



Australian Capital Territory

Piracy Act 1698

11 Will 3 c 7

Republication No 1

Republication date: 11 July 2002

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Piracy Act 1698* 11 Will 3 c 7 as in force on 11 July 2002. It includes any commencement, repeal or expiry affecting the republished law and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

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

Kinds of republications

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

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

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

Editorial changes

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

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

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

Modifications

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

Penalties

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

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



Australian Capital Territory

Piracy Act 1698

11 Will 3 c 7

Contents

	Page
1	1
2	3
3	3
4	3
5	4
6	4
7	6
8	7
9	7
10	8
11	9
12	10

Contents

	Page
13	11
14	11
15	12
16	12
17	13
18	13

Endnotes

1	About the endnotes	14
2	Abbreviation key	14
3	Legislation history	15
4	Amendment history	15



Australian Capital Territory

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1

Whereas by the *Offences at Sea Act 1536*, it is enacted, that treasons, felonies, robberies, murders, and confederacies committed on the sea, shall be enquired of, tried, and determined according to the common course of the laws of this land used for such offences upon the land within this realm; whereupon the trial of those offenders before the admiral, or his lieutenant, or his commissary, hath been altogether disused:

And whereas, that since the making of the said Act, and especially of late years, it hath been found by experience, that persons committing piracies, robberies, and felonies on the seas, in or near the East and West Indies, and in places very remote, cannot be

brought to condign punishment without great trouble and charges in sending them into England to be tried within the realm, as the said statute directs, insomuch that many idle and profligate persons have been thereby encouraged to turn pirates, and betake themselves to that sort of wicked life, trusting that they shall not, or at least cannot easily, be questioned for such their piracies and robberies, by reason of the great trouble and expence that will necessarily fall upon such as shall attempt to apprehend and prosecute them for the same:

And whereas the numbers of them are of late very much increased, and their insolencies so great, that unless some speedy remedy be provided to suppress them, by a strict and more easy way for putting the ancient laws in that behalf in execution, the trade and navigation into remote parts will very much suffer thereby;

Be it therefore declared and enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that all piracies, felonies, and robberies committed in or upon the sea, or in any haven, river, creek, or place, where the admiral or admirals have power, authority, or jurisdiction, may be examined, inquired of, tried, heard and determined, and adjudged, according to the directions of this Act, in any place at sea, or upon the land, in any of his majesty's islands, plantations, colonies, dominions, forts, or factories, to be appointed for that purpose by the King's commission or commissions under the great seal of England, or the seal of the admiralty of England, directed to all or any of the admirals, vice-admirals, rear-admirals, judges of vice-admiralties, or commanders of any of his majesty's ships of war, and also to all or any such person or persons, officer or officers, by name, or for the time being, as his majesty shall think fit to appoint;

Which said commissioners shall have full power jointly or severally, by warrant under the hand and seal of them, or any one of them, to commit to safe custody any person or persons, against whom information of piracy, robbery, or felony upon the sea, shall be

given upon oath (which oath they or any one of them shall have full power, and are hereby required to administer) and to call and assemble a court of admiralty on ship-board, or upon the land, when and as often as occasion shall require;

Which court shall consist of seven persons at the least.

2

And if so many of the persons aforesaid cannot conveniently be assembled, be it further enacted by the authority aforesaid, that any three of the aforesaid persons (whereof the president or chief of some English factory, or the governor, lieutenant governor, or member of his majesty's councils in any of the plantations or colonies aforesaid, or commander of one of his majesty's ships, is always to be one) shall have full power and authority, by virtue of this Act, to call and assemble any other persons on ship-board, or upon the land, to make up the number of seven.

3

Provided, that no persons but such as are known merchants, factors, or planters, or such as are captains, lieutenants, or warrant officers in any of his majesty's ships of war, or captains, masters, or mates of some English ship, shall be capable of being so called, and sitting and voting in the said court.

