NORTHERN TERRITORY OF AUSTRALIA

CRIMINAL CODE ACT 1983

As in force at 7 November 2019

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ENDNOTES

NORTHERN TERRITORY OF AUSTRALIA

As in force at 7 November 2019

CRIMINAL CODE ACT 1983

An Act to establish a Code of criminal law

1 Short title

This Act may be cited as the *Criminal Code Act 1983*.

2 Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

(2) Sections 406 to and including 431 of the Code shall not come into operation on the date fixed under subsection (1) unless the notice fixing that date expressly provides that those sections shall so come into operation, but the Administrator may, by a subsequent notice in the *Gazette*, fix the date on which those sections should come into operation and they shall come into operation accordingly.

3 Repeal

(1) Each Act of the State of South Australia specified in Part 1 of Schedule II is, in its application to the Territory, repealed.

(2) The Acts specified in Part 2 of Schedule II are repealed.

4 Interpretation

(1) In this Act, ***the Code*** means the Code of criminal law contained in Schedule I.

(2) For the purposes of the *Interpretation Act 1978*, the Code shall be construed as if it were a separate Act.

5 Establishment of Code

On and from the commencement of the respective Parts of the Code, those Parts shall be the law of the Territory in respect of the various matters therein dealt with.

6 Liability to trial

(1) Subject to section 12 of the *Interpretation Act 1978*, no person is liable to be tried or punished in the Territory in respect of a matter dealt with in the Code except in accordance with the Code or another law of the Territory.

(2) Where an offender is punishable under the Code or another law of the Territory, a person may be prosecuted and found guilty either under the Code or that other law.

7 Civil remedies

(1) Where an act is declared by the Code to be lawful, no action shall be brought in respect of that act.

(2) Subject to subsection (1):

(a) this Act does not affect a right of action that a person would have had against another person if this Act had not been passed; and

(b) no omission from the Code of a penal provision in respect of an act or omission that before the commencement of this Act constituted an actionable wrong affects a right of action in respect of that act or omission.

8 Contempt of Court

(1) Subject to subsection (2), this Act or the Code does not affect the authority of a court of record to punish a person summarily for the offence commonly known as ***Contempt of Court***.

(2) A person shall not be punished under subsection (1) and under the Code for the same act or omission.

Schedule I Criminal Code of the Northern Territory of Australia

section 4

Part I Introductory matters

Division 1 Definitions: Commission of offence: division of offences: attempts

1 Definitions

In this Code, unless the contrary intention appears:

abnormality of mind means abnormality of mind arising from a condition of arrested or retarded development of mind or inherent causes or induced by disease, illness or injury.

act, in relation to an accused person, means the deed alleged to have been done by him. it is not limited to bodily movement and it includes the deed of another caused, induced or adopted by him or done pursuant to a common intention.

adult means a person of or over the age of 18 years.

aggravated offence, for Part VI, see section 149B.

agreement about conduct that corrupts a betting outcome of an event, for Part VII, Division 5A, see section 237B(2).

aircraft includes hovercraft.

alters includes adds to.

application of force and like terms include striking, touching, moving and the application of heat, light, noise, electrical or other energy, gas, odour or any other substance or thing if applied to such a degree as to cause injury or personal discomfort.

belongs, for Part VII, Division 6, see section 239.

benefit, for Part IV, see section 75B.

bet, for Part VII, Division 5A, see section 237C(1).

birth, see section 1C.

building means any structure complete or otherwise, not being a flimsy or insubstantial structure by the standards of the community to which the owner or occupier of it belongs, that, except in the 3 cases hereinafter mentioned, is not readily moveable and that is used or intended for the occupation of man or his animals or the storage or shelter of his goods. it includes a caravan, ship and an erected tent used or intended for any such purpose.

cause a financial disadvantage, for Part VII, Division 5A, see section 237E(2).

causes, for Part VII, Division 6, see section 240.

child means a person who is not an adult.

circumstance of aggravation means any circumstance by reason of which an offender is liable to a greater punishment than that to which he would be liable if the offence were committed without the existence of that circumstance.

coercion means physical or mental pressure forcing the person said to be coerced to do what he would not otherwise do.

collection does not include a collection made or exhibited for the purpose of effecting sales or other commercial dealings.

committal for trial includes committal for sentence.

conduct, for Part IIAA and Schedule 1 provisions, has the meaning in section 43AD(1).

conduct that corrupts a betting outcome of an event, for Part VII, Division 5A, see section 237B(1).

counterfeit token means a token that is not genuine and that is intended to resemble or pass for a genuine token.

credit means credit in respect of the payment or repayment of money and also credit in respect of the delivery of goods, the obtaining of service, the doing of work or the performance of any other obligation whether legally enforceable or not.

Crown Law Officer means the Attorney-General or the Director of Public Prosecutions and includes a person authorized under a law of the Territory to exercise a power or perform a function in the name of or on behalf of a Crown Law Officer.

custodial correctional facility, see section 11(1)(a) of the *Correctional Services Act 2014*.

damage, for Part VII, Division 6, see section 238.

damages includes destroys and, when used in relation to a document or writing, includes obliterating and rendering it illegible either in whole or in part.

deal in, for Part VII, Division 2A, see section 228A.

death means:

(a) the irreversible cessation of all function of a person's brain, including the brain stem; or

(b) the irreversible cessation of circulation of blood in a person's body.

deception:

(a) means intentional deception by word or conduct as to fact or law and includes a deception as to the present intention of the person using the deception or another person; and

(b) includes an act or thing done or omitted to be done with the intention of causing:

(i) a computer system; or

(ii) a machine that is designed to operate by means of payment or identification,

to make a response that the person doing or omitting to do the act or thing is not authorised to cause the computer system or machine to make.

declared offence means an offence against a law of the Territory that, under an Act, is declared to be an offence to which Part IIAA applies.

distribute, for Part VI, Division 7A, see section 208AA.

duress means a threat to commit upon any person an offence against the person for which an offender may be sentenced to imprisonment for 7 years or longer.

dwelling-house means any building or part of a building kept by the owner or occupier for his residence or the residence of his family, guests or servants; it is immaterial that from time to time it is uninhabited.

election means any election held under the authority of any statute providing for the choice of persons to fill any office or place of a public character.

emergency worker, for Part VI, Division 5, see section 187(2).

employed in the public service includes employed in an Agency under the *Public Sector Employment and Management Act 1993*, as a police officer or to execute any process of a court of justice.

encourage, for Part VII, Division 5A, see section 237G.

engage in conduct, for Part IIAA and Schedule 1 provisions, has the meaning in section 43AD(2).

enters, in relation to a building, includes the entry into the building of any part of the body of the person said to have entered that building or any part of an instrument used by him.

event, except for Part VII, Division 5A, means the result of an act or omission.

event, for Part VII, Division 5A, see section 237D(1).

event contingency, for Part VII, Division 5A, see section 237D(2).

evidential burden, for Part IIAA and Schedule 1 provisions, has the meaning in section 43BT.

explosive substance includes a gaseous substance in such a state of compression as to be capable of explosion.

fault element, for Part IIAA and Schedule 1 provisions, has the meaning in section 43AH.

fault element of basic intent, for Part IIAA and Schedule 1 provisions, means a fault element of intention for a physical element that consists only of conduct.

gain:

(a) means:

(i) gain of property; or

(ii) gain of services provided free of cost or at less than the usual cost; and

(b) includes temporary gain and a gain by keeping what one has.

harm has the meaning in section 1A.

have or ***has in possession*** includes having under control in any place, whether for the use or benefit of the person of whom the term is used or of another person, and although another person has the actual possession or custody of the thing in question.

identification documentation, for Part VII, Division 2A, see section 228A.

identification information, for Part VII, Division 2A, see section 228A.

image, for Part VI, Division 7A, see section 208AA.

improper, for Part IV, see section 75C.

indictable offence, see section 3.

intention, for Part IIAA and Schedule 1 provisions, has the meaning in section 43AI.

intimate image, for Part VI, Division 7A, see section 208AA.

intoxication, for Part IIAA and Schedule 1 provisions, means intoxication because of the influence of alcohol, a drug or any other substance.

involuntary intoxication means the person concerned is under the influence of an intoxicating substance caused by the involuntary ingestion of it, his honest and reasonable mistake as to the nature of it, some physical idiosyncrasy of which he was unaware or the coercion, mistake or deception of another.

Judge means a Supreme Court judge.

judicial proceedings means any proceedings had or taken in or before a court, tribunal or person in which evidence may be taken on oath.

knowingly, used in connection with any term denoting doing, uttering or using, implies knowledge of the character of the thing done, uttered or used.

knowledge, for Part IIAA and Schedule 1 provisions, has the meaning in section 43AJ.

legal burden, for Part IIAA and Schedule 1 provisions, has the meaning in section 43BQ.

law enforcement officer, for Part VI, Division 7A, see section 208AA.

local government election means any election held under any law relating to local government.

loss means loss of property and includes a loss by not getting what one might get as well as a loss by parting with what one has.

medical treatment includes dental treatment and all forms of surgery.

menace includes a threat of an injury, accusation or detriment of any kind to be caused or to be made against any person either by the offender or by any other person if the demand is not complied with.

money includes an instrument for the payment of money that may be negotiated by an ADI, coins, cheques and any other orders, warrants or authorities for the payment of money.

mortgaged goods includes any goods and chattels and any live animals and their progeny and any crops or produce of the earth, whether growing or severed, that are subject for the time being to the provisions of any written instrument by which a valid charge or lien is created upon them by way of security for any debt or obligation.

negligent, for Part IIAA and Schedule 1 provisions, has the meaning in section 43AL.

night or ***night-time*** means the interval between 9 o'clock in the evening and 6 o'clock in the morning.

obtain, for Part IV, see section 75A.

obtain a financial advantage, for Part VII, Division 5A, see section 237E(1).

offensive weapon means any article made or adapted to cause injury or fear of injury to the person or by which the person having it intends to cause injury or fear of injury to the person.

owner includes any part owner and any person having possession or control of, or any special property in, the property in question. it also, as does the term ***person*** and other like terms when used with reference to property, includes Her Majesty and any corporation, local authority and public body constituted by or under any statute and any other association of persons capable of owning property.

person similarly circumstanced does not include a person who is voluntarily intoxicated.

physical element, for Part IIAA and Schedule 1 provisions, has the meaning in section 43AE.

prisoner, see section 6 of the *Correctional Services Act 2014*.

property, except for Part VII, Division 6, means every thing, animate or inanimate, capable of being the subject of ownership including:

(a) things in action and other intangible property; and

(b) wild creatures that have been tamed or are ordinarily kept in captivity and other wild creatures or their carcasses if they have been reduced into possession that has not been lost or abandoned or are in the course of being reduced into possession.

property, for Part VII, Division 6, see section 238.

property damage offence, for Part VII, Division 6, see section 238.

public officer, for Part IV, see section 75A.

Public Sector has the same meaning as in the *Public Sector Employment and Management Act 1993*.

reckless, for Part IIAA and Schedule 1 provisions, has the meaning in section 43AK.

riot, see section 63(4).

riotously assembled, see section 63(4).

Schedule 1 offence means an offence against a Schedule 1 provision.

Schedule 1 provision means a provision of this Code specified in Schedule 1.

self-induced intoxication, for Part IIAA, has the meaning in section 43AR.

serious harm means any harm (including the cumulative effect of more than one harm):

(a) that endangers, or is likely to endanger, a person's life; or

(b) that is or is likely to be significant and longstanding.

sexual intercourse means:

(a) the insertion to any extent by a person of his penis into the vagina, anus or mouth of another person;

(b) the insertion to any extent by a person of any part of the person's body or an object into the vagina or anus of another person, except for the purpose of performing a medical examination or administering medical treatment; or

(c) cunnilingus or fellatio,

and continues until the withdrawal of the part of the body or object from the mouth, vagina or anus into which it was inserted or the cessation of cunnilingus or fellatio, as the case may be.

ship means every kind of vessel used in navigation not propelled by oars.

special liability provision means a provision providing that:

(a) absolute liability applies to one or more (but not all) of the physical elements of an offence; or

(b) in a prosecution for an offence, it is not necessary to prove that the defendant knew something; or

(c) in a prosecution for an offence, it is not necessary to prove that the defendant knew or believed something.

statutory instrument means subordinate legislation made pursuant to an Act.

summary offence, see section 3.

token means a counter, chip or other article that may be used, in appropriate circumstances, in lieu of money.

trade secret means a secret and unique or distinctly different formula, process or method, whether it has been perfected or not, provided it has been recorded by some means and has commercial value.

trial includes proceedings upon a plea of guilty.

uncorroborated testimony means testimony that is not corroborated in some material particular by other evidence implicating the accused person.

unlawful or ***unlawfully*** means without authorization, justification or excuse.

unnecessary force means force that the user of such force knows is unnecessary for and disproportionate to the occasion or that an ordinary person, similarly circumstanced to the person using such force, would regard as unnecessary for and disproportionate to the occasion.

utter means using or dealing with, attempting to use or deal with or attempting to induce any person to use, deal with or act upon, the thing in question.

vagina means the internal and external female genitalia and includes a surgically constructed vagina.

valuable security means a document that is the property of any person and that is evidence of the ownership of property or of the right to recover or receive property.

vessel means every kind of vessel used in navigation.

victim, for Part VII, Division 2A, see section 228A.

writing includes:

(a) a seal, mark and sign that is capable of conveying meaning; and

(b) data held in electronic form that is capable of being transformed into a document.

wrongful act and like terms mean an act that is wrong by the ordinary standards of the community. a lawful act may be a wrongful act, but any act expressly declared to be lawful cannot be a wrongful act.

Note for section 1

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

1A Harm

(1) Harm is physical harm or harm to a person's mental health, whether temporary or permanent.

(2) Physical harm includes unconsciousness, pain, disfigurement, infection with a disease and any physical contact with a person that a person might reasonably object to in the circumstances, whether or not the person was aware of it at the time.

(3) Harm to a person's mental health includes significant psychological harm, but does not include mere ordinary emotional reactions such as those of only distress, grief, fear or anger.

(4) Harm does not include being subjected to any force or impact that is within the limits of what is acceptable as incidental to social interaction or to life in the community.

1B Person against whom offence may be committed

A person against whom an offence may be committed under this Code is a person who has been born and who has not already died.

1C Birth

(1) A person's birth occurs at the time the person is fully removed from the mother's body and has an independent existence from the mother.

(2) The following are relevant, but not determinative, as to whether a person has been born:

(a) the person is breathing;

(b) the person's organs are functioning of their own accord;

(c) the person has an independent circulation of blood.

2 Commission of offence

For the purposes of this Part, an offence is committed when a person who possesses any mental element that may be prescribed with respect to that offence does, makes or causes the act, omission or event, or the series or combination of the same, constituting the offence in circumstances where the act, omission or event, or each of them, if there is more than one, is not authorized or justified.

3 Classification of offence

(1) Every offence is either an indictable offence or a summary offence.

(2) An offence is an ***indictable offence*** if:

(a) an Act states that the offence is an indictable offence; or

(b) subject to subsection (3)(a), the penalty that may be imposed on an individual for the offence includes imprisonment for a period of more than 2 years.

(3) An offence is a ***summary offence*** if:

(a) an Act states that:

(i) the offence is a summary offence; or

(ii) the offence is not an indictable offence; or

(iii) a charge of the offence must be heard and determined summarily; or

(b) the offence is not an indictable offence.

4 Attempts to commit offences

(1) When a person, intending to commit an offence, begins to put his intention into execution by means adapted to its fulfilment and manifests his intention by some overt act, but does not fulfil his intention to such an extent as to commit the offence, he is said to attempt to commit the offence.

(2) It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfilment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from the further prosecution of his intention.

(3) It is immaterial that, by reason of circumstances not known to the offender, it is impossible in fact to commit the offence.

(4) The same facts may constitute one offence and an attempt to commit another offence.

Division 2 Presumptions

5 Innocence

Every accused person is presumed to be innocent until the contrary is proved.

7 Intoxication

(1) In all cases where intoxication may be regarded for the purposes of determining whether a person is guilty or not guilty of an offence:

(a) it shall be presumed that, until the contrary is proved, the intoxication was voluntary; and

(b) unless the intoxication was involuntary, it shall be presumed evidentially that the accused person foresaw the natural and probable consequences of his conduct.

(2) It is hereby declared that the amendment effected by subsection (1) applies to and in relation to all proceedings before a court in respect of an offence committed on or after 1 January 1984, in which the question of guilt has not been determined before that court before the commencement of this Act, as if the amendment came into operation on 1 January 1984.

8 Offences committed in prosecution of common purpose

(1) When 2 or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another and in the prosecution of such purpose an offence is committed by one or some of them, the other or each of the others is presumed to have aided or procured the perpetrator or perpetrators of the offence to commit the offence unless he proves he did not foresee the commission of that offence was a possible consequence of prosecuting that unlawful purpose.

(2) Two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another when they agree to engage in or concur in engaging in any conduct that, if engaged in, would involve them or some or one of them in the commission of an offence or a tort.

9 Mode of execution different from that counselled

When a person counsels another to commit an offence and an offence is committed by the person to whom the counsel is given and because of it, but the offence committed is different from the one counselled or is committed in a different way from the way counselled, the person giving such counsel is presumed to have counselled the offence committed unless he proves the conduct giving rise to the offence committed was not foreseen by him as a possible consequence of giving such counsel.

10 Death or serious harm caused in the course of violence of 2 or more persons

When a person dies or is found to be dead or to have suffered serious harm after 2 or more persons have used violence against him or his person and it is proved that the death or serious harm was caused as the result or in the course of that violence, but the evidence of the prosecution does not establish by whom it was caused, each of them is presumed either to have caused or aided the other or others to cause the death or serious harm until the

contrary is proved if the violence used by him was of such a nature that it was likely to have caused, in the case of death, death or serious harm or, in the case of serious harm, serious harm.

11 Power to impose domestic discipline

A person who may justifiably apply force to a child for the purposes of discipline, management or control may delegate that power either expressly or by implication to another person who has the custody or control of the child either temporarily or permanently and, where that other person is a school teacher of the child, it shall be presumed that the power has been delegated unless it is expressly withheld.

Division 3 Parties to Offences

12 Abettors and accessories before the fact

(1) When an offence is committed, the following persons also are deemed to have taken part in committing the offence and may be charged with actually committing it:

(a) every person who aids another in committing the offence;

(b) every person who does or omits to do any act for the purpose of enabling or aiding another to commit the offence; and

(c) every person who counsels or procures another to commit the offence.

(2) A person who counsels or procures another to commit an offence may be charged with committing the offence or counselling or procuring its commission.

(3) A finding of guilt of counselling or procuring the commission of an offence entails the same consequences in all respects as a finding of guilt of committing the offence.

13 Accessories after the fact

(1) A person who receives or assists another who, to his knowledge, has committed an offence in order to enable him to escape prosecution becomes an accessory after the fact to the offence.

(2) The rule of law under which a wife cannot be an accessory after the fact to an offence committed by her husband is abolished.

Division 4 Application of criminal law

14 Effect of changes in law

(1) A person cannot be found guilty of an offence unless the conduct impugned would have constituted an offence under the law in force when it occurred; nor unless that conduct also constitutes an offence under the law in force when he is proceeded against for that conduct.

(2) If the law in force when the conduct impugned occurred differs from that in force at the time of the finding of guilt, the offender cannot be punished to any greater extent than was authorized by the former law or to any greater extent than is authorized by the latter law.

15 Application of criminal laws

If a person is guilty of the conduct proscribed by any offence it is immaterial that that conduct or some part of it did not occur in the Territory if that conduct affected or was intended to affect the peace, order or good government of the Territory.

16 Offences counselled or procured in the Territory to be committed out of the Territory

(1) Any person who, in the Territory, counsels or procures another to commit, at a place not in the Territory, an offence of such a nature that the conduct giving rise to it is also an offence in the Territory and that offence is in fact committed, is guilty of an offence of the same kind and, subject to subsection (2), is liable to the same punishment as if he had counselled or procured that other person to engage in that conduct in the Territory and he had done so.

(2) A person found guilty under subsection (1) is not liable to greater punishment than that to which the person who actually committed the offence was liable under the law in force in the place where the offence was committed.

(3) A prosecution cannot be instituted under subsection (1) except at the request of the government of the state having jurisdiction in the place where the offence so counselled or procured was committed.

Division 5 Effect of previous finding of guilt or acquittal

17 Definitions

In this Division:

similar offence means an offence in which the conduct therein impugned is substantially the same as or includes the conduct impugned in the offence to which it is said to be similar.

18 Defence of previous finding of guilt or acquittal

Subject to sections 19 and 20, it is a defence to a charge of any offence to show that the accused person has already been found guilty or acquitted of:

(a) the same offence;

(b) a similar offence;

(c) an offence of which he might be found guilty upon the trial of the offence charged; or

(d) an offence upon the trial of which he could have been found guilty of the offence charged.

19 Limitation of defence in relation to certain offences

Where the act or omission is such that it causes death or serious harm to another, the accused person may be found guilty of the offence of which he is guilty by reason of such death or serious harm notwithstanding that he has already been found guilty of some other offence constituted by the act or omission.

20 Finding of guilt or acquittal of regulatory offence no defence

Subject to section 21, a finding of guilt for or an acquittal of a regulatory offence shall not be a defence to a charge another offence that is not a regulatory offence.

21 Stay of vexatious, &c., proceedings

Notwithstanding anything contained in this Division, a court, in any proper case, may order that proceedings brought before the court be stayed on the ground that they are vexatious or harassing and thereupon they shall be stayed.

Part II Criminal responsibility

Division 1 General matters

22 Exclusion of regulatory offences

Except for sections 26(1)(c) and (d) (and sections 23 and 24 to the extent necessary to give effect to section 26(1)(c) and (d)), 30(3) and 38, this Part does not apply to regulatory offences.

23 Effect of authorization, justification or excuse

A person is not guilty of an offence if any act, omission or event constituting that offence done, made or caused by him was authorized, justified or excused.

24 Authorization, justification or excuse of event

Any event resulting from an act or omission that was authorized, justified or excused is, accordingly, authorized, justified or excused.

25 Lawful act, &c., to be authorized or justified and authorized or justified act to be lawful

An act, omission or event expressly declared to be lawful is either authorized or justified and an act, omission or event expressly declared to be authorized or justified is lawful.

Division 2 Authorization

26 Execution of law, &c.

(1) An act, omission or event is authorized if it is done, made or caused:

(a) in the exercise of a right granted or recognized by law;

(b) in execution of the law or in obedience to, or in conformity with, the law;

(c) in obedience to the order of a competent authority whom the person doing, making or causing it is bound by law to obey, unless the order is manifestly unlawful; or

(d) subject to subsection (3), pursuant to authority, permission or licence lawfully granted.

(2) Whether an order is or is not manifestly unlawful is a question of law.

(3) A person cannot authorize or permit another to kill him or, except in the case of medical treatment, to cause him serious harm.

Division 3 Justification

27 Circumstances in which force not being such force as is likely to cause death or serious harm is justified

In the circumstances following, the application of force is justified provided it is not unnecessary force and it is not intended and is not such as is likely to cause death or serious harm:

(a) to lawfully execute any sentence, process or warrant or make any arrest;

(b) to prevent a person who is being or who has been lawfully arrested from escaping or from being rescued;

(c) to prevent the continuance of a breach of the peace or a renewal of it and to detain any person who is committing or about to join in or to renew the breach of the peace for such time as may be reasonably necessary in order to give him into the custody of a police officer;

(d) to suppress a riot;

(e) to prevent the commission of an offence;

(k) in the case of a person who is entitled by law to the possession of moveable property, or a person acting by his authority, and who attempts to take possession of it from a person who neither claims right to it nor acts by the authority of a person who claims right to it and the person in possession resists him, to obtain possession of the property, provided he does not intentionally do him harm;

(p) in the case of a parent or guardian of a child, or a person in the place of such parent or guardian, to discipline, manage or control such child;

(pa) to prevent a person reasonably believed to be attempting to, or about to, kill himself, from killing himself;

(q) in the case of the person in command of a ship on a voyage or an aircraft on a flight, or a person acting by his authority, to maintain good order and discipline on board the ship or aircraft;

(r) to assist a person to do any of the things aforesaid.

28 Circumstances in which force causing death or serious harm is justified

In the circumstances following, the application of force that will or is likely to kill or cause serious harm is justified provided it is not unnecessary force:

(a) in the case of a police officer when lawfully attempting to arrest or to assist with the arrest of a person whom he reasonably believes to be a person who:

(i) unless arrested, may commit an offence punishable with imprisonment for life;

(ii) has taken flight to avoid arrest; and

(iv) the person has been called upon by the police officer or another police officer to surrender and has been allowed a reasonable opportunity to do so;

(b) in the case of a police officer when attempting to prevent the escape or the rescue of a person from lawful custody whom he reasonably believes to be a person who, unless kept in lawful custody, may commit an offence punishable with imprisonment for life and provided the police officer first calls upon the person attempting to escape or to rescue to surrender or to desist and allows him a reasonable opportunity to do so;

(c) in the case of a correctional officer (as defined in section 4 of the *Correctional Services Act 2014*) when attempting to prevent the escape or the rescue of a person from lawful custody and provided the officer first calls upon the person attempting to escape or to rescue to surrender or to desist and allows him a reasonable opportunity to do so;

(d) in the case of a police officer when attempting to suppress a riot if all of the following apply:

(i) the officer has orally ordered the immediate dispersal of persons who are riotously assembled (the ***rioters***) or has attempted to give that order;

(ii) the officer believes on reasonable grounds that, because of the rioters' conduct:

(A) someone other than a rioter is in danger of death or serious harm; or

(B) an offence in relation to property punishable with imprisonment for life is being committed;

(iii) if it is practicable to do so – the officer attempts to stop the conduct and gives the rioters a reasonable opportunity to stop the conduct;

(e) in the case of a police officer, or a person acting by his authority, when attempting to prevent a person committing or continuing the commission of an offence of such a nature as to cause the person using the force reasonable apprehension that death or serious harm to another will result;

(g) in the case of a person in command of a ship or an aircraft, or a person acting by his authority or any person on board such ship or aircraft, when attempting to prevent a person committing or continuing the commission of an offence of such a nature as to cause the person using the force reasonable apprehension that death or serious harm will result.

29 Defensive conduct justified

(1) Defensive conduct is justified and a person who does, makes or causes an act, omission or event by engaging in defensive conduct is not criminally responsible for the act, omission or event.

(2) A person engages in defensive conduct only if:

(a) the person believes that the conduct is necessary:

(i) to defend himself or herself or another person;

(ii) to prevent or terminate the unlawful deprivation of his or her or another person's personal liberty;

(iii) to protect property in the person's possession or control from unlawful appropriation, destruction, damage or interference;

(iv) to prevent trespass to land or premises occupied by or in the control of the person;

(v) to remove a trespasser from land or premises occupied by or in the control of the person; or

(vi) to assist a person in possession or control of property to protect that property or to assist a person occupying or in control of land or premises to prevent trespass to or remove a trespasser from that land or premises; and

(b) the conduct is a reasonable response in the circumstances as the person reasonably perceives them.

(3) A person does not engage in defensive conduct if the conduct involves the use of force intended to cause death or serious harm:

(a) to protect property; or

(b) to prevent trespass or remove a trespasser.

(4) For the purposes of subsections (2) and (3), a person trespasses if he or she enters or remains on land or premises:

(a) with intent to commit an offence; or

(b) in circumstances where the entry on to or remaining on the land or premises constitutes an offence.

(5) A person does not engage in defensive conduct if:

(a) he or she is responding to the lawful conduct of another person; and

(b) he or she knows that the other person's conduct is lawful.

(6) Nothing in subsection (5) is to be taken to prevent a person from engaging in defensive conduct in circumstances where the other person's conduct is lawful merely because he or she would be excused from criminal responsibility for that conduct.

(7) Sections 31 and 32 do not apply in relation to defensive conduct.

Division 4 Excuse

30 Ignorance of law: Bona fide claim of right, &c.

(1) Subject to subsections (2) and (3), ignorance of the law does not afford an excuse unless knowledge of the law by the offender is expressly declared to be an element of the offence.

(2) A person is excused from criminal responsibility for an act or omission done or made with respect to, or for an event caused to, property in the exercise of an honest claim of right and without intention to defraud.

(3) A person is excused from criminal responsibility for an act, omission or event done, made or caused in contravention of a statutory instrument if, at the time of doing, making or causing it, the statutory instrument was not known to him and had not been published or otherwise reasonably made available or known to the public or

those persons likely to be affected by it.

(4) For the purposes of subsection (3), ***published*** means published in the *Gazette* or notified in the *Gazette* as having been made.

31 Unwilled act etc. and accident

(1) A person is excused from criminal responsibility for an act, omission or event unless it was intended or foreseen by him as a possible consequence of his conduct.

(2) A person who does not intend a particular act, omission or event, but foresees it as a possible consequence of his conduct, and that particular act, omission or event occurs, is excused from criminal responsibility for it if, in all the circumstances, including the chance of it occurring and its nature, an ordinary person similarly circumstanced and having such foresight would have proceeded with that conduct.

(3) This section does not apply to an offence against section 155.

32 Mistake of fact

A person who does, makes or causes an act, omission or event under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for it to any greater extent than if the real state of things had been such as he believed to exist.

33 Sudden and extraordinary emergency

Subject to the express provisions of this Code relating to self-defence and duress, a person is excused from criminal responsibility for an act or omission done or made under such circumstances of sudden and extraordinary emergency that an ordinary person similarly circumstanced would have acted in the same or a similar way; and he is excused from criminal responsibility for an event resulting from such act or omission.

38 Immature age

(1) A person under the age of 10 years is excused from criminal responsibility for an act, omission or event.

(2) A person under the age of 14 years is excused from criminal responsibility for an act, omission or event unless it is proved that at the time of doing the act, making the omission or causing the event he had capacity to know that he ought not to do the act, make the omission or cause the event.

39 Judicial officers

Except as expressly provided by this Code, a judicial officer is excused from criminal responsibility for anything done or omitted to be done by him in the exercise of his judicial functions although the act done is in excess of his judicial authority or although he is bound to do the act omitted to be done.

40 Duress

(1) A person is excused from criminal responsibility for an act, omission or event if it was done, made or caused because of duress provided:

(a) he believed the person making the threat was in a position to execute the threat;

(b) he believed there was no other way he could ensure the threat was not executed;

(c) an ordinary person similarly circumstanced would have acted in the same or a similar way; and

(d) he reported the threat to a police officer as soon as was reasonably practicable, unless the nature of the threat was such that an ordinary person similarly circumstanced would not have reported that threat.

(2) The excuse referred to in subsection (1) does not extend to an act, omission or event that would constitute an offence of which serious harm or an intention to cause such harm is an element; nor to a person who has rendered himself liable to have such a threat made to him by having entered into an association or conspiracy that has as any of its objects the doing of a wrongful act.

43 Damage to property

A person is excused from criminal responsibility for damage caused to property by the use of such force as was reasonably necessary for the purpose of defending or protecting himself, or any other person, or any property, from injury that he believed, on reasonable grounds, was imminent, provided an ordinary person similarly circumstanced would have acted in the same or a similar way.

Part IIAA Criminal responsibility for Schedule 1 offences and declared offences

Division 1 Preliminary matters

43AA Application of Part

(1) This Part applies only in relation to Schedule 1 offences, and declared offences, committed on or after the commencement of the Part.

