



Australian Capital Territory

# **Criminal Code 2002    No 51**

**Republication No 1**

**Effective: 1 January 2003**

Republication date: 1 January 2003

Act not amended up to this date

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Criminal Code 2002* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 January 2003. It also includes any amendment, repeal or expiry affecting the republished law.

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

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

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 includes 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.

### Modifications

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.



Australian Capital Territory

# Criminal Code 2002

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Australian Capital Territory

## **Criminal Code 2002**

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An Act relating to the criminal law, and for other purposes

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## Chapter 1 Preliminary

### 1 Name of Act

This Act is the *Criminal Code 2002*.

### 2 Commencement

- (1) This Act (other than schedule 1, part 1.23) commences on 1 January 2003.
- (2) Schedule 1, part 1.23 commences on the commencement of the *Territory Records Act 2002*, section 52.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

### 3 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.

For example, the signpost definition '*conduct*—see section 13.' means that the expression 'conduct' is defined in that section.

*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, s 155 and s 156 (1)).

### 4 Notes

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

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

**5 Codification**

- (1) The only offences against Territory laws are the offences created under this Act or any other Act.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (2) This section does not apply until the default application date.
- (3) Subsection (2) and this subsection expire on the default application date.

## **Chapter 2**                    **General principles of criminal responsibility**

### **Part 2.1**                    **Purpose and application**

#### **6**            **Purpose of ch 2**

- (1) The purpose of this chapter is to codify general principles of criminal responsibility under Territory laws.
- (2) It contains all the general principles of criminal responsibility that apply to any offence, irrespective of how the offence is created.

#### **7**            **Application of ch 2**

This chapter applies to all offences against this Act and all other offences against Territory laws.

#### **8**            **Delayed application of ch 2 to certain offences**

- (1) Despite section 7, the provisions of this chapter (other than the immediately applied provisions) do not apply to an offence created by a provision that commenced before 1 January 2003 (a *pre-2003 offence*) until the default application date.
- (2) To remove any doubt, if—
  - (a) a provision containing a pre-2003 offence is omitted and remade (with or without changes) before the default application date; and
  - (b) the remade provision creates an offence;

the provisions of this chapter apply to the offence (unless an Act or subordinate law provides otherwise).

- (3) To remove any doubt, a power to make subordinate laws for an Act includes power to make subordinate laws applying this chapter to, or displacing the application of subsection (1) to, offences against subordinate laws under that Act.
- (4) In interpreting the immediately applied provisions in relation to an offence, the other provisions of this Act may be considered.
- (5) This section expires on the default application date.

## **9 Delayed application of div 2.3.2 etc**

- (1) Despite sections 7 and 8, the provisions of division 2.3.2 (Lack of capacity—mental impairment) and section 66 (2) (d) do not apply to offences until the default application date.
- (2) This section expires on the default application date.

## **10 Definitions—*default application date* and *immediately applied provisions***

In this Act:

*default application date* means 1 January 2006 or, if another date is prescribed under the regulations for this definition, that date.

*immediately applied provisions* mean the following provisions of this chapter:

- section 15 (5) (which deals with evidence of self-induced intoxication)
- section 25 (Children under 10)
- section 26 (Children 10 and over but under 14)
- section 30 (Intoxication—interpretation)
- section 31 (Intoxication—offences involving basic intent)
- section 32 (Intoxication—negligence as fault element)
- section 33 (Intoxication—relevance to defences)
- section 34 (Involuntary intoxication)

**Chapter 2**  
**Part 2.1**

General principles of criminal responsibility  
Purpose and application

Section 10

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- section 44 (Attempt)
- section 45 (Complicity and common purpose)
- section 46 (Innocent agency)
- section 47 (Incitement)
- section 48 (Conspiracy)
- part 2.6 (Proof of criminal responsibility)
- part 2.7 (Geographical application) other than section 66 (2) (d)

## **Part 2.2                    The elements of an offence**

### **Division 2.2.1            General**

#### **11      Elements**

- (1) An offence consists of physical elements and fault elements.
- (2) However, the law that creates the offence may provide that there is no fault element for some or all of the physical elements.
- (3) The law that creates the offence may provide different fault elements for different physical elements.

#### **12      Establishing guilt of offences**

A person must not be found guilty of committing an offence unless the following is proved:

- (a) the existence of the physical elements that are, under the law creating the offence, relevant to establishing guilt;
- (b) for each of the physical elements for which a fault element is required—the fault element or 1 of the fault elements for the physical element.

*Note 1*    See pt 2.6 on proof of criminal responsibility.

*Note 2*    See pt 2.7 on geographical jurisdiction.

## **Division 2.2.2            Physical elements**

### **13    Definitions—*conduct* and *engage in conduct***

In this Act:

*conduct* means an act, an omission to do an act or a state of affairs.

*engage in conduct* means—

- (a) do an act; or
- (b) omit to do an act.

### **14    Physical elements**

A *physical element* of an offence may be—

- (a) conduct; or
- (b) a result of conduct; or
- (c) a circumstance in which conduct, or a result of conduct, happens.

### **15    Voluntariness**

- (1) Conduct can only be a physical element if it is voluntary.
- (2) Conduct is voluntary only if it is a product of the will of the person whose conduct it is.

#### **Examples of conduct that is not voluntary**

- 1 a spasm, convulsion or other unwilled bodily movement
- 2 an act done during sleep or unconsciousness
- 3 an act done during impaired consciousness depriving the person of the will to act

*Note*      An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).



- (3) An omission to do an act is voluntary only if the act omitted is an act that the person can do.
- (4) If the conduct required for an offence consists only of a state of affairs, the state of affairs is voluntary only if it is a state of affairs over which the person is capable of exercising control.
- (5) Evidence of self-induced intoxication cannot be considered in deciding whether conduct is voluntary.

*Note* For when intoxication is *self-induced*, see s 30.

## **16 Omissions**

An omission to do an act can only be a physical element if—

- (a) the law creating the offence makes it a physical element; or
- (b) the law creating the offence impliedly provides that the offence is committed by an omission to do an act that, by law, there is a duty to do.

## **Division 2.2.3 Fault elements**

### **17 Fault elements**

- (1) A *fault element* for a particular physical element may be intention, knowledge, recklessness or negligence.
- (2) Subsection (1) does not prevent a law that creates an offence from providing other fault elements for a physical element of the offence.

### **18 Intention**

- (1) A person has *intention* in relation to conduct if the person means to engage in the conduct.
- (2) A person has *intention* in relation to a result if the person means to bring it about or is aware that it will happen in the ordinary course of events.

- (3) A person has *intention* in relation to a circumstance if the person believes that it exists or will exist.

## **19 Knowledge**

A person has *knowledge* of a result or circumstance if the person is aware that it exists or will exist in the ordinary course of events.

## **20 Recklessness**

- (1) A person is *reckless* in relation to a result if—
- (a) the person is aware of a substantial risk that the result will happen; and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (2) A person is *reckless* in relation to a circumstance if—
- (a) the person is aware of a substantial risk that the circumstance exists or will exist; and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (3) The question whether taking a risk is unjustifiable is a question of fact.
- (4) If recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness satisfies the fault element.

