



Australian Capital Territory

# Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004

A2004-15

## Contents

---

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Definitions—default application date and immediately applied provisions, definition of immediately applied provisions Section 10	2
5 New chapter 3	3
6 Definitions for pt 4.1 Section 100, definition of property	69
7 Sections 100 to 125	69
8 Dictionary, new definitions	69
9 Dictionary, definition of <i>property</i>	71

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Contents

---

10	Dictionary, new definitions	Page 72
<b>Schedule 1</b>	<b>Consequential amendments—corporate criminal responsibility</b>	73
Part 1.1	Animal Welfare Act 1992	73
Part 1.2	Casino Control Act 1988	74
Part 1.3	Cemeteries and Crematoria Act 2003	76
Part 1.4	Classification (Publications, Films and Computer Games) (Enforcement) Act 1995	77
Part 1.5	Clinical Waste Act 1990	79
Part 1.6	Consumer Credit (Administration) Act 1996	80
Part 1.7	Coroners Act 1997	81
Part 1.8	Discrimination Act 1991	82
Part 1.9	Door-to-Door Trading Act 1991	83
Part 1.10	Drugs of Dependence Act 1989	87
Part 1.11	Electoral Act 1992	87
Part 1.12	Electricity Safety Act 1971	89
Part 1.13	Environment Protection Act 1997	89
Part 1.14	Financial Institutions Duty Act 1987	91
Part 1.15	Firearms Act 1996	92
Part 1.16	Fisheries Act 2000	93
Part 1.17	Food Act 2001	95
Part 1.18	Gambling and Racing Control Act 1999	96
Part 1.19	Gaming Machine Act 1987	98
Part 1.20	Gene Technology Act 2003	98
Part 1.21	Guardianship and Management of Property Act 1991	99

---

contents 2	Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004	A2004-15
------------	-------------------------------------------------------------------------------	----------

		Page
<b>Part 1.22</b>	<b>Health Records (Privacy and Access) Act 1997</b>	101
<b>Part 1.23</b>	<b>Independent Competition and Regulatory Commission Act 1997</b>	102
<b>Part 1.24</b>	<b>Interactive Gambling Act 1998</b>	104
<b>Part 1.25</b>	<b>Juries Act 1967</b>	105
<b>Part 1.26</b>	<b>Lakes Act 1976</b>	106
<b>Part 1.27</b>	<b>Land (Planning and Environment) Act 1991</b>	108
<b>Part 1.28</b>	<b>Legal Practitioners Act 1970</b>	109
<b>Part 1.29</b>	<b>Liquor Act 1975</b>	111
<b>Part 1.30</b>	<b>Listening Devices Act 1992</b>	112
<b>Part 1.31</b>	<b>Nature Conservation Act 1980</b>	113
<b>Part 1.32</b>	<b>Occupational Health and Safety Act 1989</b>	115
<b>Part 1.33</b>	<b>Pharmacy Act 1931</b>	116
<b>Part 1.34</b>	<b>Podiatrists Act 1994</b>	117
<b>Part 1.35</b>	<b>Psychologists Act 1994</b>	117
<b>Part 1.36</b>	<b>Tobacco Act 1927</b>	118
<b>Part 1.37</b>	<b>Waste Minimisation Act 2001</b>	119
<b>Part 1.38</b>	<b>Water Resources Act 1998</b>	120
<b>Schedule 2</b>	<b>Consequential amendments—redundant offences</b>	122
<b>Part 2.1</b>	<b>ACTION Authority Act 2001</b>	122
<b>Part 2.2</b>	<b>Adoption Act 1993</b>	123
<b>Part 2.3</b>	<b>Animal Diseases Act 1993</b>	124
<b>Part 2.4</b>	<b>Animal Welfare Act 1992</b>	124
<b>Part 2.5</b>	<b>Annual Leave Act 1973</b>	125

Contents

---

		Page
<b>Part 2.6</b>	<b>Architects Act 1959</b>	125
<b>Part 2.7</b>	<b>Associations Incorporation Act 1991</b>	125
<b>Part 2.8</b>	<b>Births, Deaths and Marriages Registration Act 1997</b>	126
<b>Part 2.9</b>	<b>Blood Donation (Transmittable Diseases) Act 1985</b>	126
<b>Part 2.10</b>	<b>Building Act 2004</b>	127
<b>Part 2.11</b>	<b>Building and Construction Industry Training Levy Act 1999</b>	127
<b>Part 2.12</b>	<b>Business Names Act 1963</b>	128
<b>Part 2.13</b>	<b>Casino Control Act 1988</b>	128
<b>Part 2.14</b>	<b>Cemeteries and Crematoria Act 2003</b>	130
<b>Part 2.15</b>	<b>Charitable Collections Act 2003</b>	130
<b>Part 2.16</b>	<b>Children and Young People Act 1999</b>	131
<b>Part 2.17</b>	<b>Clinical Waste Act 1990</b>	132
<b>Part 2.18</b>	<b>Commissioner for the Environment Act 1993</b>	132
<b>Part 2.19</b>	<b>Community and Health Services Complaints Act 1993</b>	132
<b>Part 2.20</b>	<b>Consumer and Trader Tribunal Act 2003</b>	133
<b>Part 2.21</b>	<b>Consumer Credit (Administration) Act 1996</b>	133
<b>Part 2.22</b>	<b>Cooperatives Act 2002</b>	133
<b>Part 2.23</b>	<b>Court Security Act 2001</b>	133
<b>Part 2.24</b>	<b>Debits Tax Act 1997</b>	134
<b>Part 2.25</b>	<b>Dental Technicians and Dental Prosthetists Registration Act 1988</b>	134
<b>Part 2.26</b>	<b>Discrimination Act 1991</b>	134
<b>Part 2.27</b>	<b>Domestic Animals Act 2000</b>	135
<b>Part 2.28</b>	<b>Drugs of Dependence Act 1989</b>	136
<b>Part 2.29</b>	<b>Duties Act 1999</b>	136

---

contents 4	Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004	A2004-15
------------	-------------------------------------------------------------------------------	----------

---

		Page
<b>Part 2.30</b>	<b>Education Act 1937</b>	136
<b>Part 2.31</b>	<b>Electoral Act 1992</b>	137
<b>Part 2.32</b>	<b>Electricity Safety Act 1971</b>	137
<b>Part 2.33</b>	<b>Environment Protection Act 1997</b>	137
<b>Part 2.34</b>	<b>Fair Trading (Consumer Affairs) Act 1973</b>	138
<b>Part 2.35</b>	<b>Firearms Act 1996</b>	139
<b>Part 2.36</b>	<b>First Home Owner Grant Act 2000</b>	140
<b>Part 2.37</b>	<b>Fisheries Act 2000</b>	141
<b>Part 2.38</b>	<b>Food Act 2001</b>	141
<b>Part 2.39</b>	<b>Fuels Control Act 1979</b>	141
<b>Part 2.40</b>	<b>Gambling and Racing Control Act 1999</b>	141
<b>Part 2.41</b>	<b>Gas Safety Act 2000</b>	142
<b>Part 2.42</b>	<b>Gas Safety Regulations 2001</b>	142
<b>Part 2.43</b>	<b>Hawkers Act 2003</b>	142
<b>Part 2.44</b>	<b>Health Professions Boards (Elections) Act 1980</b>	143
<b>Part 2.45</b>	<b>Intoxicated Persons (Care and Protection) Act 1994</b>	143
<b>Part 2.46</b>	<b>Judicial Commissions Act 1994</b>	144
<b>Part 2.47</b>	<b>Lakes Act 1976</b>	144
<b>Part 2.48</b>	<b>Land (Planning and Environment) Act 1991</b>	144
<b>Part 2.49</b>	<b>Land Titles Act 1925</b>	145
<b>Part 2.50</b>	<b>Legal Aid Act 1977</b>	145
<b>Part 2.51</b>	<b>Liquor Act 1975</b>	146
<b>Part 2.52</b>	<b>Long Service Leave Act 1976</b>	146
<b>Part 2.53</b>	<b>Lotteries Act 1964</b>	146
<b>Part 2.54</b>	<b>Machinery Regulations 1950</b>	147
<b>Part 2.55</b>	<b>Magistrates Court (Civil Jurisdiction) Act 1982</b>	147

## Contents

---

		Page
<b>Part 2.56</b>	<b>Mental Health (Treatment and Care) Act 1994</b>	148
<b>Part 2.57</b>	<b>Nurses Act 1988</b>	148
<b>Part 2.58</b>	<b>Occupational Health and Safety Act 1989</b>	149
<b>Part 2.59</b>	<b>Occupational Health and Safety (Certification of Plant Users and Operators) Regulations 2000</b>	150
<b>Part 2.60</b>	<b>Occupational Health and Safety Regulations 1991</b>	150
<b>Part 2.61</b>	<b>Ombudsman Act 1989</b>	150
<b>Part 2.62</b>	<b>Optometrists Act 1956</b>	151
<b>Part 2.63</b>	<b>Pawnbrokers Act 1902</b>	152
<b>Part 2.64</b>	<b>Periodic Detention Regulations 1995</b>	152
<b>Part 2.65</b>	<b>Pharmacy Act 1931</b>	153
<b>Part 2.66</b>	<b>Physiotherapists Act 1977</b>	154
<b>Part 2.67</b>	<b>Plant Diseases Act 2002</b>	154
<b>Part 2.68</b>	<b>Poisons Act 1933</b>	154
<b>Part 2.69</b>	<b>Pool Betting Act 1964</b>	154
<b>Part 2.70</b>	<b>Pounds Act 1928</b>	154
<b>Part 2.71</b>	<b>Prohibited Weapons Act 1996</b>	154
<b>Part 2.72</b>	<b>Prostitution Act 1992</b>	155
<b>Part 2.73</b>	<b>Public Baths and Public Bathing Act 1956</b>	155
<b>Part 2.74</b>	<b>Public Health Act 1997</b>	155
<b>Part 2.75</b>	<b>Public Interest Disclosure Act 1994</b>	156
<b>Part 2.76</b>	<b>Radiation Act 1983</b>	156
<b>Part 2.77</b>	<b>Rates and Land Tax Act 1926</b>	157
<b>Part 2.78</b>	<b>Rehabilitation of Offenders (Interim) Act 2001</b>	158
<b>Part 2.79</b>	<b>Road Transport (Driver Licensing) Act 1999</b>	159

		Page
<b>Part 2.80</b>	<b>Road Transport (Driver Licensing) Regulations 2000</b>	159
<b>Part 2.81</b>	<b>Road Transport (General) Act 1999</b>	160
<b>Part 2.82</b>	<b>Royal Commissions Act 1991</b>	160
<b>Part 2.83</b>	<b>Sale of Motor Vehicles Act 1977</b>	160
<b>Part 2.84</b>	<b>Scaffolding and Lifts Act 1912</b>	160
<b>Part 2.85</b>	<b>Second-hand Dealers Act 1906</b>	160
<b>Part 2.86</b>	<b>Smoke-free Areas (Enclosed Public Places) Act 1994</b>	161
<b>Part 2.87</b>	<b>Stock Act 1991</b>	161
<b>Part 2.88</b>	<b>Surveyors Act 2001</b>	161
<b>Part 2.89</b>	<b>Taxation Administration Act 1999</b>	162
<b>Part 2.90</b>	<b>Tobacco Act 1927</b>	163
<b>Part 2.91</b>	<b>Trade Measurement Act 1991</b>	164
<b>Part 2.92</b>	<b>Transplantation and Anatomy Act 1978</b>	165
<b>Part 2.93</b>	<b>Tree Protection (Interim Scheme) Act 2001</b>	165
<b>Part 2.94</b>	<b>Utilities Act 2000</b>	165
<b>Part 2.95</b>	<b>Utilities (Water Restrictions) Regulations 2002</b>	166
<b>Part 2.96</b>	<b>Vocational Education and Training Act 2003</b>	166
<b>Part 2.97</b>	<b>Waste Minimisation Act 2001</b>	166
<b>Part 2.98</b>	<b>Water and Sewerage Act 2000</b>	166
<b>Part 2.99</b>	<b>Water Resources Act 1998</b>	167
<b>Schedule 3</b>	<b>Other consequential amendments</b>	168
<b>Part 3.1</b>	<b>Bail Act 1992</b>	168
<b>Part 3.2</b>	<b>Crimes Act 1900</b>	170

Contents

---

		Page
<b>Part 3.3</b>	<b>Crimes (Offences against the Government) Act 1989</b>	172
<b>Part 3.4</b>	<b>Magistrates Court Act 1930</b>	173
<b>Part 3.5</b>	<b>Victims of Crime (Financial Assistance) Act 1983</b>	173





Australian Capital Territory

# **Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004**

**A2004-15**

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An Act to amend the *Criminal Code 2002*, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

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2003 007B

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

## **1 Name of Act**

This Act is the *Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004*.

## **2 Commencement**

- (1) This Act (other than schedule 3, part 3.1) commences on the 14th day after its notification day.

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

- (2) Schedule 3, part 3.1 (Bail Act 1992) commences immediately after the commencement of the *Bail Amendment Act 2004*, section 5.

## **3 Legislation amended**

This Act amends the *Criminal Code 2002*.

*Note* This Act also amends other legislation (see schs 1, 2 and 3).

## **4 Definitions—default application date and immediately applied provisions, definition of immediately applied provisions**

### **Section 10**

*insert*

- part 2.5 (Corporate criminal responsibility)

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**5 New chapter 3***insert***Chapter 3 Theft, fraud, bribery and related offences****Part 3.1 Interpretation for chapter 3****300 Definitions for ch 3**

In this chapter:

*belongs*, in relation to property—see section 301.

*cause*, a loss, means cause a loss to someone else.

*dishonest* means—

- (a) dishonest according to the standards of ordinary people; and
- (b) known by the defendant to be dishonest according to the standards of ordinary people.

*Note 1* The following provisions affect the meaning of *dishonest*:

- s 303 (Dishonesty for pt 3.2)
- s 327 (Dishonesty for div 3.3.2)
- s 354 (Dishonesty for pt 3.7).

*Note 2* In a prosecution, dishonesty is a matter for the trier of fact (see s 302).

*duty*, of a person who is a public official, means a function that—

- (a) is given to the person as a public official; or
- (b) the person holds himself or herself out as having as a public official.

**gain** means—

- (a) a gain in property, whether temporary or permanent; or
- (b) a gain by way of the supply of services;

and includes keeping what one has.

**loss** means a loss in property, whether temporary or permanent, and includes not getting what one might get.

**obtain** includes—

- (a) obtain for someone else; and
- (b) induce a third person to do something that results in someone else obtaining.

*Note* The following provisions affect the meaning of **obtain**:

- s 314 (a) (Receiving—meaning of **stolen property**)
- s 328 (Obtains for div 3.3.2)
- s 335 (6) (Obtaining financial advantage from the Territory)
- s 355 (Obtain for pt 3.7).