(2) The following provisions of Part I do not apply in relation to Schedule 1 offences, or declared offences, committed on or after the commencement of this Part:

(a) section 1 (Definitions), definitions of ***act***, ***duress***, ***knowingly*** and ***involuntary intoxication***;

(b) section 2 (Commission of offence);

(c) section 3 (Division of offences);

(d) section 4 (Attempts to commit offences);

(e) section 7 (Intoxication);

(f) section 8 (Offences committed in prosecution of common purpose);

(g) section 9 (Mode of execution different from that counselled);

(h) section 12 (Abettors and accessories before the fact);

(i) section 15 (Application of criminal laws);

(j) section 16 (Offences counselled or procured in the Territory to be committed out of the Territory).

(3) The following provisions of this Code do not apply in relation to Schedule 1 offences, or declared offences, committed on or after the commencement of this Part:

(a) Part II (Criminal Responsibility);

(b) section 277 (Attempts to commit offences);

(c) section 278 (Punishment of attempts to commit offences);

(d) section 280 (Attempts to procure commission of criminal offences);

(e) section 282 (Conspiracy to commit indictable offence).

Note for section 43AA

A term defined in this Part has the meaning given to it for the purposes of this Part and the Schedule 1 provisions. For example, the meaning given to the term ***conduct*** *in section 43AD(1) applies for the purposes of the partial defence of provocation to a charge of murder (a Schedule 1 offence) – see the signpost definition of the term in section 1.*

Division 2 Elements of offence

Subdivision 1 General matters

43AB Elements

(1) An offence consists of physical elements and fault elements.

(2) However, the law that creates the offence may provide that there is no fault element for one or more physical elements.

(3) The law that creates the offence may provide different fault elements for different physical elements.

43AC Establishing guilt of offences

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

(a) the existence of the physical elements of the offence that are, under the law creating the offence, relevant to establishing guilt;

(b) for each of the physical elements for which a fault element is required, one of the fault elements for the physical element.

43ACA Law including separate statement about fault elements

(1) This section applies to a provision of a law that:

(a) creates an offence; and

(b) includes a separate statement:

(i) specifying the fault elements of the offence; or

(ii) classifying the offence as one of strict liability or absolute liability (and thus excluding fault elements).

Example

See the statement under the heading "Fault elements" in section 174FA(1).

(2) Part IIAA applies to the offence.

Note

Part IIAA states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences (for example, see the extended meaning given to the concept of recklessness in section 43AK(4)).

(3) If the statement identifies certain elements as the fault elements of the offence:

(a) the fault elements so identified are the only fault elements of the offence; and

(b) the statement operates to the exclusion of fault elements that might otherwise be implied under provisions of this Code.

Note

Accordingly fault elements that might otherwise be implied under section 43AM are excluded by the statement.

(4) If the statement classifies the offence as one of strict liability, section 43AN(1) applies to the offence.

(5) If the statement classifies the offence as one of absolute liability, section 43AO(1) applies to the offence.

Subdivision 2 Physical elements

43AD Conduct and engaging in conduct

(1) Conduct is an act, an omission to perform an act or a state of affairs.

(2) Engage in conduct is to:

(a) perform an act; or

(b) omit to perform an act.

43AE Physical elements

A physical element of an offence may be:

(a) conduct; or

(b) a result of conduct; or

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

43AF Voluntariness

(1) Conduct can only be a physical element if it is voluntary.

(2) Conduct is only voluntary if it is a product of the will of the person whose conduct it is.

Examples of conduct that is not voluntary

1 A spasm, convulsion or other unwilled bodily movement.

2 An act performed during sleep or unconsciousness.

3 An act performed during impaired consciousness depriving the person of the will to act.

(3) An omission to perform an act is only voluntary if the act omitted is an act the person can perform.

(4) If the conduct constituting an offence consists only of a state of affairs, the state of affairs is only voluntary if it is one over which the person is capable of exercising control.

(5) Evidence of self-induced intoxication cannot be considered in determining whether conduct is voluntary.

43AG Omissions

(1) An omission to perform an act can only be a physical element if the law creating the offence:

(a) makes it a physical element; or

(b) impliedly provides that the offence is committed by an omission to perform an act that, by law, there is a duty to perform.

(2) However, an omission to perform an act can be a physical element of an offence against a Schedule 1 provision if it is a person's omission to perform any of the duties referred to in Part VI, Division 1.

(3) The fault element for an omission to perform an act referred to in subsection (2) that causes, or that gives rise to danger of, death or harm is, if not otherwise specified in the Schedule 1 provision, the same as the fault element for the result of the omission.

Note for section 43AG(3)

In the absence of subsection (3), the fault element for the conduct consisting of an omission to perform an act would be intention under the default provision in section 43AM(1). Generally in relation to Schedule 1 offences, the fault element for acts that cause etc. death or harm is not specified but the fault element for the result concerned is specified as either intention, recklessness or negligence.

Subdivision 3 Fault elements

43AH Fault elements

(1) A fault element for a particular physical element may be intention, knowledge, recklessness or negligence.

(2) Subsection (1) does not prevent the law that creates an offence from specifying other fault elements for a physical element of the offence.

43AI Intention

(1) A person has intention in relation to conduct if the person means to engage in that conduct.

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

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

43AJ Knowledge

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

43AK Recklessness

(1) A person is reckless in relation to a result if:

(a) the person is aware of a substantial risk that the result will happen; and

(b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(2) A person is reckless in relation to a circumstance if:

(a) the person is aware of a substantial risk that the circumstance exists or will exist; and

(b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(3) The question whether taking a risk is unjustifiable is one of fact.

(4) If recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness satisfies the fault element.

43AL Negligence

A person is negligent in relation to a physical element of an offence if the person's conduct involves:

(a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and

(b) such a high risk that the physical element exists or will exist,

that the conduct merits criminal punishment for the offence.

43AM Offences that do not provide fault elements

(1) If a law that creates an offence does not provide a fault element for a physical element that consists only of conduct, intention is the fault element for the physical element.

(2) If a law that creates an offence does not provide a fault element for a physical element that consists of a result or circumstance, recklessness is the fault element for the physical element.

Note for subsection (2)

Under section 43AK(4), recklessness can be established by proving intention, knowledge or recklessness.

Subdivision 4 Cases where fault elements are not required

43AN Strict liability

(1) If a law that creates an offence provides that an offence is an offence of strict liability:

(a) there are no fault elements for any of the physical elements of the offence; and

(b) the defence of mistake of fact under section 43AX is available.

(2) If a law that creates an offence provides that strict liability applies to a particular physical element of an offence:

(a) there are no fault elements for that physical element; and

(b) the defence of mistake of fact under section 43AX is available in relation to that physical element.

(3) The existence of strict liability does not make any other defence unavailable.

43AO Absolute liability

(1) If a law that creates an offence provides that an offence is an offence of absolute liability:

(a) there are no fault elements for any of the physical elements of the offence; and

(b) the defence of mistake of fact under section 43AX is unavailable.

(2) If a law that creates an offence provides that absolute liability applies to a particular physical element of an offence:

(a) there are no fault elements for that physical element; and

(b) the defence of mistake of fact under section 43AX is unavailable in relation to that physical element.

(3) The existence of absolute liability does not make any other defence unavailable.

Division 3 Circumstances in which there is no criminal responsibility

Subdivision 1 Lack of capacity of children

43AP Children under 10

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

43AQ Children over 10 but under 14

(1) A child aged 10 years or more but under 14 years old can only be criminally responsible for an offence if the child knows that his or her conduct is wrong.

(2) The question whether a child knows that his or her conduct is wrong is one of fact.

(3) The burden of proving that a child knows that his or her conduct is wrong is on the prosecution.

Subdivision 2 Intoxication

43AR Self-induced intoxication

(1) Intoxication is self-induced unless it came about:

(a) involuntarily; or

(b) as a result of fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force; or

(c) from the use of a drug for which a prescription is required and that was used in accordance with the directions of the medical practitioner or dentist who prescribed it; or

(d) from the use of a drug for which no prescription is required and that was used for a purpose, and in accordance with the dosage level, recommended by the manufacturer.

(2) However, intoxication is self-induced if a person using a drug as referred to in subsection (1)(c) or (d) knew, or had reason to believe, when the person took the drug that the drug would significantly impair the person's judgment or control.

43AS Intoxication – offences involving basic intent

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

Note for subsection (1)

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

(2) This section does not prevent evidence of self-induced intoxication being taken into consideration in determining whether conduct was accidental.

(3) This section does not prevent evidence of self-induced intoxication being taken into consideration in determining whether a person had a mistaken belief about facts if the person had considered whether or not the facts existed.

(4) A person may be regarded as having considered whether or not facts existed if:

(a) he or she had considered, on a previous occasion, whether those facts existed in circumstances surrounding that occasion; and

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

43AT Intoxication – negligence as fault element

(1) If negligence is a fault element for a particular physical element of an offence, in determining whether that fault element existed in relation to a person who is intoxicated, regard must be had to the standard of a reasonable person who is not intoxicated.

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

43AU Intoxication – relevance to defences

(1) If any part of a defence is based on actual knowledge or belief, evidence of intoxication may be considered in determining whether that knowledge or belief existed.

(2) However, if:

(a) each physical element of an offence has a fault element of basic intent; and

(b) any part of a defence is based on actual knowledge or belief,

evidence of self-induced intoxication cannot be considered in determining whether that knowledge or belief existed.

(3) If any part of a defence is based on reasonable belief, in determining whether that reasonable belief existed, regard must be had to the standard of a reasonable person who is not intoxicated.

(4) If a person's intoxication is not self-induced, in determining whether any part of a defence based on reasonable belief exists, regard must be had to the standard of a reasonable person intoxicated to the same extent as the person concerned.

43AV Involuntary intoxication

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

Subdivision 3 Mistake or ignorance

43AW Mistake or ignorance of fact – fault elements other than negligence

(1) A person is not criminally responsible for an offence that has a physical element for which there is a fault element other than negligence if:

(a) at the time of the conduct constituting the physical element, the person is under a mistaken belief about, or is ignorant of, facts; and

(b) the existence of that mistaken belief or ignorance negates any fault element applying to that physical element.

(2) In determining whether a person was under a mistaken belief about, or was ignorant of, facts, the tribunal of fact may consider whether the mistaken belief or ignorance was reasonable in the circumstances.

43AX Mistake of fact – strict liability

(1) A person is not criminally responsible for an offence that has a physical element for which there is no fault element if:

(a) at or before the time of the conduct constituting the physical element, the person considered whether or not facts existed and was under a mistaken but reasonable belief about those facts; and

(b) had those facts existed, the conduct would not have constituted an offence.

(2) A person may be regarded as having considered whether or not facts existed if:

(a) he or she had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and

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

Note for section 43AX

Section 43AO(2) prevents this section applying in situations of absolute liability.

43AY Mistake or ignorance of law

(1) A person can be criminally responsible for an offence even if, at the time of the conduct constituting the offence, the person is mistaken about, or ignorant of, the existence or content of a law that creates the offence.

(2) However, the person is not criminally responsible for the offence if:

(a) the law creating the offence expressly or impliedly provides that a person is not criminally responsible for the offence in those circumstances; or

(b) the person's ignorance or mistake negates a fault element applying to a physical element of the offence.

(3) In addition, if the law creating the offence is a statutory instrument, the person is not criminally responsible for the offence if, at the time of the conduct constituting the offence, the statutory instrument:

(a) was not known to the person; and

(b) had not been published in the *Gazette* or otherwise been made available to persons likely to be affected by it in such a way that the person would have become aware of its contents by exercising due diligence.

43AZ Claim of right

(1) A person is not criminally responsible for an offence that has a physical element relating to property if:

(a) at the time of the conduct constituting the offence, the person is under a mistaken belief about a proprietary or possessory right; and

(b) the existence of that right would negate a fault element for any physical element of the offence.

(2) A person is not criminally responsible for any other offence arising necessarily out of the exercise of the proprietary or possessory right that the person mistakenly believes to exist.

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

Subdivision 4 External factors

43BA Intervening conduct or event

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

(a) the physical element is brought about by another person over whom the person has no control or by a non-human act or event over which the person has no control; and

(b) the person could not reasonably be expected to guard against the bringing about of that physical element.

43BB Duress

(1) A person is not criminally responsible for an offence if the person carries out the conduct constituting the offence under duress.

(2) A person carries out conduct under duress only if the person reasonably believes that:

(a) a threat has been made that will be carried out unless an offence is committed; and

(b) there is no reasonable way that the threat can be rendered ineffective; and

(c) the conduct is a reasonable response to the threat.

(3) However, the person does not carry out conduct under duress if the threat is made by or on behalf of a person with whom the person is voluntarily associating to carry out conduct of the kind actually carried out.

43BC Sudden or extraordinary emergency

(1) A person is not criminally responsible for an offence if the person carries out the conduct constituting the offence in response to circumstances of sudden or extraordinary emergency.

(2) This section applies only if the person carrying out the conduct reasonably believes that:

(a) circumstances of sudden or extraordinary emergency exist; and

(b) committing the offence is the only reasonable way to deal with the emergency; and

(c) the conduct is a reasonable response to the emergency.

43BD Self-defence

(1) A person is not criminally responsible for an offence if the person carries out the conduct constituting the offence in self-defence.

(2) A person carries out conduct in self-defence only if:

(a) the person believes the conduct is necessary:

(i) to defend himself or herself or another person; or

(ii) to prevent or terminate the unlawful imprisonment of himself or herself or another person; or

(iii) to protect property from unlawful appropriation, destruction, damage or interference; or

(iv) to prevent criminal trespass to any land or premises; or

(v) to remove from any land or premises a person who is committing criminal trespass; and

(b) the conduct is a reasonable response in the circumstances as he or she perceives them.

(3) However, the person does not carry out conduct in self-defence if:

(a) the person uses force that involves the intentional infliction of death or serious harm:

(i) to protect property; or

(ii) to prevent criminal trespass; or

(iii) to remove a person who is committing criminal trespass; or

(b) the person is responding to lawful conduct that the person knew was lawful.

(4) Conduct is not lawful for subsection (3)(b) merely because the person carrying it out is not criminally responsible for it.

43BE Lawful authority

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

Division 4 Extensions of criminal responsibility

43BF Attempt

(1) A person who attempts to commit an offence is guilty of the offence of attempting to commit that offence and, unless otherwise provided, is punishable as if the offence attempted had been committed.

(2) For the person to be guilty, the person's conduct must be more than merely preparatory to the commission of the offence.

(3) The question whether conduct is more than merely preparatory to the commission of the offence is one of fact.

(4) For the offence of attempting to commit an offence, intention and knowledge are fault elements in relation to each physical element of the offence attempted.

Note for subsection (4)

Under section 43AC, only one of the fault elements of intention or knowledge would need to be established in relation to each physical element of the offence attempted.

(5) Subsection (4) has effect subject to subsection (9).

(6) A person may be found guilty even if:

(a) committing the offence attempted is impossible; or

(b) the person actually committed the offence attempted.

(7) A person who is found guilty of attempting to commit an offence cannot be subsequently charged with the completed offence.

(8) Any defences, procedures, limitations or qualifying provisions that apply to an offence apply also to the offence of attempting to commit that offence.

(9) Any special liability provisions that apply to an offence apply also to the offence of attempting to commit that offence.

(10) It is not an offence to attempt to commit an offence against section 43BG or 43BJ.

43BG Complicity and common purpose

(1) A person who aids, abets, counsels or procures the commission of an offence by another person is taken to have committed that offence and is punishable accordingly.

(2) For the person to be guilty:

(a) the person's conduct must have in fact aided, abetted, counselled or procured the commission of the offence by the other person; and

(b) the offence must have been committed by the other person.

(3) For the person to be guilty, the person must have intended that:

(a) the person's conduct would aid, abet, counsel or procure the commission of any offence (including its fault elements) of the type the other person committed; or

(b) the person's conduct would aid, abet, counsel or procure the commission of an offence and have been reckless about the commission of the offence (including its fault elements) that the other person in fact committed.

(4) Subsection (3) has effect subject to subsection (7).

(5) A person cannot be found guilty of aiding, abetting, counselling or procuring the commission of an offence if, before the offence was committed, the person:

(a) terminated his or her involvement; and

(b) took all reasonable steps to prevent the commission of the offence.

(6) A person may be found guilty of aiding, abetting, counselling or procuring the commission of an offence even if the principal offender has not been prosecuted or has not been found guilty.

(7) Any special liability provisions that apply to an offence apply also to the offence of aiding, abetting, counselling or procuring the commission of that offence.

43BH Innocent agency

(1) A person is taken to have committed an offence if:

(a) the person procures someone else to engage in conduct that (whether or not together with conduct engaged in by the person) makes up the physical elements of the offence consisting of conduct; and

(b) any physical element of the offence consisting of a circumstance exists; and

(c) any physical element of the offence consisting of a result of the conduct happens; and

(d) when the person procured the other person to engage in the conduct, the person had the fault element applying to each physical element of the offence.

(2) To remove any doubt, if a person is taken to have committed an offence because of this section, the offence is punishable as if, apart from the operation of this section, the person had committed the offence.

43BI Incitement

(1) A person who urges the commission of an offence is guilty of the offence of incitement.

(2) For the person to be guilty, the person must intend that the offence incited be committed.

(3) Subsection (2) has effect subject to subsection (6).

(4) A person may be found guilty even if committing the offence incited is impossible.

(5) Any defences, procedures, limitations or qualifying provisions that apply to an offence apply also to the offence of incitement in relation to that offence.

(6) Any special liability provisions that apply to an offence apply also to the offence of incitement in relation to that offence.

(7) It is not an offence to incite the commission of an offence against section 43BF, this section or section 43BJ.

Maximum penalty:

(a) if the offence incited is punishable by life imprisonment – imprisonment for 10 years; or

(b) if the offence incited is punishable by imprisonment for 14 years or more, but is not punishable by life imprisonment – imprisonment for 7 years; or

(c) if the offence incited is punishable by imprisonment for 10 years or more, but is not punishable by imprisonment for 14 years or more – imprisonment for 5 years; or

(d) if the offence is otherwise punishable by imprisonment – imprisonment for 3 years or for the maximum term of imprisonment for the offence incited, whichever is the lesser; or

(e) if the offence incited is not punishable by imprisonment – the number of penalty units equal to the maximum number of penalty units applicable to the offence incited.

43BJ Conspiracy

(1) A person who conspires with another person to commit an offence punishable by imprisonment for more than 12 months, or by a fine of 200 penalty units or more, is guilty of the offence of conspiracy to commit that offence and, unless otherwise provided, is punishable as if the offence to which the conspiracy relates had been committed.

(2) For the person to be guilty:

(a) the person must have entered into an agreement with one or more other persons; and

(b) the person and at least one other party to the agreement must have intended that an offence would be committed pursuant to the agreement; and

(c) the person or at least one other party to the agreement must have committed an overt act pursuant to the agreement.

(3) Subsection (2) has effect subject to subsection (9).

(4) A person may be found guilty of conspiracy to commit an offence even if:

(a) committing the offence is impossible; or

(b) the only other party to the agreement is a body corporate; or

(c) each other party to the agreement is at least one of the following:

(i) a person who is not criminally responsible;

(ii) a person for whose benefit or protection the offence exists; or

(d) subject to subsection (5)(a), all other parties to the agreement have been acquitted of the conspiracy.

(5) A person cannot be found guilty of conspiracy to commit an offence if:

(a) all other parties to the agreement have been acquitted of the conspiracy and a finding of guilt would be inconsistent with their acquittal; or

(b) he or she is a person for whose benefit or protection the offence exists.

(6) A person cannot be found guilty of conspiracy to commit an offence if, before the commission of an overt act pursuant to the agreement, the person:

(a) withdrew from the agreement; and

(b) took all reasonable steps to prevent the commission of the offence.

(7) A court may dismiss a charge of conspiracy if it thinks that the interests of justice require it to do so.

(8) Any defences, procedures, limitations or qualifying provisions that apply to an offence apply also to the offence of conspiracy to commit that offence.

(9) Any special liability provisions that apply to an offence apply also to the offence of conspiracy to commit that offence.

(10) Proceedings for an offence of conspiracy must not be commenced without the consent of the Director of Public Prosecutions.

(11) However, a person may be arrested for, charged with, or remanded in custody or on bail in connection with, an offence of conspiracy before the necessary consent has been given.

43BJA References in Acts to offences

(1) A reference in an Act to an offence against an Act (including this Code) includes a reference to an offence against section 43BF, 43BI or 43BJ that relates to such an offence.

(2) A reference in an Act (including this Code) to a particular offence includes a reference to an offence against section 43BF, 43BI or 43BJ that relates to that offence.

(3) Subsection (1) or (2) does not apply if an Act is expressly or impliedly to the contrary effect.

Note for section 43BJA

Sections 43BG and 43BH operate as extensions of principal offences and accordingly are not mentioned in this section.

Division 5 Corporate criminal responsibility

43BK General principles

(1) This Code applies to bodies corporate as well as natural persons.

(2) This Code applies to bodies corporate in the same way as it applies to natural persons, but subject to the changes made by this Part and any other changes necessary because criminal liability is being imposed on a body corporate rather than a natural person.

(3) A body corporate may be found guilty of any offence, including one punishable by imprisonment.

43BL Physical elements

If a physical element of an offence is committed by an employee, agent or officer of a body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, the physical element must also be attributed to the body corporate.

43BM Fault elements other than negligence

(1) If intention, knowledge or recklessness is a fault element in relation to a physical element of an offence, that fault element must be attributed to a body corporate that expressly, tacitly or impliedly authorised or permitted the commission of the offence.

(2) The ways in which authorisation or permission may be established include:

(a) proving that the body corporate's board of directors intentionally, knowingly or recklessly engaged in the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence; and

(b) proving that a high managerial agent of the body corporate intentionally, knowingly or recklessly engaged in the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence; and

(c) proving that a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to non-compliance with the relevant provision; and

(d) proving that the body corporate failed to create and maintain a corporate culture that required compliance with the relevant provision.

(3) Subsection (2)(b) does not apply if the body corporate proves that it exercised due diligence to prevent the conduct or the authorisation or permission.

(4) Factors relevant to the application of subsection (2)(c) and (d) include:

(a) whether authority to commit an offence of the same or a similar character had been given by a high managerial agent of the body corporate; and

(b) whether the employee, agent or officer of the body corporate who committed the offence believed on reasonable grounds, or entertained a reasonable expectation, that a high managerial agent of the body corporate would have authorised or permitted the commission of the offence.

(5) If recklessness is not a fault element in relation to a physical element of an offence, subsection (2) does not enable the fault element to be proved by proving that the board of directors, or a high managerial agent, of the body corporate recklessly engaged in the conduct or recklessly authorised or permitted the commission of the offence.

(6) In this section:

board of directors means the body (by whatever name called) exercising the executive authority of the body corporate.

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

high managerial agent, of a body corporate, means an employee, agent or officer of the body corporate with duties of such responsibility that his or her conduct may fairly be assumed to represent the body corporate's policy.

43BN Negligence

(1) The test of negligence for a body corporate is that set out in section 43AL.

(2) Subsection (3) applies if:

(a) negligence is a fault element in relation to a physical element of an offence; and

(b) no individual employee, agent or officer of the body corporate has that fault element.

(3) The fault element of negligence may exist on the part of the body corporate if its conduct is negligent when viewed as a whole (that is, by aggregating the conduct of any number of its employees, agents or officers).

(4) Negligence may be evidenced by the fact that the prohibited conduct was substantially attributable to:

(a) inadequate corporate management, control or supervision of the conduct of one or more of its employees, agents or officers; or

(b) failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.

43BO Mistake of fact – strict liability

(1) A body corporate can only rely on section 43AX in relation to conduct that would, apart from this section, constitute an offence on its part if:

(a) the employee, agent or officer of the body corporate who engaged in the conduct was under a mistaken but reasonable belief about facts that, had they existed, would have meant that the conduct would not have constituted an offence; and

(b) the body corporate proves that it exercised due diligence to prevent the conduct.

(2) A failure to exercise due diligence may be evidenced by the fact that the prohibited conduct was substantially attributable to:

(a) inadequate corporate management, control or supervision of the conduct of one or more of its employees, agents or officers; or

(b) failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.

43BP Intervening conduct or event

A body corporate cannot rely on section 43BA in relation to a physical element of an offence brought about by another person if the other person is an employee, agent or officer of the body corporate.

Division 6 Proof of criminal responsibility

43BQ Legal burden of proof

The legal burden, in relation to a matter, is the burden of proving the existence of the matter.

43BR Legal burden of proof – prosecution

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

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

43BS Standard of proof – prosecution

(1) A legal burden of proof on the prosecution must be discharged beyond reasonable doubt.

(2) Subsection (1) does not apply if a law specifies a different standard of proof.

43BT Evidential burden of proof

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

43BU Evidential burden of proof – defence

(1) Subject to section 43BV, a burden of proof that a law imposes on a defendant is an evidential burden only.

(2) A defendant who wishes to deny criminal responsibility by relying on a provision of Division 3 or Part IIA bears an evidential burden in relation to that matter.

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

(4) The defendant no longer bears the evidential burden in relation to a matter if evidence sufficient to discharge the burden is adduced by the prosecution or by the court.

(5) The question whether an evidential burden has been discharged is a question of law.

43BV Legal burden of proof – defence

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

(a) specifies that the burden of proof in relation to the matter in question is a legal burden; or

(b) requires the defendant to prove the matter; or

(c) creates a presumption that the matter exists unless the contrary is proved.

43BW Standard of proof – defence

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

43BX Use of averments

A law that allows the prosecution to make an averment does not allow the prosecution to aver any fault element of an offence.

Division 7 Geographical application

43BY Application and effect of Division

(1) This Division extends the application of a law of the Territory that creates an offence beyond the territorial limits of the Territory (and Australia) if the required geographical nexus exists for the offence.

(2) If a law that creates an offence provides for any geographical consideration for an offence, the provision prevails over any inconsistent provision of this Division.

Examples for subsection (2)

1 A law creating an offence may provide that the place of commission of the offence is (explicitly or by necessary implication) an element of the offence.

2 A law creating an offence may provide for its application outside the Territory and exclude (explicitly or by necessary implication) the requirement for a geographical nexus between the Territory and an element of the offence.

43BZ Interpretation for Division

(1) For this Division, the required geographical nexus is the geographical nexus referred to in section 43CA(2).

(2) For this Division, the place where an offence is committed is the place where any of the physical elements of the offence happen.

(3) For this Division, the place where an offence has an effect includes:

(a) any place whose peace, welfare or good government is threatened by the offence; and

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

43CA Extension of offences if required geographical nexus exists

(1) An offence against a law is committed if:

(a) disregarding any geographical considerations, all elements of the offence exist; and

(b) a geographical nexus exists between the Territory and the offence.

(2) A geographical nexus exists between the Territory and an offence if:

(a) the offence is committed completely or partly in the Territory, whether or not the offence has any effect in the Territory; or

(b) the offence is committed completely outside the Territory (whether or not outside Australia) but has an effect in the Territory.

43CB Geographical application – double criminality

(1) This Division applies to an offence committed partly in the Territory and partly in a place outside the Territory (whether or not outside Australia), even if it is not also an offence in that place.

(2) This Division applies to an offence committed completely outside the Territory (whether or not outside Australia) only if:

(a) it is also an offence in the place where it is committed; or

(b) it is not also an offence in that place, but the tribunal of fact is satisfied the offence is such a threat to the peace, welfare or good government of the Territory that it justifies criminal punishment in the Territory.

43CC Geographical application – procedure

(1) The required geographical nexus is conclusively presumed for an offence unless rebutted under subsection (2) or (4).

(2) If a person charged with an offence disputes the existence of the required geographical nexus for the offence, the following provisions apply:

(a) the court must proceed with the trial of the offence in the usual way;

(b) if, at the end of the trial, the tribunal of fact is satisfied on the balance of probabilities that the required geographical nexus does not exist, it must make or return a finding to that effect, and the court must dismiss the charge;

(c) however, if, disregarding any geographical considerations, the tribunal of fact would find the person not guilty of the offence (other than because of mental impairment), it must make or return a verdict of not guilty;

(d) also, if, disregarding any geographical considerations, the tribunal of fact would find the person not guilty of the offence only because of mental impairment, it must make or return a verdict that the person is not guilty of the offence because of mental impairment.

(3) This section applies to any alternative verdict available by law to the tribunal of fact in relation to another offence with which the person was not charged.

(4) The tribunal of fact may make or return a finding of guilty in relation to the other offence (referred to in subsection (3)) unless satisfied on the balance of probabilities the required geographical nexus does not exist for the other offence.

(5) If the issue of whether the required geographical nexus exists for an offence is raised before the trial, the issue must be reserved for consideration at the trial.

43CD Geographical application – suspicion etc. that offence committed

(1) This section applies if a person may exercise a power or perform a function under a law on reasonable suspicion or belief that an offence has been committed.

(2) The person may exercise the power or perform the function if the person suspects or believes, as the case requires, on reasonable grounds that all the elements required for the offence exist.

(3) Subsection (2) applies whether or not the person suspects or believes, or has any ground to suspect or believe, that the required geographical nexus exists for the offence.

Part IIA Mental impairment and unfitness to be tried

Division 1 Preliminary

43A Definitions

In this Part:

appropriate person means:

(a) in relation to an accused person or supervised person who is detained or in custody in, or receives treatment, services or assistance in, at or from, an approved treatment facility or an approved temporary treatment facility within the meaning of the *Mental Health and Related Services Act 1998* – the CEO (Health);

(b) in relation to an accused person or supervised person who is detained or in custody in, or receives treatment, services or assistance in, at or from, a prescribed person, organisation or facility or a person, organisation or facility who or which is a member of a class of prescribed persons, organisations or facilities – the CEO (Health);

(c) in relation to a person who is a represented adult as defined in section 3 of the *Guardianship of Adults Act 2016* – the CEO (Health); or

(d) in relation to a person who is held in custody in a custodial correctional facility or is under the supervision of a probation and parole officer under the *Parole Act 1971* – the chief executive officer of the Agency administering that Act.

CEO (Health) means the chief executive officer of the Agency administering the *Medical Services Act 1982*.

chief executive officer has the same meaning as in the *Public Sector Employment and Management Act 1993*.

committal proceedings means proceedings to determine whether or not to commit a person to trial under Part V of the *Local Court (Criminal Procedure) Act 1928*.

court means the Supreme Court.

custodial supervision order means a supervision order referred to in section 43ZA(1)(a).

expert means a person who holds a qualification or has experience or expertise that is relevant to the mental impairment, condition or disability of an accused person or a supervised person.

investigation means an investigation into the fitness of an accused person to stand trial conducted under Division 3.

mental illness means an underlying pathological infirmity of the mind, whether of long or short duration and whether permanent or temporary, but does not include a condition that results from the reaction of a healthy mind to extraordinary stimuli (although such a condition may be evidence of a mental illness if it involves some abnormality and is prone to recur).

mental impairment includes senility, intellectual disability, mental illness, brain damage and involuntary intoxication.

next of kin, in relation to a person, means the person's parent, spouse or de facto partner, sibling or child or any other person who is the person's primary carer.

non-custodial supervision order means a supervision order referred to in section 43ZA(1)(b).

special hearing means a hearing conducted under Division 4.

supervised person means a person who is the subject of a supervision order.

supervision order means a custodial supervision order or a non-custodial supervision order made by a court under Division 5.

victim means a person who suffered injury, loss or damage as a direct result of an offence or conduct that would, but for the mental impairment or unfitness to be tried of the person who carried out the conduct, have constituted an offence.

43B Meaning of *supervised person* in Divisions 6 and 7

In Divisions 6 and 7:

supervised person means the person the supervision of whom is the subject of a hearing referred to in those Divisions.

Division 2 Mental impairment

43C Defence of mental impairment

(1) The defence of mental impairment is established if the court finds that a person charged with an offence was, at the time of carrying out the conduct constituting the offence, suffering from a mental impairment and as a consequence of that impairment:

(a) he or she did not know the nature and quality of the conduct;

(b) he or she did not know that the conduct was wrong (that is he or she could not reason with a moderate degree of sense and composure about whether the conduct, as perceived by reasonable people, was wrong); or

(c) he or she was not able to control his or her actions.