## **21 Negligence**

A person is *negligent* in relation to a physical element of an offence if the person's conduct merits criminal punishment for the offence because it involves—

- (a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and
- (b) such a high risk that the physical element exists or will exist.

## **22 Offences that do not provide fault elements**

- (1) If the law creating an offence does not provide a fault element for a physical element that consists only of conduct, intention is the fault element for the physical element.
- (2) If the law creating an offence does not provide a fault element for a physical element that consists of a circumstance or a result, recklessness is the fault element for the physical element.

## **Division 2.2.4 Cases where fault elements are not required**

### **23 Strict liability**

- (1) If a law that creates an offence provides that the offence is a strict liability offence—
  - (a) there are no fault elements for any of the physical elements of the offence; and
  - (b) the defence of mistake of fact under section 36 (Mistake of fact—strict liability) is available.
- (2) If a law that creates an offence provides that strict liability applies to a particular physical element of the offence—
  - (a) there are no fault elements for the physical element; and
  - (b) the defence of mistake of fact under section 36 is available in relation to the physical element.
- (3) The existence of strict liability does not make any other defence unavailable.

## **24 Absolute liability**

- (1) If a law that creates an offence provides that the offence is an absolute liability offence—
  - (a) there are no fault elements for any of the physical elements of the offence; and
  - (b) the defence of mistake of fact under section 36 (Mistake of fact—strict liability) is not available.
- (2) If a law that creates an offence provides that absolute liability applies to a particular physical element of the offence—
  - (a) there are no fault elements for the physical element; and
  - (b) the defence of mistake of fact under section 36 is not available in relation to the physical element.
- (3) The existence of absolute liability does not make any other defence unavailable.

## Part 2.3                      Circumstances where there is no criminal responsibility

### Division 2.3.1              Lack of capacity—children

#### 25      Children under 10

A child under 10 years old is not criminally responsible for an offence.

#### 26      Children 10 and over but under 14

- (1) A child aged 10 years or older, but under 14 years old, can only be criminally responsible for an offence if the child knows that his or her conduct is wrong.
- (2) The question whether a child knows that his or her conduct is wrong is a question of fact.
- (3) The burden of proving that a child knows that his or her conduct is wrong is on the prosecution.

### Division 2.3.2              Lack of capacity—mental impairment

#### 27      Definition—*mental impairment*

- (1) In this Act:  
*mental impairment* includes senility, intellectual disability, mental illness, brain damage and severe personality disorder.
- (2) In this section:  
*mental illness* is an underlying pathological infirmity of the mind, whether of long or short duration and whether permanent or temporary, but does not include a condition (a *reactive condition*)

resulting from the reaction of a healthy mind to extraordinary external stimuli.

- (3) However, a reactive condition may be evidence of a mental illness if it involves some abnormality and is prone to recur.

## **28    Mental impairment and criminal responsibility**

- (1) A person is not criminally responsible for an offence if, when carrying out the conduct required for the offence, the person was suffering from a mental impairment that had the effect that—
- (a) the person did not know the nature and quality of the conduct; or
  - (b) the person did not know that the conduct was wrong; or
  - (c) the person could not control the conduct.
- (2) For subsection (1) (b), a person does not know that conduct is wrong if the person cannot reason with a moderate degree of sense and composure about whether the conduct, as seen by a reasonable person, is wrong.
- (3) The question whether a person was suffering from a mental impairment is a question of fact.
- (4) A person is presumed not to have been suffering from a mental impairment.
- (5) The presumption is displaced only if it is proved on the balance of probabilities (by the prosecution or defence) that the person was suffering from a mental impairment.
- (6) The prosecution may rely on this section only if the court gives leave.
- (7) If the tribunal of fact is satisfied that a person is not criminally responsible for an offence only because of mental impairment, it must make or return a special verdict that the person is not guilty of the offence because of mental impairment.

## **29 Mental impairment and other defences**

- (1) A person cannot rely on a mental impairment to deny voluntariness or the existence of a fault element, but may rely on mental impairment to deny criminal responsibility.
- (2) If the tribunal of fact is satisfied that a person carried out conduct because of a delusion caused by a mental impairment, the delusion itself cannot be relied on as a defence, but the person may rely on the mental impairment to deny criminal responsibility.

## **Division 2.3.3 Intoxication**

### **30 Intoxication—interpretation**

- (1) In this Act:

*fault element of basic intent* means a fault element of intention for a physical element that consists only of conduct.

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

- (2) For this Act, intoxication is *self-induced* unless it came about—
  - (a) involuntarily; or
  - (b) because of fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force; or
  - (c) from the use of a drug for which a prescription is required and that was used in accordance with the directions of the doctor or dentist who prescribed it; or
  - (d) from the use of a drug for which no prescription is required and that was used for a purpose, and in accordance with the dosage level, recommended by the manufacturer.

- (3) However, subsections (2) (c) and (d) do not apply if the person using the drug knew, or had reason to believe, when the person took the drug that the drug would significantly impair the person's judgment or control.

### **31 Intoxication—offences involving basic intent**

- (1) Evidence of self-induced intoxication cannot be considered in deciding whether a fault element of basic intent exists.

*Note*     A fault element of intention in relation to a result or circumstance is not a fault element of basic intent.

- (2) This section does not prevent evidence of self-induced intoxication being considered in deciding whether conduct was accidental.
- (3) This section does not prevent evidence of self-induced intoxication being considered in deciding whether a person had a mistaken belief about facts if, when carrying out the conduct making up the physical element of the offence, the person considered whether or not the facts existed.
- (4) A person may be taken to have considered whether or not facts existed when carrying out conduct if—
- (a) the person had considered, on a previous occasion, whether the facts existed in the circumstances surrounding that occasion; and
  - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as the circumstances surrounding the previous occasion.

### **32 Intoxication—negligence as fault element**

- (1) If negligence is a fault element for a particular physical element of an offence, in deciding whether the fault element exists for a person



who is intoxicated, regard must be had to the standard of a reasonable person who is not intoxicated.

- (2) However, if intoxication is not self-induced, regard must be had to the standard of a reasonable person intoxicated to the same extent as the person concerned.

### **33 Intoxication—relevance to defences**

- (1) If any part of a defence is based on actual knowledge or belief, evidence of intoxication may be considered in deciding whether the knowledge or belief exists.
- (2) However, if—
  - (a) each physical element of an offence has a fault element of basic intent; and
  - (b) any part of a defence is based on actual knowledge or belief; evidence of self-induced intoxication cannot be considered in deciding whether the knowledge or belief exists.
- (3) If any part of a defence is based on reasonable belief, in deciding whether the reasonable belief exists, regard must be had to the standard of a reasonable person who is not intoxicated.
- (4) If a person's intoxication is not self-induced, in deciding whether any part of a defence based on reasonable belief exists, regard must be had to the standard of a reasonable person intoxicated to the same extent as the person concerned.