**public duty** means a duty of a public official.

**public official** means a person having public official functions, or acting in a public official capacity, and includes the following:

- (a) a Territory public official;
- (b) a member of the legislature of the Commonwealth, a State or another Territory;
- (c) a member of the executive of the Commonwealth, a State or another Territory;
- (d) a member of the judiciary, the magistracy or a tribunal of the Commonwealth, a State or another Territory;
- (e) a registrar or other officer of a court or tribunal of the Commonwealth, a State or another Territory;

- 
- (f) an individual who occupies an office under a law of the Commonwealth, a State, another Territory or a local government;
  - (g) an officer or employee of the Commonwealth, a State, another Territory or a local government;
  - (h) an officer or employee of an authority or instrumentality of the Commonwealth, a State, another Territory or a local government;
  - (i) an individual who is otherwise in the service of the Commonwealth, a State, another Territory or a local government (including service as a member of a military or police force or service);
  - (j) a contractor who exercises a function or performs work for the Commonwealth, a State, another Territory or a local government.

**services** includes any rights (including rights in relation to, and interests in, property), benefits, privileges or facilities, but does not include rights or benefits that are the supply of goods.

**supply** includes—

- (a) in relation to goods—supply (or re-supply) by way of sale, exchange, lease, hire or hire-purchase; and
- (b) in relation to services—provide, grant and confer.

**Territory public official** means a person having public official functions for the Territory, or acting in a public official capacity for the Territory, and includes the following:

- (a) a member of the Legislative Assembly;
- (b) a Minister;
- (c) a judge, magistrate or tribunal member;

- (d) the master of the Supreme Court;
- (e) the registrar or other officer of a court or tribunal;
- (f) a public servant;
- (g) an officer or employee of a Territory authority or instrumentality;
- (h) a statutory office-holder or an officer or employee of a statutory office-holder;
- (i) a police officer;
- (j) a contractor who exercises a function or performs work for the Territory, a Territory authority or instrumentality or a statutory office-holder.

### **301 Person to whom property belongs for ch 3**

- (1) 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) This section is subject to section 330 (Money transfers).

*Note* Section 305 (Person to whom property belongs for pt 3.2) affects the meaning of *belongs*.

### **302 Dishonesty a matter for trier of fact**

In a prosecution for an offence against this chapter, dishonesty is a matter for the trier of fact.

## **Part 3.2                      Theft and related offences**

### **Division 3.2.1              Interpretation for part 3.2**

#### **303    Dishonesty for pt 3.2**

- (1) A person's appropriation of property belonging to someone else is not dishonest if the person appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.
- (2) However, subsection (1) does not apply if the person appropriating the property held it as trustee or personal representative.

*Note*     A defendant bears an evidential burden in relation to the matters mentioned in subsections (1) and (2) (see s 58 (3)).

- (3) A person's appropriation of property belonging to someone else can be dishonest even if the person or another person is willing to pay for it.

#### **304    Appropriation of property for pt 3.2**

- (1) Any assumption of the rights of an owner to ownership, possession or control of property, without the consent of a person to whom the property belongs, is an appropriation of the property.
- (2) If a person has come by property (innocently or not) without committing theft, subsection (1) applies to any later assumption of those rights without consent by keeping or dealing with it as owner.
- (3) If property is, or purports to be, transferred or given to a person acting in good faith, a later assumption by the person of rights the person believed the person was acquiring is not an appropriation of property because of any defect in the transferor's title.

**305 Person to whom property belongs for pt 3.2**

- (1) If property belongs to 2 or more people, a reference to the person to whom the property belongs is taken to be a reference to each of them.
- (2) If property is subject to a trust—
  - (a) the person to whom the property belongs includes anyone who has a right to enforce the trust; and
  - (b) an intention to defeat the trust is an intention to deprive any such person of the property.
- (3) Property of a corporation sole belongs to the corporation despite a vacancy in the corporation.
- (4) If a person (*A*) receives property from or on account of someone else (*B*) and is under a legal obligation to *B* to retain and deal with the property or its proceeds in a particular way, the property or proceeds belong to *B*, as against *A*.
- (5) If a person (*A*) gets property by someone else's fundamental mistake and is under a legal obligation to make restoration (in whole or part) of the property, its proceeds or its value—
  - (a) the property or its proceeds belong (to the extent of the obligation and as against *A*) to the person entitled to restoration (*B*); and
  - (b) an intention not to make restoration is—
    - (i) an intention to permanently deprive *B* of the property or proceeds; and
    - (ii) an appropriation of the property or proceeds without *B*'s consent.



(6) In this section:

*fundamental mistake*, in relation to property, means—

- (a) a mistake about the identity of the person getting the property;  
or
- (b) a mistake about the essential nature of the property; or
- (c) a mistake about the amount of any money, if the person getting the money is aware of the mistake when getting the money.

*money* includes anything that is equivalent to money.

**Examples of things equivalent to money**

a cheque or other negotiable instrument

an electronic funds transfer

*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).

**306 Intention of permanently depriving for pt 3.2**

- (1) A person (*A*) has the intention of permanently depriving someone else (*B*) of property belonging to B if—
  - (a) A appropriates property belonging to B without meaning B to permanently lose the property; and
  - (b) A intends to treat the property as A's own to dispose of regardless of B's rights.
- (2) For subsection (1), if A borrows or lends property belonging to B, the borrowing or lending may amount to treating the property as A's own to dispose of regardless of B's rights if, but only if, the borrowing or lending is for a period, and in circumstances, making it equivalent to an outright taking or disposal.

- (3) Without limiting this section, if—
- (a) A has possession or control (lawfully or not) of property belonging to B; and
  - (b) A parts with the property under a condition about its return that A may not be able to carry out; and
  - (c) the parting is done for A's own purposes and without B's authority;

the parting amounts to treating the property as A's own to dispose of regardless of B's rights.

- (4) This section does not limit the circumstances in which a person can be taken to have the intention of permanently depriving someone else of property.

### **307 General deficiency**

A person may be found guilty of theft of all or any part of a general deficiency in money or other property even though the deficiency is made up of a number of particular amounts of money or items of other property that were appropriated over a period.

## **Division 3.2.2 Indictable offences for part 3.2**

### **308 Theft**

A person commits an offence (*theft*) if the person dishonestly appropriates property belonging to someone else with the intention of permanently depriving the other person of the property.

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

*Note* For alternative verdict provisions applying to this offence, see s 370, s 371 and s 372.

### 309 Robbery

A person commits an offence (*robbery*) if—

- (a) the person commits theft; and
- (b) when committing the theft, or immediately before or immediately after committing the theft, the person—
  - (i) uses force on someone else; or
  - (ii) threatens to use force then and there on someone else;with intent to commit theft or to escape from the scene.

Maximum penalty: 1 400 penalty units, imprisonment for 14 years or both.

*Note* *Theft* means an offence against s 308 or s 321.

### 310 Aggravated robbery

A person commits an offence (*aggravated robbery*) if the person—

- (a) commits robbery in company with 1 or more people; or
- (b) commits robbery and, at the time of the robbery, has an offensive weapon with him or her.

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

*Note* *Robbery* means an offence against s 309.

### 311 Burglary

- (1) A person commits an offence (*burglary*) if the person enters or remains in a building as a trespasser with intent—
  - (a) to commit theft of any property in the building; or
  - (b) to commit an offence that involves causing harm, or threatening to cause harm, to anyone in the building; or

- (c) to commit an offence in the building that—
  - (i) involves causing damage to property; and
  - (ii) is punishable by imprisonment for 5 years or longer.

Maximum penalty: 1 400 penalty units, imprisonment for 14 years or both.

- (2) In subsection (1) (b) and (c), *offence* includes an offence against a Commonwealth law.
- (3) Absolute liability applies to subsection (1) (c) (ii).
- (4) For this section, a person is not a trespasser only because the person is permitted to enter or remain in the building—
  - (a) for a purpose that is not the person’s intended purpose; or
  - (b) because of fraud, misrepresentation or someone else’s mistake.
- (5) In this section:

*building* includes the following:

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

### **312 Aggravated burglary**

A person commits an offence (*aggravated burglary*) if the person—

- (a) commits burglary in company with 1 or more people; or
- (b) commits burglary and, at the time of the burglary, has an offensive weapon with him or her.

Maximum penalty: 2 000 penalty units, imprisonment for 20 years or both.

### 313 Receiving

- (1) A person commits an offence (*receiving*) if the person dishonestly receives stolen property, knowing or believing the property to be stolen.

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

*Note* For an alternative verdict provision applying to receiving, see s 371.

- (2) A person cannot be found guilty of both theft (or a related offence) and receiving in relation to the same property if the person retains custody or possession of the property.

- (3) For this section—

- (a) it is to be assumed that section 308 to section 312 and section 326 had been in force at all times before the commencement of this section; and
- (b) property that was appropriated or obtained before the commencement of this section, does not become original stolen property unless the property was appropriated or obtained in circumstances that (apart from paragraph (a)) amounted to an offence against a Territory law in force at that time.

- (4) In this section:

*related offence* means any of the following:

- (a) robbery;
- (b) aggravated robbery;
- (c) burglary;
- (d) aggravated burglary;
- (e) obtaining property by deception.

**314 Receiving—meaning of *stolen property***

- (1) For section 313, property is *stolen property* if it is—
  - (a) original stolen property; or
  - (b) previously received property; or
  - (c) tainted property.
- (2) *Stolen property* may include all or any part of a general deficiency in money or other property even though the deficiency is made up of a number of particular amounts of money or items of other property that were appropriated or obtained over a period.
- (3) *Stolen property* does not include land appropriated or obtained in the course of theft or obtaining property by deception.
- (4) Property is *original stolen property* if it is—
  - (a) property, or a part of property, that—
    - (i) was appropriated—
      - (A) in the ACT in the course of theft or a related offence; or
      - (B) in a place outside the ACT in the course of an offence in that place that would have been theft or a related offence if it had happened in the ACT;  
whether or not the property, or the part of the property, is in the state it was in when it was appropriated; and
    - (ii) is in the custody or possession of the person who appropriated it; or
  - (b) property, or a part of property, that—
    - (i) was obtained—

- (A) in the ACT in the course of obtaining property by deception; or
- (B) in a place outside the ACT in the course of an offence in that place that would have been obtaining property by deception if it had happened in the ACT;

whether or not the property, or the part of the property, is in the state it was in when it was obtained; and

- (ii) is in the custody or possession of the person who obtained it or for whom it was obtained.

(5) Property is *previously received property* if it is property that—

(a) was received—

- (i) in the ACT in the course of an offence of receiving; or
- (ii) in a place outside the ACT in the course of an offence in that place that would have been receiving if it had happened in the ACT; and

(b) is in the custody or possession of the person who received it in the course of that offence.

(6) For subsections (4) and (5), property ceases to be original stolen property or previously received property—

- (a) when it is restored to the person from whom it was appropriated or obtained, or to other lawful custody or possession; or
- (b) when the person from whom it was appropriated or obtained, or anyone claiming through that person, ceases to have any right to restitution in relation to it.

- (7) Property is *tainted property* if it—
- (a) is, in whole or part, the proceeds of sale of, or property exchanged for—
    - (i) original stolen property; or
    - (ii) previously received property; and
  - (b) if paragraph (a) (i) applies—is in the custody or possession of—
    - (i) for original stolen property appropriated as mentioned in subsection (4) (a) (i)—the person who appropriated it; or
    - (ii) for original stolen property obtained as mentioned in subsection (4) (b) (i)—the person who obtained it or for whom it was obtained; and
  - (c) if paragraph (a) (ii) applies—is in the custody or possession of the person who received the previously received property in the course of an offence mentioned in subsection (6) (a).
- (8) If, because of the application of section 330 (Money transfers), an amount credited to an account held by a person is property obtained in the ACT in the course of obtaining property by deception (or outside the ACT in the course of an offence that would have been obtaining property by deception if it had happened in the ACT)—
- (a) the property is taken to be in the possession of the person while all or any part of the amount remains credited to the account; and
  - (b) the person is taken to have received the property if the person fails to take the steps that are reasonable in the circumstances to ensure that the credit is cancelled; and
  - (c) subsection (6) of this section does not apply to the property.



- (9) The definition of *obtain* in section 300 does not apply to this section.

*Note* See s 328 for the meaning of *obtain* for the application of this section to div 3.3.3 (Obtaining property by deception).

- (10) In this section:

*account*—see section 325.

*related offence* means any of the following:

- (a) robbery;
- (b) aggravated robbery;
- (c) burglary;
- (d) aggravated burglary.

### **315 Going equipped for theft etc**

- (1) A person commits an offence if the person, in any place other than the person's home, has with him or her an article with intent to use it in the course of or in relation to theft or a related offence.

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

- (2) In this section:

*related offence* means any of the following:

- (a) robbery;
- (b) aggravated robbery;
- (c) burglary;
- (d) aggravated burglary;
- (e) an offence against section 318 (Taking etc motor vehicle without consent);

- (f) obtaining property by deception.

### **316 Going equipped with offensive weapon for theft etc**

- (1) A person commits an offence if the person, in any place other than the person's home, has with him or her an offensive weapon with intent to use it in the course of or in relation to theft or a related offence.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

- (2) In this section:

*related offence* means any of the following:

- (a) robbery;
- (b) aggravated robbery;
- (c) burglary;
- (d) aggravated burglary.

### **317 Making off without payment**

- (1) A person commits an offence if—
  - (a) the person knows he or she is required or expected to make immediate payment for goods or services supplied by someone else; and
  - (b) the person dishonestly makes off—
    - (i) without having paid the amount owing; and
    - (ii) with intent to avoid payment of the amount owing.

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

(2) This section does not apply in relation to a supply of goods or services that is contrary to law.

(3) In this section:

*immediate payment* includes payment when collecting goods in relation to which a service has been supplied.

### **318 Taking etc motor vehicle without consent**

(1) A person commits an offence if the person—

- (a) dishonestly takes a motor vehicle belonging to someone else; and
- (b) does not have consent to take the vehicle from a person to whom it belongs.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

*Note 1* Pt 2.3 (Circumstances where there is no criminal responsibility) provides for defences that apply to offences under the Code. These include the defence of lawful authority (see s 43).

*Note 2* For the meaning of *dishonest*, see s 300.

(2) A person commits an offence if—

- (a) the person dishonestly drives or rides in or on a motor vehicle belonging to someone else; and
- (b) the vehicle was dishonestly taken by someone without the consent of a person to whom it belongs.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

*Note* For alternative verdict provisions applying to an offence against this section, see s 370.

(3) In this section:

*car*—see the *Road Transport (Vehicle Registration) Regulations 2000*, dictionary.

*car derivative*—see the *Road Transport (Vehicle Registration) Regulations 2000*, dictionary.

*motorbike*—see the *Road Transport (Vehicle Registration) Regulations 2000*, dictionary.

*motor vehicle* means a car, car derivative or motorbike.

### **319 Dishonestly taking Territory property**

- (1) A person (*A*) commits an offence if—
- (a) on a particular occasion, *A* dishonestly takes 1 or more items of property belonging to someone else; and
  - (b) the other person is the Territory; and
  - (c) *A* does not have consent to take the item or any of the items from a person who has the authority to consent; and
  - (d) either—
    - (i) the property has a replacement value or total replacement value of more than \$500 when it is taken; or
    - (ii) the absence of the item or any of the items from the custody, possession or control of the person who would otherwise have had custody, possession or control would be likely to cause substantial disruption to activities carried on by or for the Territory.

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

- (2) Absolute liability applies to subsection (1) (b) and (d).

(3) In this section:

***Territory*** includes the following:

- (a) a Territory authority;
- (b) a Territory owned corporation;
- (c) a Territory instrumentality that is not a Territory authority or a Territory owned corporation.