(2) If the defence of mental impairment is established, the person must be found not guilty because of mental impairment.

43D Presumption of competence and burden of proof

(1) A person is presumed not to have been suffering a mental impairment unless the contrary is proved.

(2) The party raising the defence of mental impairment bears the onus of rebutting the presumption specified in subsection (1).

43E Standard of proof

The question of whether a person was suffering from a mental impairment having the effect specified in section 43C(1)(a), (b) or (c):

(a) is a question of fact; and

(b) subject to sections 43H and 43XA, is to be determined by a jury on the balance of probabilities.

43F Who may raise defence and when may defence be raised and considered?

(1) The defence of mental impairment may be raised:

(a) by the defence at any time during the trial;

(b) by the court on application by the prosecution; or

(c) by the court on its own initiative.

(2) If the defence of mental impairment is raised during the trial, the issues relating to establishing the defence are to be separately tried.

(3) If the defence of mental impairment arises during a committal proceeding, the question is to be reserved for consideration by the court during the trial of the accused person.

(4) A committal proceeding is not to be discontinued and the accused person discharged only because the defence of mental impairment has been raised during the committal proceeding.

43G Hearing of question of mental impairment by court etc.

(1) If the defence of mental impairment is raised during the trial, the court:

(a) must hear the evidence and representations as to the accused person's mental competence produced by the parties; and

(b) on application by the defence or the prosecution or on its own initiative – may require the accused person to be examined by a psychiatrist or other appropriate expert and the results of the examination to be reported to the court.

(2) After the evidence has concluded and the parties have addressed the jury, the Judge must direct the jury to consider:

(a) the question of mental impairment and determine whether on the balance of probabilities the defence of mental impairment is established; and

(b) whether the evidence establishes the elements of the offence the accused person is charged with, or an offence that the accused person may be found alternatively guilty of, beyond reasonable doubt,

and to determine whether the accused person:

(c) is not guilty of the offence charged;

(d) is not guilty of the offence charged because of his or her mental impairment; or

(e) committed the offence charged or an offence that he or she may be found alternatively guilty of.

(3) In directing the jury, the Judge must explain to the jury the findings that it may make and the consequences of the findings in law and otherwise.

43H Plea of not guilty by reason of mental impairment may be accepted

If the parties to a prosecution of an offence agree, the court may, at any time during the trial of the offence, accept a plea and record a finding of not guilty of the offence because of mental impairment.

43I Effect of findings under this Division

(1) If an accused person is found not guilty of the offence charged, the court must discharge the accused person.

(2) If an accused person is found not guilty because of mental impairment, the court must:

(a) declare that the accused person is liable to supervision under Division 5; or

(b) order that the accused person be released unconditionally.

(3) If the court makes a declaration under subsection (2)(a), the court may also make the interim orders it considers just, including one or more of the following orders:

(a) an order for the bail of the accused person;

(b) an order that the accused person be remanded in custody (whether in a custodial correctional facility or another place the court considers appropriate);

(c) an order for the examination of the accused person by a psychiatrist or other appropriate expert;

(d) if the court makes an order referred to in paragraph (c) – an order that a report of the results of the examination be produced before the court.

(3A) The court must not make an interim order under subsection (3)(b) remanding the accused person in custody in a custodial correctional facility unless the court is satisfied there is no practical alternative given the circumstances of the accused person.

(4) If an accused person is found guilty of the offence charged or an offence that he or she may be found guilty alternatively of, the court must record the jury's verdict and proceed to deal with the conviction and sentencing of the accused person in the normal way.

Division 3 Unfitness to stand trial

43J When is a person unfit to stand trial?

(1) A person charged with an offence is unfit to stand trial if the person is:

(a) unable to understand the nature of the charge against him or her;

(b) unable to plead to the charge and to exercise the right of challenge;

(c) unable to understand the nature of the trial (that is that a trial is an inquiry as to whether the person committed the offence);

(d) unable to follow the course of the proceedings;

(e) unable to understand the substantial effect of any evidence that may be given in support of the prosecution; or

(f) unable to give instructions to his or her legal counsel.

(2) A person is not unfit to stand trial only because he or she suffers from memory loss.

43K Presumption of fitness to stand trial and burden of proof

(1) A person is presumed to be fit to stand trial.

(2) The presumption of fitness to stand trial is rebutted only if it is established by an investigation under this Division that the person is unfit to stand trial.

(3) If the question of a person's fitness to stand trial is raised by the prosecution or the defence, the party raising the question bears the onus of rebutting the presumption of fitness.

(4) If the question of a person's fitness to stand trial is raised by the court, the prosecution has carriage of the matter and no party bears the onus of rebutting the presumption of fitness.

43L Standard of proof

The question of whether a person is fit to stand trial is a question of fact to be determined by a jury on the balance of probabilities.

43M Committal proceedings

(1) If the question of an accused person's fitness to stand trial arises at committal proceedings:

(a) the accused person is not to be discharged only because the question has been raised during the committal proceedings;

(b) the committal proceedings are to be completed in accordance with the *Local Court (Criminal Procedure) Act 1928* (whether or not section 110 of that Act is complied with); and

(c) if the accused person is committed for trial – the question is to be reserved for consideration by the court during the trial of the accused person.

(2) In the event of an inconsistency between Part V of the *Local Court (Criminal Procedure) Act 1928* and this section, this section prevails to the extent of the inconsistency.

43N Institution of investigation of fitness of accused person

(1) The question of whether an accused person is fit to stand trial may be raised in the court by the prosecution or the defence, or by the court, at any time after the presentation of the indictment.

(2) The court must order an investigation into the fitness of the accused person to stand trial if:

(a) the question of fitness was reserved during the committal proceedings; or

(b) the Judge is satisfied that there are reasonable grounds on which to question the accused person's fitness to stand trial.

(3) If the court makes an order for an investigation into the fitness of the accused person after the trial has commenced, the court may adjourn or discontinue the trial and conduct an investigation.

(4) The question of the fitness of an accused person to stand trial may be raised more than once in the same proceeding.

43O Court may make interim orders

Before or at the time the court makes an order under section 43N(2) for an investigation, the court may also make the interim orders it considers just, including one or more of the following orders:

(a) an order for the bail of the accused person;

(b) an order that the accused person be remanded in custody (whether in a custodial correctional facility or another place the court considers appropriate);

(c) an order that any reports relating to the fitness of the accused person to stand trial held by the prosecution or defence be produced before the court;

(d) an order that the accused person undergo an examination by a psychiatrist or other appropriate expert and that a report of the results of the examination be given to the court.

43P Procedure for conduct of investigation

(1) At the commencement of the investigation, the Judge must explain to the jury:

(a) the reason for the investigation;

(b) the findings that may be made and the consequences of those findings in law and otherwise; and

(c) the standard of proof required to establish whether the accused person is fit for trial.

(2) The court must hear the relevant evidence and submissions relating to the question of fitness of the accused person put to the court by the prosecution and the defence.

(3) If the Judge considers that it is in the interests of justice to do so, the court may:

(a) call evidence on its own initiative;

(b) require the accused person to undergo an examination by a psychiatrist or other appropriate expert; and

(c) require the results of an examination referred to in paragraph (b) to be produced before the court.

43Q Finding that accused person fit to stand trial

If the jury finds that the accused is fit to stand trial, the trial of the accused person for committing the offence he or she is charged with is to proceed in the normal way.

43R Procedure if accused person found unfit to stand trial after conduct of investigation

(1) If the jury finds that the accused person is unfit to stand trial, the Judge must determine whether there is a reasonable prospect that the accused person might, within 12 months, regain the necessary capacity to stand trial.

(2) In making his or her determination under subsection (1), the Judge:

(a) may call evidence on his or her own initiative; and

(b) must refer to all relevant evidence and make the determination on the balance of probabilities.

(3) If the Judge determines that it is not likely that the accused will become fit to stand trial within 12 months, subject to section 43XA, the court must hold a special hearing within 3 months after the date of the Judge's determination.

(4) If the Judge determines that there is a reasonable prospect that the accused person might become fit for trial within 12 months, the Judge must adjourn the matter of the fitness of the accused person to be tried for the period, not exceeding 12 months, within which the Judge considers that the accused person might become fit.

(5) If the matter is adjourned under subsection (4), the Judge may make the interim orders he or she considers just, including one or more of the following orders:

(a) an order for the bail of the accused person;

(b) an order that the accused person is remanded in custody (whether in a custodial correctional facility or another place the Judge considers appropriate) during the adjournment.

(6) The Judge must not make an order under subsection (5) remanding the accused person in custody in a custodial correctional facility unless the Judge is satisfied that there is no practicable alternative given the circumstances of the accused person.

(7) On the expiry of the adjournment, the accused person is presumed to be fit to stand trial unless a party or the court raises a real and substantive question as to the accused person's fitness to stand trial.

(8) Where the accused person is presumed to be fit, the trial of the accused person for committing the offence he or she is charged with is to proceed in the normal way.

(9) Where a real and substantial question as to the accused person's fitness has been raised in accordance with subsection (7), the court must:

(a) if the adjournment was for less than 12 months – adjourn the matter for a further period that, when added together with the first period of adjournment, does not exceed 12 months; or

(b) subject to section 43XA, hold a special hearing within 3 months after the date the adjournment expires.

(10) If the Judge further adjourns the matter under subsection (9)(a), he or she may vary an order made under subsection (5) in respect of the accused person or make any other orders referred to in subsection (5) as he considers just (and, in doing so, must comply with subsection (6)).

(11) On the expiry of an adjournment under subsection (9)(a), subsections (7), (8), (9) and (10) apply with the necessary changes as if a reference to an adjournment in those subsections were a reference to a further adjournment under subsection (9)(a).

(12) A matter may be adjourned more than once under subsection (9)(a) but the total period of adjournment of a matter under this section is not to exceed 12 months.

43S Abridgement of adjournment under section 43R

Where the court has made an order under section 43R(4) or (9)(a) adjourning the matter of the fitness of an accused person to be tried, the accused person or the Director of Public Prosecutions may at any time during the adjournment apply to the court for either of the following orders:

(a) if the accused person or the Director of Public Prosecutions considers that the accused person has become fit to stand trial – an order that the trial of the accused person for committing the offence he or she is charged with is to proceed in the normal way;

(b) if the accused person or the Director of Public Prosecutions considers that the accused person will not become fit to stand trial by the end of the 12 month period referred to in section 43R – an order to hold a special hearing within 3 months after the date the order is made.

43T Finding that accused person unfit to stand trial by agreement

(1) If, at any time before or during the trial of an offence, the parties to the prosecution of the offence agree that the accused person is unfit to stand trial, the court may dispense with an investigation into the fitness of the accused person to stand trial and record a finding that the accused person is unfit to stand trial.

(2) If the court records a finding under subsection (1), section 43R applies in relation to the accused person the subject of the finding as if a reference to an accused person in section 43R were a reference to an accused person referred to in subsection (1).

43U Extension of period for holding special hearing

(1) The Court may, on application or on its own initiative, extend, by not more than 3 months, the period within which a special hearing is to be held under section 43R (including as applied by section 43T) or 43S.

(2) There is no limit to the number of extensions that the court may make under subsection (1).

Division 4 Special hearings

43V Purpose of special hearings

(1) A special hearing is to determine, on the evidence available, whether an accused person who is found not fit to stand trial:

(a) is not guilty of the offence he or she is charged with;

(b) is not guilty of the offence he or she is charged with because of his or her mental impairment; or

(c) committed the offence he or she is charged with or an offence available as an alternative to the offence charged.

(2) To make a finding under subsection (1)(c), the jury must be satisfied beyond reasonable doubt, on the evidence available, that the accused person committed the offence charged or an offence available as an alternative to the offence.

43W Procedure for conduct of special hearing

(1) A special hearing is to be conducted as nearly as possible as if it were a criminal trial.

(2) At a special hearing:

(a) the accused person is taken to plead not guilty;

(b) the accused person's legal representative (if any) may exercise the accused person's right of challenge;

(c) the accused person may raise any defence (including the defence of mental impairment) that he or she could raise at a criminal trial;

(d) the rules of evidence apply;

(e) the accused person may give evidence; and

(f) any alternative finding of guilt that would be available for a jury at a criminal trial is available to the jury at the special hearing.

(3) The Judge must explain to the jury:

(a) that a real and substantial question has been raised as to the accused person's fitness to be tried;

(b) the meaning of being unfit to stand trial;

(c) the purpose of the special hearing, the findings that are available to the jury and the consequences of the findings at law and otherwise; and

(d) the standard of proof required for the findings.

43X Findings at special hearing

(1) If the jury at a special hearing finds the accused person is not guilty of the offence, the finding is taken to be a finding of not guilty at a criminal trial and the court must discharge the accused person.

(2) If the jury at a special hearing finds the accused person is not guilty because of mental impairment, the finding is taken to be a finding of not guilty because of mental impairment at a criminal trial and the court must:

(a) declare that the accused person is liable to supervision under Division 5; or

(b) order that the accused person be released unconditionally.

(3) If the jury at a special hearing finds, on the evidence available, that the accused person committed the offence charged or an offence available as an alternative to the offence charged, the finding:

(a) is taken to be a qualified finding of guilt and does not constitute a basis in law for a finding of guilt of the offence to which the finding relates;

(b) constitutes a bar to further prosecution in respect to the same conduct and circumstances; and

(c) is subject to appeal in the same manner as if it were a finding of guilt at a criminal trial,

and the court must declare that the accused person is liable to supervision under Division 5 or discharge the accused person unconditionally.

43XA Dispensing with special hearing

If, at any time before or during a special hearing, the parties to the prosecution of the offence agree that the evidence establishes the defence of mental impairment, the court may accept a plea and record a finding of not guilty of the offence because of mental impairment.

43XB Effect of finding under section 43XA

If the court records a finding under section 43XA, the court must:

(a) declare that the accused person is liable to supervision under Division 5; or

(b) order that the accused person be released unconditionally.

43Y Interim orders pending supervision

(1) If the court makes a declaration under section 43X(2)(a) or (3) or 43XB(a), the court may make the interim orders pending the supervision order it considers just, including one or more of the following orders:

(a) an order for the bail of the accused person;

(b) an order that the accused person is to be remanded in custody (whether in a custodial correctional facility or another place the court considers appropriate) until the supervision order is made;

(c) an order that the accused person undergo an examination by a psychiatrist or other appropriate expert;

(d) if the court makes an order referred to in paragraph (c) – an order that a report of the results of the examination be produced before the court.

(2) The court must not make an interim order under subsection (1)(b) remanding the accused person in custody in a custodial correctional facility unless the court is satisfied there is no practical alternative given the circumstances of the accused person.

Division 5 Supervision orders

43Z When supervision orders are made

The court must make a supervision order under this Division in respect of a person if:

(a) the court declares under section 43I(2)(a), 43X(2)(a) or (3) or 43XB(a) that the person is liable to supervision; or

(b) the Court of Criminal Appeal remits a matter to the court under section 412A(3) for the making of a supervision order in respect of the person.

43ZA Nature of supervision orders

(1) A supervision order may, subject to the conditions the court considers appropriate and specifies in the order:

(a) if it is a custodial supervision order – commit the accused person to custody:

(i) subject to subsection (2) – in a custodial correctional facility; or

(ii) subject to subsection (3) – in another place (an ***appropriate place***) the court considers appropriate; or

(b) if it is a non-custodial supervision order – release the accused person.

(2) The court must not make a custodial supervision order committing the accused person to custody in a custodial correctional facility unless it is satisfied that there is no practicable alternative given the circumstances of the person.

(2A) Without limiting subsection (1), the court may decide a supervision order is subject to the condition that a person (an ***authorised person***) authorised by the CEO (Health) may use any reasonable force and assistance:

(a) to enforce the order; and

(b) without limiting paragraph (a) – to take the accused person into custody, or to restrain the accused person, in order to prevent the accused person harming himself or herself or someone else.

(2B) The CEO (Health):

(a) must, by *Gazette* notice, make supervision directions about:

(i) the qualifications of an authorised person; and

(ii) the reporting by an authorised person of any use of force or assistance for subsection (2A); and

(b) may, in the supervision directions, provide for any other matters about the use of such force and assistance as decided by the CEO (Health).

(2C) An authorised person may use reasonable force or assistance as provided in subsection (2A) only in accordance with the supervision directions.

(3) Unless the court receives a certificate from the CEO (Health) mentioned in subsection (4), the court must not make a supervision order:

(a) committing the accused person to custody in an appropriate place; or

(b) providing for the accused person to receive treatment or other services in, at or from an appropriate place.

(4) The certificate of the CEO (Health) must state:

(a) facilities or services are available in the appropriate place for the custody, care or treatment of the accused person; and

(b) if the appropriate place is a secure care facility – the accused person fulfils the criteria for involuntary treatment and care under the *Disability Services Act 1993*.

43ZB Appeals against supervision orders

(1) A supervision order (including a supervision order varied under section 43ZD or 43ZE) is subject to the same rights of appeal as a sentence.

(2) In addition to appeals referred to in subsection (1), the CEO (Health) may appeal to the Court of Criminal Appeal against a supervision order if he or she considers that:

(a) a different supervision order should have been made; and

(b) an appeal should be brought in the public interest.

(3) On an appeal under subsection (2), the Court of Criminal Appeal may confirm the supervision order or quash the supervision order and make another supervision order in substitution for it.

43ZC Term of supervision order

Subject to sections 43ZD, 43ZE and 43ZG, a supervision order is for an indefinite term.

43ZD Variation or revocation of supervision order

(1) Any of the following persons may apply to the court for an order varying or revoking a supervision order:

(a) the Director of Public Prosecutions;

(b) the supervised person;

(c) a person having the custody, care, control or supervision of the supervised person;

(d) any other person who has an interest that the court recognises as proper for the purposes of making the application.

(2) A person who makes an application under subsection (1) must give notice of the application at least 14 days before the hearing of the application to:

(a) the Director of Public Prosecutions; and

(b) the supervised person; and

(c) the next of kin (if any) of the supervised person; and

(d) a person having the custody, care, control or supervision of the supervised person.

(3) If, on an application to vary or revoke a supervision order by the supervised person, the court refuses the application, the supervised person must not make another application within 12 months after the date of the court's refusal or any other period (which may be lesser or greater) the court fixes.

(3A) The court may adjourn the hearing for the application if the court considers it appropriate to do so.

(3B) If the court adjourns the hearing under subsection (3A), the court may make interim orders for the supervised person (including, for example, an order that the supervised person be remanded in custody in a custodial correctional facility or another place the court considers appropriate).

(3C) The court must not make an interim order under subsection (3B) remanding the supervised person in custody in a custodial correctional facility unless the court is satisfied there is no practical alternative given the circumstances of the supervised person.

(3D) To avoid doubt:

(a) the making of an interim order under subsection (3B) does not revoke the supervision order; and

(b) subject to a direction by the court – the supervision order continues to have effect while an interim order under subsection (3B) is in force.

(4) On hearing the application, the court may:

(a) confirm the supervision order the subject of the application; or

(b) if the application is for an order revoking the supervision order:

(i) revoke the supervision order and release the supervised person unconditionally; or

(ii) vary the conditions of the supervision order; or

(c) if the application is for an order varying the supervision order:

(i) vary the conditions of the supervision order;

(ii) where the supervision order is a non-custodial supervision order – vary the supervision order to a custodial supervision order; or

(iii) where the supervision order is a custodial supervision order – vary the supervision order to a non-custodial supervision order.

43ZE Urgent variation of non-custodial supervision order

(1) If it appears to the Director of Public Prosecutions that a supervised person who is subject to a non-custodial supervision order is not complying or is not likely to comply with the supervision order and, because of that, the supervision order should be varied urgently, the Director of Public Prosecutions may make an urgent application to the court for an order varying the supervision order.

(2) In making an application under subsection (1):

(a) the Director of Public Prosecutions may give notice of the application to one or more of the persons specified in section 43ZD(2) and the notice he or she gives may be less than the 14 days required under that subsection; and

(b) the Director of Public Prosecutions may make the application orally by telephone or in writing by facsimile or any other available electronic means of communication.

(3) If the supervised person fails to appear at the hearing of the application, the court must issue a warrant for the apprehension and arrest of the supervised person.

(3A) The court may adjourn the hearing for the application if the court considers it appropriate to do so.

(3B) If the court adjourns the hearing under subsection (3A), the court may make interim orders for the supervised person (including, for example an order that the supervised person be remanded in custody in a custodial correctional facility or another place the court considers appropriate).

(3C) The court must not make an interim order under subsection (3B) remanding the supervised person in custody in a custodial correctional facility unless the court is satisfied there is no practical alternative given the circumstances of the supervised person.

(3D) To avoid doubt:

(a) the making of an interim order under subsection (3B) does not revoke the supervision order; and

(b) subject to a direction by the court – the supervision order continues to have effect while an interim order under subsection (3B) is in force.

(4) On hearing the application, the court may:

(a) confirm the non-custodial supervision order; or

(b) vary the conditions of the non-custodial supervision order; or

(c) vary the non-custodial supervision order to a custodial supervision order and impose the conditions on the custodial supervision order that the court considers appropriate.

(5) If the court makes an order under subsection (4)(c) varying the supervision order to a custodial supervision order:

(a) unless the term fixed under section 43ZG in respect of the supervision order has expired, that period continues to apply in respect of the custodial supervision order; or

(b) if the term referred to in paragraph (a) has expired – the court must fix the term it considers appropriate during which the supervision order as varied is to be in force and specify the term in the supervision order (and section 43ZG applies to and in relation to the supervision order as varied as if that term were a term fixed under section 43ZG(1)).

43ZF Emergency power of apprehension

(1) If a member of the Police Force suspects on reasonable grounds that:

(a) a supervised person is failing or has failed to comply with the supervision order to which he or she is subject (including a supervision order that has just been varied);

(b) the safety of a supervised person is at risk unless the supervised person is apprehended; or

(c) the safety of the public is at risk if a supervised person is not apprehended,

the member may apprehend the supervised person.

(2) A supervised person who is apprehended under subsection (1) must be detained:

(a) if the supervised person is subject to a custodial supervision order – in the place where he or she is committed to custody under the supervision order; or

(b) if the supervised person is subject to a non-custodial supervision order – in an appropriate place (which would, if there is no practicable alternative in the circumstances, be a custodial correctional facility or a police station).

(3) If a supervised person who is apprehended under subsection (1) is subject to a non-custodial supervision order, an application for an order varying the non-custodial supervision order is to be made to the court under section 43ZD or 43ZE.

43ZG Major review of supervision orders

(1) When the court makes a supervision order, the court must fix a term in accordance with subsection (2), (3) or (4) that is appropriate for the offence concerned and specify the term in the order.

(2) Subject to subsections (3) and (4), the term fixed under subsection (1) is to be equivalent to the period of imprisonment or supervision (or aggregate period of imprisonment and supervision) that would, in the court's opinion, have been the appropriate sentence to impose on the supervised person if he or she had been found guilty of the offence charged.

(3) If:

(a) the offence charged carries a mandatory penalty of life imprisonment; or

(b) the court is of the view that life imprisonment would have been an appropriate penalty for the offence charged;

the court must fix the period it would have set as the non-parole period for the offence under the *Sentencing Act 1995* if the supervised person had been found guilty of the offence charged as the term under subsection (1).

(4) If the supervised person was charged with the commission of multiple offences, the court must fix the term under subsection (1) by reference to the offence carrying the longest maximum period of imprisonment.

(4A) A reference in subsection (2) to a period of supervision is a reference to a period of custody or any other form of supervision of a person under a court order (including, for example, a home detention order) on the court finding the person guilty of an offence.

(4B) The court may decide the term fixed under subsection (1) is taken to have commenced from a specified time that was:

(a) before the making of the supervision order; and

(b) at or after the time the supervised person was first taken into custody for an offence because of which the court may make the supervision order.

(5) At least 3 months (but not more than 6 months) before the expiry of the term fixed under subsection (1) in respect of a supervision order, the court must conduct a review to determine whether to release the supervised person the subject of the supervision order from it.

(5A) The court may adjourn the proceedings for the review to a time that is after the expiry of the term fixed under subsection (1) if the court considers it appropriate to do so.

(5B) If the court adjourns the proceedings under subsection (5A):

(a) the court may make interim orders for the supervised person (including, for example, an order that the supervised person be remanded in custody in a custodial correctional facility or another place the court considers appropriate); and

(b) subject to a direction by the court – the supervision order continues to have effect until the completion of the review.

(5C) The court must not make an interim order under subsection (5B)(a) remanding the supervised person in custody in a custodial correctional facility unless the court is satisfied there is no practical alternative given the circumstances of the supervised person.

(6) On completing the review under subsection (5), unless the court considers that the safety of the supervised person or the public will or is likely to be seriously at risk if the supervised person is released, the court must release the supervised person unconditionally.

(7) If the court considers that the safety of the supervised person or the public will or is likely to be seriously at risk if the supervised person is released unconditionally, the court must:

(a) confirm the supervision order; or

(b) vary the conditions of the supervision order (including, if the supervision order is a custodial supervision order, the place of custody where the supervised person is detained); or

(c) if the supervision order is a non-custodial order – vary the supervision order to a custodial supervision order and impose the conditions on the order that the court considers appropriate; or

(d) if the supervision order is a custodial order – vary the supervision order to a non-custodial order and impose the conditions on the order that the court considers appropriate.

43ZH Periodic review of supervision orders

(1) After considering a report submitted by an appropriate person under section 43ZK, if the court considers it is appropriate, the court may conduct a review to determine whether the supervised person the subject of the report may be released from the supervision order.

(2) On completing the review of a custodial supervision order, the court must:

(a) vary the supervision order to a non-custodial supervision order unless satisfied on the evidence available that the safety of the supervised person or the public will be seriously at risk if the person is released on a non-custodial supervision order; or

(b) if the court is satisfied on the evidence available that the safety of the supervised person or the public will be seriously at risk if the person is released on a non-custodial supervision order:

(i) confirm the order; or

(ii) vary the conditions of the order, including the place of custody where the supervised person is detained.

(3) On completing the review of a non-custodial supervision order, the court may:

(a) confirm the order;

(b) vary the conditions of the order;

(c) vary the supervision order to a custodial supervision order and impose the conditions on the order the court considers appropriate; or

(d) revoke the order and release the supervised person unconditionally.

43ZI Right of persons to appear at hearings under this Division

(1) Subject to subsection (2), a person who is or is likely to be the subject of a supervision order has a right to appear before the court at a hearing of an application for an order making, varying or revoking the supervision order or of a review of the supervision

order under this Division.

(2) If the person who is or is likely to be the subject of the supervision order does not appear before the court, the court must satisfy itself that:

(a) the person has been informed of his or her right to appear but has elected not to appear; or

(b) appearing before the court would be detrimental to the person's health.

(3) Subsection (2) does not apply to the hearing of an urgent application for an order varying a non-custodial supervision order under section 43ZE.

(4) The Director of Public Prosecutions may appear before the court at a hearing referred to in subsection (1).

(4A) In addition, the CEO (Health) is entitled to appear at a hearing of an application for an order varying or revoking the supervision order, or of a review of the supervision order, for a person who is in custody in an appropriate place mentioned in section 43ZA(1)(a)(ii), including, for example, a resident of a secure care facility under the *Disability Services Act 1993*.

(5) Also, the court may give leave to a person who it considers has a proper interest in the matter the subject of a hearing mentioned in subsection (1) to appear before the court at the hearing.

(6) A person who is entitled to appear before the court under this section is a party to the matter in which he or she appears and is entitled to be legally represented.

Division 6 Reports

43ZJ Court to receive report on condition of accused persons declared liable to supervision

(1) If the court declares under Division 2 or 4 that an accused person is liable to supervision, the appropriate person must, within 30 days after the date of the declaration or the longer period (if any) agreed to by the court, prepare and submit a report to the court on the mental impairment, condition or disability of the accused person that is the reason he or she was found to be not guilty of the offence charged because of mental impairment or to be unfit to stand trial.

(2) A report referred to in subsection (1) is to contain:

(a) a diagnosis and prognosis of the accused person's mental impairment, condition or disability;

(b) details of the accused person's response to any treatment, therapy or counselling he or she is receiving or has received and any services that are being or have been provided to him or her; and

(c) a suggested treatment plan for managing the accused person's mental impairment, condition or disability.

43ZK Periodic reports on condition of supervised persons

(1) If the court makes a supervision order, the appropriate person must, at intervals of not more than 12 months, until the supervision order is revoked, prepare and submit a report to the court on the treatment and management of the supervised person's mental impairment, condition or disability.

(2) A report referred to in subsection (1) is to contain:

(a) details of the treatment, therapy or counselling that the supervised person has received, and the services that have been provided to the supervised person, since the supervision order was made or the last report was prepared (as the case may require); and

(b) details of any changes to the prognosis of the supervised person's mental impairment, condition or disability and to the plan for managing the mental impairment, condition or disability.

43ZL Reports on views of victim or next of kin

(1) At the time the court is considering whether to make, vary or revoke a supervision order in respect of an accused person or a supervised person, or whether to determine to release a supervised person from a supervision order, the victim of the offence concerned or the next of kin of the victim (who may be a deceased victim) may prepare and submit a report to the court setting out the views of the victim or next of kin concerning one or more of the following:

(a) the conduct of the accused person or supervised person;

(b) the impact of the accused person's or supervised person's conduct on the victim or the next of kin or any other member of the victim's family;

(c) if the court is considering whether to release a supervised person from a supervision order – the impact the supervised person's conduct could have on the victim or next of kin or any other members of the victim's family if the supervised person is released.

(2) The court must receive all reports made to it under subsection (1).

(3) The court may, on its own initiative if it considers it will assist in determining whether to make, vary or revoke a supervision order in respect of an accused person or a supervised person, or whether to release a supervised person from a supervision order, request one or more of the following reports:

(a) a report setting out the views of the next of kin of the accused person or supervised person and the impact of the accused person's or supervised person's conduct on the next of kin or other members of the accused person's or supervised person's family;

(b) if the accused person or supervised person is a member of an Aboriginal community – a report setting out the views of the members of the Aboriginal community.

(4) The court must consider all reports made to it under this section.

Division 7 Principles on which court is to act

43ZLA Definition

In this Division:

order means:

(a) a declaration that an accused person is liable to supervision; or

(b) an order releasing an accused person unconditionally; or

(c) an interim order for the bail of an accused person; or

(d) an interim order providing for the custody of an accused person or supervised person; or

(e) an order making, varying or revoking a supervision order; or

(f) an order releasing a supervised person.

43ZM Principle court to apply when making order

In determining whether to make an order under this Part, the court must apply the principle that restrictions on a supervised person's freedom and personal autonomy are to be kept to the minimum that is consistent with maintaining and protecting the safety of the community.

43ZN Matters court must take into account when making order

(1) In determining whether to make an order under this Part, the court must have regard to the following matters:

(a) whether the accused person or supervised person concerned is likely to, or would if released be likely to, endanger himself or herself or another person because of his or her mental impairment, condition or disability;

(b) the need to protect people from danger;

(c) the nature of the mental impairment, condition or disability;

(d) the relationship between the mental impairment, condition or disability and the offending conduct;

(e) whether there are adequate resources available for the treatment and support of the supervised person in the community;

(f) whether the accused person or supervised person is complying or is likely to comply with the conditions of the supervision order;

(g) any other matters the court considers relevant.