### **34 Involuntary intoxication**

A person is not criminally responsible for an offence if the person's conduct making up the offence was as a result of intoxication that was not self-induced.

## **Division 2.3.4            Mistake and ignorance**

### **35    Mistake or ignorance of fact—fault elements other than negligence**

- (1) A person is not criminally responsible for an offence that has a physical element for which there is a fault element other than negligence if—
  - (a) when carrying out the conduct making up the physical element, the person is under a mistaken belief about, or is ignorant of, facts; and
  - (b) the existence of the mistaken belief or ignorance negates a fault element applying to the physical element.
- (2) In deciding whether a person was under a mistaken belief about facts, or was ignorant of facts, the tribunal of fact may consider whether the mistaken belief or ignorance was reasonable in the circumstances.

### **36    Mistake of fact—strict liability**

- (1) A person is not criminally responsible for an offence that has a physical element for which there is no fault element if—
  - (a) when carrying out the conduct making up the physical element, the person considered whether or not facts existed, and was under a mistaken but reasonable belief about the facts; and
  - (b) had the facts existed, the conduct would not have been an offence.
- (2) A person may be taken to have considered whether or not facts existed when carrying out conduct if—
  - (a) the person had considered, on a previous occasion, whether the facts existed in the circumstances surrounding that occasion; and

- (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as the circumstances surrounding the previous occasion.

*Note* Section 24 (Absolute liability) prevents this section applying to offences of absolute liability.

### **37 Mistake or ignorance of law creating offence**

- (1) A person can be criminally responsible for an offence even though, when carrying out the conduct required for the offence, the person is mistaken about, or ignorant of, the existence or content of a law that creates the offence.
- (2) However, the person is not criminally responsible for the offence if—
- (a) the law creating the offence expressly or impliedly provides that a person is not criminally responsible for the offence in those circumstances; or
- (b) the person's ignorance or mistake negates a fault element applying to a physical element of the offence.

### **38 Claim of right**

- (1) A person is not criminally responsible for an offence that has a physical element relating to property if—
- (a) when carrying out the conduct required for the offence, the person is under a mistaken belief about a proprietary or possessory right; and
- (b) the existence of the right would negate a fault element for any physical element of the offence.
- (2) A person is not criminally responsible for any other offence arising necessarily out of the exercise of a proprietary or possessory right that the person mistakenly believes to exist.

- (3) This section does not negate criminal responsibility for an offence relating to the use of force against a person.

## **Division 2.3.5            External factors**

### **39            Intervening conduct or event**

A person is not criminally responsible for an offence that has a physical element to which absolute or strict liability applies if—

- (a) the physical element is brought about by someone else over whom the person has no control or by a non-human act or event over which the person has no control; and
- (b) the person could not reasonably have been expected to guard against the bringing about of the physical element.

### **40            Duress**

- (1) A person is not criminally responsible for an offence if the person carries out the conduct required for the offence under duress.
- (2) A person carries out conduct under duress only if the person reasonably believes that—
  - (a) a threat has been made that will be carried out unless an offence is committed; and
  - (b) there is no reasonable way to make the threat ineffective; and
  - (c) the conduct is a reasonable response to the threat.
- (3) However, the person does not carry out conduct under duress if the threat is made by or on behalf of a person with whom the person is voluntarily associating to carry out conduct of the kind required for the offence.

#### **41 Sudden or extraordinary emergency**

- (1) A person is not criminally responsible for an offence if the person carries out the conduct required for the offence in response to circumstances of sudden or extraordinary emergency.
- (2) This section applies only if the person reasonably believes that—
  - (a) circumstances of sudden or extraordinary emergency exist; and
  - (b) committing the offence is the only reasonable way to deal with the emergency; and
  - (c) the conduct is a reasonable response to the emergency.

#### **42 Self-defence**

- (1) A person is not criminally responsible for an offence if the person carries out the conduct required for the offence in self-defence.
- (2) A person carries out conduct in self-defence only if—
  - (a) the person believes the conduct is necessary—
    - (i) to defend himself or herself or someone else; or
    - (ii) to prevent or end the unlawful imprisonment of himself or herself or someone else; or
    - (iii) to protect property from unlawful appropriation, destruction, damage or interference; or
    - (iv) to prevent criminal trespass to land or premises; or
    - (v) to remove from land or premises a person committing criminal trespass; and
  - (b) the conduct is a reasonable response in the circumstances as the person perceives them.

- (3) However, the person does not carry out conduct in self-defence if—
- (a) the person uses force that involves the intentional infliction of death or serious harm—
    - (i) to protect property; or
    - (ii) to prevent criminal trespass; or
    - (iii) to remove a person committing criminal trespass; or
  - (b) the person is responding to lawful conduct that the person knows is lawful.
- (4) Conduct is not lawful for subsection (3) (b) only because the person carrying it out is not criminally responsible for it.

#### **43 Lawful authority**

A person is not criminally responsible for an offence if the conduct required for the offence is justified or excused under a law.

## Part 2.4                      Extensions of criminal responsibility

### 44      Attempt

- (1) If a person attempts to commit an offence, the person commits the offence of attempting to commit that offence.
- (2) However, a person commits the offence of attempting to commit an offence only if the person carries out conduct that is more than merely preparatory to the commission of the offence attempted.
- (3) The question whether conduct is more than merely preparatory is a question of fact.
- (4) A person may be found guilty of attempting to commit an offence even though—
  - (a) it was impossible to commit the offence attempted; or
  - (b) the person committed the offence attempted.
- (5) For the offence of attempting to commit an offence, intention and knowledge are fault elements for each physical element of the offence attempted.

*Note*      Only 1 of the fault elements of intention or knowledge needs to be established for each physical element of the offence attempted (see s 12 (Establishing guilt of offences)).
- (6) However, any special liability provisions that apply to an offence apply also to the offence of attempting to commit the offence.
- (7) Any defence, procedure, limitation or qualifying provision applying to an offence applies to the offence of attempting to commit the offence.

- (8) If a person is found guilty of attempting to commit an offence, the person cannot later be charged with committing the offence.
- (9) The offence of attempting to commit an offence is punishable as if the offence attempted had been committed.
- (10) This section does not apply to an offence against section 45 (Complicity and common purpose) or section 48 (Conspiracy).

#### **45 Complicity and common purpose**

- (1) A person is taken to have committed an offence if the person aids, abets, counsels or procures the commission of the offence by someone else.
- (2) However, the person commits the offence because of this section only if—
  - (a) the person's conduct in fact aids, abets, counsels or procures the commission of the offence by the other person; and
  - (b) when carrying out the conduct, the person either—
    - (i) intends the conduct to aid, abet, counsel or procure the commission of any offence (including its fault elements) of the type committed by the other person; or
    - (ii) intends the conduct to aid, abet, counsel or procure the commission of an offence by the other person and is reckless about the commission of the offence (including its fault elements) in fact committed by the other person.
- (3) To remove any doubt, the person is taken to have committed the offence only if the other person commits the offence.
- (4) Despite subsection (2), any special liability provisions that apply to an offence apply also to the offence of aiding, abetting, counselling or procuring the commission of the offence.