4

And be it enacted by the authority aforesaid, that such persons called and assembled as aforesaid, shall have full power and authority, according to the course of the admiralty, to issue warrants for bringing any persons accused of piracy or robbery, before them to be tried, heard, and adjudged;

And to summon witnesses, and to take informations and examinations of witnesses upon their oath;

And to do all things necessary for the hearing and final determination of any case of piracy, robbery, and felony;

And to give sentence and judgment of death, and to award execution of the offenders convicted and attainted as aforesaid, according to the civil law, and the methods and rules of the admiralty;

And that all and every person and persons so convicted and attainted of piracy or robbery, shall have and suffer such losses of lands, goods and chattels, as if they had been attainted and convicted of an piracy, felonies, and robberies according to the *Offences at Sea Act 1536*.

5

Provided always, and be it further enacted by the authority aforesaid, that so soon as any court shall be assembled as aforesaid, either on ship-board or upon the land, the King's commission shall first be openly read, and the said court then and there shall be solemnly and publickly called and proclaimed;

And then the president of the court shall, in the first place, publickly in open court take the following oath, *viz.*

I *A. B.* do swear in the presence of Almighty God, that I will truly and impartially try and adjudge the prisoner or prisoners which shall be brought upon his or their trials before this court, and honestly and duly, on my part, put his majesty's commission for the trying of them in execution, according to the best of my skill and knowledge: and that I have no interest, directly or indirectly, in any ship or goods, for the piratically taking of which any person stands accused, and is now to be tried:

So help me God.

6

And be having taken the oath in manner aforesaid, shall immediately administer the same oath to every person who shall fit,

and have and give a voice in the said court upon the trial of such prisoner or prisoners as aforesaid;

And immediately thereupon the said prisoner or prisoners shall be formally brought before them;

And then the register of the said court shall openly and distinctly read the articles against such prisoner or prisoners, upon which they or any of them is or are to be tried;

Wherein shall be set forth the particular fact or facts of piracy, robbery, and felony, with the time and place when and where, and in what manner it was committed;

And then each prisoner shall be asked, whether he be guilty of the said piracy and robbery, or felony, or not guilty? whereupon every such prisoner shall immediately plead thereunto, guilty, or not guilty, or else it shall be taken as confessed, and he shall suffer such pains of death, loss of lands, goods and chattels, and in like manner, as if he or they had been attainted or convicted upon the oath of witnesses, or his own confession;

But if any prisoner shall plead not guilty, witnesses shall be produced by the register, and duly sworn and examined openly, *viva voce*, in the prisoner's presence;

And after a witness hath answered all the questions proposed by the president of the court, and given his evidence, it shall and may be lawful for the prisoner to have the witness cross-examined, by first declaring to the court what questions he would have asked, and thereupon the president of the court shall interrogate the witness accordingly;

And every prisoner shall have liberty to bring witnesses for his defence, who shall be sworn, and examined upon oath, as the witnesses were that testified against him;

And afterwards the prisoner shall be fairly heard what he can say for himself;

All which being done, the prisoner shall be taken away and kept in safe custody, and all other persons, except the register, shall withdraw from the said court, and then the court shall consider of the evidence which hath been given, and debate the matters and circumstances of the prisoner's case, and the president of the court shall collect all the votes of the persons who do fit and have voices in the said court, beginning at the junior first, and ending with himself;

And according to the plurality of voices, sentence and judgment shall be then given and pronounced publickly in the presence of the prisoner or prisoners, being called in again;

And according to such sentence and judgment the person or persons attainted shall be executed and put to death, at such time, in such manner, and in such place upon the sea, or within the ebbing or flowing thereof, as the president or the major part of the court, by warrant directed to a provost marshal (which the president or said major part shall have power to constitute) shall appoint.