### **320 Dishonestly retaining Territory property**

(1) A person (*A*) commits an offence if—

- (a) on a particular occasion, *A* takes 1 or more items of property belonging to someone else; and
- (b) the other person is the Territory; and
- (c) *A* dishonestly retains any or all of the items; and
- (d) *A* does not have consent to retain the item or any of the items dishonestly retained from a person who has the authority to consent; and
- (e) either—
  - (i) the property dishonestly retained had a replacement value or total replacement value of more than \$500 when it was taken; or
  - (ii) the absence of the item, or any of the items, dishonestly retained from the custody, possession or control of the person who would otherwise have had custody, possession or control is likely to cause substantial disruption to activities carried on by or for the Territory.

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

- (2) Absolute liability applies to subsection (1) (b) and (d).
- (3) In this section:
  - Territory*—see section 319.

### **Division 3.2.3          Summary offences for part 3.2**

#### **321    Minor theft**

- (1) A person commits an offence (also *theft*) if—
  - (a) the person dishonestly appropriates property belonging to someone else with the intention of permanently depriving the other person of the property; and
  - (b) the property has a replacement value of \$2 000 or less when it is appropriated.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Absolute liability applies to subsection (1) (b).
- (3) This section does not prevent a person being charged with an offence against section 308 (Theft) if the replacement value of the property appropriated is \$2 000 or less.

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

- (1) A person commits an offence if—
  - (a) the person dishonestly removes an article from premises; and
  - (b) the premises are at any time open to the public; and
  - (c) the article is publicly exhibited, or kept for public exhibition, at the premises; and

- (d) the person does not have the consent to remove the article from a person entitled to give the consent.

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

- (2) Absolute liability applies to subsection (1) (b) and (c).
- (3) This section does not apply in relation to an article that is publicly exhibited, or kept for public exhibition, for the purpose of selling, or any other commercial dealing with, the article or articles of that kind.
- (4) In this section:

*premises* includes any building or part of a building.

### **323 Making off without payment—minor offence**

- (1) A person commits an offence if—
  - (a) the person knows he or she is required or expected to make immediate payment for goods or services supplied by someone else; and
  - (b) the person dishonestly makes off—
    - (i) without having paid the amount owing; and
    - (ii) with intent to avoid payment of the amount owing; and
  - (c) the amount owing is \$2 000 or less.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Absolute liability applies to subsection (1) (c).
- (3) This section does not apply in relation to a supply of goods or services that is contrary to law.

(4) This section does not prevent a person being charged with an offence against section 317 (Making off without payment) if the amount owing is \$2 000 or less.

(5) In this section:

*immediate payment* includes payment when collecting goods in relation to which a service has been supplied.

### **324 Unlawful possession of stolen property**

(1) A person commits an offence if—

(a) the person—

- (i) has property in the person's possession; or
- (ii) has property in someone else's possession; or
- (iii) has property in or on any premises (whether or not the premises belong to or are occupied by the person or the property is there for the person's own use); or
- (iv) gives possession of property to someone who is not lawfully entitled to possession of it; and

(b) the property is reasonably suspected of being stolen property or otherwise unlawfully obtained property.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) Absolute liability applies to subsection (1) (b).

(3) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant had no reasonable grounds for suspecting that the property concerned was stolen property or otherwise unlawfully obtained property.



(4) In this section:

*premises* includes any aircraft, building, structure, vehicle or vessel, or any place (whether built on or not), and any part of an aircraft, building, structure, vehicle, vessel or place.

*stolen property*—see section 314.

## **Part 3.3                      Fraudulent conduct**

### **Division 3.3.1              Interpretation for part 3.3**

#### **325    Definitions for pt 3.3**

In this part:

*account* means an account (including a loan account, credit card account or similar account) with a bank or other financial institution.

*deception* means an intentional or reckless deception, whether by words or other conduct, and whether as to fact or law, and includes—

- (a) a deception about the intention of the person using the deception or anyone else; and
- (b) conduct by a person that causes a computer, a machine or an electronic device to make a response that the person is not authorised to cause it to do.

## **Division 3.3.2      Obtaining property by deception**

### **326    Obtaining property by deception**

A person commits an offence (*obtaining property by deception*) if the person, by deception, dishonestly obtains property belonging to someone else with the intention of permanently depriving the other person of the property.

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

*Note*      For alternative verdict provisions applying to obtaining property by deception, see s 371 and s 372.

### **327    Dishonesty for div 3.3.2**

A person's obtaining of property belonging to someone else can be dishonest even if the person or another person is willing to pay for it.

### **328    Obtains for div 3.3.2**

- (1) For this division, and for the application of section 313 (Receiving) to this division, a person *obtains* property if—
  - (a) the person obtains ownership, possession or control of it for the person or someone else; or
  - (b) the person enables ownership, possession or control of it to be retained by the person or someone else; or
  - (c) the person induces a third person to pass ownership, possession or control of it to someone else; or
  - (d) the person induces a third person to enable someone else to retain ownership, possession or control of it; or
  - (e) section 330 (2) or (3) (Money transfers) applies.

- 
- (2) The definition of *obtain* in section 300 does not apply to this division, or for the application of section 313 (Receiving) to this division.

### **329 Intention of permanently depriving—div 3.3.3**

- (1) A person (*A*) has the intention of permanently depriving someone else (*B*) of property belonging to B if—
- (a) A obtains property belonging to B without meaning B to permanently lose the property; and
  - (b) A intends to treat the property as A's own to dispose of regardless of B's rights.
- (2) For subsection (1), if A borrows or lends property belonging to B, the borrowing or lending may amount to treating the property as A's own to dispose of regardless of B's rights if, but only if, the borrowing or lending is for a period, and in circumstances, making it equivalent to an outright taking or disposal.
- (3) Without limiting this section, if—
- (a) A has possession or control (lawfully or not) of property belonging to B; and
  - (b) A parts with the property under a condition about its return that A may not be able to carry out; and
  - (c) the parting is done for A's own purposes and without B's authority;
- the parting amounts to treating the property as A's own to dispose of regardless of B's rights.
- (4) This section does not limit the circumstances in which a person can be taken to have the intention of permanently depriving someone else of property.

### **330 Money transfers**

- (1) This section applies for this division and for the application of section 313 (Receiving) to this division.
- (2) If a person (*A*) causes an amount to be transferred from an account held by someone else (*B*) to an account held by A—
  - (a) the amount is taken to have been property that belonged to B; and
  - (b) A is taken to have obtained the property for A with the intention of permanently depriving B of the property.
- (3) If a person (*A*) causes an amount to be transferred from an account held by someone else (*B*) to an account held by a third person (*C*)—
  - (a) the amount is taken to have been property that belonged to B; and
  - (b) A is taken to have obtained the property for C with the intention of permanently depriving B of the property.
- (4) An amount is transferred from an account (*account 1*) to another account (*account 2*) if—
  - (a) a credit is made to account 2; and
  - (b) a debit is made to account 1; and
  - (c) the credit results from the debit or the debit results from the credit.
- (5) A person causes an amount to be transferred from an account if the person induces someone else to transfer the amount from the account (whether or not the other person is the account holder).

**331 General deficiency for div 3.3.2**

A person may be found guilty of an offence of obtaining property by deception involving all or any part of a general deficiency in money or other property even though the deficiency is made up of a number of particular amounts of money or items of other property that were obtained over a period.

**Division 3.3.3 Other indictable offences for part 3.3**

**332 Obtaining financial advantage by deception**

A person commits an offence if the person, by deception, dishonestly obtains a financial advantage from someone else.

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

**333 General dishonesty**

- (1) A person commits an offence if—
  - (a) the person does something with the intention of dishonestly obtaining a gain from someone else; and
  - (b) the other person is the Territory.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

- (2) Absolute liability applies to subsection (1) (b).
- (3) A person commits an offence if—
  - (a) the person does something with the intention of dishonestly causing a loss to someone else; and
  - (b) the other person is the Territory.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

- (4) Absolute liability applies to subsection (3) (b).
- (5) A person commits an offence if—
  - (a) the person—
    - (i) dishonestly causes a loss, or a risk of loss, to someone else; and
    - (ii) knows or believes that the loss will happen or that there is a substantial risk of the loss happening; and
  - (b) the other person is the Territory.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

- (6) Absolute liability applies to subsection (5) (b) .
- (7) A person commits an offence if—
  - (a) the person does something with the intention of dishonestly influencing a public official in the exercise of the official's duty as a public official; and
  - (b) the public official is a Territory public official; and
  - (c) the duty is a duty as a Territory public official.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

- (8) Absolute liability applies to subsection (7) (b) and (c).
- (9) In this section:

***Territory***—see section 319.

### 334 Conspiracy to defraud

- (1) A person commits an offence if the person conspires with someone else with the intention of dishonestly obtaining a gain from a third person.

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

- (2) A person commits an offence if the person conspires with someone else with the intention of dishonestly causing a loss to a third person.

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

- (3) A person commits an offence if the person—

- (a) conspires with someone else to dishonestly cause a loss, or a risk of loss, to a third person; and
- (b) knows or believes that the loss will happen, or that there is a substantial risk of the loss happening.

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

- (4) A person commits an offence if the person conspires with someone else with the intention of dishonestly influencing a public official in the exercise of the official's duty as a public official.

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

- (5) A person commits an offence against this section (*conspiracy to defraud*) only if—

- (a) the person enters into an agreement with at least 1 other person; and

- (b) the person and at least 1 other party to the agreement intend to do the thing under the agreement; and
  - (c) the person or at least 1 other party to the agreement commits an overt act under the agreement.
- (6) A person may be found guilty of conspiracy to defraud even if—
- (a) it was impossible to obtain the gain, cause the loss or risk of loss, or influence the public official; 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) for an agreement to commit an offence—a person for whose benefit or protection the offence exists; or
  - (d) all other parties to the agreement are acquitted of the offence (unless to find the person guilty would be inconsistent with their acquittal).
- (7) A person must not be found guilty of conspiracy to defraud 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 doing of the thing.
- (8) A person must not be found guilty of an offence of conspiracy to defraud in relation to an agreement to commit an offence (an ***agreed offence***) if the person is someone for whose benefit or protection the agreed offence exists.
- (9) Any defence, procedure, limitation or qualifying provision applying to an agreed offence applies also to an offence of conspiracy to defraud in relation to the agreed offence.



- (10) A court may dismiss a charge of conspiracy to defraud if it considers that the interests of justice require it to dismiss the charge.
- (11) A proceeding for an offence of conspiracy to defraud must not be begun without the consent of the Attorney-General or the director of public prosecutions.
- (12) However, a person may be arrested for, charged with or remanded in custody or released on bail in relation to an offence of conspiracy to defraud before the consent is given.

### **Division 3.3.4 Summary offences for part 3.3**

#### **335 Obtaining financial advantage from the Territory**

- (1) A person commits an offence if—
  - (a) the person obtains a financial advantage for the person from someone else; and
  - (b) the person knows or believes that the person is not eligible to receive the financial advantage; and
  - (c) the other person is the Territory.

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

- (2) Absolute liability applies to subsection (1) (c).
- (3) A person commits an offence if—
  - (a) the person obtains a financial advantage for someone else (**B**) from a third person; and
  - (b) the person knows or believes that B is not eligible to receive the financial advantage; and

(c) the third person is the Territory.

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

- (4) Absolute liability applies to subsection (3) (c).
- (5) For subsection (3), a person (A) is taken to have obtained a financial advantage for someone else from the Territory if A induces the Territory to do something that results in the other person obtaining the financial advantage.
- (6) The definition of *obtain* in section 300 does not apply to this section.
- (7) In this section:  
*Territory*—see section 319.

### **336 Passing valueless cheques**

- (1) A person commits an offence if—
- (a) the person obtains property, a financial advantage or other benefit from someone else by passing a cheque; and
- (b) the person—
- (i) does not have reasonable grounds for believing that the cheque will be paid in full on presentation; or
- (ii) intends to dishonestly obtain the property, financial advantage or benefit from someone else.

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

- (2) A person may be found guilty of an offence against this section even though, when the cheque was passed, there were some funds to the credit of the account on which the cheque was drawn.

(3) In this section:

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

## **Part 3.4                      False or misleading statements, information and documents**

### **337 Making false or misleading statements**

- (1) A person commits an offence if—
- (a) the person makes a statement (whether orally, in a document or in any other way); and
  - (b) the statement is false or misleading; and
  - (c) the person knows that the statement—
    - (i) is false or misleading; or
    - (ii) omits anything without which the statement is false or misleading; and
  - (d) the statement is made in or in relation to an application or claim for a statutory entitlement or a benefit; and
  - (e) any of the following applies:
    - (i) the statement is made to the Territory;
    - (ii) the statement is made to a person who is exercising a function under a Territory law;
    - (iii) the statement is made in compliance or purported compliance with a Territory law.

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

- (2) Absolute liability applies to subsection (1) (e) (i), (ii) and (iii).
- (3) A person commits an offence if—
  - (a) the person makes a statement (whether orally, in a document or in any other way); and
  - (b) the statement is false or misleading; and
  - (c) the person is reckless about whether the statement—
    - (i) is false or misleading; or
    - (ii) omits anything without which the statement is false or misleading; and
  - (d) the statement is made in or in relation to an application or claim for a statutory entitlement or a benefit; and
  - (e) any of the following applies:
    - (i) the statement is made to the Territory;
    - (ii) the statement is made to a person who is exercising a function under a Territory law;
    - (iii) the statement is made in compliance or purported compliance with a Territory law.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (4) Absolute liability applies to subsection (3) (e) (i), (ii) and (iii).
- (5) Subsections (1) (b), (1) (c) (i), (3) (b) and (3) (c) (i) do not apply if the statement is not false or misleading in a material particular.
- (6) Subsections (1) (b), (1) (c) (ii), (3) (b) and (3) (c) (ii) do not apply if the omission does not make the statement misleading in a material particular.

*Note* The defendant bears an evidential burden in relation to the matters mentioned in ss (5) and (6) (see s 58 (3)).

(7) In this section:

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

***statutory entitlement*** includes an accreditation, approval, assessment, authority, certificate, condition, decision, determination, exemption, licence, permission, permit, registration or other prescribed thing giving a status, privilege or benefit under a law (whether or not required under the law for doing anything).

***Territory***—see section 319.

*Note* For an alternative verdict provision applying to this offence, see s 374.

### **338 Giving false or misleading information**

- (1) A person commits an offence if—
- (a) the person gives information to someone else; and
  - (b) the information is false or misleading; and
  - (c) the person knows that the information—
    - (i) is false or misleading; or
    - (ii) omits anything without which the information is false or misleading; and
  - (d) any of the following applies:
    - (i) the person to whom the information is given is the Territory;
    - (ii) the person to whom the information is given is a person who is exercising a function under a Territory law;
    - (iii) the information is given in compliance or purported compliance with a Territory law.

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

- (2) Absolute liability applies to subsection (1) (d) (i), (ii) and (iii).
- (3) Subsections (1) (b) and (1) (c) (i) do not apply if the information is not false or misleading in a material particular.
- (4) Subsections (1) (b) and (1) (c) (ii) do not apply if the omission does not make the information misleading in a material particular.
- (5) Subsection (1) (d) (i) does not apply if, before the information was given by the person to the Territory, the Territory did not take reasonable steps to tell the person about the existence of the offence against subsection (1).
- (6) Subsection (1) (c) (ii) does not apply if, before the information was given by a person (*A*) to the person mentioned in that subparagraph (*B*), *B* did not take reasonable steps to tell *A* about the existence of the offence against subsection (1).
- (7) For subsections (5) and (6), it is sufficient if the following form of words is used:  
‘Giving false or misleading information is a serious offence’.
- (8) In this section:  
*Territory*—see section 319.