- (5) A person must not be found guilty of aiding, abetting, counselling or procuring the commission of an offence if, before the offence was committed, the person—
  - (a) ended his or her involvement; and
  - (b) took all reasonable steps to prevent the commission of the offence.
- (6) A person may be found guilty of aiding, abetting, counselling or procuring the commission of an offence even if the person who committed the offence is not prosecuted or found guilty.
- (7) To remove any doubt, if a person is taken to have committed an offence because of this section, the offence is punishable as if, apart from the operation of this section, the person had committed the offence.

#### **46 Innocent agency**

- (1) A person is taken to have committed an offence if—
  - (a) the person procures someone else to engage in conduct that (whether or not together with conduct engaged in by the person) makes up the physical elements of the offence consisting of conduct; and
  - (b) any physical element of the offence consisting of a circumstance exists; and
  - (c) any physical element of the offence consisting of a result of the conduct happens; and
  - (d) when the person procured the other person to engage in the conduct, the person had a fault element applying to each physical element of the offence.
- (2) To remove any doubt, if a person is taken to have committed an offence because of this section, the offence is punishable as if, apart

from the operation of this section, the person had committed the offence.

#### **47 Incitement**

- (1) If a person urges the commission of an offence (the *offence incited*), the person commits the offence of incitement.

Maximum penalty:

- (a) if the offence incited is punishable by life imprisonment—imprisonment for 10 years, 1 000 penalty units or both; or
  - (b) if the offence incited is punishable by imprisonment for 14 years or more (but not life imprisonment)—imprisonment for 7 years, 700 penalty units or both; or
  - (c) if the offence incited is punishable by imprisonment for 10 years or more (but less than 14 years)—imprisonment for 5 years, 500 penalty units or both; or
  - (d) if the offence incited is punishable by imprisonment for less than 10 years, either or both of the following:
    - (i) the lesser of the maximum term of imprisonment for the offence incited and imprisonment for 3 years;
    - (ii) 300 penalty units; or
  - (e) if the offence incited is not punishable by imprisonment—the number of penalty units equal to the maximum number of penalty units applying to the offence incited.
- (2) However, the person commits the offence of incitement only if the person intends that the offence incited be committed.
- (3) Despite subsection (2), any special liability provisions that apply to an offence apply also to the offence of incitement to commit the offence.

- (4) A person may be found guilty of the offence of incitement even though it was impossible to commit the offence incited.
- (5) Any defence, procedure, limitation or qualifying provision applying to an offence applies to the offence of incitement in relation to the offence.
- (6) This section does not apply to an offence against section 44 (Attempt), section 48 (Conspiracy) or this section.

#### **48 Conspiracy**

- (1) If a person conspires with someone else to commit an offence (the *offence conspired*) punishable by imprisonment for longer than 1 year or by a fine of 200 penalty units or more (or both), the person commits the offence of conspiracy.
- (2) However, the person commits the offence of conspiracy only if—
  - (a) the person entered into an agreement with at least 1 other person; and
  - (b) the person and at least 1 other party to the agreement intend that an offence be committed under the agreement; and
  - (c) the person or at least 1 other party to the agreement commits an overt act under the agreement.
- (3) Despite subsection (2), any special liability provisions that apply to an offence apply also to the offence of conspiracy to commit the offence.
- (4) The offence of conspiring to commit an offence is punishable as if the offence conspired had been committed.
- (5) A person may be found guilty of the offence of conspiracy even though—
  - (a) it was impossible to commit the offence conspired; or

- (b) the person and each other party to the agreement is a corporation; or
  - (c) each other party to the agreement is—
    - (i) a person who is not criminally responsible; or
    - (ii) a person for whose benefit or protection the offence exists; or
  - (d) all other parties to the agreement are acquitted of the conspiracy (unless to find the person guilty would be inconsistent with their acquittal).
- (6) A person must not be found guilty of the offence of conspiracy to commit an offence if, before the commission of an overt act under the agreement, the person—
- (a) withdrew from the agreement; and
  - (b) took all reasonable steps to prevent the commission of the offence conspired.
- (7) A person for whose benefit or protection an offence exists cannot be found guilty of conspiracy to commit the offence.
- (8) Any defence, procedure, limitation or qualifying provision applying to an offence applies to the offence of conspiracy to commit the offence.
- (9) A court may dismiss a charge of conspiracy if it considers that the interests of justice require it to dismiss the charge.
- (10) A proceeding for an offence of conspiracy must not be begun without the consent of the Attorney-General or the director of public prosecutions.
- (11) However, a person may be arrested for, charged with, or remanded in custody or on bail in relation to, an offence of conspiracy before the consent has been given.

## **Part 2.5**

# **Corporate criminal responsibility**

### **49 General principles**

- (1) This Act applies to corporations as well as individuals.

*Note* A law that creates an offence applies to a corporation as well as to an individual (see Legislation Act, s 161).

- (2) The Act applies to corporations in the same way as it applies to individuals, but subject to the changes made by this part and any other changes necessary because criminal responsibility is being imposed on a corporation rather than an individual.

### **50 Physical elements**

A physical element of an offence consisting of conduct is taken to be committed by a corporation if it is committed by an employee, agent or officer of the corporation acting within the actual or apparent scope of his or her employment or within his or her actual or apparent authority.

### **51 Corporation—fault elements other than negligence**

- (1) In deciding whether the fault element of intention, knowledge or recklessness exists for an offence in relation to a corporation, the fault element is taken to exist if the corporation expressly, tacitly or impliedly authorises or permits the commission of the offence.
- (2) The ways in which authorisation or permission may be established include—
  - (a) proving that the corporation's board of directors intentionally, knowingly or recklessly engaged in the conduct or expressly,

tacitly or impliedly authorised or permitted the commission of the offence; or

- (b) proving that a high managerial agent of the corporation intentionally, knowingly or recklessly engaged in the conduct or expressly, tacitly or impliedly authorised or permitted the commission of the offence; or
  - (c) proving that a corporate culture existed within the corporation that directed, encouraged, tolerated or led to noncompliance with the contravened law; or
  - (d) proving that the corporation failed to create and maintain a corporate culture requiring compliance with the contravened law.
- (3) Subsection (2) (b) does not apply if the corporation proves that it exercised appropriate diligence to prevent the conduct, or the authorisation or permission.
- (4) Factors relevant to subsection (2) (c) and (d) include—
- (a) whether authority to commit an offence of the same or a similar character had been given by a high managerial agent of the corporation; and
  - (b) whether the employee, agent or officer of the corporation who committed the offence reasonably believed, or had a reasonable expectation, that a high managerial agent of the corporation would have authorised or permitted the commission of the offence.
- (5) If recklessness is not a fault element for a physical element of an offence, subsection (2) does not enable the fault element to be proved by proving that the board of directors, or a high managerial agent, of the corporation recklessly engaged in the conduct or recklessly authorised or permitted the commission of the offence.

(6) In this section:

***board of directors***, of a corporation, means the body exercising the corporation's executive authority, whether or not the body is called the board of directors.