7

And be it further enacted by the authority aforesaid, that some person, being a publick notary, shall be register of the court;

And in case of his absence, death, or incapacity, or for want of a person so qualified, the president of the court shall and may appoint a register, giving him an oath (which he is hereby empowered to administer) duly, faithfully, and impartially to execute his office;

Which register shall prepare all warrants and articles, and take care to provide all things requisite for any trial, according to the substantial and essential parts of proceedings in a court of admiralty, in the most summary way;

And shall take minutes of the whole proceedings, and enter them duly in a book by him to be kept for that purpose;

And shall from time to time, as opportunity offers, transmit the same, with the copies of all articles and judgments given in any such cases, in any court whereof he shall be register, unto the high court of admiralty of England;

8

And be it further enacted by the authority aforesaid, that if any of his majesty's natural-born subjects, or denizens of this Kingdom, shall commit any piracy or robbery, or any act of hostility, against others his majesty's subjects upon the sea, under colour of any commission from any foreign prince or state, or pretence of authority from any person whatsoever, such offender and offenders, and every of them, shall be deemed, adjudged, and taken to be pirates, felons, and robbers;

And they and every of them being duly convicted thereof, according to this Act, or the *Offences at Sea Act 1536*, shall have and suffer such pains of death, loss of lands, goods, and chattels, as pirates, felons, and robbers upon the seas ought to have and suffer.

9

And be it further enacted, that if any commander or master of any ship, or any seaman or mariner, shall in any place where the admiral hath jurisdiction, betray his trust, and turn pirate, enemy, or rebel, and piratically and feloniously run away with his or their ship or ships; or any barge, boat, ordnance, ammunition, goods, or merchandizes, or yield them up voluntarily to any pirate, or shall bring any seducing messages from any pirate, enemy, or rebel, or consult, combine, or confederate with, or attempt or endeavour to corrupt any commander, master, officer, or mariner to yield up or run away with any ship, goods, or merchandizes, or turn pirate, or go over to pirates, or if any person shall lay violent hands on his commander, whereby to hinder him from fighting in defence of his ship and goods committed to his trust, or that shall confine his master, or make, or endeavour to make a revolt in the ship, shall be

adjudged, deemed, and taken to be a pirate, felon, and robber, and being convicted thereof, according to the directions of this Act, shall have and suffer pains of death, loss of lands, goods, and chattels, as pirates, felons, and robbers upon the seas ought to have and suffer.

10

And whereas several evil-disposed persons, in the plantations and elsewhere, have contributed very much towards the increase and encouragement of pirates, by setting them forth, and by aiding abetting, receiving, and concealing them and their goods, and there being some defects in the laws for bringing such evil-disposed persons to condign punishment;

be it enacted by the authority aforesaid, that all and every person and persons whatsoever, who, after the twenty-ninth day of September in the year of our Lord one thousand seven hundred, shall either on the land, or upon the seas, knowingly or wittingly set forth any pirate, or aid and assist, or maintain, procure, command, counsel or devise any person or persons whatsoever, to do or commit any piracies or robberies upon the seas, and such person and persons shall thereupon do or commit any such piracy or robbery, then all and every such person or persons whatsoever, so as aforesaid setting forth any pirate, or aiding, assisting, maintaining, procuring, commanding, counselling or advising the same, either on the land or upon the sea, shall be and are hereby declared, and shall be deemed and adjudged to be accessory to such piracy and robbery done and committed;

And further, that after any piracy or robbery is or shall be committed by any pirate or robber whatsoever, every person and persons, who knowing that such pirate or robber has done or committed such piracy and robbery, shall on the land or upon the sea, receive, entertain or conceal any such pirate or robber, or receive or take into his custody any ship, vessel, goods or chattels, which have been by any such pirate or robber piratically and feloniously taken, shall be

and are hereby likewise declared, deemed and adjudged to be accessory to such piracy and robbery;

And that after the said nine and twentieth day of September, all such accessaries to such piracies and robberies shall and may be enquired of, tried, heard, determined and adjudged after the common course of the laws of this land, according to the *Offences at Sea Act 1536*, as the principals of such piracies and robberies may and ought to be, and no otherwise;

And being thereupon attainted, shall suffer such pains of death, losses of lands, goods and chattels, and in like manner, as the principals of such piracies, robberies and felonies ought to suffer, according to the *Offences at Sea Act 1536*, which is hereby declared to be and continue in full force;

any thing in this present Act contained to the contrary notwithstanding.