(2) The court must not make an order under this Part releasing a supervised person from custody (whether conditionally or otherwise) or significantly reducing the supervision to which a supervised person is subject unless:

(a) the court has:

(i) obtained and considered 2 reports, each report being prepared by a person who is a psychiatrist or other expert (but the same person must not prepare both reports); and

(ii) considered the reports submitted to the court under sections 43ZJ and 43ZK and received by the court under section 43ZL, if any; and

(b) subject to subsections (3) and (4), the court is satisfied that each of the following persons was given reasonable notice of the proceedings concerned:

(i) the victim of the offence concerned;

(ii) if the victim concerned is deceased – the victim's next of kin;

(iia) the next of kin of the supervised person concerned;

(iii) if the supervised person concerned is a member of an Aboriginal community – the Aboriginal community.

(3) Notice is not required to be given to a person referred to in subsection (2)(b) if the person cannot be found after reasonable inquiry.

(4) Notice is not to be given to a person referred to in subsection (2)(b)(i) or (ii) who has given notice to the court that he or she does not wish to be notified of any hearings in relation to the supervised person concerned and has not withdrawn that notice.

Division 8 Miscellaneous

43ZO Legal counsel to have independent discretion

If an accused person or supervised person is unable to instruct his or her legal counsel on questions relevant to an investigation or proceedings under this Part, the legal counsel may exercise an independent discretion and act as he or she reasonably believes to be the in the person's best interests.

43ZP Counselling next of kin

(1) If an application is made to the court under this Part that might result in an order for the release from custody of a supervised person, the Minister must ensure that counselling services are available to the victim, next of kin of a deceased victim and next of kin of the supervised person.

(2) A person who, in the course of the provision of counselling services to a person referred to in subsection (1), discloses information about the supervised person concerned to another person does not, in doing so, contravene the law of the Territory or any code or rule of conduct or professional ethics and is taken not to have committed an offence against the law in force in the Territory because of the disclosure.

43ZPA Protection from liability

(1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function under this Act as a person authorised for section 43ZA(2A).

(2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

(3) In this section:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

43ZQ Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

(a) required or permitted by this Part to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.

Part III Offences against public order

Division 1 Sedition

44 Definitions

In this Division:

seditious enterprise means an enterprise undertaken in order to carry out a seditious intention.

seditious intention means an intention:

(a) to excite disaffection against the government or the Legislative Assembly or the administration of justice of or in the Territory;

(b) to excite any person to attempt to procure the alteration, otherwise than by lawful means, of any matter in the Territory established by a law in force in the Territory; or

(c) to promote feelings of ill-will and hostility between different classes of persons so as to endanger the peace, order or good government of the Territory.

seditious words means words expressing a seditious intention.

45 Seditious enterprise

Subject to section 48, any person who engages in or agrees or undertakes to engage in a seditious enterprise is guilty of a crime and is liable to imprisonment for 3 years or, upon being found guilty summarily, to imprisonment for one year.

46 Seditious words

Subject to section 48, any person who writes, prints, utters or publishes seditious words is guilty of a crime and is liable to imprisonment for 3 years or, upon being found guilty summarily, to imprisonment for one year.

47 Procedure on prosecution for sedition

(1) A crime defined by section 45 or 46 may be prosecuted either on indictment or, with the consent of the Director of Public Prosecutions and the accused person, summarily.

(2) A person cannot be found guilty of committing or of counselling or procuring the commission of a crime defined by section 45 or 46 upon the uncorroborated testimony of one witness.

48 Acts done in good faith

A person shall not be guilty of a crime defined by section 45 or 46:

(a) for endeavouring in good faith to show that the Administrator is, or his advisors are, mistaken in any of his or their counsels, policies or actions;

(b) for pointing out in good faith errors or defects in the government, the legislation or the administration of justice of or in the Territory with a view to the reformation of those errors or defects;

(c) for exciting in good faith another person to attempt to procure by lawful means the alteration of any matter established by law in the Territory;

(d) for pointing out in good faith, in order to bring about its removal, a matter that is producing, or has a tendency to produce, feelings of ill-will or hostility between different classes of persons; or

(e) for doing anything in good faith in connection with an industrial dispute or an industrial matter.

49 Unlawful oaths to commit offences, &c.

Any person who:

(a) administers, or is present at and consents to the administering of, an oath or engagement in the nature of an oath purporting to bind the person who takes it:

(i) to commit an offence;

(ii) to be a member of an association, society or confederacy formed or maintained for the purpose of committing an offence;

(iii) to obey the orders or commands of a committee or body not lawfully constituted, or of a person not having authority by law, to give such orders or commands;

(iv) not to inform or give evidence against a person; or

(v) not to reveal or discover an association, society or confederacy formed or maintained for the purpose of committing an offence, or an offence that has been or is to be committed, or an unlawful oath or engagement that may have been administered or tendered to or taken by himself or any other person, or the import of any such oath or engagement; or

(b) takes such an oath or engagement, not being compelled to do so,

is guilty of a crime and is liable to imprisonment for 3 years.

Division 2 Terrorism

50 Definitions

In this Division:

act of terrorism means the use or threatened use of violence:

(a) to procure or attempt to procure:

(i) the alteration of;

(ii) the cessation of; or

(iii) the doing of,

any matter or thing established by a law of, or within the competence or power of, a legally constituted government or other political body (whether or not legally constituted) in the Territory, the Commonwealth or any other place;

(b) for the purpose of putting the public or a section of the public in fear; or

(c) for the purpose of preventing or dissuading the public or a section of the public from carrying out, either generally or at a particular place, an activity it is entitled to carry out.

organization means an association, society or confederacy.

unlawful organization means an organization that uses, threatens to use or advocates the use of unlawful violence in the Territory to achieve its ends.

violence means violence of a kind that causes, or is likely to cause, the death of, or serious harm to, a person.

51 Membership of unlawful organization

(1) Any person who, knowing an organization to be an unlawful organization:

(a) belongs or professes to belong to it;

(b) solicits or invites financial or other support for it or knowingly makes or receives a contribution of money or other property to or for its resources; or

(c) arranges or assists in the arrangement or management of or addresses a meeting of 3 or more persons knowing that the meeting is to support or further the activities of that unlawful

organization or is to be addressed by a person belonging or professing to belong to that unlawful organization,

is guilty of a crime and is liable to imprisonment for 2 years.

(2) The court by or before which a person is found guilty of a crime defined by this section may order the forfeiture to the Crown of any money or other property that, at the time of the offence, he had in his possession or under his control for the use or benefit of the unlawful organization.

52 Evidence of knowledge of unlawfulness

Proof of the fact that a person has belonged to an unlawful organization for 28 days or was a member of any committee of it is evidence that he knew it to be an unlawful organization.

53 Display of support for unlawful organization

Any person who, knowing an organization to be an unlawful organization, in a public place, or in any other place with the intention that it can be seen by persons in a public place:

(a) wears an item of dress; or

(b) wears, carries or displays a sign or article,

in such a way or in such circumstances that it can reasonably be inferred he is a member or supporter of an unlawful organization, is guilty of an offence and is liable to imprisonment for 6 months.

54 Terrorism

Any person who commits an act of terrorism is guilty of a crime and is liable to imprisonment for life.

55 Contribution towards acts of terrorism

(1) Any person who obtains for himself or another or supplies anything with the intention that it be used, or knowing that it is intended to be used, for or in connection with the preparation or commission of an act of terrorism is guilty of a crime and is liable to imprisonment for 10 years.

(2) Any court by or before which a person is found guilty of a crime defined by this section may order the forfeiture to the Crown of any property that, at the time of the crime:

(a) he had in his possession or under his control; and

(b) he intended should be used for or in connection with the preparation or commission of an act of terrorism.

Division 3 Offences against the Executive and Legislative power

56 Interference with Administrator or Minister

Any person who does an act with the intention of interfering with the free exercise by the Administrator or a Minister of the Crown of a duty or an authority of his office is guilty of a crime and is liable to imprisonment for 7 years.

57 Interference with Legislative Assembly

Any person who, by force or deception, or by threat or intimidation of any kind, interferes with the free exercise by the Legislative Assembly of its authority is guilty of a crime and is liable to imprisonment for 7 years.

58 Influencing Legislative Assembly member

Any person who, directly or indirectly, by force, deception, threat or intimidation of any kind, influences a member of the Legislative Assembly in the exercise of his duty or authority as a member of, or induces him to absent himself from, the Legislative Assembly or a committee of the Legislative Assembly, is guilty of a crime and is liable to imprisonment for 7 years.

59 Bribery of Legislative Assembly member

Any person who, in order to influence a member of the Legislative Assembly in the exercise of his duty or authority as a member, or in order to induce him to absent himself from the Legislative Assembly or a committee of the Legislative Assembly, gives, confers or procures, or promises or offers to give, confer or procure, property or a benefit of any kind to, upon or for the member or another, is guilty of a crime and is liable to imprisonment for 7 years.

60 Legislative Assembly member receiving bribe

Any person who, being a member of the Legislative Assembly, solicits, receives or obtains, or agrees to receive or obtain, property or a benefit of any kind for himself or another, upon the understanding that the exercise by the member of his duty or authority as a member shall be in any way influenced or affected, is guilty of a crime and is liable to imprisonment for 7 years.

61 Disturbing the Legislative Assembly

Any person who intentionally:

(a) disturbs the Legislative Assembly while it is in session; or

(b) engages in conduct in the immediate view and presence of the Legislative Assembly while it is in session with the intention of interrupting its proceedings or impairing the respect due to its authority,

is guilty of a crime and is liable to imprisonment for 3 years.

62 Going armed to Legislative Assembly

Any person who, without lawful excuse, being armed with a firearm or other dangerous or offensive weapon, enters or is found within the precincts of the Legislative Assembly is guilty of a crime and is liable to imprisonment for 3 years.

Division 4 Unlawful assemblies: breaches of the peace

63 Interpretation

(1) When 3 or more persons, with intent to carry out some common purpose, assemble in such a manner or, being assembled, conduct themselves in such a manner as to cause persons in the neighbourhood to fear on reasonable grounds that the persons so assembled will tumultuously disturb the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons tumultuously to disturb the peace, they are an unlawful assembly.

(2) It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in such a manner as aforesaid.

(3) An assembly of 3 or more persons who assemble for the purpose of protecting the dwelling-house of any one of them against persons threatening to enter it in order to commit an offence therein is not an unlawful assembly.

(4) When an unlawful assembly has begun to act in so tumultuous a manner as to disturb the peace, the assembly is called a riot and the persons assembled are said to be riotously assembled.

64 Punishment of unlawful assembly

Any person who takes part in an unlawful assembly is guilty of a crime and is liable to imprisonment for one year.

65 Punishment of riot

Any person who takes part in a riot is guilty of an offence and is liable to imprisonment for 3 years.

66 Offences relating to riots

(1) A person is guilty of an offence if:

(a) the person is one of 12 or more people who are riotously assembled; and

(b) a police officer orally orders those people to disperse immediately; and

(c) the person:

(i) fails to comply with the order as soon as the circumstances permit; and

(ii) continues to assemble with people riotously.

Maximum penalty: Imprisonment for 14 years.

(2) A person is guilty of an offence if:

(a) the person engages in conduct that involves a violent act; and

(b) the conduct results in the prevention of a police officer from orally ordering the immediate dispersal of 12 or more people who are riotously assembled; and

(c) one of the following subparagraphs applies:

(i) the person engages in the conduct intending or knowing that it involves a violent act and has the result mentioned in paragraph (b);

(ii) the person is reckless as to whether the conduct involves a violent act and has that result.

Maximum penalty: Imprisonment for 14 years.

(3) A person is guilty of an offence if:

(a) the person is one of 12 or more people who are riotously assembled; and

(b) a police officer is prevented from orally ordering the immediate dispersal of those people; and

(c) the person, knowing about the prevention of the making of the oral order, continues to assemble with people riotously.

Maximum penalty: Imprisonment for 14 years.

(4) A person is guilty of an offence if the person:

(a) is one of 12 or more people who are riotously assembled; and

(b) unlawfully damages property while the people are so assembled.

Maximum penalty: Imprisonment for 14 years.

(5) To avoid doubt, an offence against subsection (1), (2), (3) or (4), may be committed in private or public places.

(6) In this section:

conduct that involves a violent act includes:

(a) conduct capable of causing injury to a person or damage to property (whether or not it actually causes such injury or damage); and

(b) a threat to engage in such conduct.

69 Going armed in public

Any person who goes armed in public without lawful occasion in such a manner as to cause fear to a person of reasonable firmness and courage is guilty of an offence and is liable to imprisonment for 3 years.

70 Challenge to a fight likely to cause death or serious harm

Any person who challenges another to a fight of such a nature that, if it should occur, death or serious harm is likely to result or attempts to provoke another to such a fight or attempts to provoke any person to challenge another to such a fight, is guilty of an offence and is liable to imprisonment for 3 years.

Division 5 Offences against political liberty

71 Interfering with political liberty

(1) Any person who by violence, or by threats or intimidation of any kind, hinders or interferes with the free exercise of any political right by another person is guilty of an offence and is liable to imprisonment for 2 years.

(2) If the offender is a public officer and commits the offence in abuse of his authority as such an officer he is liable to imprisonment for 3 years.

Division 6 Piracy

72 Definitions

In this Division:

act of piracy means an act on the high seas (other than an act of war committed under the authority of the Commonwealth or the lawful government of a foreign state):

(a) that, if committed in the Territory, would constitute robbery;

(b) of boarding a ship against the wishes or without the knowledge of the master for the purpose of committing thereon, or in fact committing thereon, an act that, if committed in the Territory, would constitute an offence against section 156, 181, 192, 194, 195, 202 or 239;

(c) of stealing a ship or directly or indirectly taking control of a ship against the wishes of the master;

(d) of confining the master of a ship against his will; or

(e) of a person on board a ship intentionally disobeying a lawful direction of the master given for the purpose of ensuring the safety of the ship, the crew or the passengers,

provided, however, a person shall not be regarded as having committed an act of piracy by reason only of his having taken control of a ship against the wishes of the master where the master himself had control of the ship as a result of an act of piracy and where the person is a member of the armed forces of, or is acting with the authority of, the Commonwealth or the lawful government of a foreign state.

master means the person for the time being in control of the ship, whether or not that control was lawfully obtained.

pirate means a person who commits an act of piracy.

73 Punishment of piracy

Any person who commits an act of piracy is guilty of an offence and is liable to imprisonment for 20 years; and a person who has committed an act of piracy out of the Territory and who comes into the Territory is, by so coming into the Territory, guilty of an offence

and is liable to imprisonment for 20 years.

74 Trading with pirates

Any person who trades with or supplies ammunition, provisions or stores to a pirate knowing him to be a pirate is guilty of an offence and is liable to imprisonment for 5 years.

75 Fitting out ship for piracy

Any person who builds or fits out a ship with the intention that it shall be used or with the knowledge that it is intended to be used for or in connection with an act of piracy is guilty of an offence and is liable to imprisonment for 5 years.

Part IV Offences against the administration of law and justice and against public authority

Division 1 Disclosure of confidential information and corruption and abuse of office

Subdivision 1 Interpretation and preliminary matters

75A Definitions

In this Part:

benefit, see section 75B.

improper, see section 75C.

obtain includes to get or receive.

public officer, see section 4 of the *Independent Commissioner Against Corruption Act 2017*.

75B Meaning of *benefit*

(1) ***Benefit*** means a benefit of any kind, including a non-pecuniary benefit.

(2) For this Part:

(a) a benefit is taken to be requested by a person:

(i) whether the benefit is a current benefit or a promise of a future benefit; and

(ii) whether the benefit is to be received by the person or another person; and

(b) a benefit is taken to be obtained by a person:

(i) whether the benefit is a current benefit or a promise of a future benefit; and

(ii) whether the benefit is received by the person or another person; and

(c) a benefit is taken to be offered by a person to a public officer:

(i) whether the benefit is a current benefit or the promise of a future benefit; and

(ii) whether the benefit is to be received by the public officer or another person; and

(d) a benefit is taken to be given by a person to a public officer:

(i) whether the benefit is a current benefit or the promise of a future benefit; and

(ii) whether the benefit is received by the public officer or another person.

75C Improper conduct

(1) A person's conduct is ***improper*** if the conduct, in the circumstances, warrants criminal sanction.

(2) The finder of fact must find the conduct improper unless:

(a) the finder of fact is satisfied that:

(i) the conduct is trivial; or

(ii) the conduct has caused only minimal damage to the public interest; and

(b) the finder of fact is satisfied that the conduct, in the circumstances, does not warrant criminal sanction.

(3) In deciding whether a person's conduct, in the circumstances, warrants criminal sanction, the finder of fact must have regard to the following matters:

(a) if the person is a public officer – whether the person behaved in a way reasonably expected of a public officer;

(b) if the person is not a public officer – whether the person behaved in a way reasonably expected of the person;

(c) whether the person acted in an honest and reasonable belief that the person was lawfully entitled to act in the manner the person acted in the conduct being considered;

(d) the seriousness of the conduct and any result of the conduct;

(e) whether the conduct occurred:

(i) as an isolated incident; or

(ii) as part of repeated similar conduct; or

(iii) as part of a course of conduct.

75D Dismissal of trivial case

If, in any proceedings for an offence under this Part, the court considers that the offence is of a trivial or merely technical nature, the court may in its discretion dismiss the case.

Subdivision 2 Offences

76 Disclosure of confidential information

(1) A person commits an offence if:

(a) the person:

(i) is a public officer who obtains information because of the officer's position; or

(ii) was a public officer who obtained information because of the person's position as a public officer; and

(b) the information is confidential information and the person has knowledge of that circumstance; and

(c) the person intentionally engages in conduct; and

(d) the conduct is improper; and

(e) the conduct results in the disclosure of the information and the person is reckless in relation to the result.

Maximum penalty: Imprisonment for 3 years.

(2) Strict liability applies to subsection (1)(a).

(3) Absolute liability applies to subsection (1)(d).

(4) A person commits an offence if:

(a) the person:

(i) is a public officer who obtains information because of the officer's position; or

(ii) was a public officer who obtained information because of the person's position as a public officer; and

(b) the information is confidential information and the person has knowledge of that circumstance; and

(c) the person intentionally engages in conduct; and

(d) the conduct is improper; and

(e) the conduct results in the disclosure of the information and the person is reckless in relation to the result; and

(f) the improper conduct is engaged in with the intention of gaining a benefit.

Maximum penalty: Imprisonment for 5 years.

(5) Strict liability applies to subsection (4)(a).

(6) Absolute liability applies to subsection (4)(d).

77 Corruption

(1) A public officer commits an offence if:

(a) the officer intentionally requests or knowingly obtains a benefit; and

(b) the officer knows the benefit is:

(i) an inducement to influence the officer's performance of the officer's powers or functions; or

(ii) a reward for the officer having performed the officer's powers or functions in a particular way or for a particular result; and

(c) the conduct mentioned in paragraph (a) is improper.

Maximum penalty: Imprisonment for 10 years.

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

(3) A person commits an offence if:

(a) the person intentionally offers or gives a benefit to another person; and

(b) the person offered or given the benefit is a public officer and the person offering or giving the benefit is reckless in relation to that circumstance; and

(c) the person offering or giving the benefit does so with the intention that the benefit is:

(i) an inducement to influence the officer's performance of the officer's powers or functions; or

(ii) a reward for the person; and

(d) the conduct mentioned in paragraph (a) is improper.

Maximum penalty: Imprisonment for 10 years.

(4) Absolute liability applies to subsection (3)(d).

78 Other corrupting benefits

(1) A public officer commits an offence if:

(a) the officer intentionally requests or knowingly obtains a benefit; and

(b) the officer knows the benefit would tend to:

(i) be an inducement to influence the officer's performance of the officer's powers or functions; or

(ii) be a reward for the officer; and

(c) the conduct mentioned in paragraph (a) is improper.

Maximum penalty: Imprisonment for 5 years.

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

(3) A person commits an offence if:

(a) the person intentionally offers or gives a benefit to another person; and

(b) the person offered or given the benefit is a public officer and the person offering or giving the benefit is reckless in relation to that circumstance; and

(c) the person offering or giving the benefit knows the benefit would tend to:

(i) be an inducement to influence the officer's performance of the officer's powers or functions; or

(ii) be a reward for the officer.

(d) the conduct mentioned in paragraph (a) is improper.

Maximum penalty: Imprisonment for 5 years.

(4) Absolute liability applies to subsection (3)(d).

79 Advancing secret personal interests

(1) A public officer who is a public sector employee commits an offence if:

(a) the officer knowingly holds a private interest; and

(b) the officer would be able to exercise the officer's duties or functions as an officer in a manner that substantially affects the private interest and the officer is reckless in relation to that circumstance; and

(c) the officer had a reasonable opportunity to disclose the private interest to an appropriate person; and

(d) the officer fails to disclose the private interest to an appropriate person and is reckless in relation to that failure; and

(e) the conduct mentioned in paragraph (d) is improper.

Maximum penalty: Imprisonment for 2 years.

(2) Strict liability applies to subsection (1)(c).

(3) Absolute liability applies to subsection (1)(e).

(4) A public officer commits an offence if:

(a) the officer knowingly holds a private interest; and

(b) the officer:

(i) intentionally exercises the officer's duties or functions as a public officer in a manner that materially affects the private interest; and

(ii) obtains a benefit as a result of the conduct mentioned in subparagraph (i); and

(iii) is reckless in relation to that result; and

(c) the officer fails to disclose the private interest to an appropriate person and is reckless in relation to that failure; and

(d) the conduct mentioned in paragraphs (b) and (c) is improper.

Maximum penalty: Imprisonment for 7 years.

Examples for subsection (4)(b)

(a) the officer influences the performance or management of, or influences the decision whether to enter into or terminate, a contract or agreement made on account of the public sector that affects the value of a business in which the officer is a partner; or

(b) the officer influences a decision to refuse a licence to a business that is a competitor with a business which owes the officer money.

(5) Absolute liability applies to subsection (4)(d).

(6) This section does not apply to a person who is a public officer by the sole reason of being a member, officer or employee of a public body mentioned in section 16(1)(l) of the *Independent Commissioner Against Corruption Act 2017*.

(7) In this section:

appropriate person means one of the following:

(a) for a public officer who is a public sector employee – the Chief Executive Officer of the Agency in, or in relation to, which the public officer is employed or engaged;

(b) for a public officer who is not a public sector employee or a Chief Executive Officer – the Chief Executive Officer of the Agency in, or in relation to, which the public officer is employed or engaged;

(c) for a public officer who holds an office established under an Act and is not a public sector employee – the minister administering that Act;

(d) for a public officer mentioned in section 16(2)(f) of the *Independent Commissioner Against Corruption Act 2017* – the person mentioned in section 16(2)(a) to (e) of that Act by whom, or on behalf of whom, the public officer is engaged;

(e) for a public officer who is a Chief Executive Officer of an Agency – the minister responsible for that Agency;

(f) for a minister other than the Chief Minister – the Chief Minister;

(g) for the Chief Minister – the Administrator;

(h) for a member of the Legislative Assembly other than the Speaker – the Speaker;

(i) for the Speaker – the Deputy Speaker;

(j) for a police officer other than the Commissioner of Police – the Commissioner of Police;

(k) for the Chief Justice – the next most senior Supreme Court Judge;

(l) for the Chief Judge – the Chief Justice;

(m) for any other Local Court Judge – the Chief Judge;

(n) for the President of the Civil and Administrative Tribunal (the ***Tribunal***) – the Chief Judge;

(o) for any member of the Tribunal who is a judicial officer – the Chief Judge;

(p) for any other member of the Tribunal – the President of the Tribunal;

(q) for the Territory Coroner – the Chief Judge;

(r) for the Deputy Coroner – the Territory Coroner;

(s) for a public officer who is an employee of a local government council other than the CEO (as defined in section 3 of the *Local Government Act 2008*) of that council – the CEO of that council;

(t) for the CEO of a local government council – the principal member (as mentioned in section 42 of the *Local Government Act 2008*) of that council;

(u) for a member of a local government council other than the principal member – the principal member;

(v) for the principal member of a local government council – the CEO of that council.

private interest means a legal or financial interest that is held directly or indirectly.

80 Abuse of office – dishonesty

(1) A public officer commits an offence if:

(a) the officer:

(i) intentionally provides, certifies or approves a document that is false in a material particular; or

(ii) intentionally modifies a document so that it is false in a material particular; and

(b) the material particular mentioned in paragraph (a) relates to either of the following circumstances and the officer has knowledge of that circumstance:

(i) the expenditure of public money;

(ii) the rights of a person; and

(c) the conduct mentioned in paragraph (a) is improper.

(2) For subsection (1)(b), a material particular relates to the expenditure of public money if it relates to one or more of the following:

(a) remuneration payable, or claimed to be payable, to any person;

(b) payment of money;

(c) delivery of goods or services;

(d) records or documents made for any accounting purposes, financial purpose or other similar purpose.

Maximum penalty: Imprisonment for 3 years.

(3) Absolute liability applies to subsection (1)(c).

Note for section 80

If false information is provided for the purpose of gain to the public officer, the offence of false accounting under section 233 may be applicable.

81 Abuse of office – arbitrary and prejudicial conduct

(1) A public officer commits an offence if:

(a) the officer intentionally engages in conduct; and

(b) the conduct is intentionally arbitrary or an abuse of process; and

(c) the conduct is prejudicial to the rights of another person and the officer is reckless in relation to that circumstance; and

(d) the conduct is improper.

Maximum penalty: Imprisonment for 2 years.

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

(3) A public officer commits an offence if:

(a) the officer intentionally engages in conduct; and

(b) the conduct is intentionally arbitrary or an abuse of process; and

(c) the conduct is prejudicial to the rights of another person and the officer is reckless in relation to that circumstance; and

(d) the conduct is improper; and

(e) the conduct is engaged in with the intention of obtaining a benefit.

Maximum penalty: Imprisonment for 3 years.

(4) Absolute liability applies to subsection (3)(d).

83 Corruption of surveyor or valuer

Any person who, being duly appointed under any statute to be a surveyor or valuer for determining the compensation to be paid to any person for land compulsorily taken from him under the authority of any statute, or for injury done to any land under the authority of any statute:

(a) acts as such surveyor or valuer while he has, to his knowledge, an interest in the land in question; or

(b) executes unfaithfully, dishonestly or with partiality the duty of surveying the land or making a valuation of the land or of the extent of the injury,

is guilty of an offence and is liable to imprisonment for 3 years.

85 False assumption of authority

Any person who:

(a) not being a justice of the peace, assumes to act as a justice of the peace; or

(b) without authority, assumes to act as a person having authority by law to administer an oath, witness an affidavit or declaration or to do any other act of a public nature that can only be done by persons authorized by law to do so; or

(c) represents himself to be a person authorized by law to sign a document testifying to the contents of any register or record kept by lawful authority, or testifying to any fact or event, and signs such document as being so authorized when he is not and knows he is not, in fact, so authorized,

is guilty of an offence and is liable to imprisonment for 3 years.

86 Personating public officers

Any person who:

(a) personates any person employed in the public service on an occasion when the latter is required to do any act or attend in any place by virtue of his employment; or

(b) falsely represents himself to be a person employed in the public service and assumes to do any act or to attend in any place for the purpose of doing any act by virtue of such employment,

is guilty of an offence and is liable to imprisonment for 3 years.

86A Alternative verdicts

(1) This section applies if, in a proceeding against a person charged with an offence against section 77(1) (the ***prosecuted offence***), the trier of fact:

(a) is not satisfied beyond reasonable doubt that the person committed an offence against section 77(1); but

(b) is satisfied beyond reasonable doubt that the person committed any offence in this Division (an ***alternative offence***).

(2) The trier of fact may find the person not guilty of the prosecuted offence but guilty of the alternative offence.

Division 3 Corrupt and improper practices at elections

87 Undue influence

Any person who:

(a) uses or threatens to use any force or restraint, or does or threatens to do any temporal or spiritual injury, or causes or threatens to cause any detriment of any kind, to an elector in order to induce him to vote in a particular manner or to refrain from voting at an election or on account of his having voted at an election; or

(b) by force or fraud prevents or obstructs the free exercise of the franchise of an elector, or by any such means compels or induces an elector to vote in a particular manner or to refrain from voting at an election,

is guilty of an offence and is liable to imprisonment for 3 years.

88 Bribery

Any person who:

(a) gives, confers or procures, or promises or offers to give or confer or to procure or attempt to procure, to, upon or for any person any property or benefit of any kind on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by an elector at an election in the capacity of an elector or in order to induce any person to endeavour to procure the return of any person at an

election, or the vote of any elector at an election;

(b) being an elector, asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him at an election in the capacity of an elector;

(c) asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of a promise made by him or any other person to endeavour to procure the return of any person at an election, or the vote of any person at an election; or

(d) advances or pays any money to or for the benefit of any other person with the intent that such money shall be applied for any of the purposes mentioned in paragraph (a), (b) or (c), or in discharge or repayment of money wholly or in part applied for any such purpose,

is guilty of an offence and is liable to imprisonment for 3 years.

89 Further penalty for corrupt practices

(1) Any person found guilty of an offence against section 87 or 88 with respect to an election of the Legislative Assembly becomes incapable for 3 years from the date of the finding of guilt of voting at any such election or of holding any judicial office and, if he holds any such office, the office is vacated.

(2) He also becomes incapable for the like period of being elected to or of sitting in the Legislative Assembly; and, if at the time of the finding of guilt he is a member of it, his seat is vacated.

(3) Any person found guilty of such an offence committed with respect to a local government election becomes incapable, for 2 years from the date of the finding of guilt, of holding any local government office and, if he holds any such office, the office is vacated.

90 Illegal practices

Any person who:

(a) being prohibited by law from voting at an election and knowing that he is so prohibited votes at the election;

(b) procures any person who is, and whom he knows to be, prohibited from voting at an election to vote at the election;

(c) before or during an election, and for the purpose of promoting or procuring the choice of any candidate at the election, knowingly publishes a false statement of the withdrawal of another candidate at the election;

(d) before or during an election, and for the purpose of affecting the return of a candidate at the election, knowingly publishes a false statement of fact respecting the personal character or conduct of the candidate;

(e) being a candidate at an election withdraws from being a candidate in consideration of a payment or promise of payment; or

(f) being a candidate or the agent of a candidate at an election corruptly procures any other person to withdraw from being a candidate at the election in consideration of any payment or promise of payment,

is guilty of an offence and is liable to imprisonment for 3 years.

91 Placing false ballot-papers in ballot-boxes

Any person who places in a ballot-box a ballot-paper that has not been lawfully handed to and marked by an elector is guilty of an offence and is liable to imprisonment for 7 years.

Division 4 Selling and trafficking in offices

92 Bargaining for offices in public service

Any person who:

(a) corruptly asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him or any other person with regard to the appointment or contemplated appointment of any person to any office or employment in the Public Sector, or with regard to any application by any person for employment in the Public Sector; or

(b) corruptly gives, confers or procures, or promises or offers to give or confer or to procure or attempt to procure, to, upon or for any person, any property or benefit of any kind on account of any such act or omission,

is guilty of an offence and is liable to imprisonment for 3 years.

Division 5 Offences relating to the administration of justice

93 Judicial corruption

(1) Any person who:

(a) being the holder of a judicial office, corruptly asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in his judicial capacity; or

(b) corruptly gives, confers or procures, or promises or offers to give or confer or to procure or attempt to procure, to, upon or for any person holding a judicial office, or to, upon or for any other person, any property or benefit of any kind on account of any such act or omission on the part of the person holding the judicial office,

is guilty of an offence and is liable to imprisonment for 14 years.

(2) In subsection (1), ***holder of a judicial office*** means a person who by himself or with another or others conducts judicial proceedings.

(3) A prosecution of an offence against subsection (1) cannot be begun except by the direction of a Crown Law Officer.