***corporate culture***, for a corporation, means an attitude, policy, rule, course of conduct or practice existing within the corporation generally or in the part of the corporation where the relevant conduct happens.

***high managerial agent***, of a corporation, means an employee, agent or officer of the corporation whose conduct may fairly be assumed to represent the corporation's policy because of the level of responsibility of his or her duties.

## **52 Corporation—negligence**

- (1) This section applies if negligence is a fault element in relation to a physical element of an offence and no individual employee, agent or officer of a corporation has the fault element.
- (2) The fault element of negligence may exist for the corporation in relation to the physical element if the corporation's conduct is negligent when viewed as a whole (that is, by aggregating the conduct of a number of its employees, agents or officers).

*Note* The test of negligence for a corporation is that set out in s 21 (Negligence).

## **53 Corporation—mistake of fact—strict liability**

A corporation may only rely on section 36 (Mistake of fact—strict liability) in relation to the conduct that would make up an offence by the corporation if—

- (a) the employee, agent or officer of the corporation who carried out the conduct was under a mistaken but reasonable belief

about facts that, had they existed, would have meant that the conduct would not have been an offence; and

- (b) the corporation proves that it exercised appropriate diligence to prevent the conduct.

**54 Corporation—intervening conduct or event**

A corporation may not rely on section 39 (Intervening conduct or event) in relation to a physical element of an offence brought about by someone else if the other person is an employee, agent or officer of the corporation.

**55 Evidence of negligence or failure to exercise appropriate diligence**

Negligence, or failure to exercise appropriate diligence, in relation to conduct of a corporation may be evidenced by the fact that the conduct was substantially attributable to—

- (a) inadequate corporate management, control or supervision of the conduct of 1 or more of the corporation's employees, agents or officers; or
- (b) failure to provide adequate systems for giving relevant information to relevant people in the corporation.



## Part 2.6                      Proof of criminal responsibility

### 56      Legal burden of proof—prosecution

- (1) The prosecution has the legal burden of proving every element of an offence relevant to the guilt of the person charged.

*Note*      See s 11 (Elements) on what elements are relevant to a person's guilt.

- (2) The prosecution also has the legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof on the defendant.

- (3) In this Act:

*legal burden*, in relation to a matter, means the burden of proving the existence of the matter.

### 57      Standard of proof—prosecution

- (1) A legal burden of proof on the prosecution must be discharged beyond reasonable doubt.
- (2) Subsection (1) does not apply if a law provides for a different standard of proof.

### 58      Evidential burden of proof—defence

- (1) Subject to section 59 (Legal burden of proof—defence), a burden of proof that a law imposes on a defendant is an evidential burden only.
- (2) A defendant who wishes to deny criminal responsibility by relying on a provision of part 2.3 (Circumstances where there is no criminal responsibility) has an evidential burden in relation to the matter.

- (3) Subject to section 59, a defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence (whether or not it accompanies the description of the offence) has an evidential burden in relation to the matter.

**Examples**

- 1 The *XYZ Act 2002*, section 10 (1) creates an offence of producing a false or misleading document. Section 10 (2) provides—

(2) This section does not apply if the document is not false or misleading in a material particular.

Section 10 (2) is an exception to section 10 (1). A defendant who wishes to rely on the exception has an evidential burden that the document is not false or misleading in a material particular.

- 2 The *XYZ Act 2002*, section 10 (1) creates an offence of a person making a statement knowing that it omits something without which the statement is misleading. Section 10 (2) provides—

(2) This section does not apply if the omission does not make the statement misleading in a material particular.

Section 10 (2) is an exception to section 10 (1). A defendant who wishes to rely on the exception has an evidential burden that the omission did not make the statement misleading in a material particular.

- 3 The *XYZ Act 2002*, section 10 (1) creates an offence of disclosing certain information about a restraining order. Section 10 (2) provides—

(2) This section does not apply if the disclosure is made to a police officer.

Section 10 (2) is an exception to section 10 (1). A defendant who wishes to rely on the exception has an evidential burden that the disclosure was made to a police officer.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) To remove any doubt, for a strict liability offence that allows the defence of reasonable excuse, a defendant has an evidential burden in relation to the defence.

- (5) The defendant no longer has the evidential burden in relation to a matter if evidence sufficient to discharge the burden is presented by the prosecution.
- (6) The question whether an evidential burden has been discharged is a question of law.
- (7) In this Act:

*evidential burden*, in relation to a matter, means the burden of presenting or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

## 59 Legal burden of proof—defence

A burden of proof that a law imposes on the defendant is a legal burden only if the law expressly—

- (a) provides that the burden of proof in relation to the matter in question is a legal burden; or
- (b) requires the defendant to prove the matter; or
- (c) creates a presumption that the matter exists unless the contrary is proved.

### Example for par (b)

The *XYZ Act 2002*, section 10 (1) creates an offence of exhibiting a film classified ‘R’ to a child. Section 10 (2) provides—

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the defendant believed on reasonable grounds that the child was an adult.

Section 10 (2) provides a defence to an offence against section 10 (1). A defendant who wishes to rely on the defence has a legal burden of proving that the defendant believed on reasonable grounds that the child was an adult.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**60 Standard of proof—defence**

A legal burden of proof on the defendant must be discharged on the balance of probabilities.

**61 Use of averments**

A law that allows the prosecution to make an averment (however expressed) does not allow the prosecution—

- (a) to aver any fault element of an offence; or
- (b) to make an averment in prosecuting for an offence that is directly punishable by imprisonment.

## Part 2.7 Geographical application

### 62 Application and effect of pt 2.7

- (1) This part applies to all offences.
- (2) This part extends the application of a Territory law that creates an offence beyond the territorial limits of the ACT (and Australia) if the required geographical nexus exists for the offence.
- (3) If a law that creates an offence provides for any geographical consideration for the offence, that provision prevails over any inconsistent provision of this part.

#### Examples for s (3)

- 1 A law creating an offence may provide that the place of commission of the offence is (explicitly or by necessary implication) an element of the offence.
- 2 A law creating an offence may provide for its application outside the ACT and exclude (explicitly or by necessary implication) the requirement for a geographical nexus between the ACT and an element of the offence.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

### 63 Interpretation for pt 2.7

- (1) For this part, the *required geographical nexus* is the geographical nexus mentioned in section 64 (2).
- (2) For this part, the place where an offence is committed is the place where any of the physical elements of the offence happen.
- (3) For this part, the place where an offence has an effect includes—
  - (a) any place whose peace, welfare or good government is threatened by the offence; and

- (b) any place where the offence would have an effect (or would cause such a threat) if the offence were committed.

**64 Extension of offences if required geographical nexus exists**

- (1) An offence against a law is committed if—
  - (a) disregarding any geographical considerations, all elements of the offence exist; and
  - (b) a geographical nexus exists between the ACT and the offence.
- (2) A *geographical nexus* exists between the ACT and an offence if—
  - (a) the offence is committed completely or partly in the ACT, whether or not the offence has any effect in the ACT; or
  - (b) the offence is committed completely outside the ACT (whether or not outside Australia) but has an effect in the ACT.