### **339 Producing false or misleading documents**

- (1) A person commits an offence if—
  - (a) the person produces a document to someone else; and
  - (b) the document is false or misleading; and
  - (c) the person knows that the document is false or misleading; and
  - (d) the document is produced in compliance or purported compliance with a Territory law.

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

- (2) Subsection (1) (b) and (c) does not apply if the document is not false or misleading in a material particular.
- (3) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a signed statement—
  - (a) stating that the document is, to the signing person's knowledge, false or misleading in a material particular; and
  - (b) setting out, or referring to, the material particular in which the document is, to the signing person's knowledge, false or misleading.
- (4) The statement under subsection (3) must be signed by—
  - (a) the person; or
  - (b) if the person who produces the document is a corporation—a competent officer of the corporation.

## Part 3.5                      Blackmail

### 340    Meaning of *menace* for pt 3.5

- (1) A *menace* includes—
  - (a) an express or implied threat of action that is detrimental or unpleasant to someone else; or
  - (b) a general threat of detrimental or unpleasant action that is implied because the person making the demand is a public official.
- (2) A threat against an individual is a *menace* only if—
  - (a) the threat would be likely to cause an individual of normal stability and courage to act unwillingly; or

- (b) the threat would be likely to cause the individual to act unwillingly because of a particular vulnerability of which the maker of the threat is aware.
- (3) A threat against an entity other than an individual is a *menace* only if—
  - (a) the threat would ordinarily cause an unwilling response; or
  - (b) the threat would be likely to cause an unwilling response because of a particular vulnerability of which the maker of the threat is aware.

**341 Meaning of *unwarranted demand with a menace* for pt 3.5**

- (1) A person makes an *unwarranted demand with a menace* of someone else only if the person—
  - (a) makes a demand with a menace of the other person; and
  - (b) does not believe that he or she has reasonable grounds for making the demand; and
  - (c) does not reasonably believe that the use of the menace is a proper means of reinforcing the demand.
- (2) The demand need not be a demand for money or other property.
- (3) It does not matter whether the menace relates to action to be taken by the person making the demand.

**342 Blackmail**

A person commits an offence if the person makes an unwarranted demand with a menace of someone else with the intention of—

- (a) obtaining a gain; or
- (b) causing a loss; or
- (c) influencing the exercise of a public duty.



Maximum penalty: 1 400 penalty units, imprisonment for 14 years or both.

## Part 3.6 Forgery and related offences

### Division 3.6.1 Interpretation for part 3.6

#### 343 Definitions for pt 3.6

In this part:

*document* includes any of the following:

- (a) anything on which there are figures, marks, numbers, perforations, symbols or anything else that can be responded to by a computer, machine or electronic device;
- (b) a credit card or debit card;
- (c) a formal or informal document.

*Note* For further definition of *document*, see the Legislation Act, dict, pt 1.

*false document*—see section 344.

#### 344 Meaning of *false document* etc for pt 3.6

- (1) A document is *false* only if the document, or any part of the document, purports—
  - (a) to have been made in the form in which it is made by a person who did not 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 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 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 authorise its making in those terms; or
  - (e) to have been changed in any way by a person who did not change it in that way; or
  - (f) to have been changed in any way on the authority of a person who did not authorise it to be changed in that way; or
  - (g) to have been made or changed by an existing person who did not exist; or
  - (h) to have been made or changed on the authority of an existing person who did not exist; or
  - (i) to have been made or changed on a date on which, at a time or place at which, or otherwise in circumstances in which it was not made or changed.
- (2) For this part, **making** a false document includes changing the document so as to make it a false document under subsection (1) (whether or not it already was false in some other way).
- (3) For this section, a document that purports to be a true copy of another document is to be treated as if it were the original document.

### **345 Inducing acceptance that document genuine**

For section 346, section 347 and section 348—

- (a) a reference to inducing a person to accept a document as genuine includes a reference to causing a computer, machine or electronic device to respond to the document as if it were genuine; and
- (b) it is not necessary to prove an intention to induce a particular person to accept the false document as genuine.

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**Division 3.6.2      Offences for part 3.6****346    Forgery**

A person commits an offence (*forgery*) if the person makes a false document with the intention that the person or someone else will use it—

- (a) to dishonestly induce another person (C) to accept it as genuine; and
- (b) because C accepts it as genuine, to dishonestly—
  - (i) obtain a gain; or
  - (ii) cause a loss; or
  - (iii) influence the exercise of a public duty.

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

**347    Using false document**

A person commits an offence if the person uses a false document, knowing that it is false, with the intention of—

- (a) dishonestly inducing someone else to accept it as genuine; and
- (b) because the other person accepts it as genuine, dishonestly—
  - (i) obtaining a gain; or
  - (ii) causing a loss; or
  - (iii) influencing the exercise of a public duty.

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

**348 Possessing false document**

A person commits an offence if the person has in the person's possession a false document, knowing that it is false, with the intention that the person or someone else will use it—

- (a) to dishonestly induce another person (C) to accept it as genuine; and
- (b) because C accepts it as genuine, to dishonestly—
  - (i) obtain a gain; or
  - (ii) cause a loss; or
  - (iii) influence the exercise of a public duty.

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

**349 Making or possessing device etc for making false document**

- (1) A person commits an offence if the person makes or adapts a device, material or other thing—
  - (a) knowing that the thing is designed or adapted for making a false document (whether or not it is designed or adapted for another purpose); and
  - (b) with the intention that the person or someone else will use the thing to commit forgery.

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

- (2) A person commits an offence if—
  - (a) the person knows that a device, material or other thing is designed or adapted for making a false document (whether or not it is designed or adapted for another purpose); and

- (b) the person has the device, material or other thing in the person's possession with the intention that the person or someone else will use it to commit forgery.

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

- (3) A person commits an offence if the person makes or adapts a device, material or other thing knowing that it is designed or adapted for making a false document (whether or not it is designed or adapted for another purpose).

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

- (4) A person commits an offence if the person has in the person's possession a device, material or other thing knowing that it is designed or adapted for making a false document (whether or not it is designed or adapted for another purpose).

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

- (5) Subsection (4) does not apply if the person has a reasonable excuse.

### **350 False accounting**

- (1) A person commits an offence if—
  - (a) the person dishonestly damages, destroys or conceals an accounting document; and
  - (b) the person does so with the intention of obtaining a gain or causing a loss.

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

- (2) A person commits an offence if—

- (a) the person dishonestly—
  - (i) makes, or concurs in making, in an accounting document an entry that is false or misleading in a material particular; or
  - (ii) omits, or concurs in omitting, a material particular from an accounting document; and
- (b) the person does so with the intention of obtaining a gain or causing a loss.

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

- (3) A person commits an offence if, in giving information for any purpose—
  - (a) the person dishonestly produces to someone, or makes use of, an accounting document that is false or misleading in a material particular; and
  - (b) the person is reckless about whether the accounting document is false or misleading in a material particular; and
  - (c) the person produces or makes use of the accounting document with the intention of obtaining a gain or causing a loss.

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

- (4) In this section:

*accounting document* means any account, record or other document made or required for an accounting purpose.

### **351 False statement by officer of body**

- (1) An officer of a body commits an offence if—

- (a) the officer dishonestly publishes or concurs in the publishing of a document containing a statement or account that is false or misleading in a material particular; or
- (b) the officer is reckless about whether the statement or account is false or misleading in a material particular; and
- (c) the officer publishes or concurs in the publishing of the document with the intention of deceiving members or creditors of the body about its affairs.

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

(2) In this section:

*creditor*, of a body, includes a person who has entered into a security for the benefit of the body.

*officer*, of a body, includes—

- (a) any member of the body who is concerned in its management; and
- (b) anyone purporting to act as an officer of the body.

## **Part 3.7                      Bribery and related offences**

### **Division 3.7.1              Interpretation for part 3.7**

#### **352    Definitions for pt 3.7**

In this part:

*agent*—see section 353.

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

*favour*—an agent provides a *favour* if the agent—

- (a) is influenced or affected in the exercise of his or her function as agent; or
- (b) does or does not do something as agent, or because of his or her position as agent; or
- (c) causes or influences his or her principal, or another agent of the principal, to do or not do something.

*function*, of an agent, includes a function the agent holds himself or herself out as having as agent.

*principal*—see section 353.

### **353 Meaning of agent and principal for pt 3.7**

- (1) An *agent* (and the *principal* of the agent) includes the following:

<b>column 1 item</b>	<b>column 2 agent</b>	<b>column 3 principal of the agent</b>
1	a person acting for someone else with that other person's actual or implied authority	that other person
2	a public official	the government or other body for which the official acts
3	an employee	the employer
4	a lawyer acting for a client	the client
5	a partner	the partnership
6	an officer of a corporation (whether or not employed by it)	the corporation



column 1 item	column 2 agent	column 3 principal of the agent
7	an officer of another body (whether or not employed by it)	the body
8	a consultant to a person	that person

- (2) A person is an agent or principal if the person is, or has been or intends to be, an agent or principal.

#### **354 Dishonesty for pt 3.7**

The provision of a benefit can be dishonest even if the provision of the benefit is customary in a trade, business, profession or calling.

#### **355 Meaning of *obtain* for pt 3.7**

- (1) For this part, a person (*A*) is taken to *obtain* a benefit for someone else (*B*) if *A* induces a third person to do something that results in *B* obtaining the benefit.
- (2) The definition of *obtain* in section 300 does not apply to this part.

### **Division 3.7.2 Offences for part 3.7**

#### **356 Bribery**

- (1) A person commits an offence if—
- (a) the person dishonestly—
    - (i) provides a benefit to an agent or someone else; or
    - (ii) causes a benefit to be provided to an agent or someone else; or

- (iii) offers to provide, or promises to provide, a benefit to an agent or someone else; or
  - (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to an agent or someone else; and
- (b) the person does so with the intention that the agent will provide a favour.

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

(2) An agent commits an offence if—

- (a) the agent dishonestly—
  - (i) asks for a benefit for himself, herself or someone else; or
  - (ii) obtains a benefit for himself, herself or someone else; or
  - (iii) agrees to obtain a benefit for himself, herself or someone else; and
- (b) the agent does so with the intention—
  - (i) that he or she will provide a favour; or
  - (ii) of inducing, fostering or sustaining a belief that he or she will provide a favour.

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

### **357 Other corrupting benefits**

(1) A person commits an offence if—

- (a) the person dishonestly—
  - (i) provides a benefit to an agent or someone else; or

- (ii) causes a benefit to be provided to an agent or someone else; or
  - (iii) offers to provide, or promises to provide, a benefit to an agent or someone else; or
  - (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to an agent or someone else; and
- (b) obtaining, or expecting to obtain, the benefit would tend to influence the agent to provide a favour.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

(2) An agent commits an offence if—

- (a) the agent dishonestly—
  - (i) asks for a benefit for himself, herself or someone else; or
  - (ii) obtains a benefit for himself, herself or someone else; or
  - (iii) agrees to obtain a benefit for himself, herself or someone else; and
- (b) obtaining, or expecting to obtain, the benefit would tend to influence the agent to provide a favour.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

(3) For this section, it does not matter whether the benefit is in the nature of a reward.

### **358 Payola**

A person commits an offence if—

- (a) the person holds himself or herself out to the public as being engaged in a business or activity of—
  - (i) making disinterested selections or examinations; or
  - (ii) expressing disinterested opinions in relation to property or services; and
- (b) the person dishonestly asks for or obtains, or agrees to obtain, a benefit for himself, herself or someone else in order to influence the selection, examination or opinion.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

### **359 Abuse of public office**

- (1) A public official commits an offence if—
  - (a) the official—
    - (i) exercises any function or influence that the official has as a public official; or
    - (ii) fails to exercise any function the official has as a public official; or
    - (iii) engages in any conduct in the exercise of the official's duties as a public official; or
    - (iv) uses any information that the official has gained as a public official; and
  - (b) the official does so with the intention of—
    - (i) dishonestly obtaining a benefit for himself, herself or someone else; or
    - (ii) dishonestly causing a detriment to someone else.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

- (2) A person commits an offence if—
- (a) the person has ceased to be a public official in a particular capacity; and
  - (b) the person uses any information the person gained in that capacity; and
  - (c) the person does so with the intention of—
    - (i) dishonestly obtaining a benefit for himself, herself or someone else; or
    - (ii) dishonestly causing a detriment to someone else.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

- (3) Subsection (2) (a) applies to a person—
- (a) whether the person ceased to be a public official as mentioned in the paragraph before, at or after the commencement of this section; and
  - (b) whether or not the person continues to be a public official in another capacity.

## **Part 3.8                      Impersonation or obstruction                                          of Territory public officials**

### **Division 3.8.1              Indictable offences for part 3.8**

#### **360    Impersonating Territory public official**

- (1) A person commits an offence if the person—

- (a) on a particular occasion, impersonates someone else in the other person's capacity as a Territory public official; and
- (b) does so—
  - (i) knowing it to be in circumstances when the official is likely to be performing his or her duty; and
  - (ii) with intent to deceive.

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

- (2) A person commits an offence if the person—
  - (a) falsely represents himself or herself to be a Territory public official in a particular capacity (whether or not that capacity exists or is fictitious); and
  - (b) does so in the course of doing an act, or attending a place, in the assumed capacity of such an official.

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

- (3) A person commits an offence if the person—
  - (a) either—
    - (i) impersonates someone else in the other person's capacity as a Territory public official; or
    - (ii) falsely represents himself or herself to be a Territory public official in a particular capacity (whether or not that capacity exists or is fictitious); and
  - (b) does so—
    - (i) with the intention of obtaining a gain, causing a loss or influencing the exercise of a public duty; and
    - (ii) if paragraph (a) (i) applies—also with intent to deceive.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

- (4) To remove any doubt, in this section:

*false representation* does not include conduct engaged in solely for entertainment.

*impersonation* does not include conduct engaged in solely for entertainment.

### **361 Obstructing Territory public official**

- (1) A person commits an offence if—

- (a) the person obstructs, hinders, intimidates or resists a public official in the exercise of his or her functions as a public official; and
- (b) the person knows that the public official is a public official; and
- (c) the public official is a Territory public official; and
- (d) the functions are functions as a Territory public official.

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

- (2) Absolute liability applies to subsection (1) (c).
- (3) Strict liability applies to the circumstance that the public official was exercising the official's functions as a public official.
- (4) In this section:

*function*—

- (a) in relation to a person who is a public official—means a function that is given to the person as a public official; and

- (b) in relation to a person who is a Territory public official—  
means a function given to the person as a Territory public official.

## **Division 3.8.2 Summary offences for part 3.8**

### **362 Impersonating police officer**

- (1) A person who is not a police officer commits an offence if the person wears a uniform or badge of a police officer.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person who is not a police officer commits an offence if the person represents himself or herself to be a police officer.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) An offence against subsection (1) or (2) is a strict liability offence.

- (4) A person who is not a police officer commits an offence if the person wears clothing or a badge reckless about whether the clothing or badge would cause someone to believe that the person is a police officer.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (5) This section does not apply to conduct engaged in solely for entertainment.