94 Official corruption not judicial but relating to offences

Any person who:

(a) being a justice of the peace not acting judicially, or being a person employed in the public service in any capacity not judicial for the prosecution, detention or punishment of offenders, corruptly asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him with a view to corrupt or improper interference with the due administration of justice, or the procurement or facilitation of the commission of any offence, or the protection of any offender or intending offender from detection or punishment; or

(b) corruptly gives, confers or procures, or promises or offers to give or confer or to procure or attempt to procure, to, upon or for any such person, or to, upon or for any other person, any property or benefit of any kind on account of any such act or

omission on the part of the justice of the peace or other person so employed,

is guilty of an offence and is liable to imprisonment for 14 years.

95 Corrupting or threatening jurors

Any person who:

(a) attempts by menaces of any kind, or benefits or promises of benefit of any kind, or by other corrupt means, to influence any person, whether a particular person or not, in his conduct as a juror in any judicial proceedings, whether he has taken the oath as a juror or not; or

(b) threatens to do any injury or cause any detriment of any kind to any person on account of anything done by him as a juror in any judicial proceedings; or

(c) accepts any benefit or promise of benefit on account of anything to be done by him as a juror in any judicial proceedings, whether he has taken the oath as a juror or not, or on account of anything already done by him as a juror in any judicial proceedings,

is guilty of an offence and is liable to imprisonment for 7 years.

96 Perjury

(1) Any person who in any judicial proceedings, or for the purpose of instituting any judicial proceedings, knowingly gives false testimony touching any matter that is material to any question then depending in the proceedings, or intended to be raised in the proceedings, is guilty of an offence that is called perjury.

(2) It is immaterial whether the testimony is given on oath or under any other sanction authorized by law.

(3) The forms and ceremonies used in administering the oath or in otherwise binding the person giving the testimony to speak the truth are immaterial if he assents to the forms and ceremonies actually used.

(4) It is immaterial whether the false testimony is given orally or in writing.

(5) It is immaterial whether the court or tribunal is properly constituted, or is held in the proper place or not, if it actually acts as a court or tribunal in the proceedings in which the testimony is given.

(6) It is immaterial whether the person who gives the testimony is a competent witness or not, or whether the testimony is admissible in the proceedings or not.

97 Punishment of perjury

(1) Any person who commits perjury is guilty of an offence and is liable to imprisonment for 14 years.

(2) If the offender commits the offence in order to procure the finding of guilt of another person for an offence punishable with imprisonment for life, he is liable to imprisonment for life.

98 Evidence on charge of perjury

A person cannot be found guilty of committing perjury or of counselling or procuring the commission of perjury upon the uncorroborated testimony of one witness.

99 Fabricating evidence

Any person who, with intent to mislead in any judicial proceedings:

(a) fabricates evidence by any means other than perjury or counselling or procuring the commission of perjury; or

(b) knowingly makes use of such fabricated evidence,

is guilty of an offence and is liable to imprisonment for 7 years.

100 Corruption of witnesses

Any person who:

(a) gives, confers or procures, or promises or offers to give or confer or to procure or attempt to procure, any property or benefit of any kind to, upon or for any person upon any agreement or understanding that any person called or to be called as a witness in any judicial proceedings shall give false testimony or withhold true testimony;

(b) attempts by any other means to induce a person called or to be called as a witness in any judicial proceedings to give false testimony or to withhold true testimony; or

(c) asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person upon any agreement or understanding that any person shall, as a witness in any judicial proceedings, give false testimony or withhold true testimony,

is guilty of an offence and is liable to imprisonment for 7 years.

101 Deceiving witnesses

Any person who practises any fraud or deceit on, or knowingly makes or exhibits any false statement, representation or writing to, any person called or to be called as a witness in any judicial proceedings with intent to affect the testimony of such person as a witness, is guilty of an offence and is liable to imprisonment for 3 years.

102 Destroying evidence

Any person who, knowing that any book, document, tape recording, photograph or other thing of any kind is or may be required in evidence in judicial proceedings, destroys it or renders it illegible or undecipherable or incapable of identification with intent thereby to prevent it from being used in evidence, is guilty of an offence and is liable to imprisonment for 3 years.

103 Preventing witnesses from attending

Any person who prevents or attempts to prevent any person whom he knows has been duly summoned to attend as a witness before any court or tribunal from attending as a witness, or from producing anything in evidence pursuant to a subpoena or summons, is guilty of an offence and is liable to imprisonment for 3 years.

103A Threats or reprisals relating to persons involved in criminal investigations or judicial proceedings or against public officers

(1) A person must not do any of the following with the intention of inducing a person who is, or may be, involved in a criminal investigation or judicial proceedings, to act or not to act in a way that might influence the outcome of the investigation or proceedings:

(a) stalk a person within the meaning of section 189;

(b) cause or procure any physical injury to a person or property;

(c) threaten or attempt to cause or procure any physical injury to a person or property;

(d) cause detriment of any kind to a person.

Fault elements:

The person:

(a) intentionally does an act mentioned in paragraph (a), (b), (c) or (d); and

(b) intends to induce a person to act or not to act in a way that might influence the outcome of a criminal investigation or judicial proceedings; and

(c) knows, or is reckless as to whether, the person is or may be involved in the investigation or proceedings.

Maximum penalty: Imprisonment for 7 years.

(2) A person must not do any of the following on account of anything said or done by a person involved in a criminal investigation or judicial proceedings in good faith in the conduct of the investigation or proceedings:

(a) stalk a person within the meaning of section 189;

(b) cause or procure any physical injury to a person or property;

(c) threaten or attempt to cause or procure any physical injury to a person or property;

(d) cause detriment of any kind to a person.

Fault elements:

The person:

(a) intentionally does an act mentioned in paragraph (a), (b), (c) or (d); and

(b) has knowledge of the thing said or done by a person involved in a criminal investigation or judicial proceedings in the conduct of the investigation or proceedings.

Maximum penalty: Imprisonment for 7 years.

(3) A person must not do any of the following with the intention of influencing the manner in which a public officer discharges or performs his or her official duties or functions:

(a) stalk a person within the meaning of section 189;

(b) cause or procure any physical injury to a person or property;

(c) threaten or attempt to cause or procure any physical injury to a person or property;

(d) cause detriment of any kind to a person.

Fault elements:

The person:

(a) intentionally does an act mentioned in paragraph (a), (b), (c) or (d); and

(b) intends to influence the manner in which a public officer discharges or performs his or her official duties or functions; and

(c) knows, or is reckless as to whether, the person is a public officer.

Maximum penalty: Imprisonment for 7 years.

(4) A person must not do any of the following on account of anything said or done by a public officer in good faith in the discharge or performance, or purported discharge or performance, of his or her official duties or functions:

(a) stalk a person within the meaning of section 189;

(b) cause or procure any physical injury to a person or property;

(c) threaten or attempt to cause or procure any physical injury to a person or property;

(d) cause detriment of any kind to a person.

Fault elements:

The person:

(a) intentionally does an act mentioned in paragraph (a), (b), (c) or (d); and

(b) has knowledge of the thing said or done by a public officer in good faith in the discharge or performance or purported discharge or performance of his or her official duties or functions.

Maximum penalty: Imprisonment for 7 years.

(5) For this section:

(a) a person is ***involved in a criminal investigation*** if the person is involved in such an investigation as a witness, victim or legal practitioner or is otherwise assisting police with their inquiries; and

(b) a person is ***involved in judicial proceedings***, whether the proceedings are in progress or are proceedings that are to be, or may be, instituted at a later time, if the person is:

(i) a judicial officer or other officer at the proceedings; or

(ii) involved in the proceedings as a witness, juror (whether the person has taken the oath as a juror or not) or legal practitioner.

(6) In this section:

public officer includes the following:

(a) a person appointed to public office by the Administrator or a minister;

(b) a judicial officer;

(c) a member of the Legislative Assembly;

(d) a public sector employee;

(e) a police officer;

(f) any other officer or employee of the Territory;

(g) a member of a Territory instrumentality or the governing body of a Territory instrumentality or an officer or employee of a Territory instrumentality;

(h) a member of a local government body or an officer or employee of a local government body;

(i) a person who personally performs work for the Territory, a Territory instrumentality or a local government body as a contractor or an employee of a contractor or otherwise directly or indirectly on behalf of a contractor.

Territory instrumentality means:

(a) an Agency or instrumentality of the Territory; or

(b) any body (whether or not incorporated) that is established by or under an Act and:

(i) is comprised of persons, or has a governing body comprised of persons, a majority of whom are appointed by the Administrator, a minister or an Agency or instrumentality of the Territory; or

(ii) is subject to control or direction by a minister.

104 Compounding indictable offences

(1) Any person who asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person upon any agreement or understanding that he will compound or conceal an indictable offence, or will abstain from, discontinue or delay a prosecution for an indictable offence, or will withhold any evidence thereof, is guilty of an offence.

(2) If the indictable offence is such that a person found guilty of it is liable to be sentenced to imprisonment for life, the offender is liable to imprisonment for 7 years.

(3) In any other case, the offender is liable to imprisonment for 3 years.

105 Compounding penal actions

Any person who, having brought, or under pretence of bringing, an action against another person upon a penal statute in order to obtain from him a penalty for any offence committed or alleged to have been committed by him, compounds the action without the order or consent of the court in which the action is brought or is to be brought is guilty of an offence and is liable to imprisonment for one year.

106 Delay in taking person arrested before court

Any person who, except as permitted by law, having arrested another, deliberately delays bringing him before a court to be dealt with according to law is guilty of an offence and is liable to imprisonment for 2 years.

107 Bringing fictitious action on penal statute

Any person who, in the name of a fictitious plaintiff, or in the name of a real person, but without his authority, brings an action against another person upon a penal statute for the recovery of a penalty for any offence committed or alleged to have been committed by him is guilty of an offence and is liable to imprisonment for 2 years.

108 Inserting advertisement without authority of court

Any person who, without authority, or knowing the advertisement to be false in any material particular, inserts or causes to be inserted in the *Gazette* or in any newspaper an advertisement purporting to be published under the authority of any court or tribunal is guilty of an offence and is liable to imprisonment for 2 years.

109 Attempting to pervert justice

Any person who attempts, in any way not specially defined by this Code, to obstruct, prevent, pervert or defeat the course of justice is guilty of an offence and is liable to imprisonment for 15 years.

Division 6 Escapes: rescues: obstructing officers of courts

110 Forcibly rescuing certain offenders

Any person who by force rescues or attempts to rescue from lawful custody an offender under sentence for the offence of murder or terrorism, or a person committed into the custody of the Commissioner of Correctional Services on such a charge, is guilty of an offence and is liable to imprisonment for life.

111 Aiding escape from lawful custody

Any person who:

(a) aids a person in escaping or attempting to escape from lawful custody, confinement or detention; or

(b) conveys anything or causes anything to be conveyed into a custodial correctional facility with intent to facilitate the escape of a prisoner,

is guilty of an offence and is liable to imprisonment for 7 years.

112 Escape from lawful custody

(1) Any person who:

(a) is a prisoner in lawful custody following his arrest or conviction for an offence; or

(aa) is in custody under a continuing detention order under the *Serious Sex Offenders Act 2013*; or

(b) is lawfully confined or detained otherwise than as referred to in paragraph (a);

and who escapes from such custody, confinement or detention, is guilty of an offence.

(2) If the offence upon which a person referred to in subsection (1)(a) has been arrested or convicted:

(a) is an indictable offence – the person is liable to imprisonment for 3 years; or

(b) is a summary offence – the person is liable to imprisonment for one year.

(2AA) A person who commits an offence against subsection (1)(aa) is liable to imprisonment for 3 years.

(2A) A person who commits an offence against subsection (1)(b) is liable to imprisonment for 12 months.

(3) The offender may be tried, found guilty and punished notwithstanding that at the time of his apprehension or trial the term of his original custody, confinement or detention has expired.

113 Permitting escape

Any person who, being a correctional services officer (as defined in section 16 of the *Correctional Services Act 2014*) or a police officer and being charged with the custody of a prisoner or a person under arrest upon a charge of an offence, permits him to escape from custody is guilty of an offence and is liable to imprisonment for 3 years.

114 Harbouring escaped prisoners

Any person who harbours, maintains or employs a person who is, to his knowledge, an offender under sentence by any court of the Territory, the Commonwealth or a State or another Territory of the Commonwealth involving deprivation of liberty and unlawfully at large, is guilty of an offence and is liable to imprisonment for 2 years.

115 Rescuing mentally ill persons

Any person who:

(a) rescues any person during his conveyance as a mentally ill person to a hospital or other institution for the mentally ill or to a custodial correctional facility, or rescues any person during his confinement as a mentally ill person in any such place;

(b) being in charge of a person during his conveyance as a mentally ill person to any such place permits him to escape from custody;

(c) being a superintendent of, or person employed in, any such place permits a person confined therein as a mentally ill person to escape therefrom; or

(d) conceals any such person as aforesaid who has, to his knowledge, been rescued during such conveyance or confinement or has, to his knowledge, escaped during such conveyance or from such confinement,

is guilty of an offence and is liable to imprisonment for 3 years.

116 Removing, &c., property under lawful seizure

Any person who, when any property has been attached or taken under the process or authority of any court of justice, knowingly and with intent to hinder or defeat the attachment or process, receives, removes, retains, conceals or disposes of such property is guilty of an offence and is liable to imprisonment for 3 years.

117 Obstructing officers of courts of justice

Any person who obstructs or resists any person lawfully charged with the execution of an order or warrant of any court of justice is guilty of an offence and is liable to imprisonment for 3 years.

Division 7 Miscellaneous offences against public authority

118 False statements in statements required to be under oath or solemn declaration

Any person who, on any occasion on which a person making a statement touching any matter is required by law to make it on oath or under some sanction that may by law be substituted for an oath, or is required to verify it by solemn declaration, makes a statement touching such matter that, in any material particular, is to his knowledge false and verifies it on oath or under such other sanction or by solemn declaration, is guilty of an offence and is liable to imprisonment for 7 years.

119 False declarations and statements

Any person who, on any occasion on which he or she is permitted or required by law:

(a) to make a statutory declaration or an unattested declaration as provided for in the *Oaths, Affidavits and Declarations Act 2010*; or

(b) to make a statement or declaration of any other kind before any person authorised by law to permit it to be made before him or her;

makes such a declaration or statement that, in any material particular, is to his or her knowledge false, is guilty of an offence and is liable to imprisonment for 3 years.

120 Evidence

A person cannot be found guilty of committing or counselling or procuring the commission of an offence against sections 118 and 119 upon the uncorroborated testimony of one witness.

121 Resisting public officers

Any person who in any manner obstructs or resists any public officer while engaged in the discharge or attempted discharge of the duties of his office under any statute, or obstructs or resists any person while engaged in the discharge or attempted discharge of any duty imposed on him by any statute, is guilty of an offence and is liable to imprisonment for 2 years.

122 Refusal by public officer to perform duty

Any person who, being employed in the public service or as an officer of any court or tribunal, perversely and without reasonable excuse omits or refuses to do any act that it is his duty to do by virtue of his employment is guilty of an offence and is liable to imprisonment for 2 years.

123 Neglect to aid in suppressing riot

Any person who, having reasonable notice that he is required to assist any police officer in suppressing a riot, without reasonable excuse omits to do so, is guilty of an offence and is liable to imprisonment for one year.

124 Neglect to aid in arresting offenders, &c.

Any person who, having reasonable notice that he is required to assist any police officer in arresting any person, or in preserving the peace, without reasonable excuse omits to do so, is guilty of an offence and is liable to imprisonment for one year.

Part V Acts injurious to the public in general

Division 1 Offences relating to religious worship

125 Offering violence to officiating ministers of religion

Any person who:

(a) by threats or force prevents or attempts to prevent any minister of religion from lawfully officiating in any place of religious worship, or from performing his duty in the lawful burial or cremation of the dead in any cemetery or crematorium;

(b) by threats or force obstructs or attempts to obstruct any minister of religion while so officiating or performing his duty; or

(c) assaults or, upon or under the pretence of executing any civil process, arrests any minister of religion who is engaged in or is, to the knowledge of the offender, about to engage in any of the offices or duties referred to in paragraph (a) or who is, to the knowledge of the offender, going to perform the same or returning from the performance thereof,

is guilty of an offence and is liable to imprisonment for 2 years.

Division 2 Offences against morality

Subdivision 1 Child abuse material and indecent articles

125A Interpretation

(1) In this Subdivision:

article includes any thing:

(a) that contains or embodies matter to be read or looked at;

(b) that is to be looked at;

(c) that is a record; or

(d) that can be used, either alone or as one of a set, for the production or manufacture of any thing referred to in paragraphs (a), (b) or (c),

but does not include:

(e) a film that is classified (other than as RC) under the Commonwealth Act;

(f) a publication that is classified Unrestricted, Category 1 restricted or Category 2 restricted under the Commonwealth Act;

(g) a computer game that is classified (other than as RC) under the Commonwealth Act; or

(h) a film, publication or computer game that is the subject of an exemption under Part 10 of the *Classification of Publications, Films and Computer Games Act 1985*.

child abuse material means material that depicts, describes or represents, in a manner that is likely to cause offence to a reasonable adult, a person who is a child or who appears to be a child:

(a) engaging in sexual activity;

(b) in a sexual, offensive or demeaning context; or

(c) being subjected to torture, cruelty or abuse,

but does not include:

(d) a film, publication or computer game that is classified (other than as RC) under the Commonwealth Act; or

(e) a film, publication or computer game that is the subject of an exemption under Part X of the *Classification of Publications, Films and Computer Games Act 1985*.

Classification Board means the Classification Board established under the Commonwealth Act.

classified means classified under the Commonwealth Act.

Commonwealth Act means the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth.

computer game, ***film*** and ***publication*** have the same meaning as in the Commonwealth Act.

indecent article means an article that:

(a) promotes crime or violence, or incites or instructs in matters of crime or violence; or

(b) depicts, describes or represents, in a manner that is likely to cause offence to a reasonable adult:

(i) the use of violence or coercion to compel a person to participate in, or submit to, sexual conduct;

(ii) sexual conduct with or on the body of a dead person;

(iii) the use of urine or excrement in association with degrading or dehumanising conduct or sexual conduct;

(iv) bestiality;

(v) acts of torture or the infliction of extreme violence or extreme cruelty; or

(vi) a person (whether or not engaged in sexual activity) who is a child who has not attained the age of 16 years or who looks like a child who has not attained that age.

law enforcement agency has the same meaning as in the *Criminal Records (Spent Convictions) Act 1992*.

person includes part of a person.

pornographic or abusive performance means any performance by a person:

(a) engaging in sexual activity;

(b) in a sexual, offensive or demeaning context; or

(c) being subject to torture, cruelty or abuse,

that is likely to cause offence to a reasonable adult.

publish includes:

(a) distribute, disseminate, circulate, deliver, exhibit, lend for gain, exchange, barter, sell, offer for sale, let on hire or offer to let on hire;

(b) have in possession or custody, or under control, for the purpose of doing an act referred to in paragraph (a); or

(c) print, photograph or make in any other manner (whether of the same or of a different kind or nature): for the purpose of doing such an act.

record means a gramophone record or a wire or tape, or a film, and any other thing of the same or of a different kind or nature, on which is recorded a sound or picture and from which, with the aid of a suitable apparatus, the sound or picture can be produced (whether or not it is in a distorted or altered form).

sell has the same meaning as in the *Classification of Publications, Films and Computer Games Act 1985*.

senior rank means a rank of or above the rank of Commander.

(2) A reference in this subdivision to a classification in relation to a film, publication or computer game is a reference to its classification (or, as the case may be, that it is unclassified) under the Commonwealth Act.

(3) For this subdivision, the phrase ***material that depicts, describes or represents*** includes material that contains data from which text, visual images or sound can be generated.

125AB Child abuse material and related articles may be destroyed

(1) This section applies if any of the following things are seized by a police officer:

(a) child abuse material;

(b) an article that contains child abuse material;

(c) an article that a police officer of a senior rank reasonably believes contains child abuse material.

(2) A police officer of a senior rank may authorise the forfeiture and destruction by a police officer of the thing.

(3) Subsection (2) applies whether or not a person has been charged, or is to be charged with an offence in relation to the thing.

(4) The thing may be destroyed at the place at which it was forfeited or at any other place that a police officer of a senior rank thinks fit.

(5) If the operation of this section would, apart from this subsection, result in an acquisition of property from a person otherwise than on just terms:

(a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and

(b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

125AC Article containing child abuse material may be returned

(1) If an article that contains, or is believed to contain, child abuse material is forfeited by a police officer under section 125AB, a police officer of a senior rank may authorise a police officer to return the article to the owner of the article.

(2) The authorisation must not be given unless the police officer of a senior rank is satisfied the child abuse material has been removed from the article.

125B Possession of child abuse material

(1) A person who possesses, distributes, produces, sells or offers or advertises for distribution or sale child abuse material is guilty of an offence and is liable:

(a) in the case of an individual – to imprisonment for 10 years; and

(b) in the case of a corporation – to a fine of 10 000 penalty units.

(2) Nothing in this section makes it an offence:

(a) for a member or officer of a law enforcement agency to have any child abuse material in his or her possession in the exercise or performance of a power, function or duty conferred or imposed on the member or officer by or under an Act or law; or

(b) for a person to have child abuse material in his or her possession in the exercise or performance of a power, function or duty relating to the classification of such material conferred or imposed on the person by or under an Act or law.

(3) In respect of a charge against a person of having committed an offence against this section, proof that child abuse material was at the material time in or on a place of which the person was:

(a) the occupier; or

(b) concerned in the management or control,

is evidence that the child abuse material was then in the person's possession unless it is shown that the person then neither knew nor had reason to suspect that the child abuse material was in or on that place.

(4) It is a defence to a prosecution for an offence against this section to prove that the material is being used for legitimate medical or health research purposes.

(5) In proceedings for an offence against this section, a certificate issued under section 87 of the Commonwealth Act purporting to be signed by the Director of the Classification Board (or by the Deputy Director of the Classification Board) and stating that the film, publication or computer game concerned is classified RC on the basis that it describes or depicts, in a way that is likely to cause offence to a reasonable adult, a person (whether or not engaged in sexual activity) who is a child or who looks like a child is admissible in any court of law and is prima facie evidence that the film, publication or computer game is child abuse material.

(6) A court that finds a person guilty of an offence against this section:

(a) must order the forfeiture and destruction of any child abuse material in respect of which the offence was committed; and

(b) may order the forfeiture and destruction of any other articles seized at the same time as the child abuse material in respect of which the offence was committed.

125C Publishing indecent articles

(1) A person who publishes an indecent article is guilty of an offence and is liable:

(a) in the case of an individual to imprisonment for 2 years; and

(b) in the case of a corporation to a fine of 175 penalty units.

(2) Nothing in this section makes it an offence for:

(a) a person to publish an indecent article for the purposes of an application for classification under a Commonwealth Act; or

(b) a member or officer of a law enforcement agency to publish an indecent article in the exercise or performance of a power, function or duty conferred or imposed on the member or officer by or under an Act or law.

(3) For the purposes of this section, an article may be indecent even though part of it is not indecent.

125D Criminal liability of executive officer of body corporate

(1) An executive officer of a body corporate commits an offence if the body corporate commits an offence by contravening section 125B(1), 125C(1) or 125E (a ***relevant offence***).

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

(2) An offence against subsection (1) is a regulatory offence.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the defendant:

(a) was not in a position to influence the conduct of the body corporate in relation to the contravention; or

(b) took reasonable steps to prevent the contravention; or

(c) did not know, and could not reasonably have been expected to know, that the contravention would happen.

Note for subsection (3)

A matter mentioned in subsection (3) must be proved on the balance of probabilities – see section 440.

(4) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:

(a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):

(i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;

(ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);

(iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;

(b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.

(5) Subsection (4) does not limit the matters the court may consider.

(6) This section does not affect the liability of the body corporate.

(7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.

(8) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.

(9) In this section:

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

125E Using child for production of child abuse material or pornographic or abusive performance

A person who uses, offers or procures a person who is a child or who appears to be a child for the production of child abuse material or for a pornographic or abusive performance is guilty of an offence and is liable:

(a) in the case of an individual – to imprisonment for 14 years; and

(b) in the case of a corporation – to a fine of 15 000 penalty units.

125F Court proceedings

(1) This section applies to proceedings for:

(a) an offence against section 125B or 125E; or

(b) an offence against section 125C involving an article that is indecent by virtue of paragraph (b)(vi) of the definition of ***indecent article***.

(2) For proceedings specified in subsection (1), the Court must be closed while the material that is the subject of the offence is on display.

Subdivision 2 Other offences against morality

126 Definitions

In this Subdivision:

in public means with more than one other person present or within the view of a person not a party to the act.

mentally ill or handicapped person means a person who, because of abnormality of mind, is unable to manage himself or herself or to exercise responsible behaviour.

127 Sexual intercourse or gross indecency involving child under 16 years

(1) Any person who:

(a) has sexual intercourse with; or

(b) commits any act of gross indecency upon,

a child who is under the age of 16 years is guilty of an offence and is liable to imprisonment for 16 years.

(2) If the child is of or over the age of 10 years and under the age of 16 years and the offence is committed in any of the following circumstances, the offender is liable to imprisonment for 20 years:

(a) the offender is in the company of another person;

(b) the child is (whether generally or at the time of the commission of the offence) under the care of the offender;

(c) the child has a serious physical disability;

(d) the child has a serious intellectual disability;

(e) the offender took advantage of the child being under the influence of alcohol or a drug in order to commit the offence.

(3) If the child is under the age of 10 years, the offender is liable to imprisonment for 25 years.

(4) It is a defence to a charge of an offence against this section to prove:

(a) the child was of or above the age of 14 years; and

(b) the accused person believed on reasonable grounds that the child was of or above the age of 16 years.

(5) Section 12 does not apply to the child with respect to whom an offence against this section is committed.

128 Sexual intercourse or gross indecency involving child over 16 years under special care

(1) Any adult who:

(a) has sexual intercourse with; or

(b) commits any act of gross indecency upon,

a child who is:

(c) of or over the age of 16 years; and

(d) under the person's special care,

is guilty of an offence and is liable to imprisonment for 4 years.

(2) If the child is of or over the age of 16 years and under the age of 17 years, the offender is liable to imprisonment for 8 years.

(3) For this section, a person (***the victim***) is under the special care of another person (***the offender***) if the offender:

(a) is the step-parent, guardian or foster parent of the victim;

(b) is a school teacher and the victim is a pupil of the offender;

(c) has established a personal relationship with the victim in connection with the care, instruction (for example, religious, sporting or musical instruction) or supervision (for example, supervision in the course of employment or training) of the victim;

(d) is an officer at a correctional institution at which the victim is detained; or

(e) is a health professional or other provider of health care or treatment and the victim is a patient or client of the offender.

(4) It is a defence to a charge of an offence against this section to prove that the accused person was, at the time of the alleged offence, the spouse or de facto partner of the child.

130 Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person

(1) In this section:

disability support service means a medical or therapeutic service provided to a mentally ill or handicapped person and related to the mental illness or handicap.

provider of disability support services means a person who provides a disability support service, whether or not he or she does so for remuneration or on a voluntary basis, but does not include such a person who himself or herself at the time of providing a disability support service is a mentally ill or handicapped person.

(2) Any person who, being a provider of disability support services to a mentally ill or handicapped person:

(a) has sexual intercourse with; or

(b) commits any act of gross indecency upon,

that person is guilty of an offence and is liable to imprisonment for 8 years.

(3) It is a defence to a charge of an offence against subsection (2) to prove that the accused person:

(a) was, at the time of the alleged offence, the spouse or de facto partner of the mentally ill or handicapped person; or

(b) did not know that the person was a mentally ill or handicapped person.

(3A) Any person who, being a provider of disability support services to a mentally ill or handicapped child who is under the age of 16 years:

(a) has sexual intercourse with; or

(b) commits any act of gross indecency upon,

the child is guilty of an offence and is liable to imprisonment for 20 years.

(3B) If the child is under the age of 10 years, the offender is liable to imprisonment for 25 years.

(3C) It is a defence to a charge of an offence against subsection (3A) to prove:

(a) the child was of or above the age of 14 years;

(b) the accused person believed on reasonable grounds that the child was of or above the age of 16 years; and

(c) the accused person did not know the child was mentally ill or handicapped.

(4) Section 12 does not apply to the person with respect to whom an offence against this section is committed.

131 Attempts to procure child under 16 years

(1) Any person who attempts to procure a child who is under the age of 16 years to:

(a) have sexual intercourse either in the Territory or elsewhere; or

(b) commit, perform or engage in any act of gross indecency,

is guilty of an offence and is liable to imprisonment for 3 years.

(2) If the offender is an adult he is liable to imprisonment for 5 years.

(3) It is a defence to a charge of an offence against this section to prove:

(a) the child was of or above the age of 14 years; and

(b) the accused person believed on reasonable grounds that the child was of or above the age of 16 years.

131A Sexual relationship with child

(1) For the purposes of this section, ***offence of a sexual nature*** means an offence against section 127, 128, 130, 132, 134, 188(1) and (2)(k), 192 or 192B.

(2) Any adult who maintains a relationship of a sexual nature with a child under the age of 16 years is guilty of an offence and is liable to imprisonment for 7 years.

(3) A person shall not be convicted of an offence against this section unless it is shown that the offender, as an adult, has, during the period in which it is alleged that he maintained the relationship in issue with the child, done an act defined to constitute an offence of a sexual nature in relation to the child on 3 or more occasions, and evidence of the doing of any such act shall be admissible and probative of the maintenance of the relationship notwithstanding that the evidence does not disclose the dates or the exact circumstances of those occasions.

(4) If in the course of the relationship of a sexual nature the offender committed an offence of a sexual nature for which the offender is liable to imprisonment for at least 7 years but not more than 20 years, other than an offence against section 192(8) or 192B, the offender is liable in respect of maintaining the relationship to imprisonment for 20 years.

(5) If in the course of the relationship of a sexual nature the offender committed:

(a) an offence against section 192(8) or 192B; or

(b) an offence of a sexual nature for which the offender is liable to imprisonment for more than 20 years,

the offender is liable in respect of maintaining the relationship to imprisonment for life.

(6) It is a defence to a charge of an offence against this section to prove:

(a) the child was of or above the age of 14 years; and

(b) the accused person believed on reasonable grounds that the child was of or above the age of 16 years.

(7) A person may be charged in one indictment with an offence against this section and with any other offence of a sexual nature alleged to have been committed by him in the course of the relationship in issue in the first-mentioned offence and he may be convicted of and punished for any or all of the offences so charged.

(8) Where the offender is sentenced to a term of imprisonment for the offence against this section and a term of imprisonment for an offence of a sexual nature, an order shall not be made directing that one of those sentences take effect from the expiration of deprivation of liberty for the other offence.

(9) An indictment for an offence against this section shall be signed by the Director of Public Prosecutions.

(10) Section 12 does not apply to the child with respect to whom an offence against this section is committed.

132 Indecent dealing with child under 16 years

(1) In this section, ***deals with*** includes the doing of any act which, if done without consent, would constitute an assault within the meaning of sections 187 and 188.

(2) Any person who:

(a) indecently deals with a child under the age of 16 years;

(b) exposes a child under the age of 16 years to an indecent act by the offender or any other person;

(c) permits himself to be indecently dealt with by a child under the age of 16 years;

(d) procures a child under the age of 16 years to perform an indecent act;

(e) without legitimate reason, intentionally exposes a child under the age of 16 years to an indecent object or indecent film, video tape, audio tape, photograph or book; or

(f) without legitimate reason, intentionally takes or records, by means of any device, an indecent visual image of a child under the age of 16 years,

is guilty of an offence and is liable to imprisonment for 10 years.

(4) If the child is under the age of 10 years, the offender is liable to imprisonment for 14 years.