**65 Geographical application—double criminality**

- (1) This part applies to an offence committed partly in the ACT and partly in a place outside the ACT (whether or not outside Australia), even if it is not also an offence in that place.
- (2) This part applies to an offence committed completely outside the ACT (whether or not outside Australia) only if—
  - (a) it is also an offence in the place where it is committed; or
  - (b) it is not also an offence in that place, but the tribunal of fact is satisfied that the offence is such a threat to the peace, welfare or good government of the ACT that it justifies criminal punishment in the ACT.

## 66 Geographical application—procedure

- (1) The required geographical nexus is conclusively presumed for an offence unless rebutted under subsection (2) or (4).
- (2) If a person charged with an offence disputes the existence of the required geographical nexus for the offence, the following provisions apply:
  - (a) the court must proceed with the trial of the offence in the usual way;
  - (b) if, at the end of the trial, the tribunal of fact is satisfied on the balance of probabilities that the required geographical nexus does not exist, it must make or return a finding to that effect, and the court must dismiss the charge;
  - (c) however, if, disregarding any geographical considerations, the tribunal of fact would find the person not guilty of the offence (other than because of mental impairment), it must make or return a verdict of not guilty;
  - (d) also, if, disregarding any geographical considerations, the tribunal of fact would find the person not guilty of the offence only because of mental impairment, it must make or return a verdict that the person is not guilty of the offence because of mental impairment.

*Note* Par (d) does not apply to offences until the default application date (see s 9 (1)). For findings in relation to mental illness before that date, see *Crimes Act 1900*, pt 13.

- (3) This section applies to any alternative verdict available by law to the tribunal of fact in relation to another offence with which the person was not charged.
- (4) The tribunal of fact may make or return a finding of guilty in relation to the other offence (mentioned in subsection (3)) unless

satisfied on the balance of probabilities that the required geographical nexus does not exist for the other offence.

- (5) If the issue of whether the required geographical nexus exists for an offence is raised before the trial (including at a special hearing under the *Crimes Act 1900*, section 315), the issue must be reserved for consideration at the trial.

**67 Geographical application—suspicion etc that offence committed**

- (1) This section applies if a person may exercise a function under a law on reasonable suspicion or belief that an offence has been committed.
- (2) The person may exercise the function if the person suspects or believes, as the case requires, on reasonable grounds that all the elements required for the offence exist.
- (3) Subsection (2) applies whether or not the person suspects or believes, or has any ground to suspect or believe, that the required geographical nexus exists for the offence.



## **Chapter 4**            **Property damage and computer offences**

### **Part 4.1**            **Property damage offences**

#### **Division 4.1.1**      **Interpretation for part 4.1**

##### **100**    **Definitions for pt 4.1**

In this part:

*causes* damage or another result—a person *causes* damage or another result if the person's conduct substantially contributes to the damage or other result.

*damage* property, includes the following:

- (a) destroy the property;
- (b) cause the physical loss of the property by interfering with the property (including by removing any restraint over the property or abandoning the property);
- (c) cause loss of a use or function of the property by interfering with the property;
- (d) deface the property;
- (e) for a document—obliterate or make illegible the whole or part of the document;
- (f) for an animal—harm or kill the animal;
- (g) for a plant or other thing forming part of land—cut it from the land.

*property* means any real or personal property of a tangible nature, including—

- (a) a wild creature that is tamed or ordinarily kept in captivity or that is in, or is being taken into, the possession of a person; and
- (b) any organ or part of a human body and any blood, ova, semen or other substance extracted from a human body.

### **101 Person to whom property belongs**

- (1) For this part, property belongs to anyone having possession or control of it, or having any proprietary right or interest in it (other than an equitable interest arising only from an agreement to transfer or grant an interest or from a constructive trust).
- (2) If property is subject to a trust, a reference to the people to whom it belongs includes a reference to anyone having a right to enforce the trust.
- (3) If property belongs to 2 or more people, a reference to the person to whom the property belongs is a reference to all the people.

### **102 Threats**

For this part—

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

## **Division 4.1.2      Offences**

### **103    Damaging property**

- (1) A person commits an offence if the person—
- (a) causes damage to property belonging to someone else; and
  - (b) intends to cause, or is reckless about causing, damage to that property or any other property belonging to someone else.

Maximum penalty: 1 000 penalty units, imprisonment for 10 years or both.

- (2) A conviction for an offence against this section is an alternative verdict to a charge for—
- (a) an offence against section 116 (Unauthorised modification of data to cause impairment); or
  - (b) an offence against section 117 (Unauthorised impairment of electronic communication).

### **104    Arson**

- (1) A person commits an offence if the person—
- (a) causes damage to a building or vehicle by fire or explosive; and
  - (b) intends to cause, or is reckless about causing, damage to that or any other building or vehicle.

Maximum penalty: 1 500 penalty units, imprisonment for 15 years or both.

- (2) A person commits an offence if the person—
- (a) makes to someone else (*person B*) a threat to damage, by fire or explosive, a building or vehicle belonging to person B or to another person; and

- (b) intends to cause, or is reckless about causing, person B to fear that the threat will be carried out.

Maximum penalty: 700 penalty units, imprisonment for 7 years or both.

- (3) In the prosecution of an offence against subsection (2) it is not necessary to prove that the person threatened (person B) actually feared that the threat would be carried out.

- (4) In this section:

*building* includes—

- (a) part of a building; or  
(b) any structure (whether or not moveable) that is used, designed or adapted for residential purposes.

*vehicle* means motor vehicle, motorised vessel or aircraft.

## **105 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: 1 500 penalty units, imprisonment for 15 years or both.

*Note* The fault element of recklessness can be satisfied by proof of intention, knowledge or recklessness (see s 20 (4)).

- (2) 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.

#### **106 Threat to cause property damage—fear of death or serious harm**

- (1) A person commits an offence if the person—
  - (a) intentionally makes to someone else a threat to damage property; and
  - (b) is reckless about causing that person to fear that the carrying out of the threat will kill or cause serious harm to that person or another person.

Maximum penalty: 700 penalty units, imprisonment for 7 years or both.

*Note* The fault element of recklessness can be satisfied by proof of intention, knowledge or recklessness (see s 20 (4)).

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

#### **107 Threat to cause property damage**

- (1) A person commits an offence if the person—
  - (a) intentionally makes to someone else a threat to damage property belonging to that person or to another person; and
  - (b) intends that person to fear that the threat will be carried out.

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

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

### **108 Possession of thing with intent to damage property**

- (1) A person commits an offence if the person possesses a thing with the intention that the person or someone else will use it to damage property belonging to another person.

Maximum penalty: 300 penalty units, imprisonment for 3 years or both.

- (2) In this section:

*possess* a thing includes—

- (a) have control over disposing of the thing (whether or not the thing is in the custody of the person); or  
(b) have joint possession of the thing.

### **Division 4.1.3 Defences**

*Note* A defendant bears an evidential burden in relation to the defences in this division (see s 58 (3)).