### **363 Obstructing Territory public official**

- (1) A person commits an offence if—

- (a) the person obstructs, hinders, intimidates or resists a public official in the exercise of his or her functions as a public official; and



- 
- (b) the person is reckless about whether the public official is a public official; and
  - (c) the public official is a Territory public official; and
  - (d) the functions are functions as a Territory public official.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Absolute liability applies to subsection (1) (c) and (d).
- (3) Strict liability applies to the circumstance that the public official was exercising the official's functions as a public official.
- (4) In this section:

*function*—see section 361.

## **Part 3.9                      Procedural matters for chapter 3**

### **Division 3.9.1            General**

#### **364    Stolen property held by dealers etc—owners rights**

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

(2) A dealer or lender who contravenes an order under subsection (1) (b), or who disposes of any property after being told 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 decided by a magistrate.

(3) In this section:

*related offence* means any of the following:

- (a) robbery;
- (b) aggravated robbery;
- (c) burglary;
- (d) aggravated burglary;
- (e) obtaining property by deception.

*stolen property* means property appropriated or obtained in the course of theft or a related offence.

### **365 Stolen property held by police—disposal**

(1) This section applies if—

- (a) property is lawfully in the custody of a police officer; and
- (b) a person is charged with theft or a related offence in relation to the property; and
- (c) the person charged—
  - (i) cannot be found; or
  - (ii) is convicted, discharged or acquitted in relation to the charge.

(2) A magistrate may—

- (a) make an order for the property to be given to the person who appears to be the owner of the property; or
  - (b) if there is no-one who appears to be the owner—make any order in relation to the property that the magistrate considers just.
- (3) An order under this section does not prevent anyone from recovering the property from the person to whom the property is given under the order if a proceeding for the recovery is begun within 6 months after the day the order is made.
- (4) In this section:  
*related offence*—see section 364.

**366 Procedure and evidence—theft, receiving etc**

- (1) Any number of defendants may be charged in a single indictment with theft or receiving in relation to the same property and the defendants charged may be tried together.
- (2) Any number of defendants may be charged in a single indictment with obtaining property by deception or receiving in relation to the same property and the defendants charged may be tried together.
- (3) On the trial of a defendant or 2 or more defendants for theft, unless the court otherwise orders, a count on the indictment may include an allegation that the defendant or 1 or more of the defendants stole 2 or more items of property.
- (4) On the trial of a defendant or 2 or more defendants for receiving, unless the court otherwise orders, a count on the indictment—
  - (a) may include an allegation that the defendant or 1 or more of the defendants received 2 or more items of property; and

- (b) may include the allegation whether or not all the items of property were received from the same person or at the same time.
- (5) If, on the trial of a defendant for receiving, it is proved that the defendant had 4 or more items of stolen property in his or her possession, it must be presumed, unless there is evidence to the contrary, that the defendant—
    - (a) received the items; and
    - (b) at the time of receiving them, knew or believed them to be items of stolen property.
  - (6) The defendant has an evidential burden in relation to evidence to the contrary mentioned in subsection (5).
  - (7) On the trial of 2 or more defendants for jointly receiving stolen property, the trier of fact may find a defendant guilty if satisfied that the defendant received all or any of the stolen property, whether or not the defendant received it jointly with 1 or more of the other defendants.
  - (8) On the trial of 2 or more defendants for theft and receiving, the trier of fact may find 1 or more of the defendants guilty of theft or receiving, or may find any of them guilty of theft and any other or others guilty of receiving.
  - (9) On the trial of 2 or more defendants for obtaining property by deception and receiving, the trier of fact may find 1 or more of the defendants guilty of obtaining property by deception or receiving, or may find any of them guilty of obtaining property by deception and any other or others guilty of receiving.
  - (10) Subsection (11) applies to a proceeding for the theft of property in the course of transmission (whether by post or otherwise), or for receiving stolen property from such a theft.

- (11) A statutory declaration by a person that the person sent, received or failed to receive goods or a postal packet, or that goods or a postal packet when sent or received by the person were or was in a particular state or condition, is admissible as evidence of the facts stated in the declaration—
- (a) if and to the extent to which oral evidence to the same effect would have been admissible in the proceeding; and
  - (b) if, at least 7 days before the day of the beginning of the hearing or trial, a copy of the declaration is given to the defendant, and the defendant has not, at least 3 days before the day of the beginning of the hearing or trial, or within any further time that the court in special circumstances allows, given to the prosecution written notice requiring the attendance at the hearing or trial of the person making the declaration.
- (12) In this section:  
*stolen property*—see section 314.

### **367 Certain proceedings not to be heard together**

If a person is charged with an offence against section 324 (Unlawful possession of stolen property) and an offence of receiving in relation to the same property, proceedings for the offences must not be heard together.

### **368 Indictment for offence relating to deeds, money etc**

- (1) In an indictment for an offence against this chapter in relation to a document of title to land, or a part of a document of title to land, it is sufficient to state 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 people, with an interest in the land, or in any part of the land.

(2) In an indictment for an offence against this chapter in relation to money or a valuable security, it is sufficient to describe it as a certain amount of money, or a certain valuable security, without specifying a particular kind of money or security, and the description will 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 the money or security has been returned, or part was in fact returned.

(3) In this section:

*document of title to land* includes any document that is or contains evidence of title to the land or an interest in the land.

*Note* For definition of *interest*, in relation to land, see the Legislation Act, dict, pt 1.

### **369 Theft of motor vehicle—cancellation of licence**

(1) This section applies if a person is found guilty of any of the following offences:

- (a) theft of a motor vehicle;
- (b) an offence against section 318 (Taking etc motor vehicle without consent).

*Note* A reference to an offence includes a reference to a related ancillary offence, eg attempt (see Legislation Act, s 189).

(2) The court may, by order—

- (a) if the person holds a driver licence—disqualify the person from holding or obtaining a driver licence for the period the court considers appropriate; or

- (b) if the person does not hold a driver licence—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.

- (3) If the court makes an order under this section, the court must give particulars of the order to the road transport authority.
- (4) In this section:

*motor vehicle*—see the *Road Transport (Safety and Traffic Management) Act 1999*, dictionary.

## **Division 3.9.2      Alternative verdicts**

### **370    Alternative verdicts—theft and taking motor vehicle without consent**

- (1) This section applies if, in a prosecution for theft, the trier of fact is not satisfied that the defendant committed theft but is satisfied beyond reasonable doubt that the defendant committed an offence against section 318 (Taking etc motor vehicle without consent).
- (2) The trier of fact may find the defendant guilty of the offence against section 318, but only if the defendant has been given procedural fairness in relation to that finding of guilt.
- (3) In this section:
- theft* does not include an offence against section 321 (Minor theft).

**371 Alternative verdicts—theft or obtaining property by deception and receiving**

- (1) If, in a prosecution for theft or obtaining property by deception, the trier of fact is not satisfied that the defendant committed the offence but is satisfied beyond reasonable doubt that the defendant committed an offence of receiving, the trier of fact may find the defendant guilty of receiving, but only if the defendant has been given procedural fairness in relation to that finding of guilt.
- (2) If, in a prosecution for an offence of receiving, the trier of fact is not satisfied that the defendant committed the offence but is satisfied beyond reasonable doubt that the defendant committed theft or obtaining property by deception, the trier of fact may find the defendant guilty of theft or obtaining property by deception, but only if the defendant has been given procedural fairness in relation to that finding of guilt.

**372 Alternative verdicts—theft and obtaining property by deception**

- (1) If, in a prosecution for an offence of theft, the trier of fact is not satisfied that the defendant committed the offence but is satisfied beyond reasonable doubt that the defendant committed an offence of obtaining property by deception, the trier of fact may find the defendant guilty of obtaining property by deception, but only if the defendant has been given procedural fairness in relation to that finding of guilt.
- (2) If, in a prosecution for an offence of obtaining property by deception, the trier of fact is not satisfied that the defendant committed the offence but is satisfied beyond reasonable doubt that the defendant committed an offence of theft, the trier of fact may find the defendant guilty of theft, but only if the defendant has been given procedural fairness in relation to that finding of guilt.



(3) In this section:

*theft* does not include an offence against section 321 (Minor theft).

**373 Verdict of ‘theft or receiving’ etc**

(1) If, on the trial of a defendant charged with theft and receiving in relation to the same property, the trier of fact is satisfied beyond reasonable doubt that the defendant committed theft or receiving but cannot decide which of the offences the defendant committed, the trier of fact must find the defendant guilty of—

- (a) the offence that is more probable; or
- (b) if the trier of fact cannot decide which of the offences is more probable—theft.

(2) If, on the trial of a defendant charged with obtaining property by deception and receiving in relation to the same property, the trier of fact is satisfied beyond reasonable doubt that the defendant committed obtaining property by deception or receiving but cannot decide which of the offences the defendant committed, the trier of fact must find the defendant guilty of—

- (a) the offence that is more probable; or
- (b) if the trier of fact cannot decide which of the offences is more probable—obtaining property by deception.

(3) In this section:

*theft* does not include an offence against section 321 (Minor theft).

**374 Alternative verdicts—making false or misleading statements**

- (1) This section applies if, in a prosecution for an offence against section 337 (1) (Making false or misleading statements), the trier of fact is not satisfied that the defendant committed the offence but is satisfied beyond reasonable doubt that the defendant committed an offence against section 337 (3).
- (2) The trier of fact may find the defendant guilty of the offence against section 337 (3), but only if the defendant has been given procedural fairness in relation to that finding of guilt.

**Division 3.9.3 Forfeiture**

**375 Going equipped offences—forfeiture**

- (1) If a person is found guilty of an offence against section 315 (Going equipped for theft etc) in relation to an article, the person must forfeit to the Territory the article and any other article of the kind mentioned in that section that is in the person's custody or possession.
- (2) If a person is found guilty of an offence against section 316 (Going equipped with offensive weapon for theft etc) in relation to an offensive weapon, the person must forfeit to the Territory the weapon and any other offensive weapon of the kind mentioned in that section that is in the person's custody or possession.

**376 Unlawful possession offence—forfeiture**

- (1) If a person is found guilty of an offence against section 324 (Unlawful possession of stolen property), the property to which the offence relates is forfeited to the Territory—
  - (a) if the person found guilty is the owner of the property—when the person is found guilty; or

- 
- (b) in any other case—at the end of 90 days after the day the person is found guilty of the offence unless the owner of the property is known.
  - (2) The forfeited property must be transferred to the public trustee.

**377 Unlawful possession offence—disposal of forfeited property by public trustee**

- (1) The public trustee must pay any forfeited money transferred to the public trustee under section 376 to the confiscated assets trust fund under the *Confiscation of Criminal Assets Act 2003*.
- (2) The public trustee must sell or otherwise dispose of other property transferred to the public trustee under section 376.
- (3) The public trustee must—
  - (a) apply the proceeds of the sale or disposition in payment of the public trustee’s remuneration, and other costs, charges and expenses, in relation to the sale or disposition; and
  - (b) pay the remainder of the proceeds to the confiscated assets trust fund under the *Confiscation of Criminal Assets Act 2003*.
- (4) However, the Minister may, in writing, direct that, in a particular case, forfeited goods be dealt with in accordance with the direction (including in accordance with a law stated in the direction).
- (5) The direction is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (6) The public trustee must comply with the Minister’s direction.
- (7) The regulations may make provision in relation to public trustee’s remuneration, and other costs, charges and expenses, under subsection (3) (a).

**378 Unlawful possession offence—return of or compensation for forfeited property**

- (1) If, after the end of the 90-day period mentioned in section 376 (1) (b), the owner of the property claims the property, the public trustee must, if satisfied that the person is the owner—
  - (a) if the property is money—pay the money to the person; or
  - (b) in any other case—return the property to the person or pay the person reasonable compensation for the property.
- (2) This section does not apply if the property is subject to forfeiture, or has been forfeited, under the *Confiscation of Criminal Assets Act 2003*.

*Note* The *Confiscation of Criminal Assets Act 2003* provides for compensation or the return of forfeited property in certain circumstances.

**379 Forgery offences—forfeiture**

- (1) This section applies if a person is found guilty of an offence against any of the following sections:
  - (a) section 346 (Forgery);
  - (b) section 347 (Using false document);
  - (c) section 348 (Possessing false document);
  - (d) section 349 (Making or possessing device etc for making false document).
- (2) The court may order, under the *Crimes Act 1900*, section 367 (Procedure on forfeiture), that any article used in relation to the offence be forfeited to the Territory.

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**6 Definitions for pt 4.1**  
**Section 100, definition of *property***

*substitute*

***property*** means any property of a tangible nature.

*Note* For further definition of ***property***, see the dictionary and the Legislation Act, dict, pt 1.

**7 Sections 100 to 125**

*renumber as sections 400 to 425*

**8 Dictionary, new definitions**

*insert*

***account***, for part 3.3 (Fraudulent conduct)—see section 325.

***agent***, for part 3.7 (Bribery and related offences)—see section 353.

***aggravated burglary***—see section 312.

***aggravated robbery***—see section 310.

***belongs***, in relation to property, for chapter 3 (Theft, fraud, bribery and related offences)—see section 301.

***benefit***, for part 3.7 (Bribery and related offences)—see section 352.

***burglary***—see section 311.

***cause***, a loss, for chapter 3 (Theft, fraud, bribery and related offences)—see section 300.

***deception*** for part 3.3 (Fraudulent conduct)—see section 325.

***dishonest***, for chapter 3 (Theft, fraud, bribery and related offences)—see section 300.

***document***, for part 3.6 (Forgery and related offences)—see section 343.

**duty**, of a person who is a public official, for chapter 3 (Theft, fraud, bribery and related offences)—see section 300.

**explosive** means a substance or article that—

- (a) is manufactured for the purpose of producing an explosion; or
- (b) a person has with the intention of using it to produce an explosion.

**false document**, for part 3.6 (Forgery and related offences)—see section 344.

**favour**, for part 3.7 (Bribery and related offences)—see section 352.

**firearm** includes an airgun and an airpistol.

**forgery**—see section 346.

**function**, of an agent, for part 3.7 (Bribery and related offences)—see section 352.

**gain**, for chapter 3 (Theft, fraud, bribery and related offences)—see section 300.

**irreversible** means irreversible by natural or artificial means.

**knife** includes—

- (a) a knife blade; and
- (b) a razor blade; and
- (c) any other blade.

**loss**, for chapter 3 (Theft, fraud, bribery and related offences)—see section 300.

**menace**, for part 3.5 (Blackmail)—see section 340.

**obtain**, for chapter 3 (Theft, fraud, bribery and related offences)—see section 300.

*obtaining property by deception*—see section 326.

*offensive weapon* includes the following:

- (a) anything made or adapted for use for causing injury to or incapacitating a person;
- (b) anything that a person has with the intention of using, or threatening to use, to cause injury to or incapacitate someone else;
- (c) a firearm, or anything that may reasonably be taken in the circumstances to be a firearm;
- (d) a knife, or anything that may reasonably be taken in the circumstances to be a knife;
- (e) an explosive, or anything that may reasonably be taken in the circumstances to be or contain an explosive.

*principal*, for part 3.7 (Bribery and related offences)—see section 353.