(5) It is a defence to a charge of an offence against this section to prove:

(a) the child was of or above the age of 14 years; and

(b) the accused person believed on reasonable grounds that the child was of or above the age of 16 years.

(6) Subsection (5) does not apply if the child is the lineal descendant of the accused.

133 Gross indecency in public

Any person who in public and in a public place knowingly commits any act of gross indecency is guilty of an offence and is liable to imprisonment for 2 years.

134 Incest

(1) Any person who has sexual intercourse with another person who is a close family member is guilty of an offence and is liable to imprisonment for 14 years.

(2) If the close family member is a child of or over the age of 10 years and under the age of 16 years, the offender is liable to imprisonment for 20 years.

(3) If the close family member is a child under the age of 10 years, the offender is liable to imprisonment for 25 years.

(4) It is a defence to a charge of an offence against this section to prove that the accused person was acting under the coercion of the close family member.

(5) Section 12 does not apply to the close family member with respect to whom an offence against this section is committed if that member is a child under the age of 16 years.

(6) In this section:

close family member, of a person, means any of the following persons who are members of the person's family from birth:

(a) a parent or grandparent;

(b) a child or other lineal descendant;

(c) a brother, sister, half-brother or half-sister;

138 Bestiality

Any person who inserts, to any extent, the person's penis into the genital passage or anus of an animal or permits an animal to insert its penis into the person's vagina or anus is guilty of an offence and is liable to imprisonment for 3 years.

139 Knowledge of age immaterial

Except as otherwise expressly stated, it is immaterial in the case of an offence against this Division committed with respect to a child under a specified age that the accused person did not know that that child was under that age or believed that the child was not under that age.

139A Consent no defence to offence against this Division

It is not a defence to a charge of an offence against this Division for the accused to prove that the person in respect of whom the offence was committed consented to the act constituting the offence.

140 Misconduct with regard to corpses

Any person who, without authorization or excuse, the proof of which lies on him:

(a) neglects to perform any duty imposed upon him by law or undertaken by him, whether for reward or otherwise, touching the burial or other disposition of a human body or human remains; or

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

is guilty of an offence and is liable to imprisonment for 2 years.

Division 3 Offences against public health

148 Selling, &c., things unfit for food or drink

Any person who sells or exposes for sale for the food or drink of man, or has in his possession with intent to sell it for the food or drink of man, anything that he knows to be unfit for the food or drink of man is guilty of an offence and is liable to imprisonment for 3 years.

Division 4 Contamination of goods

148A Definitions

(1) In this Division:

contaminate, in relation to goods, includes:

(a) to interfere with the goods; and

(b) to make it appear that the goods have been contaminated or interfered with.

goods includes any substance:

(a) whether or not for human consumption;

(b) whether natural or manufactured; and

(c) whether or not incorporated or mixed with other goods.

(2) In this Division, a reference to economic loss caused through public awareness of the contamination of goods includes a reference to economic loss caused through:

(a) members of the public not purchasing or using those goods or similar goods; or

(b) steps taken to avoid public alarm or anxiety or to avoid harm to members of the public.

148B Contaminating goods with intent to cause public alarm or economic loss

A person who contaminates goods with the intention of:

(a) causing public alarm or anxiety; or

(b) causing economic loss through public awareness of the contamination,

is guilty of an offence and liable to imprisonment for 10 years.

148C Threatening to contaminate goods with intent to cause public alarm or economic loss

(1) A person who makes a threat that goods will be contaminated with the intention of:

(a) causing public alarm or anxiety; or

(b) causing economic loss through public awareness of the contamination,

is guilty of an offence and liable to imprisonment for 10 years.

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

148D Making false statements concerning contamination of goods with intent to cause public alarm or economic loss

(1) A person who makes a statement that the person believes to be false:

(a) with the intention of inducing the person to whom the statement is made or others to believe that goods have been contaminated; and

(b) with the intention of thereby:

(i) causing public alarm or anxiety; or

(ii) causing economic loss through public awareness of the contamination,

is guilty of an offence and liable to imprisonment for 10 years.

(2) For the purposes of this section, making a statement includes conveying information by any means.

148E Territorial nexus for offences

It is immaterial that the conduct of a person constituting an offence under this Division occurred outside the Territory, so long as the person intended by the conduct:

(a) to cause public alarm or anxiety in the Territory; or

(b) to cause economic loss in the Territory through public awareness of the contamination.

Part VI Offences against the person and related matters

Division 1A Preliminary matters

Subdivision 1 Right of occupants etc. to safety from attack by intruders

149A Right to safety from attack by intruders

It is expressly declared that it is the public policy of the Territory that occupants of dwelling-houses and commercial premises, and persons invited into those premises, have the right to enjoy absolute safety in the premises from attack by intruders.

Subdivision 2 Interpretation

149B Definitions

In this Part:

aggravated offence means an offence against section 174C or 174D that is an aggravated offence under section 174G.

distribute, for Division 7A, see section 208AA.

image, for Division 7A, see section 208AA.

intimate image, for Division 7A, see section 208AA.

law enforcement officer, for Division 7A, see section 208AA.

149C Causing death or harm

For this Part, a person's conduct causes death or harm if it substantially contributes to the death or harm.

Division 1 Duties relating to the preservation of human life

149 Duty of person in charge of child or others

It is the duty of every person having charge of a child under the age of 16 years or having charge of any person who is unable to withdraw himself from such charge by reason of age, sickness, unsoundness of mind, detention or other cause and who is unable to provide himself with the necessaries of life:

(a) to provide the necessaries of life for that child or other person; and

(b) to use reasonable care and take reasonable precautions to avoid or prevent danger to the life, safety or health of the child or other person and to take all reasonable action to rescue such child or other person from such danger.

150 Duty of person engaging in dangerous conduct

It is the duty of every person who, except in the case of necessity, undertakes to administer medical treatment to another or to engage in any other conduct that is or may be dangerous to health and that requires special knowledge, skill, attention or caution to have the requisite knowledge or skill and to employ such knowledge, skill, attention and caution as is reasonable in the circumstances.

151 Duty of person in charge of things applied to a dangerous purpose

It is the duty of every person who manages, uses or has in his possession anything that when so managed, used or had in possession may, in the absence of reasonable care and reasonable precautions, endanger the life, safety or health of another to use reasonable care and take reasonable precautions to avoid such danger.

152 Duty to do certain acts

When a person undertakes to do any act, the omission of which is dangerous to human life or health, it is his duty to do that act.

153 Effect of breach of duty

A person who omits to perform any duty imposed upon him by this Division is held to have caused any consequences to the life or health of any person to whom he owes the duty by reason of such omission, but whether or not he is criminally responsible therefor is to be determined by the other provisions of this Code.

Division 2 Provision of rescue, medical treatment and other aid

155 Failure to rescue, provide help, &c.

Any person who, being able to provide rescue, resuscitation, medical treatment, first aid or succour of any kind to a person urgently in need of it and whose life may be endangered if it is not provided, callously fails to do so is guilty of an offence and is liable to imprisonment for 7 years.

155A Assault, obstruction etc. of persons providing rescue, medical treatment or other aid

(1) A person who unlawfully assaults, obstructs or hinders another person:

(a) who is providing rescue, resuscitation, medical treatment, first aid or succour of any kind to a third person;

(b) who is taking action to prevent injury or further injury to a third person who is in immediate risk of injury or further injury; or

(c) who is taking action to prevent damage or further damage to property that is in immediate risk of damage or further damage,

is guilty of an offence and is liable to imprisonment for 5 years.

(2) If the person thereby endangers the life of or causes harm to the third person, the person is liable to imprisonment for 7 years.

Division 3 Homicide: suicide: concealment of birth: abortion

156 Murder

(1) A person is guilty of the offence of murder if:

(a) the person engages in conduct; and

(b) that conduct causes the death of another person; and

(c) the person intends to cause the death of, or serious harm to, that or any other person by that conduct.

(2) Section 43BF does not apply to the offence of murder.

Note for section 156

Under sections 158 and 159, murder may be reduced to manslaughter if the conduct causing the death concerned occurred under provocation or the defendant proves that the defendant's mental capacity was substantially impaired.

157 Punishment for murder and conspiracy to murder

(1) A person who is guilty of the offence of murder is liable to imprisonment for life.

(2) The penalty mentioned in subsection (1) is mandatory.

(3) A person who is guilty of the offence of conspiracy to commit the offence of murder is liable to imprisonment for 14 years.

Notes for section 157

1. *Under sections 53 and 53A of the Sentencing Act 1995, a sentencing court must fix a non-parole period when sentencing an offender found guilty of murder.*
2. *Under section 82(3) of the Youth Justice Act 2005, the Supreme Court may, despite this section, sentence a youth found guilty of murder to life imprisonment or a shorter period of detention or imprisonment as it considers appropriate.*

158 Trial for murder – partial defence of provocation

(1) A person (the ***defendant***) who would, apart from this section, be guilty of murder must not be convicted of murder if the defence of provocation applies.

(2) The defence of provocation applies if:

(a) the conduct causing death was the result of the defendant's loss of self-control induced by conduct of the deceased towards or affecting the defendant; and

(b) the conduct of the deceased was such as could have induced an ordinary person to have so far lost self-control as to have formed an intent to kill or cause serious harm to the deceased.

(3) Grossly insulting words or gestures towards or affecting the defendant can be conduct of a kind that induces the defendant's loss of self-control.

(4) A defence of provocation may arise regardless of whether the conduct of the deceased occurred immediately before the conduct causing death or at an earlier time.

(5) However, conduct of the deceased consisting of a non-violent sexual advance or advances towards the defendant:

(a) is not, by itself, a sufficient basis for a defence of provocation; but

(b) may be taken into account together with other conduct of the deceased in deciding whether the defence has been established.

(6) For deciding whether the conduct causing death occurred under provocation, there is no rule of law that provocation is negatived if:

(a) there was not a reasonable proportion between the conduct causing death and the conduct of the deceased that induced the conduct causing death; or

(b) the conduct causing death did not occur suddenly; or

(c) the conduct causing death occurred with an intent to take life or cause serious harm.

(7) The defendant bears an evidential burden in relation to the defence of provocation.

Note for subsection (7)

Under section 43BR(2), the prosecution bears a legal burden of disproving a matter in relation to which the defendant has discharged an evidential burden of proof. The legal burden of proof on the prosecution must be discharged beyond reasonable doubt – see section 43BS(1).

(8) A defendant who would, apart from this section, be liable to be convicted of murder must be convicted of manslaughter instead.

159 Trial for murder – partial defence of diminished responsibility

(1) A person (the ***defendant***) who would, apart from this section, be guilty of murder must not be convicted of murder if:

(a) the defendant's mental capacity was substantially impaired at the time of the conduct causing death; and

(b) the impairment arose wholly or partly from an underlying condition; and

(c) the defendant should not, given the extent of the impairment, be convicted of murder.

(2) Expert and other evidence may be admissible to enable or assist the tribunal of fact to determine the extent of the defendant's impairment at the time of the conduct causing death.

(3) If the defendant's impairment is attributable in part to an underlying condition and in part to self-induced intoxication, then, for deciding whether a defence of diminished responsibility has been established, the impairment must be ignored so far as it was attributable to self-induced intoxication.

(4) The burden of establishing a defence of diminished responsibility is a legal burden and lies on the defence.

(5) A defendant who would, apart from this section, be liable to be convicted of murder must be convicted of manslaughter instead.

(6) In this section:

mental capacity, of a defendant, means the defendant's capacity to:

(a) understand events; or

(b) judge whether his or her actions are right or wrong; or

(c) exercise self-control.

underlying condition means a pre-existing mental or physiological condition other than of a transitory kind.

160 Manslaughter

A person is guilty of the offence of manslaughter if:

(a) the person engages in conduct; and

(b) that conduct causes the death of another person; and

(c) the person is reckless or negligent as to causing the death of that or any other person by the conduct.

161 Punishment for manslaughter

A person who is guilty of the offence of manslaughter is liable to imprisonment for life.

161A Violent act causing death

(1) A person (the ***defendant***) is guilty of the offence of a violent act causing death if:

(a) the defendant engages in conduct involving a violent act to another person (the ***other person***); and

(b) that conduct causes the death of:

(i) the other person; or

(ii) any other person.

Maximum penalty: Imprisonment for 16 years.

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

(3) The defendant is criminally responsible for the offence even if the other person consented to the conduct mentioned in subsection (1)(a).

(4) However, the defendant is not criminally responsible for the offence if:

(a) the conduct involving the violent act is engaged in by the defendant:

(i) for the purpose of benefiting the other person; or

(ii) as part of a socially acceptable function or activity; and

(b) having regard to the purpose, function or activity mentioned in paragraph (a), the conduct was reasonable.

(5) In this section:

conduct involving a violent act means conduct involving the direct application of force of a violent nature to a person, whether or not an offensive weapon is used in the application of the force.

Examples of the application of force of a violent nature

A blow, hit, kick, punch or strike.

162 Assisting and encouraging suicide

(1) A person is guilty of an offence if the person:

(a) assists another person to kill or attempt to kill himself or herself; or

(b) encourages another person to kill or attempt to kill himself or herself.

Maximum penalty: Imprisonment for life.

(2) For a person to be guilty of an offence against subsection (1)(a):

(a) the person must have intended his or her conduct would assist the other person to commit suicide; and

(b) the other person commits or attempts to commit suicide and was assisted to do so by that conduct.

(3) For a person to be guilty of an offence against subsection (1)(b):

(a) the person must have intended his or her conduct would encourage the other person to commit suicide; and

(b) the other person commits or attempts to commit suicide and was encouraged to do so by that conduct.

(4) It is not an offence to attempt to commit an offence against this section.

163 Concealment of birth

A person is guilty of an offence if the person disposes of the dead body of a child (whether or not the child was born alive) with the intention of concealing the child's birth.

Maximum penalty: Imprisonment for 2 years.

165 Attempt to murder

Any person who:

(a) attempts unlawfully to kill another; or

(b) with intent unlawfully to kill another, does any act, or omits to do any act that it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life,

is guilty of an offence and is liable to imprisonment for life.

166 Threats to kill

(1) Any person who, with intent to cause fear, makes, or causes any person to receive, a threat to kill any person which threat is of such a nature as to cause fear to any person of reasonable firmness and courage, is guilty of an offence and liable to imprisonment for 7 years.

(2) It is a defence to a charge of an offence against this section to prove that making such a threat or causing it to be received was reasonable by the standards of an ordinary person similarly circumstanced to the accused person.

170 Killing unborn child

Any person who, when a woman or girl is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child, is guilty of an offence and is liable to imprisonment for life.

Division 3A Recklessly endangering life and serious harm, negligently causing serious harm and related offences involving vehicles and vessels

Subdivision 1 Interpretation

174B Danger of death or serious harm

(1) For this Division, conduct that may give rise to a danger of death or serious harm includes exposing a person to the risk of catching a disease that may give rise to a danger of death or serious harm.

(2) For this Division, conduct gives rise to a danger of death or serious harm if it is ordinarily capable of creating a real, and not merely a theoretical, danger of death or serious harm.

(3) Conduct may give rise to a danger of death or serious harm whatever the statistical or arithmetical calculation of the degree of risk of death or serious harm involved.

(4) In the prosecution of an offence against Subdivision 2, it is not necessary to prove that a person was actually placed in danger of death or serious harm by the conduct concerned.

Subdivision 2 Offences

174C Recklessly endangering life

A person is guilty of an offence if:

(a) the person engages in conduct; and

(b) that conduct gives rise to a danger of death to any person; and

(c) the person is reckless as to the danger of death to any person that arises from the conduct.

Maximum penalty: Imprisonment for 10 years or, for an aggravated offence, 14 years.

174D Recklessly endangering serious harm

A person is guilty of an offence if:

(a) the person engages in conduct; and

(b) that conduct gives rise to a danger of serious harm to any person; and

(c) the person is reckless as to the danger of serious harm to any person that arises from the conduct.

Maximum penalty: Imprisonment for 7 years or, for an aggravated offence, 10 years.

174E Negligently causing serious harm

A person is guilty of an offence if:

(a) the person engages in conduct; and

(b) that conduct causes serious harm to another person; and

(c) the person is negligent as to causing serious harm to the other person or any other person by the conduct.

Maximum penalty: Imprisonment for 10 years.

174F Driving motor vehicle causing death or serious harm

(1) A person is guilty of an offence if:

(a) the person drives a motor vehicle dangerously; and

(b) that conduct causes the death of any person.

Maximum penalty: Imprisonment for 10 years.

(2) A person is guilty of an offence if:

(a) the person drives a motor vehicle dangerously; and

(b) that conduct causes serious harm to any person.

Maximum penalty: Imprisonment for 7 years.

(3) For subsections (1)(a) and (2)(a), a person drives a motor vehicle dangerously if the person drives the vehicle:

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

(b) at a speed that is dangerous to another person; or

(c) in a manner that is dangerous to another person.

(4) An offence against subsection (1) or (2) is an offence of strict liability.

(5) A person who is convicted or acquitted of an offence against subsection (1) or (2) is not liable to be convicted of another offence against this Code on the same facts or substantially the same facts.

174FA Hit and run

(1) The driver of a vehicle is guilty of an offence if:

(a) the vehicle is involved in an incident that results in the death of, or serious harm to, a person; and

(b) the driver fails to do any of the following:

(i) stop the vehicle at the scene of the incident;

(ii) give any assistance to the person that is reasonable in the circumstances;

(iii) as soon as reasonably practicable after the incident or after giving the assistance mentioned in subparagraph (ii) – notify a representative of the Police Force of the following:

(A) that the incident has occurred;

(B) the location of the incident;

(C) that the driver was the driver of the vehicle involved in the incident;

(D) the driver's name;

(iv) comply with any reasonable direction given by a representative of the Police Force in relation to the incident.

Fault elements:

The driver knows, or is reckless as to whether or not:

(a) the vehicle is involved in an incident; and

(b) the incident results in the death of, or serious harm to, a person.

Maximum penalty:

(a) Imprisonment for 10 years if the incident results in the death of a person.

(b) Imprisonment for 7 years if the incident results in serious harm of a person.

(2) In this section:

driver, of a vehicle, includes a person who controls the vehicle (for example, the rider of a motorcycle).

representative of the Police Force means:

(a) a police officer; or

(b) a public sector employee working in a communications centre operated by the Police Force of the Northern Territory.

vehicle means any form of transport that can be used on a road or track (for example, a car, trailer, bicycle, horse or horse drawn carriage).

174FB Dangerous driving during pursuit

(1) The driver of a vehicle commits an offence if:

(a) a police officer gives the driver a direction to stop the vehicle under a law in force in the Territory; and

(b) the driver fails to comply with the direction; and

(c) a police officer pursues the vehicle; and

(d) the driver drives the vehicle dangerously while it is being pursued.

Maximum penalty: Imprisonment for 5 years.

Examples for subsection (1)(a) of laws under which a direction to stop may be given

1 Section 119A of the Police Administration Act 1978.

2 Section 29AAB of the Traffic Act 1987.

(2) For subsection (1):

(a) a police officer may be pursuing a vehicle even if the officer is not travelling at the same speed as the vehicle; and

(b) it is irrelevant that the officer's pursuit is suspended or ends before the vehicle being pursued stops; and

(c) a driver drives a vehicle dangerously if the driver drives the vehicle:

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

(ii) at a speed that is dangerous to another person; or

(iii) in a manner that is dangerous to another person.

(3) An offence against subsection (1) is an offence of strict liability.

(4) It is a defence to a prosecution for an offence against subsection (1) if the defendant believed, on reasonable grounds, that he or she was not given a direction to stop the vehicle by a police officer.

(5) The defendant has a legal burden of proof in relation to the matter mentioned in subsection (4).

(6) In this section:

direction to stop, in relation to a vehicle, means any action taken by a police officer to indicate to the driver of the vehicle that the driver must stop the vehicle including, for example:

(a) the giving of hand signals or the display of signs; and

(b) if the officer is driving a vehicle – any of the following:

(i) the flashing of the vehicle's headlights;

(ii) the use of a lamp on the vehicle displaying intermittent red and blue flashes;

(iii) the sounding of an alarm, siren or other warning device from the vehicle.

driver, see section 174FA(2).

vehicle, see section 174FA(2).

174FC Navigating vessel causing death or serious harm

(1) A person commits an offence if:

(a) the person navigates a vessel dangerously; and

(b) that conduct causes the death of another person.

Maximum penalty: Imprisonment for 10 years.

(2) A person commits an offence if:

(a) the person navigates a vessel dangerously; and

(b) that conduct causes serious harm to another person.

Maximum penalty: Imprisonment for 7 years.

(3) For subsections (1)(a) and (2)(a), a person navigates a vessel dangerously if the person navigates the vessel:

(a) while under the influence of alcohol or a drug to such an extent as to be incapable of having proper control of the vessel; or

(b) at a speed that is dangerous to another person; or

(c) in a manner that is dangerous to another person.

(4) An offence against subsection (1) or (2) is an offence of strict liability.

(5) A person who is convicted or acquitted of an offence against subsection (1) or (2) is not liable to be convicted of another offence against this Code on the same facts or substantially the same facts.

(6) In this section:

navigate, in relation to a vessel, includes any of the following:

(a) steer, direct or manage the vessel;

(b) direct or manage the course of the vessel;

(c) change the movement or direction of the vessel.

Subdivision 3 Aggravated offences

174G Increased penalty for aggravated offence

The following are circumstances of aggravation for an offence committed against section 174C or 174D and a maximum penalty specified in the section for an aggravated offence applies if any such circumstance of aggravation applies to the offence:

(a) the offence was committed by the use or threatened use of an offensive weapon;

(b) the offence was committed against a public officer who was, at the time of the offence, acting in the course of his or her duty as a police officer, correctional services officer or other law enforcement officer;

(c) the offence was committed against a person who was involved in any capacity in legal proceedings in connection with any conduct or future conduct of the person in respect of those proceedings;

(d) the offence was committed against a child under the age of 10 years;

(e) the offence was committed against a person in abuse of a position of trust;

(f) the offence was committed against a person in abuse of a position of authority.

174H Procedure for proving aggravated offence

(1) If the prosecution intends to prove an aggravated offence, the relevant circumstances of aggravation must be contained in the charge.

(2) In order to prove an aggravated offence, the prosecution must prove that the person who committed the offence intended or was reckless as to the circumstances of aggravation.

Division 4 Miscellaneous offences against the person

175 Disabling in order to commit indictable offence

Any person who, by any means calculated to choke, suffocate or strangle and with intent to commit or to facilitate the commission of an indictable offence, or to facilitate the flight of an offender after the commission or attempted commission of an indictable offence, renders or attempts to render any person incapable of resistance is guilty of an offence and is liable to imprisonment for life.

176 Stupefying in order to commit indictable offence

Any person who, with intent to commit or to facilitate the commission of an indictable offence, or to facilitate the flight of an offender after the commission or attempted commission of an indictable offence, administers, or attempts to administer, any stupefying or overpowering drug or thing to any person is guilty of an offence and is liable to imprisonment for life.

176A Drink or food spiking

(1) A person's (the ***victim***'s) drink or food is ***spiked*** if:

(a) it contains an intoxicating substance that:

(i) the victim does not expect it to contain; and

(ii) a reasonable person in the victim's position would not expect it to contain; or

(b) it contains more of an intoxicating substance than:

(i) the victim expects it to contain; and

(ii) a reasonable person in the victim's position would expect it to contain.

(2) A person is guilty of an offence if the person:

(a) spikes another's drink or food; or

(b) gives to another, or causes another to be given or to consume, spiked drink or food.

Fault elements:

(a) knowledge that the victim does not know that the drink or food is spiked or recklessness as to whether the victim knows.

(b) an intention to do one or more of the following:

(i) to impair the victim's mental acuity and thus obtain an advantage from or over the victim;

(ii) to cause embarrassment or humiliation;

(iii) to cause harm (including unwanted intoxication).

Maximum penalty: Imprisonment for 2 years.

177 Acts intended to cause serious harm or prevent apprehension

Any person who, with intent to disfigure or disable any person, or to cause serious harm to any person, or to resist or prevent the lawful arrest or detention of any person:

(a) causes any serious harm, or causes any other harm, by any means; or

(b) attempts in any manner to strike any person with any kind of projectile; or

(c) causes any explosive substance to explode; or

(d) sends or delivers any explosive substance or other dangerous or noxious thing to any person; or

(e) causes any such substance or thing to be taken or received by any person; or

(f) puts any corrosive fluid or any destructive or explosive substance in any place; or

(g) casts or throws any such fluid or substance at or upon any person or otherwise applies any such fluid or substance to the person of any person,

is guilty of an offence and is liable to imprisonment for life.

178 Preventing escape from wreck

Any person who:

(a) prevents or obstructs any person who is on board or is escaping from a ship or aircraft that is in distress or wrecked in his endeavours to save his life; or

(b) obstructs any person in his endeavours to save the life of any person so situated,

is guilty of an offence and is liable to imprisonment for life.

179 Intentionally endangering safety of persons travelling by railway or roadway

Any person who, with intent to injure or to endanger the safety of any person travelling by railway or roadway, whether a particular person or not:

(a) deals with the railway or roadway, any railway engine or carriage or motor vehicle or with anything upon or near the railway or roadway in such a manner as to affect or endanger or be likely to affect or endanger the free and safe use of the railway or roadway or the safety of any such person;

(b) shows any light or signal or sign, or in any way deals with any existing light or signal or sign, upon or near the railway or roadway; or

(c) by an omission to do any act that it is his duty to do causes the safety of any such person to be endangered,

is guilty of an offence and is liable to imprisonment for life.

180 Intentionally endangering safety of persons travelling by aircraft or ship

Any person who, with intent to injure or to endanger the safety of any person whilst he is on board any aircraft or ship, whether a particular person or not:

(a) deals with the aircraft or ship or with anything upon or near the aircraft or ship or with anything either directly or indirectly connected with the guidance, control or operation of the aircraft or ship, in such a manner as to affect or endanger or be likely to affect or endanger the free and safe use of the aircraft or ship or the safety of any such person; or

(b) by any omission to do any act that it is his duty to do causes the safety of any such person to be endangered,

is guilty of an offence and is liable to imprisonment for life.

180A Endangering occupants of vehicles and vessels

(1) A person is guilty of an offence if:

(a) the person throws a thing, or directs a laser pointer, at a vehicle or vessel; and

(b) the act mentioned in paragraph (a) gives rise to a danger of harm to someone in or on the vehicle or vessel.

Fault elements:

The person:

(a) intentionally throws the thing or directs the pointer; and

(b) knows, or is reckless as to whether or not, the act gives rise to a danger of harm to someone in or on the vehicle or vessel.

Maximum penalty: Imprisonment for 4 years.

(2) Subsection (1) applies whether or not the vehicle or vessel is stationary and whether or not the thing or laser beam reaches the vehicle or vessel.

(3) In this section:

laser pointer means a hand-held battery-operated device that is:

(a) commonly known as a laser pointer; and

(b) designed or adapted to emit a laser beam with an accessible emission limit of greater than 1 mW.

throwing a thing includes dropping or propelling the thing in any way.

vehicle means any form of transport that can be used on a road or track (for example, a car, trailer, bicycle, horse or horse drawn carriage).

181 Serious harm

Any person who unlawfully causes serious harm to another is guilty of an offence and is liable to imprisonment for 14 years.

182 Attempting to injure by explosive substances

Any person who, with intent to cause any harm to another, puts any explosive substance in any place is guilty of an offence and is liable to imprisonment for 14 years.

183 Failure to supply necessaries

Any person who, being charged with the duty of providing for another the necessaries of life, unlawfully fails to do so whereby the life of that other person is or is likely to be endangered or his health is or is likely to be permanently injured, is guilty of an offence and is liable to imprisonment for 7 years.

184 Endangering life of child by exposure

Any person who abandons or exposes a child under the age of 2 years whereby the life of such child is or is likely to be endangered, or his health is or is likely to be permanently injured, is guilty of an offence and is liable to imprisonment for 7 years.

185 Setting man-traps

(1) Any person who sets or places any spring-gun, man-trap or other device calculated to destroy human life or to inflict serious harm, or causes any such thing to be set or placed, in any place with the intent that it may kill or inflict serious harm upon a trespasser or other person coming in contact with it, or sets or places any such thing in any such place and in any such manner that it is likely to cause any such result, is guilty of an offence and is liable to imprisonment for 3 years.

(2) Any person who knowingly permits any such spring-gun, man-trap or other device that has been set or placed by another person in any such place and in any such manner that it is likely to cause any such result to continue so set or placed in any place that is then in, or afterwards comes into, his possession or occupation, is deemed to have set and placed the spring-gun, man-trap or device with the intent aforesaid.

(3) This section does not make it an offence to set any trap such as is usually set for the purpose of destroying vermin.

186 Harm

Any person who unlawfully causes harm to another is guilty of an offence and is liable to imprisonment for 5 years.

Division 4A Female genital mutilation

186A Definitions

In this Division:

authorised professional means a person registered under the Health Practitioner Regulation National Law (other than as a student) to practise in:

(a) the Aboriginal and Torres Strait Islander health practice profession; or

(b) the nursing profession; or

(c) the midwifery profession.

female genital mutilation means the excision, infibulation or any other mutilation of the whole or any part of the labia majora or labia minora or clitoris.

gender reassignment procedure means a surgical procedure to give a female, or a person whose sex is ambivalent, the genital appearance of a particular sex (whether male or female).

186B Female genital mutilation

(1) A person who performs female genital mutilation on another person is guilty of an offence and is liable to imprisonment for 14 years.

(2) An offence is committed against this section even if one or more of the acts constituting the offence occurred outside the Territory if the person mutilated by or because of the acts is ordinarily resident in the Territory.

(3) It is not an offence against this section to perform a surgical operation if the operation:

(a) has a genuine therapeutic purpose and is performed by a medical practitioner or authorised professional; or

(b) is a gender reassignment procedure and is performed by a medical practitioner.

(4) A surgical operation does not have a genuine therapeutic purpose by virtue of the fact that it is performed as, or as part of, a cultural, religious or other social custom.

186C Removal of person from Territory for female genital mutilation

(1) A person who takes another person from the Territory, or arranges for another person to be taken from the Territory, with the intention of having female genital mutilation performed on that person is guilty of an offence and liable to imprisonment for 14 years.

(2) In proceedings for an offence against subsection (1), if it is proved that:

(a) the accused took another person, or arranged for another person to be taken, from the Territory; and

(b) female genital mutilation was performed on the person while outside the Territory,

it shall be presumed, until the contrary is proved, that the accused took the person, or arranged for the person to be taken, from the Territory with the intention of having female genital mutilation performed on the person.

186D Consent not relevant

It is not a defence to a charge of an offence against this Division that the person mutilated by or because of the acts alleged to have been committed:

(a) consented to the acts; and/or

(b) consented to being taken from the Territory,

or that a parent or guardian of the person so consented.

Division 5 Assaults

187 Definitions

(1) In this Code ***assault*** means:

(a) the direct or indirect application of force to a person without his consent or with his consent if the consent is obtained by force or by means of menaces of any kind or by fear of harm or by means of false and fraudulent representations as to the nature of the act or by personation; or

(b) the attempted or threatened application of such force where the person attempting or threatening it has an actual or apparent present ability to effect his purpose and the purpose is evidenced by bodily movement or threatening words,

other than the application of force:

(c) when rescuing or resuscitating a person or when giving any medical treatment or first aid reasonably needed by the person to whom it is given or when restraining a person who needs to be restrained for his own protection or benefit or when attempting to do any such act;

(d) in the course of a sporting activity where the force used is not in contravention of the rules of the game; or

(e) that is used for and is reasonably needed for the common intercourse of life.