### **109 Consent—pt 4.1 offences**

- (1) A person (*person A*) is not criminally responsible for an offence against this part if, when the conduct required for the offence was carried out—
- (a) a person entitled to consent to the damage to the property concerned had consented; or  
(b) person A believed that a person entitled to consent to the damage to the property concerned—

- (i) had consented; or
  - (ii) would have consented if the person had known about the damage to the property and its circumstances.
- (2) For the application of this defence to an offence against section 105 (Causing bushfires):

*damage*, to property, means the risk of fire spreading to the property.

### **110 Claim of right—pt 4.1 offences**

- (1) A person is not criminally responsible for an offence against this part if, when engaging in the conduct required for the offence, the person believed that the person had a right or interest in the property concerned that entitled the person to engage in the conduct.
- (2) In this section:

*right or interest in property* includes a right or privilege in or over land or waters, whether created by grant, licence or otherwise.

### **111 Self defence**

To remove any doubt, section 42 (Self-defence) applies to an offence against this part.

## Part 4.2 Computer offences

### 112 Definitions for pt 4.2

In this part:

**causes**—a person **causes** unauthorised access to or modification of data, or impairment of electronic communication or of the reliability, security or operation of data, if the person's conduct substantially contributes to the unauthorised access, modification or impairment.

**access**, to data held in a computer, means—

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

**data** includes—

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

**data held in a computer** includes—

- (a) data entered or copied into the computer; and
- (b) data held in a removable storage device in the computer; and
- (c) data held in a data storage device on a computer network of which the computer forms part.



***data storage device*** means anything containing or designed to contain data for use by a computer.

**Examples of data storage devices**

- 1 a disc
- 2 a file server

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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

***impairment***, of electronic communication to or from a computer, includes—

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

but does not include a mere interception of the communication.

***modification***, of data held in a computer, means—

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

***serious computer offence*** means—

- (a) an offence against section 115, 116 or 117; or
- (b) conduct in another jurisdiction that is an offence in that jurisdiction and would be an offence against section 115, 116 or 117 if the conduct happened in the ACT.

**113 Limited meaning of access to data etc**

In this part, a reference to—

- (a) access to data held in a computer; or
- (b) modification of data held in a computer; or
- (c) impairment of electronic communication to or from a computer;

is limited to access, modification or impairment caused (directly or indirectly) by the execution of a function of a computer.

**114 Meaning of *unauthorised* access, modification or impairment**

- (1) For this part, access to or modification of data, or impairment of electronic communication or of the reliability, security or operation of data, by a person is *unauthorised* if the person is not entitled to cause the access, modification or impairment.
- (2) However, the access, modification or impairment is not unauthorised only because the person has an ulterior purpose for causing it.

**115 Unauthorised access, modification or impairment with intent to commit serious offence**

- (1) A person commits an offence if—
  - (a) the person causes—
    - (i) unauthorised access to data held in a computer; or
    - (ii) unauthorised modification of data held in a computer, or
    - (iii) unauthorised impairment of electronic communication to or from a computer; and

- (b) the person knows the access, modification or impairment is unauthorised; and
- (c) the person intends to commit, or enable the commission of, a serious offence (by the person or by someone else).

Maximum penalty: the maximum penalty applicable if the person had committed, or enabled the commission of, the serious offence in the ACT.

- (2) In the prosecution of an offence against this section it is not necessary to prove that the defendant knew that the offence was a serious offence.
- (3) A person can be found guilty of an offence against this section—
  - (a) even if committing the serious offence is impossible; or
  - (b) whether the serious offence is to be committed at the time of the unauthorised conduct or at a later time.
- (4) It is not an offence to attempt to commit an offence against this section.
- (5) In this section:

*serious offence* means an offence punishable by imprisonment for 5 years or longer, and includes an offence in another jurisdiction that would be a serious offence if committed in the ACT.

## **116 Unauthorised modification of data to cause impairment**

- (1) A person commits an offence if—
  - (a) the person causes unauthorised modification of data held in a computer; and
  - (b) the person knows the modification is unauthorised; and

- (c) the person—
  - (i) intends by the modification to impair access to, or to impair the reliability, security or operation of, data held in a computer; or
  - (ii) is reckless about any such impairment.

Maximum penalty: 1 000 penalty units, imprisonment for 10 years or both.

- (2) A person can be found guilty of an offence against this section even if there is or will be no actual impairment to access to, or the reliability, security or operation of, data held in a computer.
- (3) A conviction for an offence against this section is an alternative verdict to a charge for—
  - (a) an offence against section 103 (Damaging property); or
  - (b) an offence against section 117 (Unauthorised impairment of electronic communication).

### **117 Unauthorised impairment of electronic communication**

- (1) A person commits an offence if—
  - (a) the person causes an unauthorised impairment of electronic communication to or from a computer; and
  - (b) the person knows the impairment is unauthorised; and
  - (c) the person—
    - (i) intends to impair electronic communication to or from the computer; or
    - (ii) is reckless about any such impairment.

Maximum penalty: 1 000 penalty units, imprisonment for 10 years or both.

- (2) A conviction for an offence against this section is an alternative verdict to a charge for—
- (a) an offence against section 103 (Damaging property); or
  - (b) an offence against section 116 (Unauthorised modification of data to cause impairment).

**118 Possession of data with intent to commit serious computer offence**

- (1) A person commits an offence if the person has possession or control of data with the intention of—
- (a) committing a serious computer offence; or
  - (b) enabling the commission of a serious computer offence (whether by the person or by someone else).

Maximum penalty: 300 penalty units, imprisonment for 3 years or both.

- (2) For this section:

*possession or control of data* includes—

- (a) possession of a computer or data storage device holding or containing the data; or
  - (b) possession of a document in which the data is recorded; or
  - (c) control of data held in a computer that is in the possession of someone else (whether the computer is in or outside the ACT).
- (3) A person can be found guilty of an offence against this section even if committing the serious computer offence is impossible.
- (4) It is not an offence to attempt to commit an offence against this section.

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

- (1) A person commits an offence if the person produces, supplies or obtains data with the intention of—
- (a) committing a serious computer offence; or
  - (b) enabling the commission of a serious computer offence (whether by the person or by another person).

Maximum penalty: 300 penalty units, imprisonment for 3 years or both.

- (2) For this section:

*produce, supply or obtain data* includes—

- (a) produce, supply or obtain data held or contained in a computer or data storage device; or
  - (b) produce, supply or obtain a document in which the data is recorded.
- (3) A person can be found guilty of an offence against this section even if committing the serious computer offence concerned is impossible.

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

- (1) A person commits an offence if—
- (a) the person causes unauthorised access to or modification of restricted data held in a computer; and
  - (b) the person knows the access or modification is unauthorised; and
  - (c) the person intends to cause the access or modification.

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

(2) In this section:

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

**121 Unauthorised impairment of data held in computer disc, credit card etc**

A person commits an offence if—

- (a) the person causes unauthorised impairment of the reliability, security or operation of data held in a computer disc, credit card or other device used to store data by electronic means; and
- (b) the person knows the impairment is unauthorised; and
- (c) the person intends to cause the impairment.