## **9 Dictionary, definition of *property***

*substitute*

*property* includes the following:

- (a) electricity;
- (b) gas;
- (c) water;
- (d) a wild creature that is tamed or ordinarily kept in captivity or that is, or is being taken into, someone's possession;
- (e) any organ or part of a human body and any blood, ova, semen or other substance extracted from a human body.

*Note* For further definition of *property*, see the Legislation Act, dict, pt 1.

## 10 Dictionary, new definitions

*insert*

***public duty***, for chapter 3 (Theft, fraud, bribery and related offences)—see section 300.

***public official***, for chapter 3 (Theft, fraud, bribery and related offences)—see section 300.

***receiving***—see section 313.

***robbery***—see section 309.

***services***, for chapter 3 (Theft, fraud, bribery and related offences)—see section 300.

***supply***, for chapter 3 (Theft, fraud, bribery and related offences)—see section 300.

***Territory public official***, for chapter 3 (Theft, fraud, bribery and related offences)—see section 300.

***theft***—see section 308 (Theft) and section 321 (Minor theft).

***unwarranted demand with a menace***, for part 3.5 (Blackmail)—see section 341.



## **Schedule 1      Consequential amendments—corporate criminal responsibility**

(see s 3)

### **Part 1.1            Animal Welfare Act 1992**

#### **[1.1] Section 99**

*substitute*

#### **99 Acts and omissions of representatives**

(1) In this section:

*person* means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

*representative*, of a person, means an employee or agent of the person.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose;  
and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—

- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **Part 1.2 Casino Control Act 1988**

### **[1.2] Section 118**

*substitute*

#### **118 Acts and omissions of representatives**

- (1) In this section:

***person*** means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

*representative*, of a person, means an employee or agent of the person.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## Part 1.3 Cemeteries and Crematoria Act 2003

### [1.3] Section 47

*substitute*

#### 47 Acts and omissions of representatives

(1) In this section:

**person** means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

**representative**, of a person, means an employee or agent of the person.

**state of mind**, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.

- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **Part 1.4**                      **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995**

### **[1.4] Section 66**

*substitute*

#### **66 Acts and omissions of representatives**

- (1) In this section:

*person* means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

*representative*, of a person, means an employee or agent of the person.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose;  
and

- (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
  - (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

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## **Part 1.5 Clinical Waste Act 1990**

### **[1.5] Section 39**

*substitute*

#### **39 Acts and omissions of representatives**

(1) In this section:

**person** means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

**representative**, of a person, means an employee or agent of the person.

**state of mind**, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.

- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **Part 1.6 Consumer Credit (Administration) Act 1996**

### **[1.6] Section 136**

*omit*

The conduct of

*substitute*

- (1) The conduct of

### **[1.7] New section 136 (2)**

*insert*

- (2) Subsection (1) does not apply in relation to the prosecution of a credit provider or finance broker that is a corporation.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.



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## **Part 1.7**                      **Coroners Act 1997**

### **[1.8] Section 89**

*substitute*

#### **89 Acts and omissions of representatives**

(1) In this section:

**person** means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

**representative**, of a person, means an employee or agent of the person.

**state of mind**, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.

- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **Part 1.8**                      **Discrimination Act 1991**

### **[1.9] Section 108I**

*substitute*

#### **108I Acts and omissions of representatives**

- (1) In this section:

***person*** means an individual or body politic.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

***representative***, of a person, means an employee or agent of the person.

***state of mind***, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose;  
and
- (b) the person's reasons for the intention, opinion, belief or purpose.

- 
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **Part 1.9**                      **Door-to-Door Trading Act 1991**

### **[1.10] Section 18**

*substitute*

#### **18 Acts and omissions of representatives**

- (1) In this section:

***person*** means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

*representative*, of a person, means an employee or agent of the person.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **18A Criminal liability of executive officers**

- (1) An executive officer of a corporation commits an offence if—

- (a) the corporation contravenes a provision of this Act; and
- (b) the contravention is an offence against this Act (the *relevant offence*); and
- (c) the officer was reckless about whether the contravention would happen; and
- (d) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and
- (e) the officer failed to take all reasonable steps to prevent the contravention.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (2) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (3) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must have regard to the following:
  - (a) any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
    - (i) that the corporation arranges regular professional assessments of the corporation's compliance with the contravened provision;
    - (ii) that the corporation implements any appropriate recommendation arising from such an assessment;
    - (iii) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the contravened provision;

- (b) any action the officer took when the officer became aware that the contravention was, or might be, about to happen.
- (4) Subsection (3) does not limit the matters to which the court may have regard.
- (5) This section does not apply if the corporation would have a defence to a prosecution for the relevant offence.

**18B Criminal liability of people deriving financial benefit**

- (1) A person commits an offence against this Act if—
  - (a) a supplier or dealer in relation to a contract to which this Act applies contravenes a provision of this Act; and
  - (b) the contravention is an offence against this Act (the *relevant offence*); and
  - (c) the person has derived a direct or indirect financial benefit from the contract; and
  - (d) the person was reckless about whether the contravention would happen; and
  - (e) the person was in a position to influence the conduct of the supplier or dealer in relation to the contravention; and
  - (f) the person failed to take all reasonable steps to prevent the contravention.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (2) This section applies whether or not the supplier or dealer is prosecuted for, or convicted of, the relevant offence.
- (3) In deciding whether the person took (or failed to take) reasonable steps to prevent the contravention, a court must have regard to—

- (a) any action the person took directed towards ensuring compliance with the contravened provision; and
  - (b) any action the person took when the person became aware that the contravention was, or might be, about to happen.
- (5) Subsection (4) does not limit the matters to which the court may have regard.
- (6) This section does not apply if the supplier or dealer would have a defence to a prosecution for the relevant offence.

## **Part 1.10                      Drugs of Dependence Act 1989**

### **[1.11] Section 172**

*omit*

## **Part 1.11                      Electoral Act 1992**

### **[1.12] Section 338**

*substitute*

#### **338 Acts and omissions of representatives**

- (1) In this section:

*person* means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

*representative*, of a person, means an employee or agent of the person.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose;  
and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).



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## **Part 1.12                      Electricity Safety Act 1971**

### **[1.13] Section 121**

*omit*

## **Part 1.13                      Environment Protection Act 1997**

### **[1.14] Division 15.2 heading**

*substitute*

## **Division 15.2                      Extensions of liability for offences**

### **[1.15] Section 146**

*substitute*

#### **146 Acts and omissions of representatives**

(1) In this section:

***person*** means an individual.

*Note*     See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

***representative***, of a person, means an employee or agent of the person.

***state of mind***, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose;  
and
- (b) the person's reasons for the intention, opinion, belief or purpose.

- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
  - (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

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## Part 1.14 Financial Institutions Duty Act 1987

### [1.16] Section 37

*substitute*

#### 37 Acts and omissions of representatives

(1) In this section:

**person** means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

**representative**, of a person, means an employee or agent of the person.

**state of mind**, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose;  
and
- (b) the person's reasons for the intention, opinion, belief or purpose.

(2) This section applies to a prosecution for any offence against this Act.

(3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—

- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
- (b) the representative had the state of mind.

- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **Part 1.15**                      **Firearms Act 1996**

### **[1.17] Section 119**

*substitute*

#### **119 Acts and omissions of representatives**

- (1) In this section:

*person* means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

*representative*, of a person, means an employee or agent of the person.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose;  
and
- (b) the person's reasons for the intention, opinion, belief or purpose.

- 
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **Part 1.16 Fisheries Act 2000**

### **[1.18] Section 110**

*substitute*

#### **110 Acts and omissions of representatives**

- (1) In this section:

***person*** means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

*representative*, of a person, means an employee or agent of the person.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **Part 1.17                      Food Act 2001**

### **[1.19] Section 92 (4), note**

*omit*

### **[1.20] Section 99, note**

*omit*

### **[1.21] Section 127**

*substitute*

## **127 Acts and omissions of representatives**

- (1) In this section:

***person*** means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

***representative***, of a person, means an employee or agent of the person.

***state of mind***, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose;  
and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—

- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **Part 1.18**                      **Gambling and Racing Control Act 1999**

### **[1.22] Section 53C**

*substitute*

#### **53C Acts and omissions of representatives**

- (1) In this section:

**person** means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

**representative**, of a person, means an employee or agent of the person.



*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose;  
and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## Part 1.19 Gaming Machine Act 1987

### [1.23] Section 62

*omit*

## Part 1.20 Gene Technology Act 2003

### [1.24] Division 12.4

*substitute*

## Division 12.4 Acts and omissions of representatives

### 188 Acts and omissions of representatives

(1) In this section:

*person* means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

*representative*, of a person, means an employee or agent of the person.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

(2) This section applies to a prosecution for any offence against this Act.

(3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—

- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **Part 1.21**                      **Guardianship and Management of Property Act 1991**

### **[1.25] Section 73**

*substitute*

#### **73 Acts and omissions of representatives**

- (1) In this section:

***person*** means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

***representative***, of a person, means an employee or agent of the person.

*state of mind*, of a person, includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose;  
and
  - (b) the person’s reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person’s state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative’s actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative’s actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

---

## Part 1.22 Health Records (Privacy and Access) Act 1997

### [1.26] Section 24

*substitute*

#### 24 Acts and omissions of representatives

(1) In this section:

**person** means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

**representative**, of a person, means an employee or agent of the person.

**state of mind**, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

(2) This section applies to a prosecution for any offence against this Act.

(3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—

- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
- (b) the representative had the state of mind.

- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **Part 1.23** **Independent Competition and Regulatory Commission Act 1997**

### **[1.27] Section 55**

*substitute*

#### **55 Acts and omissions of representatives**

- (1) In this section:

***person*** means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

***representative***, of a person, means an employee or agent of the person.

***state of mind***, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose;  
and

- (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
  - (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## Part 1.24 Interactive Gambling Act 1998

### [1.28] Section 144

*substitute*

#### 144 Acts and omissions of representatives

(1) In this section:

**person** means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

**representative**, of a person, means an employee or agent of the person.

**state of mind**, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.



- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **Part 1.25**                      **Juries Act 1967**

### **[1.29] Section 44AB**

*substitute*

#### **44AB Acts and omissions of representatives**

- (1) In this section:

*person* means an individual.

*Note*     See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

*representative*, of a person, means an employee or agent of the person.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose;  
and
- (b) the person's reasons for the intention, opinion, belief or purpose.

- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
  - (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **Part 1.26 Lakes Act 1976**

### **[1.30] Section 51A**

*substitute*

#### **51A Acts and omissions of representatives**

- (1) In this section:

*person* means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

*representative*, of a person, means an employee or agent of the person.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## Part 1.27 Land (Planning and Environment) Act 1991

### [1.31] Section 286

*substitute*

#### 286 Acts and omissions of representatives

(1) In this section:

**person** means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

**representative**, of a person, means an employee or agent of the person.

**state of mind**, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.

- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **Part 1.28                      Legal Practitioners Act 1970**

### **[1.32] Section 195**

*substitute*

#### **195 Criminal liability of executive officers**

- (1) An executive officer of a corporation commits an offence if—
  - (a) the corporation contravenes section 192, section 193 or section 194; and
  - (b) the contravention is an offence against this Act (the *relevant offence*); and
  - (c) the officer was reckless about whether the contravention would happen; and
  - (d) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and

(e) the officer failed to take all reasonable steps to prevent the contravention.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (2) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (3) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must have regard to the following:
  - (a) any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
    - (i) that the corporation arranges regular professional assessments of the corporation's compliance with the contravened provision;
    - (ii) that the corporation implements any appropriate recommendation arising from such an assessment;
    - (iii) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the contravened provision;
  - (b) any action the officer took when the officer became aware that the contravention was, or might be, about to happen.
- (4) Subsection (3) does not limit the matters to which the court may have regard.
- (5) This section does not apply if the corporation would have a defence to a prosecution for the relevant offence.

---

## **Part 1.29**                      **Liquor Act 1975**

### **[1.33] Section 177**

*substitute*

#### **177 Acts and omissions of representatives**

(1) In this section:

***person*** means an individual.

*Note*     See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

***representative***, of a person, means an employee or agent of the person.

***state of mind***, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose;  
and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.

- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **Part 1.30**                      **Listening Devices Act 1992**

### **[1.34] Section 11**

*substitute*

#### **11 Acts and omissions of representatives**

- (1) In this section:

***person*** means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

***representative***, of a person, means an employee or agent of the person.

***state of mind***, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose;  
and
- (b) the person's reasons for the intention, opinion, belief or purpose.



- 
- (2) This section applies to a prosecution for any offence against this Act.
  - (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
    - (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
    - (b) the representative had the state of mind.
  - (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
  - (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
  - (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **Part 1.31**                      **Nature Conservation Act 1980**

### **[1.35] Section 80A**

*substitute*

#### **80A Acts and omissions of representatives**

- (1) In this section:

***person*** means an individual.

*Note*     See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

*representative*, of a person, means an employee or agent of the person.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

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## Part 1.32 Occupational Health and Safety Act 1989

### [1.36] Section 93

*substitute*

#### 93 Acts and omissions of representatives

(1) In this section:

**person** means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

**representative**, of a person, means an employee or agent of the person.

**state of mind**, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.

- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **Part 1.33 Pharmacy Act 1931**

### **[1.37] Section 59A**

*substitute*

#### **59A Acts and omissions of representatives**

- (1) In this section:

*person* means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

*representative*, of a person, means an employee or agent of the person.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose;  
and
- (b) the person's reasons for the intention, opinion, belief or purpose.

- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
  - (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **Part 1.34 Podiatrists Act 1994**

### **[1.38] Section 52**

*omit*

## **Part 1.35 Psychologists Act 1994**

### **[1.39] Section 53**

*omit*

## Part 1.36 Tobacco Act 1927

### [1.40] Section 72

*substitute*

#### 72 Acts and omissions of representatives

(1) In this section:

**person** means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

**representative**, of a person, means an employee or agent of the person.

**state of mind**, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.

- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **Part 1.37**                      **Waste Minimisation Act 2001**

### **[1.41] Section 52**

*substitute*

#### **52 Acts and omissions of representatives**

- (1) In this section:

***person*** means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

***representative***, of a person, means an employee or agent of the person.

***state of mind***, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose;  
and
- (b) the person's reasons for the intention, opinion, belief or purpose.

- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
  - (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **Part 1.38**                      **Water Resources Act 1998**

### **[1.42] Section 73**

*substitute*

#### **73 Acts and omissions of representatives**

- (1) In this section:

***person*** means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.



*representative*, of a person, means an employee or agent of the person.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

## **Schedule 2**      **Consequential amendments—redundant offences**

(see s 3)

### **Part 2.1**                      **ACTION Authority Act 2001**

#### **[2.1] Section 2, note 1**

*substitute*

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act.

#### **[2.2] Section 14 (1) (c)**

*omit*

or division 5.1

*substitute*

or any of the following provisions of the Criminal Code:

- (i) section 333 (General dishonesty);
- (ii) section 335 (Obtaining financial advantage from the Territory);
- (iii) section 359 (Abuse of public office).

**[2.3] Section 19 (4)**

*omit*

or division 5.1 (Conduct of persons associated with the authority).

*substitute*

or any of the following provisions of the Criminal Code:

- (a) section 333 (General dishonesty);
- (b) section 335 (Obtaining financial advantage from the Territory);
- (c) section 359 (Abuse of public office).