11

And forasmuch as it will also conduce to the suppressing of robberies on the sea, if due encouragement be given, and rewards allowed, to such commanders, masters, and other officers, seamen, and mariners, as shall either bravely defend their own ships, or take, seize and destroy pirates, sea rovers, and enemies;

Be it further enacted by the authority aforesaid, that when any English ship shall have been defended against any pirates, enemies, or sea rovers by fight and brought to her designed port, in which fight any of the officers or seamen shall have been killed or wounded, it shall and may be lawful to and for the judge of his majesty's high court of admiralty, or his surrogate in the port of London, or the mayor, bailiff, or chief officer in the several out ports of this Kingdom, upon the petition of the master or seamen of such ship, so defended as aforesaid, to call unto him four or more good and substantial merchants, and such as are no adventurers or owners of the ship or goods so defended, and have no manner of interest

therein, and by advice with them to raise and levy upon the respective adventurers and owners of the ship and goods so defended, by process out of the said court, such sum or sums of money as himself and the said merchants, by plurality of voices, shall determine and judge reasonable, not exceeding two pounds *per centum* of the freight, and of the ship and goods so defended, according to the first costs of the goods;

Which sum or sums of money so raised, shall be distributed among the captain, master, officers, and seamen of the said ship, or widows and children of the slain, according to the direction of the judge of the said court, or his surrogate in the port of London, or the mayor, bailiff or chief officer in the several out-ports of this Kingdom, with the approbation of the merchants aforesaid, who shall proportion the same, according to their best judgment, unto the ship's company as aforesaid, having special regard unto the widows and children of such as shall have been slain in that service, and such as have been wounded or maimed.

12

And for the better and more effectual prevention of combinations and confederacies, for the running away with or destroying of any ship, goods or merchandizes;

Be it further enacted by the authority aforesaid, that a reward of ten pounds for every ship or vessel of one hundred tuns or under, and fifteen pounds for every ship or vessel of a greater burthen, shall be paid by the captain, commander, or master of every ship or vessel, wherein any such combination or confederacy shall be set on foot, for the running away with or destroying any such ship, or the goods and merchandizes therein laden, to such person as shall first make a discovery thereof, upon due proof of such combination or confederacy;

The same to be paid at the port where the wages of the seamen of the said ship are or ought to be paid, after such discovery and proof made.

13

Provided also, that this Act shall be in force for seven years, and to the end of the next session of parliament after the expiration of the said seven years, and no longer.

14

And for the more effectual prosecution and punishment of piracies, felonies and robberies upon the sea, and of all other offences aforementioned;

Be it declared and enacted by the authority aforesaid, that the commissioners appointed or to be appointed by the *Offences at Sea Act 1536*, or the commissioners for trial of pirates appointed by this Act, shall, from and after the said nine and twentieth day of September one thousand seven hundred, have the sole power and authority of trying, hearing, and determining the said crimes and offences, within all or any of the colonies and plantations in America, governed by proprietors, or under grants or charters from the crown, and of bringing the offenders to condign punishment;

And shall and may issue forth their warrant or warrants for the seizing and apprehending of any pirates, felons, or robbers upon the sea, or their confederates or accessaries, being within any of the said colonies and plantations, in order to their being brought to trial within the same, or any other plantation in America, according to this Act, or sent into England to be tried there;

And that all and every governor and governors, person and persons in authority in the said colonies and plantations governed by proprietors, or under charters as aforesaid, shall assist the commissioners and their subordinate officers in doing their duty, and also in the execution of such warrants and otherwise, and shall

deliver up to such commissioner or commissioners, officer of officers, any pirates, felons and robbers upon the sea, and their confederates and accessaries, in order to their being tried or sent into England as aforesaid;

Any letters patents, grants or charters of government, in and about the said plantations, or other usages heretofore had or made to the contrary notwithstanding.