(2) In this Division:

emergency worker means any of the following:

(a) a member of the Northern Territory Fire and Rescue Service established under section 5(1) of the *Fire and Emergency Act*;

(b) a member of the Northern Territory Emergency Service as defined in section 8 of the *Emergency Management Act*;

(c) an ambulance officer or paramedic employed or engaged in providing ambulance services;

(d) a medical practitioner or a health practitioner, as defined in the Health Practitioner Regulation National Law:

(i) accompanying or assisting a person mentioned in paragraph (c); or

(ii) attending a situation in the absence or unavailability of a person mentioned in paragraph (c).

*Note for definition **emergency worker**, paragraph (c)*

Ambulance services are not limited to road services, and may (for example) include helicopter or fixed-wing aero-medical services.

188 Common assault

(1) Any person who unlawfully assaults another is guilty of an offence and, if no greater punishment is provided, is liable to imprisonment for one year.

(2) If the person assaulted:

(a) suffers harm;

(b) is a female and the offender is a male;

(c) is under the age of 16 years and the offender is an adult;

(d) is unable because of infirmity, age, physique, situation or other disability effectually to defend himself or to retaliate;

(e) is a member of the Legislative Assembly, the House of Representatives or the Senate and the assault is committed because of such membership;

(f) is assisting a public sector employee in carrying out the public sector employee's duties;

(fa) is assisting a justice of the peace in carrying out the justice's functions;

(g) is engaged in the lawful service of any court document or in the lawful execution of any process against any property or in making a lawful distress;

(h) has done an act in the execution of any duty imposed on him by law and the assault is committed because of such act;

(j) is assaulted in pursuance of any unlawful conspiracy;

(k) is indecently assaulted; or

(m) is threatened with a firearm or other dangerous or offensive weapon,

the offender is guilty of an offence and is liable to imprisonment for 5 years.

(3) If the person assaulted is:

(a) indecently assaulted; and

(b) under the age of 16 years,

it is not a defence to a charge of an offence against subsection (1) that the person assaulted consented to the act constituting the offence.

188A Assaults on workers

(1) A person who unlawfully assaults a worker who is working in the performance of his or her duties is guilty of an offence.

(2) The maximum penalty for the offence is as follows:

(a) if the victim suffers harm:

(i) if the person is found guilty on indictment – imprisonment for 7 years; or

(ii) if the person is found guilty summarily – imprisonment for 3 years;

(b) if the victim does not suffer harm:

(i) if the person is found guilty on indictment – imprisonment for 5 years; or

(ii) if the person is found guilty summarily – imprisonment for 2 years.

(3) A person is a ***worker*** for this section if he or she carries out employment related activities (***work***) in any lawful capacity, including work as any of the following:

(a) an employee;

(b) a contractor or subcontractor;

(c) an apprentice or trainee;

(d) a student gaining work experience;

(e) a volunteer;

(f) a self-employed person;

(g) a person appointed under a law in force in the Territory to carry out functions or to hold an office.

(4) However, the following are not workers for this section:

(a) a police officer;

(b) an emergency worker.

Note for subsection (4)

Section 189A applies in relation to assaults on police officers and emergency workers.

189A Assaults on police or emergency workers

(1) Any person who unlawfully assaults a police officer or emergency worker in the execution of the officer's or worker's duty is guilty of an offence and is liable to imprisonment for 5 years.

(2) If the police officer or emergency worker assaulted:

(a) suffers harm, the offender is liable to imprisonment for 7 years; or

(b) suffers serious harm, the offender is liable to imprisonment for 16 years.

189 Unlawful stalking

(1) A person (***the offender***) stalks another person (***the victim***) if the offender engages in conduct that includes repeated instances of or a combination of any of the following:

(a) following the victim or any other person;

(b) telephoning, sending electronic messages to, or otherwise contacting, the victim or another person;

(c) entering or loitering outside or near the victim's or another person's place of residence or of business or any other place frequented by the victim or the other person;

(d) interfering with property in the victim's or another person's possession (whether or not the offender has an interest in the property);

(e) giving offensive material to the victim or another person or leaving it where it will be found by, given to or brought to the attention of, the victim or the other person;

(f) keeping the victim or another person under surveillance;

(g) acting in any other way that could reasonably be expected to arouse apprehension or fear in the victim for his or her own safety or that of another person,

with the intention of causing physical or mental harm to the victim or of arousing apprehension or fear in the victim for his or her own safety or that of another person and the course of conduct engaged in actually did have that result.

(1A) For the purposes of this section, an offender has the intention to cause physical or mental harm to the victim or to arouse

apprehension or fear in the victim for his or her own safety or that of another person if the offender knows, or in the particular circumstances a reasonable person would have been aware, that engaging in a course of conduct of that kind would be likely to cause such harm or arouse such apprehension or fear.

(2) A person who stalks another person is guilty of an offence and is liable:

(a) to imprisonment for 2 years; or

(b) where:

(i) the person's conduct contravened a condition of bail or an injunction or order imposed by a court (either under a law of the Commonwealth, the Territory, a State or another Territory of the Commonwealth); or

(ii) the person was, on any occasion to which the charge relates, in the possession of an offensive weapon,

to imprisonment for 5 years.

190 Assaults on the Administrator or judges

(1) Any person who unlawfully assaults the Administrator or a judge whilst he is engaged in the discharge of his official functions or because of anything done or omitted to be done by him in the exercise of his official functions, is guilty of an offence and is liable to imprisonment for 14 years.

(2) In this section:

judge means the following:

(a) a Judge or Associate Judge of the Supreme Court;

(b) a Local Court Judge.

191 Assaults on member of crew of aircraft

Any person who, while on board an aircraft, unlawfully assaults a member of the crew of the aircraft or threatens such a member with any violence, injury or detriment of any kind to be caused to him, or any other person on the aircraft, by the offender or by any other person with the intention of affecting the performance by the member of his functions or duties in connection with the operation of the aircraft or with the intention of lessening his ability to perform those functions or duties, is guilty of an offence and is liable to imprisonment for 14 years.

192 Sexual intercourse and gross indecency without consent

(1) For this section, consent means free and voluntary agreement.

(2) Circumstances in which a person does not consent to sexual intercourse or an act of gross indecency include circumstances where:

(a) the person submits because of force, fear of force, or fear of harm of any type, to himself or herself or another person;

(b) the person submits because he or she is unlawfully detained;

(c) the person is asleep, unconscious or so affected by alcohol or another drug as to be incapable of freely agreeing;

(d) the person is incapable of understanding the sexual nature of the act;

(e) the person is mistaken about the sexual nature of the act or the identity of the other person;

(f) the person mistakenly believes that the act is for medical or hygienic purposes; or

(g) the person submits because of a false representation as to the nature or purpose of the act.

(3) A person is guilty of an offence if the person has sexual intercourse with another person:

(a) without the other person's consent; and

(b) knowing about or being reckless as to the lack of consent.

Maximum penalty: Imprisonment for life.

(4) A person is guilty of an offence if the person performs an act of gross indecency on another person:

(a) without the other person's consent; and

(b) knowing about or being reckless as to the lack of consent.

Maximum penalty: Imprisonment for 14 years.

(4A) For subsections (3) and (4), being reckless as to a lack of consent to sexual intercourse or an act of gross indecency includes not giving any thought to whether or not the other person is consenting to the sexual intercourse or act of gross indecency.

(5) Any person who attempts to commit an offence against subsection (3) is liable to imprisonment for 7 years.

(6) Any person who, being an adult, attempts to commit an offence against subsection (3) upon another person who is under the age of 16 years is liable to imprisonment for 14 years.

(7) Any person who attempts to commit an offence against subsection (3) and in the course of such an attempt causes harm to the other person is liable to imprisonment for 14 years.

(8) Any person who attempts to commit an offence against subsection (3) and thereby causes serious harm to the other person is liable to imprisonment for 17 years.

192A Direction to jury in certain sexual offence trials

In a relevant case the Judge shall direct the jury that a person is not to be regarded as having consented to an act of sexual intercourse or to an act of gross indecency only because the person:

(a) did not protest or physically resist;

(b) did not sustain physical injury; or

(c) had, on that or an earlier occasion, consented to:

(i) sexual intercourse; or

(ii) an act of gross indecency,

whether or not of the same type, with the accused.

192B Coerced sexual self-manipulation

(1) In this section, ***self-manipulation*** means the insertion, into the vagina or anus of a person, of an object manipulated by that person.

(2) Any person who coerces another person to engage in self-manipulation in circumstances where the person so coerced cannot reasonably be expected to resist, is guilty of an offence and is liable to imprisonment for 17 years.

193 Assaults with intent to commit an offence

Unless otherwise expressly provided, any person who unlawfully assaults a person with intent to commit an offence is guilty of an offence and is liable to imprisonment for 3 years.

Division 6 Offences against liberty: kidnapping: abduction

194 Kidnapping for ransom

(1) Any person who:

(a) with intent to extort or gain anything from or procure anything to be done or omitted to be done by a person by a demand containing threats of injury or detriment to be caused to a person, either by the offender or another person, if the demand is not complied with, takes or entices away or detains the person in respect of whom the threats are made; or

(b) receives, confines or detains the person in respect of whom the threats are made, knowing the person to have been so taken or enticed away or detained,

is guilty of an offence that is called kidnapping for ransom.

(2) Any person who commits the offence of kidnapping for ransom is liable to imprisonment for 20 years.

(3) If the person kidnapped has been set at liberty without having suffered serious harm, the offender is liable to imprisonment for 10 years.

195 Kidnapping

Any person who takes or entices away or detains another with intent to compel that other person to work for him against his will is guilty of an offence and is liable to imprisonment for 7 years.

196 Deprivation of liberty

(1) Any person who confines or detains another in any place against his will, or otherwise deprives another of his personal liberty, is guilty of an offence and is liable to imprisonment for 7 years.

(2) It is lawful for a parent or guardian, or a person in the place of a parent or guardian, or for a school teacher, by way of correction, to impose such confinement or detention, or to cause such deprivation of personal liberty of a child, as is reasonable under the circumstances.

(3) A person is excused from criminal responsibility for an offence against this section if he believes, on reasonable grounds, that the person confined, detained or deprived of his personal liberty needs to be confined, detained or deprived of his personal liberty for his own protection or benefit.

197 False certificates by officers charged with duties relating to liberty

Any person who:

(a) being required by law to give any certificate touching any matter by virtue whereof the liberty of any person may be affected, gives a certificate that, in any material particular, is to his knowledge false; or

(b) not being a person authorized by law to give such a certificate, gives such a certificate and represents himself to be a person authorized to give it,

is guilty of an offence and is liable to imprisonment for 3 years.

198 Concealment of matters affecting liberty

Any person who:

(a) being required by law to keep any record touching any matter relating to any person in confinement, refuses or neglects to keep such record, or makes in such record an entry that, in any material particular, is to his knowledge false; or

(b) being required by law to give any information to any person touching any person in confinement, or to show to any person any person in confinement, or any place in which a person is confined:

(i) refuses or neglects to give such information, or to show such person or place, to any person to whom he is so required to give the information or show the person or place; or

(ii) gives to any person to whom he is so required to give it information touching any such matter that, in any material particular, is to his knowledge false,

is guilty of an offence and is liable to imprisonment for 3 years.

199 Wrongful custody of mentally ill person

Any person who detains or assumes the custody of a mentally ill person contrary to the provisions of the laws relating to mentally ill persons is guilty of an offence and is liable to imprisonment for 2 years.

200 Threats

Any person who threatens to do any injury, or cause any detriment, of any kind to another with intent to prevent or hinder that other person from doing any act that he is lawfully entitled to do, or with intent to compel him to do any act that he is lawfully entitled to abstain from doing, is guilty of an offence and is liable to imprisonment for 2 years.

201 Abduction, enticement or detention of child under 16 years for immoral purpose

Any person who takes or entices away or detains a child who is under the age of 16 years with the intention that he or another shall have sexual intercourse with the child or that the child shall be indecently dealt with or exposed to indecent behaviour, is guilty of an offence and is liable to imprisonment for 7 years.

202 Abduction of child under 16 years

(1) Any person who takes a child who is under the age of 16 years out of the custody or protection of that child's mother or father or other person having the lawful care or charge of the child and against the will of such father or mother or other person is guilty of an offence and is liable to imprisonment for 3 years.

(2) If the offender is an adult or if the child is under the age of 14 years, he is liable to imprisonment for 7 years.

(3) It is immaterial that the offender believes the child to be of or above the age of 16 years or 14 years.

(4) It is immaterial that the child was taken with the child's consent or at the child's suggestion.

Division 6A Sexual servitude and deceptive recruiting for sexual services

202A Interpretation

(1) In this Division:

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

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

(a) to stop providing sexual services; or

(b) to leave the place or area where the person provides sexual services.

threat means:

(a) a threat of force;

(b) a threat to cause a person's deportation; or

(c) a threat of other detrimental action.

(2) For the purposes of this Division, the question whether, because of the use of force or a threat, a person is not free:

(a) to stop providing sexual services; or

(b) to leave the place or area where the person provides sexual services,

is to be decided according to whether a reasonable adult would consider, in the circumstances, that the person is not free to stop providing the services or to leave the place or area.

202B Sexual servitude

(1) A person who causes an adult to enter into or continue in sexual servitude is guilty of an offence and is liable to imprisonment for 15 years.

(2) A person who causes a child of or over the age of 12 years to enter into or continue in sexual servitude is guilty of an offence and is liable to imprisonment for 20 years.

(3) A person who causes a child under the age of 12 years to enter into or continue in sexual servitude is guilty of an offence and is liable to imprisonment for life.

202C Conducting business involving sexual servitude

(1) A person who conducts a business that involves the sexual servitude of adults is guilty of an offence and is liable to imprisonment for 15 years.

(2) A person who conducts a business that involves the sexual servitude of a child of or over the age of 12 years is guilty of an offence and is liable to imprisonment for 20 years.

(3) A person who conducts a business that involves the sexual servitude of a child under the age of 12 years is guilty of an offence and is liable to imprisonment for life.

(4) In this section, a reference to a person who conducts a business includes a reference to:

(a) a person who takes part in the management of the business;

(b) a person who exercises control or direction over the business; and

(c) a person who provides finance for the business.

202D Deceptive recruiting for sexual services

(1) A person who, with the intention of inducing another person to enter into an engagement to provide sexual services, deceives that person about the fact that the engagement will involve the provision of sexual services is guilty of an offence and is liable to imprisonment for 10 years.

(2) If the person deceived by the offender is a child, the offender is liable to imprisonment for 15 years.

202E Knowledge of age immaterial

It is immaterial in relation to an offence against this Division committed with respect to a person who was at the time of the offence a child, or a child of a specified age, that the accused person:

(a) did not know that the person was a child or a child of a specified age; or

(b) believed that the person was an adult or a child of a different age.

Division 7 Criminal defamation

203 Definitions

In this Division:

defamatory matter and ***publishes*** have the same meaning as in the civil law of defamation at the time of the publication complained of.

unlawfully means the publication would not be justified, privileged or excused by the civil law of defamation at the time of the publication complained of.

204 Unlawful publication of defamatory matter

Any person who unlawfully publishes any defamatory matter:

(a) with intent to cause or that causes or is likely to cause a breach of the peace;

(b) with intent to cause loss;

(c) with intent to interfere with the free and informed exercise of a political right;

(d) with intent to prevent or deter a person from performing any duty imposed on him by law;

(e) with intent to prevent or deter any person from doing any act that he is lawfully entitled to do or to compel him to do any act that he is lawfully entitled to abstain from doing;

(f) with intent to prevent any lawful investigation or inquiry; or

(g) with intent to interfere with or to influence any judicial proceedings;

is guilty of an offence and is liable to imprisonment for 3 years.

205 Publishing or threatening to publish defamatory matter with intent to extort money

Any person who publishes, or directly or indirectly threatens to publish, or directly or indirectly proposes to abstain from publishing, or directly or indirectly offers to prevent the publication of, any defamatory matter concerning another with intent to extort any property from such person or any other person, or with intent to induce any person to give, confer or obtain, or to attempt to obtain, to, upon or for any person any property or benefit of any kind, is

guilty of an offence and is liable to imprisonment for 3 years.

206 Further application of civil law

In the prosecution of an offence against this Division, whether any particular matter is a matter of law or fact shall be determined by the civil law of defamation at the time of the publication complained of.

207 Burden of proof

In the prosecution of an offence against this Division, the burden of proving all issues shall be upon the prosecution.

208 Prosecutions to be sanctioned by Crown Law Officer

A prosecution of an offence against this Division cannot be begun except by the direction of a Crown Law Officer.

Division 7A Distributing intimate images

208AA Definitions

In this Division:

distribute, in relation to an image, includes engaging in the following conduct, whether manually, electronically, digitally or in any other manner:

(a) publish, exhibit, show, communicate, send, supply or transmit the image to another person;

(b) make the image available for viewing or access by another person.

image means a moving or still image in any form.

*Examples for definition **image***

1 A "jpeg" file stored on a computer.

2 A photo stored on a phone.

intimate image means an image that depicts or has been altered to appear to depict:

(a) a person engaged in a sexual act of a kind not ordinarily seen in public; or

(b) a person in a manner or context that is sexual; or

(c) the genital or anal region of a person, whether bare or covered by underwear; or

(d) a breast, whether bare or covered by underwear, of a female person or of a transgender or intersex person who identifies as female.

law enforcement officer means:

(a) a police officer or a member of the police force or police service of any State; or

(b) a member of the Australian Federal Police; or

(c) a member of staff of the Australian Crime Commission.

208AB Distribution of intimate image without consent

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

(a) intentionally distributes an image of another person; and

(b) the image is an intimate image and the person is reckless in relation to that circumstance; and

(c) the other person did not consent to the distribution and the person is reckless as to the lack of consent.

Maximum penalty: Imprisonment for 3 years.

(2) Subsection (1) does not apply to the distribution of an intimate image in the following circumstances:

(a) to only the person depicted in the image;

(b) by a law enforcement officer acting reasonably in the performance of the officer's duty;

(c) for the purpose of reporting unlawful conduct to a law enforcement officer;

(d) when required by a court or reasonably required for the purpose of a legal proceeding;

(e) for a scientific, medical or educational purpose;

(f) by a person solely in the person's capacity as an internet service provider, internet content host or a carriage service provider;

(g) of a child, or other person incapable of giving consent, in circumstances that a reasonable person would regard as acceptable.

Example for subsection (2)(e)

A doctor sends an image of a female patient's breast to another doctor for a second opinion about the patient's medical condition.

Example for subsection (2)(g)

Sharing a photograph or movie of a naked newborn relative.

(3) A person under the age of 16 years is taken to be incapable of consenting to the distribution of an intimate image of the person.

(4) A person who consents to the distribution of an intimate image on a particular occasion is not, by reason only of that fact, to be regarded as having consented to the distribution of that image or any other image on another occasion.

(5) A person who consents to the distribution of an intimate image to a particular person or in a particular way is not, by reason only of that fact, to be regarded as having consented to the distribution of that image or any other image to another person or in another way.

(6) A person who distributes an intimate image of the person is not, by reason only of that fact, to be regarded as having consented to any other distribution of the image.

(7) This section does not limit the grounds on which it may be established that a person does not consent to the distribution of an intimate image.

(8) In this section:

consent means free and voluntary agreement.

208AC Threaten to distribute intimate images

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

(a) intentionally threatens to distribute an intimate image of another person; and

(b) intends the other person to fear that the threat would be carried out.

Maximum penalty: Imprisonment for 3 years.

(2) In a prosecution for an offence against this section:

(a) a threat may be made by any conduct, whether explicit, implicit, conditional or unconditional; and

(b) it is not necessary to prove that the other person actually feared that the threat would be carried out; and

(c) a person may be found guilty even if carrying out the threat is impossible.

Examples for subsection (2)(c)

1 The image does not exist.

2 Technical limitations prevent the person from distributing the image.

208AD Prosecution of child to be approved

A prosecution of a child for an offence against this Division must not be commenced without the consent of the Director of Public Prosecutions.

208AE Court may order rectification

(1) A court may order a person found guilty by the court of an offence under this Division to take reasonable action to remove, retract, recover, delete or destroy any intimate images related to the offence within a stated period.

(2) A person commits an offence if the person:

(a) knows the person is subject to an order under subsection (1); and

(b) intentionally engages in conduct; and

(c) the conduct results in non-compliance with the court order and the person is reckless in relation to that result.

Maximum penalty: Imprisonment for 2 years.

Division 8 Termination of pregnancy

208A Termination of pregnancy performed by unqualified person

(1) A person commits an offence if:

(a) the person intentionally:

(i) administers a drug to a woman or causes a drug to be taken by a woman; or

(ii) uses an instrument or other thing on a woman; and

(b) the person intends by that conduct to cause the termination of the woman's pregnancy; and

(c) the person is not a qualified person.

Maximum penalty: Imprisonment for 7 years.

(2) A person commits an offence if:

(a) the person intentionally procures for, or supplies to, a woman a drug, instrument or other thing; and

(b) the drug, instrument or other thing is intended to be used for the purpose of causing the termination of the woman's pregnancy and the person has knowledge of that circumstance; and

(c) the person is not a qualified person.

Maximum penalty: Imprisonment for 7 years.

(3) Strict liability applies to subsections (1)(c) and (2)(c).

(4) This section does not apply to a woman who consents to, or assists in, the performance of a termination on herself.

(5) For this section, each of the following, when acting in accordance with the *Termination of Pregnancy Law Reform Act 2017*, is a ***qualified person***:

(a) a suitably qualified medical practitioner;

(b) an authorised ATSI health practitioner;

(c) an authorised midwife;

(d) an authorised nurse;

(e) an authorised pharmacist.

(6) In this section:

ATSI health practitioner means a person registered under the *Health Practitioner Regulation National Law* to practise in the Aboriginal and Torres Strait Islander health practice profession (other than as a student).

authorised, see section 4 of the *Termination of Pregnancy Law Reform Act 2017*.

midwife means a person registered under the *Health Practitioner Regulation National Law* to practise in the midwifery profession (other than as a student).

nurse means a person registered under the *Health Practitioner Regulation National Law* to practise in the nursing profession (other than as a student).

pharmacist means a person registered under the *Health Practitioner Regulation National Law* to practise in the pharmacy profession (other than as a student).

suitably qualified medical practitioner, see section 4 of the *Termination of Pregnancy Law Reform Act 2017*.

woman, see section 4 of the *Termination of Pregnancy Law Reform Act 2017*.

Division 9 Defences

208D Activities involving serious harm or risk of death or serious harm

A person is not criminally responsible for an offence against this Part that is constituted by conduct that causes serious harm to another person or gives rise to a danger of death or serious harm to another person if:

(a) the conduct concerned is engaged in by the person for the purpose of benefiting the other person or pursuant to a socially acceptable function or activity; and

(b) having regard to the purpose, function or activity, the conduct was reasonable.

208E Law enforcement officers

A person is not criminally responsible for an offence against this Part if:

(a) the person is, at the time of the offence, a public officer acting in the course of his or her duty as a police officer, correctional services officer or other law enforcement officer; and

(b) the conduct of the person is reasonable in the circumstances for performing that duty.

208F Evidential burden of proof

A defendant who wishes to deny criminal responsibility by relying on a provision of this Division bears an evidential burden in relation to that matter.

Part VII Property offences and related matters

Division 1 Robbery: unlawful entry of buildings and use of vehicles and like offences

209 Definition of stealing and interpretation

(1) In this Division:

appropriates means assumes the rights of the owner of the property and includes, where the person has come by the property without stealing it, any later assumption of a right to it by keeping or dealing with it as owner.

depriving means permanently depriving and appropriating or borrowing property without meaning the person to whom it belongs permanently to lose the property if the intention of the person appropriating or borrowing it is to treat the property as his own to dispose of (including to dispose of by lending or under a condition as to its return that he may not be able to perform) regardless of the rights of the person to whom it belongs.

steals means unlawfully appropriates property of another with the intention of depriving that person of it whether or not at the time of the appropriation the person appropriating the property was willing to pay for it, but does not include the appropriation of property by a person with the reasonable belief that such property has been lost and the owner thereof cannot be discovered.

(2) A person cannot steal land or things forming part of the land and severed from it by him or at his directions, except:

(a) where he has legal authority to sell or dispose of land belonging to another and he appropriates the land or anything forming part of it by dealing with it in breach of the confidence reposed in him;

(b) where he is not in possession of the land and he appropriates anything forming part of the land by severing it or causing it to be severed, or after it has been severed; or

(c) where, being in possession of the land under a tenancy or holding over after a tenancy, he appropriates the whole or part of any fixture or structure let to be used with the land.

(3) Where property is subject to a trust, the persons to whom it belongs shall be regarded as including any person having a right to enforce the trust and an intention to defeat the trust shall be regarded as an intention to deprive of the property any person having that right.

(4) Where a person receives property from or on account of another and is under an obligation to the other to retain or deal with it or its proceeds in a particular way, the property or proceeds shall be regarded, as against him, as belonging to the person from whom he received it until the obligation is discharged.

(5) Where a person obtains property by another's mistake and is under an obligation to make restoration, in whole or in part, of the property or its proceeds or its value, then, to the extent of that obligation, the property or proceeds shall be regarded, as against the person who has so obtained it, as belonging to the person entitled to restoration and an intention not to make restoration shall be regarded as an intention to deprive that person of the property or proceeds.

(6) Property of a corporation sole shall be regarded as belonging to the corporation notwithstanding that there is a vacancy in the corporation.

210 General punishment of stealing

(1) Any person who steals is guilty of an offence and is liable, if no other punishment is provided, to imprisonment for 7 years.

(2) If the thing stolen is a testamentary instrument, whether the testator is living or dead, or if the thing stolen has a value of $100,000 or more, the offender is liable to imprisonment for 14 years.

211 Robbery

(1) Any person who steals and immediately before or at the time of his doing so, or immediately after doing so, uses or threatens to use violence to any person in order to obtain the thing stolen, to prevent or overcome resistance to its being stolen or to prevent or hinder his pursuit, is guilty of an offence called robbery and is liable to imprisonment for 14 years.

(2) If the offender is armed with a firearm or any other dangerous or offensive weapon or is in company with one or more person or persons, or if, immediately before, at or immediately after the time of the robbery he causes harm to any person, he is liable to imprisonment for life.

212 Assault with intent to steal

(1) Any person who assaults another with intent to steal anything is guilty of an offence and is liable to imprisonment for 7 years.

(2) If the offender is armed with a firearm or any other dangerous or offensive weapon or is in company with one or more person or persons or if such assault causes harm, he is liable to imprisonment for 14 years.

(3) If the offender is armed with a firearm and immediately before, at or immediately after such assault he injures any person by discharging it, he is liable to imprisonment for life.

213 Unlawful entry of buildings

(1) Any person who unlawfully enters a building with intent to commit any offence therein is guilty of an offence.

(2) If he does so with intent to commit a summary offence therein he is liable to imprisonment for one year; if the building is a dwelling-house he is liable to imprisonment for 2 years.

(3) If he does so with intent to commit therein an indictable offence for which the maximum punishment is not greater than 3 years imprisonment, he is liable to imprisonment for 3 years; if the building is a dwelling-house he is liable to imprisonment for 5 years and, if it is actually occupied at the time of his entry, he is liable to imprisonment for 7 years.

(4) If he does so with intent to commit any other indictable offence therein he is liable to imprisonment for 7 years; if the building is a dwelling-house he is liable to imprisonment for 10 years.

(5) If he commits an offence against this section at night-time he is liable to twice the punishment prescribed for that offence.

(6) If he commits an offence against this section when armed with a firearm or any other dangerous or offensive weapon, he is liable to imprisonment for 20 years; if the building is a dwelling-house he is liable to imprisonment for life.

214 Uncertainty as to offender's intent, &c.

(1) If it is proved that a person has unlawfully entered a building with intent to commit an offence therein, but the evidence cannot establish whether it is a summary offence or an indictable offence, he shall be found guilty of unlawful entry with intent to commit a summary offence.

(2) If it is proved that a person has unlawfully entered a building with intent to commit an indictable offence therein, but the evidence cannot establish which, he shall be found guilty of unlawful entry with intent to commit an indictable offence for which the maximum punishment is not greater than 3 years imprisonment.

(3) Proof of the fact that a person has unlawfully entered a building is evidence that he did so with intent to commit an offence therein.

215 Persons found armed with intent to unlawfully enter buildings

Any person who is found armed with a firearm or any other dangerous or offensive weapon with intent to unlawfully enter a building is guilty of an offence and is liable to imprisonment for 7 years.

216 Unlawfully taking control of aircraft

(1) Any person who unlawfully, directly or indirectly, takes control of an aircraft from its pilot is guilty of an offence and is liable to imprisonment for 7 years.

(2) If another person not being an accomplice of the offender is on board the aircraft, the offender is liable to imprisonment for 14 years.

(3) If the offender immediately before, at or immediately after the time of taking such control, uses or threatens to use violence to any person or property in order to take control of the aircraft or to prevent or overcome resistance to such control being taken, or is armed with a firearm or other dangerous or offensive weapon, or is in company with one or more person or persons, he is liable to imprisonment for life.

217 Unlawful use of aircraft

Any person who unlawfully uses an aircraft is guilty of an offence and is liable to imprisonment for 7 years.

218 Unlawful use of vessel, motor vehicle, caravan or trailer

(1) Any person who unlawfully uses a vessel or motor vehicle, or a caravan or trailer designed to be attached to a motor vehicle, is guilty of an offence and is liable to imprisonment for 2 years.

(2) If:

(a) in the course of such unlawful use the offender causes any injury to any person or any danger to the lives or safety of the public or any member of it;

(b) the property unlawfully used is of the value of $20,000 or more;

(c) the property unlawfully used is damaged by the offender and the cost of repairing or compensating for the same is $1,000 or more, or its value as the result of his use of it is reduced by $1,000 or more;

(d) the vessel, motor vehicle, caravan or trailer is taken with the intention of using it for or in connection with the commission of an offence other than a regulatory offence; or

(e) as a result of such unlawful use the whereabouts of the vessel, motor vehicle, caravan or trailer remain unknown to the person entitled to lawful possession of it for 48 hours or longer,

he is guilty of an offence and is liable to imprisonment for 7 years.

219 Removal of things from places open to public

(1) Any person who, in circumstances not amounting to stealing, unlawfully removes from any place to which the public has access to view that place or any collection kept in it, any article displayed or kept for display therein, is guilty of an offence and is liable to imprisonment for 3 years.

(2) It is immaterial that the public's access to the place is limited to a particular period or a particular occasion.

220 Unlawful disposition of mortgaged goods

Any person who, being the mortgagor of mortgaged goods, removes or disposes of the goods without the consent of the mortgagee and with intent to defraud, is guilty of an offence and is liable to imprisonment for 3 years.

221 Unlawful appropriation of power

Any person who unlawfully abstracts or diverts to his own use or to the use of any other person any electrical power is guilty of an offence and is liable to imprisonment for 3 years.

222 Unlawfully obtaining confidential information

Any person who unlawfully abstracts any confidential information from any register, document, computer or other repository of information with intent to cause loss to a person or with intent to publish the same to a person who is not lawfully entitled to have or to receive it, or with intent to use it to obtain a benefit or advantage

for himself or another, is guilty of an offence and is liable to imprisonment for 3 years.

223 Unlawfully disclosing trade secrets

Any person who unlawfully publishes or discloses a trade secret with intent to cause loss to a person or to obtain a benefit or advantage for himself or another is guilty of an offence and is liable to imprisonment for 3 years.

224 Severing with intent to steal

Any person who makes anything moveable with intent to steal it is guilty of an offence and is liable to imprisonment for 3 years.

225 Using registered brands with criminal intention

Any person who, with intent to facilitate the commission of an indictable offence, brands or marks any animal with a registered brand or registered mark without the permission of the owner of the brand or mark is guilty of an offence and is liable to imprisonment for 3 years.