**[2.4] Division 5.1**

*omit*

**[2.5] Division 5.2 heading**

*omit*

**[2.6] Dictionary, definition of *relevant person***

*omit*

**Part 2.2 Adoption Act 1993**

**[2.7] Section 98**

*omit*

**[2.8] Section 100 heading**

*substitute*

**100 Presenting consent obtained by fraud etc**

**[2.9] Section 100**

*omit*

forged or

**[2.10] Section 102**

*omit*

**Part 2.3 Animal Diseases Act 1993**

**[2.11] Section 52**

*omit*

**Part 2.4 Animal Welfare Act 1992**

**[2.12] Section 91**

*omit everything from*

obstruct

*to*

Act.

*substitute*

obstruct a veterinary surgeon in the exercise of the veterinary surgeon's functions under this Act.

## **Part 2.5 Annual Leave Act 1973**

### **[2.13] Section 14J heading**

*substitute*

### **14J Failing to comply with requirement of authorised officer**

### **[2.14] Section 14J (1)**

*omit*

### **[2.15] Section 14J (2)**

*omit*

(2) A person

*substitute*

A person

## **Part 2.6 Architects Act 1959**

### **[2.16] Section 19**

*omit*

## **Part 2.7 Associations Incorporation Act 1991**

### **[2.17] Sections 111 and 113**

*omit*

## Part 2.8 Births, Deaths and Marriages Registration Act 1997

### [2.18] Section 49

*omit*

### [2.19] Section 51 heading

*substitute*

#### 51 Confiscation of forged etc documents

### [2.20] Section 51 (1) and (2)

*omit*

### [2.21] Section 51

*renumber subsections when Act next republished under Legislation Act*

## Part 2.9 Blood Donation (Transmittable Diseases) Act 1985

### [2.22] Section 5 (a), note

*substitute*

*Note 1* It is an offence to make a false or misleading statement or give false or misleading information (see Criminal Code, pt 3.4).

*Note 2* If a form is approved under s 10 for a declaration, the form must be used.

### [2.23] Section 7

*omit*

**[2.24] Section 8 (1) and (2)**

*omit*

section 7

*substitute*

the Criminal Code, section 337 (Making false or misleading statements) or section 338 (Giving false or misleading information)

**Part 2.10 Building Act 2004**

**[2.25] Section 135**

*omit*

**Part 2.11 Building and Construction  
Industry Training Levy Act  
1999**

**[2.26] Section 34 (2)**

*omit*

section 36

*substitute*

the Criminal Code, part 3.4 (False or misleading statements, information and documents)

**[2.27] Section 35**

*omit everything from*

excuse

*to*

fail

*substitute*

excuse, fail

**[2.28] Section 36**

*omit*

**Part 2.12 Business Names Act 1963**

**[2.29] Section 17**

*omit*

**Part 2.13 Casino Control Act 1988**

**[2.30] Section 101 (1), definition of offence**

*omit*

constitutes an offence against this Act.

*substitute*

constitutes—

- (a) an offence against this Act; or
- (b) an offence against any of the following provisions of the Criminal Code in relation to anything done, or omitted to be done, under this Act:



- (i) part 3.4 (False or misleading statements, information and documents);
- (ii) section 356 (Bribery);
- (iii) section 357 (Other corrupting benefits);
- (iv) section 360 (Impersonating Territory public official);
- (v) section 361 (Obstructing Territory public official).

**[2.31] Sections 111 and 113**

*omit*

**[2.32] Section 114 heading**

*substitute*

**114 Impersonating licence holder etc**

**[2.33] Section 114**

*omit everything from*

not

*to*

person.

*substitute*

not impersonate the holder of a licence or of a form of identification used for this Act.

**[2.34] Section 117**

*omit*

## Part 2.14 Cemeteries and Crematoria Act 2003

### [2.35] Section 48

*omit*

## Part 2.15 Charitable Collections Act 2003

### [2.36] Section 18 (1) (b)

*omit*

someone else

*substitute*

a member of the public

### [2.37] Section 18 (1), note 1

*substitute*

*Note 1* For offences in relation to giving false or misleading information to a person exercising a function under a Territory law etc, see Criminal Code, pt 3.4 (False or misleading statements, information and documents).

### [2.38] Sections 18 (2) (b) and 19 (1) (b)

*omit*

someone else

*substitute*

a member of the public

**[2.39] Section 19 (1), note 1**

*substitute*

*Note 1* For offences in relation to giving false or misleading documents to a person exercising a function under a Territory law etc, see the Criminal Code, pt 3.4 (False or misleading statements, information and documents).

**[2.40] Section 19 (5) (b)**

*omit*

someone else

*substitute*

a member of the public

**[2.41] Sections 60 and 61**

*omit*

**Part 2.16 Children and Young People  
Act 1999**

**[2.42] Sections 387, 391 and 392**

*omit*

## Part 2.17 Clinical Waste Act 1990

### [2.43] Section 38

*omit everything after*

reasonable

*substitute*

excuse, fail to comply with a requirement of an inspector under section 34.

Maximum penalty: 50 penalty units.

## Part 2.18 Commissioner for the Environment Act 1993

### [2.44] Section 17 (7) (d)

*substitute*

(d) a prosecution for an offence against the Criminal Code, part 3.4 (False or misleading statements, information and documents) or section 361 (Obstructing Territory public official).

### [2.45] Section 27

*omit*

## Part 2.19 Community and Health Services Complaints Act 1993

### [2.46] Section 72

*omit*

---

## **Part 2.20                      Consumer and Trader Tribunal                                          Act 2003**

### **[2.47] Section 56 (1)**

*substitute*

- (1) A person commits an offence if the person obstructs or hinders the tribunal in the exercise of the tribunal's functions.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## **Part 2.21                      Consumer Credit                                          (Administration) Act 1996**

### **[2.48] Section 28**

*omit*

## **Part 2.22                      Cooperatives Act 2002**

### **[2.49] Section 450**

*omit*

## **Part 2.23                      Court Security Act 2001**

### **[2.50] Section 14**

*omit*

## Part 2.24 Debits Tax Act 1997

### [2.51] Section 15

*omit*

## Part 2.25 Dental Technicians and Dental Prosthetists Registration Act 1988

### [2.52] Section 28 (1), new note

*insert*

*Note* It is an offence to make a false or misleading statement or give false or misleading information (see Criminal Code, pt 3.4).

### [2.53] Section 65

*omit*

## Part 2.26 Discrimination Act 1991

### [2.54] Section 108E (c)

*omit*

or section 108O

### [2.55] Section 108N heading

*substitute*

## 108N Disrupting proceedings before commissioner or tribunal

**[2.56] Section 108N**

*omit everything from*

excuse

*to*

disrupt

*substitute*

excuse, disrupt

**[2.57] Section 108O**

*omit*

**Part 2.27                      Domestic Animals Act 2000**

**[2.58] Sections 141 and 143**

*omit*

**[2.59] Dictionary, definition of *excluded offence*,  
paragraph (b) (v) and (vi)**

*substitute*

(v) section 142 (Dishonoured cheques and credit transactions).

## Part 2.28 Drugs of Dependence Act 1989

### [2.60] Section 181 heading

*substitute*

#### 181 Failing to comply with requirement of inspector

### [2.61] Section 181 (a)

*omit everything from*

excuse

*to*

this Act.

*substitute*

excuse, fail to comply with a reasonable requirement of a drug inspector or a treatment centre inspector who has—

- (a) entered premises in accordance with this Act; and
- (b) complied with any requirement under section 180 to produce his or her identity card.

## Part 2.29 Duties Act 1999

### [2.62] Sections 239 and 240

*omit*

## Part 2.30 Education Act 1937

### [2.63] Section 34

*omit*

---



## **Part 2.31                      Electoral Act 1992**

### **[2.64] Section 309**

*omit*

### **[2.65] Section 310 (1)**

*omit*

section 309

*substitute*

the Criminal Code, part 3.6 (Forgery and related offences)

### **[2.66] Section 312**

*omit*

## **Part 2.32                      Electricity Safety Act 1971**

### **[2.67] Sections 114 to 116**

*omit*

## **Part 2.33                      Environment Protection Act 1997**

### **[2.68] Section 150 (2)**

*omit*

section 152

*substitute*

the Criminal Code, part 3.4 (False or misleading statements, information and documents) or section 361 (Obstructing Territory public official)

**[2.69] Section 151 heading**

*substitute*

**151 Failing to comply with requirement of inspector**

**[2.70] Section 151 (1)**

*omit*

**[2.71] Section 151 (2)**

*omit*

(2) A person

*substitute*

A person

**[2.72] Section 152**

*omit*

**Part 2.34 Fair Trading (Consumer Affairs) Act 1973**

**[2.73] Section 12I (3) (a)**

*substitute*

(a) an offence against the Criminal Code, part 3.4 (False or misleading statements, information and documents); or

**[2.74] Sections 12K and 12L**

*omit*

---

## **Part 2.35                      Firearms Act 1996**

### **[2.75] Section 52 (1) (c)**

*substitute*

- (c) the person in whose name the firearm is registered is convicted of—
- (i) an offence against this Act; or
  - (ii) an offence against the Criminal Code, part 3.4 (False or misleading statements, information and documents) in relation to an application under this Act; or
  - (iii) an offence against the Criminal Code, section 346 (Forgery) in relation to a licence or permit under this Act; or
  - (iv) an offence against the Criminal Code, section 361 (Obstructing Territory public official) in relation to a police officer exercising functions under this Act; or
  - (v) a prescribed offence; or

### **[2.76] Sections 79, 107 and 108 (b)**

*omit*

### **[2.77] Section 108 (d)**

*omit*

forged, fraudulently altered,

### **[2.78] Section 108**

*renumber paragraphs when Act next republished under Legislation Act*

**[2.79] Section 109**

*omit*

**[2.80] Section 124**

*omit*

offence against this Act

*substitute*

offence mentioned in section 52 (1) (c) (i) to (iv)

**Part 2.36** **First Home Owner Grant Act  
2000**

**[2.81] Section 45 heading**

*substitute*

**45 Failing to comply with requirement of authorised officer**

**[2.82] Section 45 (1)**

*omit*

**[2.83] Section 45**

*renumber subsections when Act next republished under Legislation Act*

**[2.84] Section 46**

*omit*

## **Part 2.37 Fisheries Act 2000**

### **[2.85] Sections 50 and 70 to 72**

*omit*

## **Part 2.38 Food Act 2001**

### **[2.86] Sections 66 to 69 and 143**

*omit*

## **Part 2.39 Fuels Control Act 1979**

### **[2.87] Section 18**

*omit*

### **[2.88] Section 20**

*omit*

this Act.

*substitute*

this Act or against the Criminal Code, part 3.4 (False or misleading statements, information and documents) or section 361 (Obstructing Territory public official).

## **Part 2.40 Gambling and Racing Control Act 1999**

### **[2.89] Section 28 heading**

*substitute*

## **28 Failing to comply with requirement of authorised officer**

### **[2.90] Section 28 (1)**

*omit*

### **[2.91] Section 28**

*renumber subsections when Act next republished under Legislation Act*

### **[2.92] Section 29**

*omit*

## **Part 2.41 Gas Safety Act 2000**

### **[2.93] Sections 60 to 62**

*omit*

## **Part 2.42 Gas Safety Regulations 2001**

### **[2.94] Regulation 14**

*omit*

## **Part 2.43 Hawkers Act 2003**

### **[2.95] Section 24 (c)**

*substitute*

- (c) the licensee or anyone else who is concerned with, or takes part in, the licensee's management has been convicted or found guilty of an offence against the Criminal Code, section 313 (Receiving) or a corresponding offence against the law of a State or another Territory.

**[2.96] Sections 43 and 44**

*omit*

**Part 2.44 Health Professions Boards  
(Elections) Act 1980**

**[2.97] Section 35**

*omit*

**Part 2.45 Intoxicated Persons (Care and  
Protection) Act 1994**

**[2.98] Section 30 heading**

*substitute*

**30 Failing to comply with requirement of inspector**

**[2.99] Section 30 (1)**

*omit*

**[2.100] Section 30 (2)**

*omit*

(2) A person

*substitute*

A person

## **Part 2.46 Judicial Commissions Act 1994**

### **[2.101] Section 45**

*omit*

## **Part 2.47 Lakes Act 1976**

### **[2.102] Section 10 heading**

*substitute*

#### **10 Failing to comply with direction by inspector**

### **[2.103] Section 10 (1)**

*omit*

### **[2.104] Section 10 (2)**

*omit*

(2) A person

*substitute*

A person

## **Part 2.48 Land (Planning and Environment) Act 1991**

### **[2.105] Sections 155, 221 and 274**

*omit*



## **Part 2.49 Land Titles Act 1925**

### **[2.106] Section 15 (1) (b)**

*omit*

explanation; or

*substitute*

explanation;

### **[2.107] Section 15 (1) (c)**

*omit*

### **[2.108] Section 15 (1), penalty, paragraph (a)**

*omit*

or (c)

## **Part 2.50 Legal Aid Act 1977**

### **[2.109] Section 95 (1)**

*omit*

### **[2.110] Section 95 (2) (a)**

*omit*

subsection (1)

*substitute*

the Criminal Code, part 3.4 (False or misleading statements, information and documents)

**[2.111] Section 95**

*renumber subsections when Act next republished under Legislation Act*

**Part 2.51 Liquor Act 1975**

**[2.112] Section 140**

*omit*

**Part 2.52 Long Service Leave Act 1976**

**[2.113] Section 13H heading**

*substitute*

**13H Failing to comply with requirement of authorised officer**

**[2.114] Section 13H (1)**

*omit*

**[2.115] Section 13H (2)**

*omit*

(2) A person

*substitute*

A person

**Part 2.53 Lotteries Act 1964**

**[2.116] Section 14**

*omit*

---

## **Part 2.54 Machinery Regulations 1950**

### **[2.117] Regulation 7 (1)**

*omit*

(1) The Minister

*substitute*

The Minister

### **[2.118] Regulations 7 (2) and penalty and 11**

*omit*

## **Part 2.55 Magistrates Court (Civil Jurisdiction) Act 1982**

### **[2.119] Section 379 heading**

*substitute*

#### **379 Interference with seized property etc**

### **[2.120] Section 379 (1) and (2)**

*omit*

### **[2.121] Section 379 (3)**

*omit*

(3) A person

*substitute*

A person

## Part 2.56 Mental Health (Treatment and Care) Act 1994

### [2.122] Section 135 heading

*substitute*

### 135 Failing to comply with requirement of inspector

#### [2.123] Section 135 (a)

*omit everything from*

excuse

*to*

fail

*substitute*

excuse, fail

#### [2.124] Section 135, penalty

*substitute*

Maximum penalty: 50 penalty units.

## Part 2.57 Nurses Act 1988

### [2.125] Section 79 heading

*substitute*

### 79 Board may require additional information

#### [2.126] Section 79 (1)

*omit*

(1) The board

*substitute*

The board

**[2.127] Section 79 (2) and penalty**

*substitute*

*Note* It is an offence to make a false or misleading statement or give false or misleading information (see Criminal Code, pt 3.4).