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

## Part 4.3 Sabotage

### 122 Definitions for pt 4.3

In this part:

*causes* damage or disruption—a person *causes* damage or disruption if the person's conduct substantially contributes to the damage or disruption.

*damage*, to a public facility, means—

- (a) damage to the facility or part of the facility; or
- (b) disruption to the use or operation of the facility.

*property offence* means—

- (a) an offence against part 4.1 (Property damage offences); or
- (b) conduct in another jurisdiction that is an offence in that jurisdiction and would be an offence against part 4.1 if the conduct happened in the ACT.

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

- (a) a government facility, including premises used by government employees for official duties;
- (b) a public infrastructure facility, including a facility providing water, sewerage, energy, fuel, communication or other services to the public;
- (c) a public information system, including a system used to generate, send, receive, store or otherwise process electronic communications;



- (d) a public transport facility, including a vehicle used to transport people or goods;
- (e) a public place, including any premises, land or water open to the public.

*unauthorised computer function* means any of the following (within the meaning of part 4.2 (Computer offences)):

- (a) unauthorised access to data held in a computer;
- (b) unauthorised modification of data held in a computer;
- (c) unauthorised impairment of electronic communication to or from a computer.

## 123 Sabotage

- (1) A person commits an offence if—
  - (a) the person causes damage to a public facility by committing a property offence or by causing an unauthorised computer function; and
  - (b) the person intends to cause—
    - (i) major disruption to government functions; or
    - (ii) major disruption to the use of services by the public; or
    - (iii) major economic loss.

Maximum penalty: 2 500 penalty units, imprisonment for 25 years or both.

- (2) To remove any doubt, a person does not commit an offence against this section only because the person takes part in a protest, strike or lockout.

## **124 Threaten sabotage**

- (1) A person commits an offence if—
- (a) the person intentionally makes to someone else a threat to cause damage to a public facility by committing a property offence or by causing an unauthorised computer function; and
  - (b) the person intends the other person to fear that the threat will be carried out and will cause—
    - (i) major disruption to government functions; or
    - (ii) major disruption to the use of services by the public; or
    - (iii) major economic loss.

Maximum penalty: 1 500 penalty units, imprisonment for 15 years or both.

- (2) To remove any doubt, a person does not commit an offence against this section only because the person intends to or threatens to take part in a protest, strike or lockout.
- (3) In the prosecution of an offence against this section it is not necessary to prove that the person threatened actually feared that the threat would be carried out.
- (4) For this section—
- (a) a threat can be made by any conduct and can be explicit or implicit and conditional or unconditional; and
  - (b) a threat to a person includes a threat to a group of people; and
  - (c) fear that a threat will be carried out includes apprehension that it will be carried out.

## Chapter 5      Miscellaneous

### 125    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.

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* In particular, the Legislation Act, dict, pt 1, defines the following terms relevant to this Act:

- Act
- ACT
- contravene
- corporation
- function
- person
- proceeding
- provision
- subordinate law.

***access***, for part 4.2 (Computer offences)—see section 112.

***causes***—

- (a) for part 4.1 (Property damage offences)—see section 100; and
- (b) for part 4.2 (Computer offences)—see section 112; and
- (c) for part 4.3 (Sabotage)—see section 122.

***conduct***—see section 13.

***creates***—a law ***creates*** an offence if it directly or indirectly creates the offence or affects its scope or operation.

***damage***—

- (a) for part 4.1 (Property damage offences)—see section 100; and
- (b) for part 4.3 (Sabotage)—see section 122.

***data***, for part 4.2 (Computer offences)—see section 112.

***data held in a computer***, for part 4.2 (Computer offences)—see section 112.

***data storage device***, for part 4.2 (Computer offences)—see section 112.

***death*** means—

- (a) the irreversible cessation of all function of a person's brain (including the brain stem); or
- (b) the irreversible cessation of circulation of blood in a person's body.

***default application date***—see section 10.

***electronic communication***, for part 4.2 (Computer offences)—see section 112.

***employee*** includes a servant.

***engage in conduct***—see section 13.

***evidential burden***—see section 58 (7).

***fault element***—see section 17.

***fault element of basic intent***—see section 30.

***harm*** means—

- (a) physical harm to a person, including unconsciousness, pain, disfigurement, infection with a disease and any physical contact with the person that a person might reasonably object to in the circumstances (whether or not the person was aware of it at the time); and
- (b) harm to a person's mental health, including psychological harm, but not including mere ordinary emotional reactions (for example, distress, grief, fear or anger);

whether temporary or permanent, but does not include being subjected to any force or impact that is within the limits of what is

acceptable as incidental to social interaction or to life in the community.

***immediately applied provisions***—see section 10.

***impairment***, for part 4.2 (Computer offences)—see section 112.

***intention***—see section 18.

***intoxication***—see section 30.

***knowledge***—see section 19.

***law*** means an Act or subordinate law, and includes a provision of an Act or subordinate law.

***legal burden***—see section 56.

***mental impairment***—see section 27.

***modification***, for part 4.2 (Computer offences)—see section 112.

***negligent***—see section 21.

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

***physical element***—see section 14.

***property***, for part 4.1 (Property damage offences)—see section 100.

***property offence***, for part 4.3 (Sabotage)—see section 122.

***public facility***, for part 4.3 (Sabotage)—see section 122.

***reckless***—see section 20.

***required geographical nexus***, for part 2.7 (Geographical application)—see section 63.

***self-induced***, intoxication—see section 30.

***serious computer offence***, for part 4.2 (Computer offences)—see section 112.

***serious harm*** means any harm (including the cumulative effect of more than 1 harm) that—

- (a) endangers, or is likely to endanger, human life; or
- (b) is, or is likely to be, significant and longstanding.

***special liability provision*** means—

- (a) a provision providing that absolute liability applies to 1 or more (but not all) of the physical elements of an offence; or
- (b) a provision providing that, in a prosecution for an offence, it is not necessary to prove that the defendant knew something; or
- (c) a provision providing that, in a prosecution for an offence, it is not necessary to prove that the defendant knew or believed something.

***unauthorised computer function***, for part 4.3 (Sabotage)—see section 122.

## 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

#### **Criminal Code 2002**

notified LR 20 December 2002

s 1, s 2 commenced 20 December 2002 (LA s 75 (1))

pt 1.23 awaiting commencement (s 2 (2) and see Territory Records Act 2002, s 52)

remainder commenced 1 January 2003 (s 2 (1))

### 4 Amendment history

#### **Codification**

s 5 (2), (3) exp default application date (s 5 (3) and see s 10)

#### **Delayed application of ch 2 to certain offences**

s 8 exp default application date (s 8 (5) and see s 10)

#### **Delayed application of div 2.3.2 etc**

s 9 exp default application date (s 9 (2) and see s 10)

#### **Repeal of Criminal Code 2001**

s 126 om LA s 89 (3)

#### **Consequential amendments—sch 1**

s 127 om R1 LA

#### **Consequential amendments**

sch 1 om R1 LA

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

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