15

And be it hereby further declared and enacted, that if any of the governors in the said plantations, or any person or persons in authority there, shall refuse to yield obedience to this Act, such refusal is hereby declared to be a forfeiture of all and every the charters granted for the government or propriety of such plantation.

16

Provided always, and be it enacted by the authority aforesaid, that whensoever any commission for the trial and punishment of the offences aforesaid, or any of them, shall be directed or sent to any place within the jurisdiction of the cinque ports, that then every such commission shall be directed unto the lord warden of the cinque ports for the time being, or to his lieutenant, and unto such other persons as the lord high chancellor, or keeper of the great seal of England for the time being, or commissioners for the custody of the great seal, shall name and appoint;

And likewise that every inquisition and trial, to be had by virtue of such commission so directed and sent to any place in the said cinque ports, shall be made and had by the inhabitants of the said cinque ports, or the members of the same;

Any thing in this Act to the contrary thereof notwithstanding.

17

And for the prevention of seamen deserting of merchant ships abroad in parts beyond the seas, which is the chief occasion of their turning pirates, and of great detriment to trade and navigation in general;

Be it enacted by the authority aforesaid, that all such seamen, officers or sailors, who shall desert the ships or vessels wherein they are hired to serve for that voyage, shall for such offence forfeit all such wages as shall be then due to him or them.

18

And be it further enacted by the authority aforesaid, that in case any master of a merchant ship or vessel shall, after the nine and twentieth day of September one thousand and seven hundred, during his being abroad, force any man on shore, or wilfully leave him behind in any of his majesty's plantations, or elsewhere, or shall refuse to bring home with him again all such of the men which he carried out with him, as are in a condition to return, when he shall be ready to proceed in his homeward-bound voyage, every such master shall, being thereof legally convicted, suffer three months imprisonment without bail or mainprize.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	s = section/subsection
LRA = Legislation (Republication) Act 1996	sch = schedule
mod = modified / modification	sdiv = subdivision
No = number	sub = substituted
num = numbered	SL = Subordinate Law
o = order	<u>underlining</u> = whole or part not commenced or to be expired
om = omitted/repealed	

3 Legislation history

This Act was originally a UK Act—(1698) 11 Will 3 c 7 (UK). The Act was renamed as the *Piracy Act 1698* when it was first republished under the *Legislation Act 2001*.

The Act was apparently in force in NSW immediately before 1 January 1911 (the date of establishment of the ACT) and was continued in force by the *Seat of Government Acceptance Act 1909* (Cwlth), s 6.

Under the *Seat of Government (Administration) Act 1910* (Cwlth), s 4 the Act had effect in the ACT as if it were an ACT law (subject to ordinances made under the *Seat of Government (Administration) Act 1910*).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former UK laws in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

Under the *Interpretation Act 1967* (repealed), s 65 all former UK Acts in force in the ACT immediately before 10 November 1999 (including this Act) became, for all purposes, laws made by the ACT Legislative Assembly. This completed the process of making former UK Acts fully into ACT laws.

Piracy Act 1698 11 Will 3 c 7

4 Amendment history

The *Imperial Acts Application Act 1986* (the **1986 Act**), sch 1, listed this Act as an Act that was to continue to be in force in the ACT (see 1986 Act, s 4 (4)).

The 1986 Act removed any doubt about the application of the Act in the ACT (see s 6 (3)). However, the application of the Act in the ACT is subject to any inconsistent non-imperial law in force in the ACT on the commencement of the 1986 Act (see s 8).

The *Piracy Punishment Act 1902*, section 5 affects the application of this Act by substituting a maximum penalty of 15 years imprisonment for the penalty of death.

This Act has not been amended since the enactment of the 1986 Act, except under the *Legislation Act 2001*.

Name of Act

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