**Part 2.58 Occupational Health and Safety Act 1989**

**[2.128] Section 67 heading**

*substitute*

**67 Failing to comply with requirement of inspector**

**[2.129] Section 67**

*omit everything from*

excuse

*to*

contravene

*substitute*

excuse, contravene

**[2.130] Sections 68 and 84N**

*omit*

**Part 2.59 Occupational Health and Safety (Certification of Plant Users and Operators) Regulations 2000**

**[2.131] Regulation 35**

*omit*

**Part 2.60 Occupational Health and Safety Regulations 1991**

**[2.132] Regulation 20**

*omit*

**Part 2.61 Ombudsman Act 1989**

**[2.133] Section 11 (7) (d)**

*omit*

section 35

*substitute*

the Criminal Code, part 3.4 (False or misleading statements, information and documents)

**[2.134] Section 35 heading**

*substitute*

**35 Failing to comply with requirement under Act**

**[2.135] Section 35 (1)**

*omit*

(1) A person

*substitute*

A person

**[2.136] Section 35 (2)**

*omit*

## **Part 2.62 Optometrists Act 1956**

**[2.137] New section 3A**

*insert*

### **3A Offences against Act—application of Criminal Code etc**

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to the following offence against this Act (see Code, pt 2.1):

- s 49 (Refusal to permit examination of books etc).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

**[2.138] Section 49**

*substitute*

**49 Refusal to permit examination of books etc**

- (1) A person commits an offence if the person—
- (a) fails to allow an authorised person to examine books, papers, records, apparatus or articles; or
  - (b) fails to produce them for examination.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

**Part 2.63 Pawnbrokers Act 1902**

**[2.139] Section 25**

*omit*

**Part 2.64 Periodic Detention  
Regulations 1995**

**[2.140] Regulation 19**

*omit*



## **Part 2.65 Pharmacy Act 1931**

### **[2.141] New section 2A**

*insert*

#### **2A Offences against Act—application of Criminal Code etc**

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to the following offence against this Act (see Code, pt 2.1):

- s 58 (Refusal to permit examination of books etc).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

### **[2.142] Section 58**

*substitute*

#### **58 Refusal to permit examination of books etc**

- (1) A person commits an offence if the person—
  - (a) fails to allow an authorised person to examine books, papers, records, apparatus or articles; or
  - (b) fails to produce them for examination.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) An offence against this section is a strict liability offence.

## **Part 2.66 Physiotherapists Act 1977**

### **[2.143] Section 53**

*omit*

## **Part 2.67 Plant Diseases Act 2002**

### **[2.144] Sections 32 to 34**

*omit*

## **Part 2.68 Poisons Act 1933**

### **[2.145] Section 17 (7)**

*omit*

## **Part 2.69 Pool Betting Act 1964**

### **[2.146] Section 11**

*omit*

## **Part 2.70 Pounds Act 1928**

### **[2.147] Section 37B**

*omit*

## **Part 2.71 Prohibited Weapons Act 1996**

### **[2.148] Section 10**

*omit*

## **Part 2.72                      Prostitution Act 1992**

### **[2.149]            Section 31**

*omit*

## **Part 2.73                      Public Baths and Public                                          Bathing Act 1956**

### **[2.150]            Section 7A**

*omit*

## **Part 2.74                      Public Health Act 1997**

### **[2.151]            Section 78, new note**

*insert*

*Note*     It is an offence to make a false or misleading statement or give false or misleading information (see Criminal Code, pt 3.4).

### **[2.152]            Section 79, new note**

*insert*

*Note*     It is an offence to make a false or misleading statement or give false or misleading information (see Criminal Code, pt 3.4).

### **[2.153]            Sections 82 and 83**

*omit*

## Part 2.75 Public Interest Disclosure Act 1994

### [2.154] Section 34

*omit*

## Part 2.76 Radiation Act 1983

### [2.155] New section 5A

*insert*

#### 5A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to the following offence against this Act (see Code, pt 2.1):

- s 24 (Failing to comply with requirement of inspector).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

**[2.156] Section 24**

*substitute*

**24 Failing to comply with requirement of inspector**

- (1) A person commits an offence if—
- (a) an inspector has entered premises under this part; and
  - (b) the inspector has made a reasonable requirement of the person; and
  - (c) the person fails to comply with the requirement.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

**Part 2.77 Rates and Land Tax Act 1926**

**[2.157] New section 22BD (3)**

*insert*

- (3) In this section:

*offence against this Act* includes an offence against the Criminal Code, part 3.4 (False or misleading statements, information and documents) or part 3.8 (Impersonation or obstruction of Territory public officials).

**[2.158] Section 22GC**

*omit*

**[2.159] Section 22GDA heading**

*substitute*

**22GDA Failing to comply with requirement of authorised officer**

**[2.160] Section 22GDA (1) and (3)**

*omit*

**[2.161] Section 22GDA**

*renumber subsections when Act next republished under Legislation Act*

**[2.162] Section 22GX**

*omit*

**Part 2.78 Rehabilitation of Offenders  
(Interim) Act 2001**

**[2.163] Section 87 (1)**

*omit*

**[2.164] Section 87 (2)**

*omit*

(2) A person

*substitute*

A person

---

## **Part 2.79**                      **Road Transport (Driver Licensing) Act 1999**

### **[2.165]            Part 3, new note**

*after part heading, insert*

*Note*     For offences in relation to false or misleading statements, information or documents, see the Criminal Code, pt 3.4

### **[2.166]            Section 32 (1) (b), (2) (b) and (3) (b)**

*omit*

state his or her name falsely or incorrectly or

### **[2.167]            Section 32 (4) and (5)**

*substitute*

- (5) The regulations may provide that subsection (1), (2) or (3) does not apply to the driving of a motor vehicle in circumstances prescribed under the regulations.

### **[2.168]            Section 32**

*renumber subsections when Act next republished under Legislation Act*

## **Part 2.80**                      **Road Transport (Driver Licensing) Regulations 2000**

### **[2.169]            Regulation 116 (3) (b)**

*omit*

deceive; or

*substitute*

deceive.

**[2.170] Regulation 116 (3) (c) and (d)**

*omit*

**Part 2.81 Road Transport (General) Act 1999**

**[2.171] Sections 43 and 228**

*omit*

**Part 2.82 Royal Commissions Act 1991**

**[2.172] Section 35B**

*omit*

**Part 2.83 Sale of Motor Vehicles Act 1977**

**[2.173] Section 67**

*omit*

**Part 2.84 Scaffolding and Lifts Act 1912**

**[2.174] Section 16**

*omit*

**Part 2.85 Second-hand Dealers Act 1906**

**[2.175] Section 16**

*omit*



## **Part 2.86**                      **Smoke-free Areas (Enclosed Public Places) Act 1994**

### **[2.176]            Section 18 heading**

*substitute*

### **18    Failing to comply with requirement of inspector**

#### **[2.177]            Section 18 (1)**

*omit*

(1) A person

*substitute*

A person

#### **[2.178]            Section 18 (2) and note**

*omit*

## **Part 2.87**                      **Stock Act 1991**

### **[2.179]            Section 37**

*omit*

## **Part 2.88**                      **Surveyors Act 2001**

### **[2.180]            Section 45**

*omit*

## Part 2.89 Taxation Administration Act 1999

### [2.181] Section 66

*omit*

### [2.182] Section 70 (1) (b)

*substitute*

- (b) section 59, 60, 61, 64 or 68 (offences of failure to keep proper records or concealing identity); or
- (c) the Criminal Code, part 3.4 (False or misleading statements, information and documents);

### [2.183] Section 70 (2), definition of *related offence*, paragraph (b)

*substitute*

- (b) if the subsequent offence is an offence against section 59, 60, 61, 64 or 68 or the Criminal Code, part 3.4—an offence against—
  - (i) section 59, 60, 61, 64 or 68; or
  - (ii) the Criminal Code, part 3.4; or
  - (iii) the *Taxation Administration Act 1953* (Cwlth), part 3, division 2, subdivision B; or
  - (iv) the *Crimes (Taxation Offences) Act 1980* (Cwlth); or
  - (v) the *Crimes Act 1914* (Cwlth), section 29D that relates to a tax liability.

### [2.184] Section 72 (1) (a) (ii)

*omit*

section 66

*substitute*

the Criminal Code, part 3.4 (False or misleading statements, information and documents)

**[2.185] Section 88 heading**

*substitute*

**88 Failing to comply with requirement of inspector**

**[2.186] Section 88 (1)**

*omit*

**[2.187] Section 88**

*renumber subsections when Act next republished under Legislation Act*

**[2.188] Section 89**

*omit*

**Part 2.90 Tobacco Act 1927**

**[2.189] Section 41 heading**

*substitute*

**41 Failing to comply with requirement of authorised officer**

**[2.190] Section 41 (1)**

*omit*

**[2.191] Section 41 (2)**

*omit*

- (2) A person  
*substitute*  
A person

## **Part 2.91 Trade Measurement Act 1991**

### **[2.192] Section 65 (a)**

*omit*

### **[2.193] Section 65 (e)**

*omit*

inspector; or  
*substitute*  
inspector.

### **[2.194] Section 65 (f)**

*omit*

### **[2.195] Section 65**

*renumber paragraphs when Act next republished under Legislation Act*

### **[2.196] Section 66 (2)**

*omit*

under section 73

*substitute*

against the Criminal Code, part 4.3 (False or misleading statements, documents or information)

**[2.197] Section 73**

*omit*

**Part 2.92 Transplantation and Anatomy  
Act 1978**

**[2.198] Section 48 (4) (b)**

*omit*

**[2.199] Section 48 (4)**

*renumber paragraphs when Act next republished under Legislation  
Act*

**Part 2.93 Tree Protection (Interim  
Scheme) Act 2001**

**[2.200] Section 40 (3) (a)**

*substitute*

- (a) an offence against the Criminal Code, part 3.4 (False or misleading statements, information and documents); or

**[2.201] Sections 42 to 44**

*omit*

**Part 2.94 Utilities Act 2000**

**[2.202] Sections 76, 118, 141, 168, 216 and 217**

*omit*

## **Part 2.95 Utilities (Water Restrictions) Regulations 2002**

### **[2.203] Regulation 18**

*omit*

## **Part 2.96 Vocational Education and Training Act 2003**

### **[2.204] Sections 44 and 45**

*omit*

## **Part 2.97 Waste Minimisation Act 2001**

### **[2.205] Section 41**

*omit*

### **[2.206] Section 48 (3) (a)**

*substitute*

- (a) an offence against the Criminal Code, part 3.4 (False or misleading statements, information and documents); or

### **[2.207] Sections 50 and 51**

*omit*

## **Part 2.98 Water and Sewerage Act 2000**

### **[2.208] Sections 41 to 43**

*omit*

## **Part 2.99 Water Resources Act 1998**

### **[2.209] Section 51 (2)**

*omit*

section 52 or 53

*substitute*

section 53 or the Criminal Code, part 3.4 (False or misleading statements, information and documents)

### **[2.210] Section 52**

*omit*

### **[2.211] Section 53 heading**

*substitute*

## **53 Failing to comply with requirement of authorised officer**

### **[2.212] Section 53 (1)**

*omit*

### **[2.213] Section 53 (2)**

*omit*

(2) A person

*substitute*

A person

## **Schedule 3**      **Other consequential amendments**

(see s 3)

### **Part 3.1**                      **Bail Act 1992**

#### **[3.1] Section 9D (1), example**

*substitute*

**Example**

Claude is served with a summons to attend the Magistrates Court to answer a charge that he has committed the offence of taking a motor vehicle without consent (punishable by 5 years imprisonment under the Criminal Code, section 318 (1), and so a serious offence for this section). Before the court date, Claude is arrested and charged with having committed an aggravated robbery the day after being served with the summons (punishable by 25 years imprisonment under the Criminal Code, section 310, and so also a serious offence for this section). At the time of the alleged aggravated robbery, the charge of taking a motor vehicle without consent was still pending. This section will apply to any decision about the grant of bail to Claude in relation to the aggravated robbery charge.

#### **[3.2] Section 9G (3), example 1**

*omit*

armed robbery

*substitute*

aggravated robbery

#### **[3.3] Schedule 1, part 1.1, items about armed robbery and aggravated burglary**

*omit*



**[3.4] Schedule 1, new part 1.1A**

*insert*

**Part 1.1A**

**Offences against Criminal  
Code**

column 1 item	column 2 provision	column 3 description of offence
1	310	aggravated robbery
2	312	aggravated burglary

**[3.5] Schedule 1**

*renumber parts when Act next republished under Legislation Act*

## Part 3.2 Crimes Act 1900

### [3.6] Section 7A, note 1, 4th dot point

*omit*

### [3.7] Divisions 6.1 and 6.2 etc

*omit*

- division 6.1, 6.2 and 6.4
- sections 149 and 150
- sections 153 to 156

### [3.8] Section 181 (b)

*omit*

section 92 or 94

*substitute*

the Criminal Code, section 310 (Aggravated robbery) or section 312 (Aggravated burglary)

### [3.9] Section 220 (4), definition of *relevant summary offence*

*substitute*

*relevant summary offence* means an offence against—

- (a) section 380 (Possession of offensive weapons and disabling substances); or
- (b) section 381 (Possession of offensive weapons and disabling substances with intent); or
- (c) the Criminal Code, section 321 (Minor theft); or
- (d) the *Road Transport (Alcohol and Drugs) Act 1977*, section 19 (Prescribed blood alcohol concentration exceeded).

**[3.10] Section 349**

*omit*

**[3.11] Section 350 (16), definition of *loss***

*substitute*

*loss*—see the Criminal Code, section 300.

**[3.12] Section 350 (16), definition of *stolen property***

*substitute*

*stolen property*—see the Criminal Code, section 314.

**[3.13] Section 367 (1)**

*after*

this Act

*insert*

or the Criminal Code

**[3.14] Sections 386 to 386C**

*omit*

## Part 3.3 Crimes (Offences against the Government) Act 1989

### [3.15] New section 10 (3)

*insert*

(3) In this section:

***officer of the Territory*** means—

- (a) a public employee; or
- (b) a person who performs services for the Territory or a Territory authority.

### [3.16] Section 10 (as amended)

*relocate to the Crimes Act 1900 as section 153*

### [3.17] New section 19 (3)

*insert*

(3) In this section:

***government premises*** means any land, building or part of a building occupied by the Territory or a Territory authority.

***unreasonable obstruction*** means anything done by someone that is, or contributes to, an obstruction of or interference with the exercise or enjoyment by other people of their lawful rights or privileges (including rights of passage on public streets) that is unreasonable in all the circumstances (including the place, time, length and nature of the obstruction or interference).

### [3.18] Section 19 (as amended)

*relocate to the Crimes Act 1900 as section 154*

**[3.19] Act repealed**

The *Crimes (Offences against the Government) Act 1989* A1989-34, as amended by this part, is repealed.

**Part 3.4 Magistrates Court Act 1930**

**[3.20] Section 59**

*omit*

**Part 3.5 Victims of Crime (Financial Assistance) Act 1983**

**[3.21] Section 3**

*omit*

A *violent crime*

*substitute*

- (1) A *violent crime*

**[3.22] Section 3, table**

*omit*

91, 92 robbery offences

**[3.23] New section 3 (2)**

*insert*

- (2) An offence against the Criminal Code, section 309 (Robbery) or section 310 (Aggravated robbery) is also a *violent crime*.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 11 December 2003.

**2 Notification**

Notified under the Legislation Act on 26 March 2004.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Bill 2004 which originated in the Assembly as the Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Bill 2003 and was passed by the Legislative Assembly on 11 March 2004.

Clerk of the Legislative Assembly

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