226 Dealing with minerals with criminal intention

Any person who, with intent to facilitate the commission of an offence, takes, conceals or otherwise disposes of any ore of any metal or mineral in or about a mining site as defined in section 4 of the *Mining Management Act 2001*, or on a mining lease, is guilty of a crime and is liable to imprisonment for 3 years.

Division 1A Home invasion and invasion of business premises

226A Interpretation

(1) In this Division:

business premises means a building or part of a building used for a business, profession, occupation, calling, trade or undertaking, whether engaged in or carried on:

(a) by a person or by the Crown in right of the Territory or in any of its other capacities; or

(b) for profit or not.

damages includes defaces, despoils, vandalises and interferes with, whether or not the relevant conduct causes damage of a permanent nature or that results in monetary loss.

(2) For the purposes of section 226B(3):

(a) the following matters are relevant in determining whether damage is of a serious nature:

(i) any physical, psychological or emotional harm suffered by a person as a result of the damage;

(ii) any apprehension, fear, distress or revulsion caused to a person as a result of the damage; and

(b) the amount of loss is determined by adding the following amounts:

(i) the loss that results directly from the damage;

(ii) any loss incurred as a consequence of restoring the dwelling-place or business premises to the condition it was in before the offence was committed, including cleaning costs and economic loss in respect of time spent in the restoration.

226B Home invasion and invasion of business premises

(1) Any person who unlawfully enters a dwelling-house and unlawfully damages the dwelling-house or property in the dwelling-house is guilty of an offence and is liable to imprisonment for 7 years.

(2) Any person who unlawfully enters business premises and unlawfully damages the business premises or property in the business premises is guilty of an offence and is liable to imprisonment for 7 years.

(3) If a person who commits an offence against subsection (1) or (2) causes damage of a serious nature or that results in a loss greater than $5 000, he or she is liable to imprisonment for 10 years.

Division 2 Criminal deception: blackmail and extortion

227 Criminal deception

(1) Any person who by any deception:

(a) obtains the property of another; or

(b) obtains a benefit (whether for himself or herself or for another),

is guilty of an offence and is liable to the same punishment as if he or she had stolen the property or property of equivalent value to the benefit fraudulently obtained (as the case may be).

(1A) In subsection (1), ***benefit*** includes any advantage, right or entitlement.

(2) For the purposes of subsection (1), a person ***obtains property*** if he obtains ownership, possession or control of it and ***obtains*** includes obtaining for another and enabling another to obtain or retain.

(3) Any person who by any deception obtains credit or further credit for himself or another, whether for the performance of an obligation that is legally enforceable or for one that is not, is guilty of an offence and is liable to imprisonment for 7 years.

(4) Any person who, for the purposes of gain for himself or another, by any deception induces a person to engage in any conduct is guilty of an offence and is liable to imprisonment for 7 years.

228 Blackmail and extortion

(1) Any person who makes any demand with menaces with intent to obtain some benefit for himself or another or to cause some detriment or injury to another is guilty of an offence and is liable to imprisonment for 14 years.

(2) It is a defence to a charge of an offence against this section to prove that the making of such demand was reasonable by the standards of an ordinary person similarly circumstanced to the accused person.

Division 2A Identity crime

Note for Division 2A

Under section 28C of the Local Court (Civil Procedure) Act 1989 and Part 5, Division 1AA of the Sentencing Act 1995 a certificate may be issued to a victim of an offence against section 228C, 228D or 228E. The certificate may assist the victim to deal with any problems caused by the commission of the offence in relation to the victim's personal or business affairs. Under the Local Court (Civil Procedure) Act 1989, the certificate may be issued whether or not any criminal proceedings have been or can be taken against a person in relation to the offence or are pending.

228A Definitions

In this Division:

deal in includes make, copy, store, supply, transmit or use.

identification documentation means a document or other thing that:

(a) contains identification information; and

(b) can be used by a person to pretend to be, or to pass the person off as, another person (whether living, dead, real or fictitious).

identification information means information that can be used (whether alone or in conjunction with other information) to identify, or purportedly identify, a person (whether living, dead, real or fictitious), including the following:

(a) a name, address, date of birth or place of birth;

(b) information as to a person's marital status;

(c) information about the relatives of a person;

(d) a driver's licence or driver's licence number;

(e) a passport or passport number;

(f) biometric data;

(g) a voice print;

(h) a credit or debit card, its number, or data stored or encrypted on it;

(i) a financial account number, user name or password;

(j) a digital signature;

(k) a series of numbers, letters, symbols (or a combination of these) intended for use as a means of personal identification;

(l) an ABN, as defined in the *A New Tax System (Australian Business Number) Act 1999* (Cth).

victim means a person whose identification information is the subject of an offence against section 228C, 228D or 228E.

228B Attempt offences in section 43BF do not apply

Section 43BF does not apply to an offence against section 228C, 228D or 228E.

228C Dealing in identification information

(1) A person commits an offence if:

(a) the person deals in information; and

(b) the information is identification information; and

(c) the person does so with intent to commit an offence or facilitate the commission of an offence.

Maximum penalty: Imprisonment for 7 years.

(2) This section applies:

(a) even if the offence mentioned in subsection (1)(c) is impossible to commit; and

(b) whether or not the victim consented to the dealing in the identification information.

(3) This section does not apply to dealing in a person's own identification information.

228D Possessing identification information

(1) A person commits an offence if:

(a) the person possesses information; and

(b) the information is identification information; and

(c) the person does so with intent to commit an offence or facilitate the commission of an offence.

Maximum penalty: Imprisonment for 3 years.

(2) This section applies:

(a) even if the offence mentioned in subsection (1)(c) is impossible to commit; and

(b) whether or not the victim consented to the possession of the identification information.

(3) This section does not apply to the possession of a person's own identification information.

228E Possessing equipment used to deal in identification information or identification documentation

(1) A person commits an offence if:

(a) the person possesses equipment; and

(b) the equipment can be used to deal in identification information or identification documentation; and

(c) the person does so with intent to commit an offence or facilitate the commission of an offence.

(2) This section applies even if the offence mentioned in subsection (1)(c) is impossible to commit.

Maximum penalty: Imprisonment for 3 years.

228F Alternative verdicts

(1) This section applies if, in a proceeding against a person charged with an offence against section 228C (the ***prosecuted offence***), the trier of fact:

(a) is not satisfied beyond reasonable doubt that the person committed the prosecuted offence; but

(b) is satisfied beyond reasonable doubt that the person committed an offence against section 228D (the ***alternative offence***).

(2) The trier of fact may find the person not guilty of the prosecuted offence but guilty of the alternative offence.

Division 3 Receiving property stolen or unlawfully obtained and like offences

229 Receiving stolen property, &c.

(1) Any person who receives anything that has been obtained by means of an indictable offence or by means of any act done at a place not in the Territory that, if it had been done in the Territory, would have constituted an indictable offence and that is an offence under the law in force in the place where it was done, knowing or believing it to have been so obtained, is guilty of an offence.

(2) Where the thing so obtained has been:

(a) converted into other property; or

(b) mortgaged or pledged or exchanged for other property,

any person who knowing or believing:

(c) that the property is wholly or in part the property into which the thing so obtained has been converted or for which it has been mortgaged or pledged or exchanged; and

(d) that the thing so obtained was obtained under such circumstances as to constitute an offence against subsection (1),

receives the whole or any part of the property into which the thing so obtained has been converted or for which it has been mortgaged or pledged or exchanged is guilty of an offence against subsection (1) and may be indicted and punished accordingly.

(3) If the thing received has a value of $100,000 or more, the offender is liable to imprisonment for 14 years.

(4) In any other case, the offender is liable to imprisonment for 7 years.

(5) For the purpose of proving the receiving of anything it is sufficient to show that the accused person has, either alone or jointly with some other person, had the thing in his possession or has aided in concealing it or disposing of it.

230 Receiving after change of ownership

When a thing has been obtained by means of an indictable offence, or by means of an act done at a place not in the Territory that, if it had been done in the Territory, would have constituted an indictable offence and that is an offence under the law in force in the place where it was done, and another person has acquired a lawful title to it, or, in the event of the thing having been converted into other property or mortgaged or pledged or exchanged for other property as referred to in section 229, another person has acquired a lawful title to such other property or the proceeds or part proceeds of such conversion, mortgage, pledge or exchange, a subsequent receiving of the thing or of such other property, proceeds or part proceeds, is not an offence although the receiver knows or believes that the thing has previously been so obtained.

231 Taking reward for recovery of property obtained by means of indictable offence

Any person who corruptly receives or obtains, or corruptly agrees to receive or obtain, any property or benefit of any kind upon an agreement or understanding that he will help any person to recover anything that has been obtained by means of an indictable offence

or by means of any act done at a place not in the Territory that, if it had been done in the Territory, would have constituted an indictable offence and that is an offence under the law in force in the place where it was done, is, unless he has used all due diligence to cause the offender to be brought to trial for the offence, guilty of an offence and is liable to imprisonment for 7 years.

Division 3A Money laundering

231A Definitions

(1) In this Division:

deals with, in relation to money or other property, means:

(a) receives or has possession or control of the money or other property;

(b) conceals or attempts to conceal the money or other property;

(c) passes the money or other property to another person; or

(d) disposes of the money or other property in any other way.

offence means:

(a) an offence against a law in force in the Territory; or

(b) an offence against a law of the Commonwealth, a State, another Territory or a foreign state, that would be an offence if committed in the Territory.

proceeds of crime means money or other property that is derived or realised, directly or indirectly, by any person from the commission of an offence.

(2) For the definition of ***proceeds of crime***, it is necessary to prove facts that constitute one or more offences but the particulars of an offence need not be proven.

231B Money laundering

(1) Any person who deals with proceeds of crime is guilty of an offence and is liable to imprisonment for 20 years.

(2) It is a defence to a prosecution for an offence against this section if the defendant proves:

(a) that he or she:

(i) did not know;

(ii) did not believe or suspect; and

(iii) did not have reasonable grounds to suspect,

that the money or other property was proceeds of offence; or

(b) that he or she engaged in the act or omission alleged to constitute the offence in order to assist the enforcement of a law of the Territory, the Commonwealth, a State or another Territory.

231C Dealing with property used in connection with offences

(1) Any person who deals with money or other property that is being used or is intended to be used in the commission of, or to facilitate the commission of, an offence is guilty of an offence and is liable to imprisonment for 20 years.

(2) For subsection (1), in order to prove that money or other property is being or is intended to be used in the commission of, or to facilitate the commission of, an offence, it is not necessary to establish that:

(a) a particular offence was or was intended to be committed in relation to the money or other property; or

(b) a particular person had or had intended to commit an offence in relation to the money or other property.

(3) It is a defence to a prosecution for an offence against this section if the defendant proves:

(a) that he or she:

(i) did not know;

(ii) did not believe or suspect; and

(iii) did not have reasonable grounds to suspect,

that the money or other property was being used or was intended to be used in the commission of, or to facilitate the commission of, an offence; or

(b) that he or she engaged in the act or omission alleged to constitute the offence in order to assist the enforcement of a law of the Territory, the Commonwealth, a State or another Territory.

231D Dealing with suspicious property

Any person who deals with money or other property that he or she ought reasonably to have suspected to be:

(a) proceeds of crime; or

(b) being used or intended to be used in the commission of, or to facilitate the commission of, an offence,

is guilty of an offence and is liable to imprisonment for 2 years.

231E Prosecution to be approved

A prosecution for an offence against this Division must not be commenced without the consent of the Director of Public Prosecutions.

231F Section 31 not to apply

Section 31 does not apply to offences in this Division.

Division 4 Frauds by trustees, officers of corporations: false accounting

232 Trustees fraudulently disposing of trust property

(1) Any person who, being a trustee of any property, destroys the property with intent to defraud or, with intent to defraud, converts the property to any use not authorized by the trust is guilty of an offence and is liable to imprisonment for 7 years.

(2) If civil proceedings have been taken against a trustee in respect of any act done by him that is an offence against this section, he cannot be afterwards prosecuted for the same cause, as for an offence, on the complaint of the person by whom the civil proceedings were taken without the sanction of the court before whom the civil proceedings were had or are pending.

(3) For the purposes of this section ***trustee*** means the following persons and no others:

(a) a trustee within the meaning of any statute;

(b) trustees upon express trust created by a deed, will or instrument in writing, whether for a public or private or charitable purpose;

(c) trustees appointed by or under the authority of a statute for any such purpose;

(d) persons upon whom the duties of any such trust as aforesaid devolve;

(e) executors and administrators; or

(f) liquidators, trustees and other like officers acting under any law relating to corporations or to bankrupts, by whomsoever appointed or elected.

233 False accounting

Any person who, with a view to gain for himself or another or with intent to deceive or cause loss to another:

(a) destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose or any similar purpose or for any financial transaction; or

(b) in furnishing information for any purpose produces or makes use of any account, or any such record or document referred to in paragraph (a), that is or may be misleading, false or deceptive in a material particular,

is guilty of an offence and is liable to imprisonment for 7 years.

234 False statements by officers of corporations, &c.

(1) An officer, auditor or promoter, or person purporting to act as such, of a corporation or an unincorporated association, either existing or intended to be formed, who, with intent to deceive its members or creditors about its affairs or with intent to induce any person to entrust or advance any property to it or to become a member or to enter into any security for the benefit of it, publishes or concurs in publishing a written statement or account that, to his knowledge, is or may be misleading, false or deceptive in a material particular is guilty of an offence and is liable to imprisonment for 7 years.

(2) Where the affairs of a corporation or an association are managed by its members, this section shall apply to any statement that a member publishes or concurs in publishing in connection with his functions of management as if he were an officer of the corporation or association.

235 Suppression, &c., of documents

(1) Any person who, with intent to defraud, destroys, defaces or conceals any document that is evidence of title to land or estate in land, or any valuable security, will or other testamentary document or any original document of or belonging to, or filed or deposited in, any court of justice or any government department, is guilty of an offence and is liable to imprisonment for 7 years.

(2) Any person who, for the purposes of gain for himself or another or with intent to cause loss to another, by any deception procures the execution of a valuable security, is guilty of an offence and is liable to imprisonment for 7 years.

(3) Subsection (2) shall apply in relation to the making, acceptance, endorsement, alteration, cancellation or destruction in whole or in part of a valuable security and in relation to the signing or sealing of any paper or other material in order that it may be made or converted into, or used or dealt with as, a valuable security, as if that were the execution of a valuable security.

Division 5 Secret commissions

236 Solicitation or receipt of secret commissions

Any person who as:

(a) the agent or employee of any person; or

(b) a trustee or guardian; or

(ba) a decision maker (as defined in section 3 of the *Advance Personal Planning Act 2013*); or

(c) a lawyer, medical practitioner, accountant, auditor, engineer, architect, surveyor, valuer or other professional advisor; or

(d) an officer, partner, manager or other participant in the direction, management or administration of the business or affairs of a corporation or an unincorporated association; or

(e) an arbitrator, adjudicator or referee,

has any powers, duties or functions to carry out and who corruptly asks for, receives or obtains, or agrees to receive or obtain from any third person, any property or benefit for himself or another on account of his failure properly to carry out or the manner in which he carries out or promises or agrees to carry out those powers, duties or functions and any such third person who corruptly gives, offers or agrees to give such property or benefit, are guilty of an

offence and each is liable to imprisonment for 3 years.

237 Independent advisor accepting secret commission

Any person who holds himself out to the public as being engaged in the business of making for commercial purposes disinterested selections or examinations, or expressing disinterested opinions in relation to property or services, and who asks for, receives or obtains, or agrees to receive, any property or benefit of any kind in order to influence his selection, examination or opinion, is guilty of an offence and is liable to imprisonment for 3 years.

Division 5A Cheating at Gambling

Subdivision 1 Preliminary matters

237A Definitions

In this Division:

agreement about conduct that corrupts a betting outcome of an event, see section 237B(2).

bet, see section 237C(1).

cause a financial disadvantage, see section 237E(2).

conduct that corrupts a betting outcome of an event, see section 237B(1).

encourage, see section 237G.

event, see section 237D(1).

event contingency, see section 237D(2).

obtain a financial advantage, see section 237E(1).

237B Corrupting betting outcome of event

(1) Conduct ***corrupts a betting outcome of an event*** if the conduct:

(a) affects or, if engaged in, would be likely to affect the outcome of any type of betting on the event; and

(b) is contrary to the standards of integrity that a reasonable person would expect of persons in a position to affect the outcome of any type of betting on the event.

(2) An ***agreement about conduct that corrupts a betting outcome of an event*** is an agreement between 2 or more persons under which one or more of them agrees to engage in conduct that corrupts a betting outcome of an event.

237C Betting

(1) To ***bet*** includes doing any of the following:

(a) placing, accepting or withdrawing a bet;

(b) causing a bet to be placed, accepted or withdrawn.

(2) In this Division, a reference to betting on an event includes a reference to betting on any event contingency.

237D Events and event contingencies

(1) An ***event*** means any event (whether it takes place in the Territory or elsewhere) on which it is lawful to bet under the laws of the Territory, a State, another Territory or the Commonwealth.

(2) An ***event contingency*** means any contingency:

(a) that is connected in any way with an event; and

(b) on which it is lawful to bet under the laws of the Territory, a State, another Territory or the Commonwealth.

237E Obtaining financial advantage or causing financial disadvantage

(1) ***Obtaining a financial advantage*** includes any of the following, whether the financial advantage is permanent or temporary:

(a) obtaining a financial advantage for oneself or for another person;

(b) inducing a third person to do something that results in oneself or another person obtaining a financial advantage;

(c) keeping a financial advantage that one has.

(2) ***Causing a financial disadvantage*** includes any of the following, whether the financial disadvantage is permanent or temporary:

(a) causing a financial disadvantage to another person;

(b) inducing a third person to do something that results in another person suffering a financial disadvantage.

237F Proof of intention to obtain financial advantage or cause financial disadvantage

(1) In proceedings for an offence under section 237H, 237J or 237K, the defendant is taken to have intended to obtain a financial advantage, or to cause a financial disadvantage, if, and only if, it is proved that:

(a) the defendant intended to obtain a financial advantage, or cause a financial disadvantage, in connection with betting on the event; or

(b) the defendant knew that another person intended to obtain a financial advantage, or cause a financial disadvantage, in connection with betting on the event, as a result of the conduct the subject of the charge.

(2) It is not necessary to prove that any financial advantage was actually obtained or any financial disadvantage was actually caused.

(3) In this section:

conduct the subject of the charge means:

(a) in the case of an offence against section 237H – the conduct that the defendant engaged in; or

(b) in the case of an offence against section 237J(1) – the conduct that the defendant offered to engage in; or

(c) in the case of an offence against section 237J(2) – the conduct that the defendant encouraged another person to engage in; or

(d) in the case of an offence against section 237J(3) – the conduct the subject of the agreement; or

(e) in the case of an offence against section 237K – the conduct, or the conduct the subject of the agreement, that the defendant encouraged another person to conceal.

237G Encourage

Encouraging another person to engage in conduct includes commanding, requesting, proposing, advising, inciting, inducing, persuading, authorising, urging, threatening or placing pressure on the person to engage in the conduct.

Subdivision 2 Offences

237H Engaging in conduct that corrupts betting outcome of event

A person is guilty of an offence if the person:

(a) engages in conduct that corrupts a betting outcome of an event; and

(b) does so with the intention of obtaining a financial advantage, or causing a financial disadvantage, in connection with any betting on the event.

Maximum penalty: Imprisonment for 7 years.

237J Facilitating conduct that corrupts betting outcome of event

(1) A person is guilty of an offence if the person:

(a) offers to engage in conduct that corrupts a betting outcome of an event; and

(b) does so with the intention of obtaining a financial advantage, or causing a financial disadvantage, in connection with any betting on the event.

Maximum penalty: Imprisonment for 7 years.

(2) A person is guilty of an offence if the person:

(a) encourages another person to engage in conduct that corrupts a betting outcome of an event; and

(b) does so with the intention of obtaining a financial advantage, or causing a financial disadvantage, in connection with any betting on the event.

Maximum penalty: Imprisonment for 7 years.

(3) A person is guilty of an offence if the person:

(a) enters into an agreement about conduct that corrupts a betting outcome of an event; and

(b) does so with the intention of obtaining a financial advantage, or causing a financial disadvantage, in connection with any betting on the event.

Maximum penalty: Imprisonment for 7 years.

237K Concealing conduct or agreement about conduct that corrupts betting outcome of event

(1) A person is guilty of an offence if the person:

(a) encourages another person to conceal from any appropriate authority conduct, or an agreement about conduct, that corrupts a betting outcome of an event; and

(b) does so with the intention of obtaining a financial advantage, or causing a financial disadvantage, in connection with any betting on the event.

Maximum penalty: Imprisonment for 7 years.

(2) In this section:

appropriate authority includes:

(a) a police officer; or

(b) a body that has the official function of controlling, regulating or supervising an event or any betting on an event.

237L Use of corrupt conduct information for betting purposes

(1) A person is guilty of an offence if:

(a) the person possesses information in connection with an event; and

(b) the information is corrupt conduct information; and

(c) the person:

(i) bets on the event; or

(ii) encourages another person to bet on the event in a particular way; or

(iii) communicates the information, or causes the information to be communicated, to another person who the first person knows or ought reasonably to know would or would be likely to bet on the event.

Maximum penalty: Imprisonment for 7 years.

(2) Information in connection with an event is ***corrupt conduct information*** if the information is about conduct, or proposed conduct, that corrupts a betting outcome of an event.

(3) In proceedings for an offence against subsection (1)(c)(ii) or (iii), it is not necessary to prove that the person encouraged to bet, or to whom information was communicated, actually bet on the event concerned.

237M Use of inside information for betting purposes

(1) A person is guilty of an offence if:

(a) the person possesses information in connection with an event; and

(b) the information is inside information; and

(c) the person:

(i) bets on the event; or

(ii) encourages another person to bet on the event in a particular way; or

(iii) communicates the information, or causes the information to be communicated, to another person who the first person knows or ought reasonably to know would or would be likely to bet on the event.

Maximum penalty: Imprisonment for 2 years.

(2) Information in connection with an event is ***inside information*** if the information:

(a) is not generally available; and

(b) if it were generally available, would, or would be likely to, influence persons who commonly bet on the event:

(i) in deciding whether or not to bet on the event; or

(ii) in making any other betting decision.

(3) Information is ***generally available*** if:

(a) it consists of matter that is readily observable by the public; or

(b) it has been made known in a manner that would, or would be likely to, bring it to the attention of the public; or

(c) it consists of deductions, conclusions or inferences made or drawn from information mentioned in paragraph (a) or (b).

(4) In proceedings for an offence against subsection (1)(c)(ii) or (iii), it is not necessary to prove that the person encouraged to bet, or to whom information was communicated, actually bet on the event concerned.

237N Alternative verdict

(1) This section applies if, in a proceeding against a person charged with an offence against section 237L (the ***prosecuted offence***), the trier of fact:

(a) is not satisfied beyond reasonable doubt that the person committed the prosecuted offence; but

(b) is satisfied beyond reasonable doubt that the person committed an offence against section 237M (the ***alternative offence***).

(2) The trier of fact may find the person not guilty of the prosecuted offence but guilty of the alternative offence.

Division 6 Criminal damage

Subdivision 1 Interpretation

238 Definitions

In this Division:

belongs, in relation to property, see section 239.

causes, in relation to damage or other result, see section 240.

damage, to property, includes:

(a) destroying the property; and

(b) causing the physical loss of the property by interfering with the property (including by removing any restraint over the property or abandoning the property); and

(c) causing any loss of a use or function of the property by interfering with the property; and

(d) defacing the property, and

(e) for a document – obliterating or rendering illegible the whole or any part of the document; and

(f) for an animal – harming or killing the animal; and

(g) for a plant or other thing forming part of land – severing it from the land.

property:

(a) means any real or personal property of a tangible nature; and

(b) without limiting paragraph (a), includes:

(i) a wild creature that is tamed or ordinarily kept in captivity or that is or is being reduced into the possession of a person; and

(ii) any organ or part of a human body and any blood, ova, semen or other substance extracted from the human body.

property damage offence means:

(a) an offence against Subdivision 2 (other than an offence against section 242); or

(b) conduct in a State or another Territory that:

(i) is an offence against a law of that State or Territory; and

(ii) would constitute an offence against Subdivision 2 (other than an offence against section 242) if the conduct occurred in the Territory.

239 Person to whom property belongs

(1) For this Division, property ***belongs*** to anyone who has:

(a) possession or control of it; or

(b) any proprietary right or interest in it, other than an equitable interest arising only from:

(i) an agreement to transfer or grant an interest; or

(ii) a constructive trust.

(2) If property is subject to a trust, the person to whom the property belongs includes anyone having a right to enforce the trust.

(3) If property belongs to 2 or more persons:

(a) a reference in this Division to a person to whom the property belongs is a reference to all those persons; and

(b) for an offence committed by a person (the ***defendant***) – a reference in this Division to property belonging to another person includes a reference to property belonging to the defendant and other persons.

240 Causing damage or other result

For this Division, a person ***causes*** damage or any other result if the person's conduct substantially contributes to the damage or other result.

Subdivision 2 Offences

241 Damage to property

(1) A person is guilty of an offence if the person causes damage to property belonging to another person.

Fault elements:

The person:

(a) intentionally causes damage to property belonging to that other person or someone else; or

(b) is reckless as to causing damage to property belonging to that other person or someone else.

Maximum penalty: Imprisonment for 14 years.

(2) A person is guilty of an offence if the person makes a threat to another person to cause damage to property.

Fault elements:

The person:

(a) intentionally makes a threat to another person to cause damage to property; and

(b) is reckless as to causing the other person to fear that:

(i) the threat will be carried out; and

(ii) the carrying out of the threat will cause death or serious harm to someone.

Maximum penalty: Imprisonment for 7 years.

(3) A person is guilty of an offence if the person makes a threat to another person to cause damage to property belonging to that other person or someone else.

Fault elements:

The person:

(a) intentionally makes a threat to another person to cause damage to property belonging to that other person or someone else; and

(b) intends to cause the other person to fear that the threat will be carried out.

Maximum penalty: Imprisonment for 2 years.

(4) For subsections (2) and (3):

(a) it is not necessary to prove that the threatened person actually feared that the threat would be carried out; and

(b) a threat may be made by any conduct, and may be explicit or implicit and may be conditional or unconditional; and

(c) a threat to a person includes a threat to a group of persons; and

(d) fear that a threat will be carried out includes apprehension that the threat will be carried out.

(5) A person is guilty of an offence if the person possesses a thing for use by that person or someone else to cause damage to property belonging to another person.

Fault element:

The person intends that the person or someone else will use the thing to cause damage to property belonging to another person.

Maximum penalty: Imprisonment for 2 years.

242 Sabotage

(1) A person is guilty of an offence if the person:

(a) commits a property damage offence; and

(b) causes damage to a public facility in committing the property damage offence.

Fault elements:

The person:

(a) has the fault elements for a particular property damage offence; and

(b) in committing the property damage offence, intends to cause:

(i) major disruption to government functions; or

(ii) major disruption to the use of services by the public; or

(iii) major economic loss.

Maximum penalty: Imprisonment for life.

(2) A person who is convicted of the offence of attempting to commit an offence against subsection (1) is punishable by imprisonment not exceeding 14 years.

Note for subsection (2)

For the offence of attempting to commit the offence, see section 43BF.

(3) A person is guilty of an offence if the person makes a threat to another person to damage a public facility.

Fault elements:

The person:

(a) intentionally makes a threat to another person to damage a public facility; and

(b) intends to cause the other person to fear that the threat will be carried out and will cause:

(i) major disruption to government functions; or

(ii) major disruption to the use of services by the public; or

(iii) major economic loss.

Maximum penalty: Imprisonment for 15 years.

(4) For subsection (3):

(a) it is not necessary to prove that the threatened person actually feared that the threat would be carried out; and

(b) a threat may be made by any conduct, and may be explicit or implicit and conditional or unconditional; and

(c) a threat to a person includes a threat to a group of persons; and

(d) fear that a threat will be carried out includes apprehension that the threat will be carried out.

(5) In this section:

damage to a public facility means:

(a) causing damage to a public facility or any part of the facility; or

(b) causing disruption to the use or operation of a public facility.

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

(a) government facilities, including premises used by government employees in connection with official duties;

(b) public infrastructure facilities, including facilities providing water, sewerage, energy, fuel, communication or other services to the public;

(c) public information systems, including systems used to generate, send, receive, store or otherwise process electronic communications;

(d) public transport facilities, including facilities used to transport people or goods;

(e) public places, including any premises, land or water open to the public.

243 Arson

(1) A person is guilty of an offence if the person causes damage to a building or conveyance by using fire or an explosive substance.

Fault elements:

The person:

(a) intentionally uses fire or an explosive substance; and

(b) intentionally causes, or is reckless as to causing, damage to a building or conveyance.

Maximum penalty: Imprisonment for life.

(2) A person who is convicted of the offence of attempting to commit an offence against subsection (1) is punishable by imprisonment not exceeding 14 years.

Note for subsection (2)

For the offence of attempting to commit the offence, see section 43BF.

(3) A person is guilty of an offence if the person makes a threat to another person to use fire or an explosive substance to cause damage to a building or conveyance.

Fault elements:

The person:

(a) intentionally makes a threat to another person to use fire or an explosive substance to cause damage to a building or conveyance; and

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

Maximum penalty: Imprisonment for 7 years.

(4) For subsection (3):

(a) it is not necessary to prove that the threatened person actually feared that the threat would be carried out; and

(b) a threat may be made by any conduct, and may be explicit or implicit and may be conditional or unconditional; and

(c) a threat to a person includes a threat to a group of persons; and

(d) fear that a threat will be carried out includes apprehension that the threat will be carried out.

(5) In this section:

building includes:

(a) a part of a building; and

(b) all or part of any other structure or thing (whether or not moveable) that is used, designed or adapted for residential purposes (for example, a caravan).

conveyance means an aircraft, vessel, train, motor vehicle or trailer attached to a motor vehicle.

244 Bushfires

(1) A person is guilty of an offence if:

(a) the person causes a fire; and

(b) there is a substantial risk that:

(i) the fire would spread to vegetation on property belonging to another person; and

(ii) the person would not be able to stop the spreading of the fire.

Fault elements:

The person:

(a) intentionally causes the fire or is reckless as to causing the fire; and

(b) is reckless as to the risk.

Maximum penalty: Imprisonment for 15 years.

(2) Subsection (1) does not apply to a person who caused a fire for the purposes of fire management or land management (or both):

(a) in accordance with a law in force in the Territory (including, for example, the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), the *Bushfires Management Act 2016* and the *Fire and Emergency Act*) *1996*; or

(b) in accordance with an agreement entered into by the Territory.

Example for subsection (2)(a)

A person who caused a fire in the course of carrying out fire management activities such as hazard reduction activities under the Fire and Emergency Act 1996.

Example for subsection (2)(b)

A person who caused a fire in the course of carrying out fire management and land management activities under an agreement between the Territory and a private company established for the reduction of greenhouse gas emissions.

(3) For this section, a person ***causes*** a fire if the person:

(a) lights a fire; or

(b) maintains a fire.

245 Leaving explosive substance at a place

A person is guilty of an offence if:

(a) the person leaves an explosive substance at a place; and

(b) there is a substantial risk that the explosive substance would cause damage to property belonging to another person.

Fault elements:

The person:

(a) intentionally leaves an explosive substance at a place; and

(b) is reckless as to the risk.

Maximum penalty: Imprisonment for 2 years.

246 Endangering operation of aircraft

(1) A person is guilty of an offence if the person engages in conduct that results in a substantial risk of endangering the safe operation of an aircraft.

Fault elements:

The person:

(a) intentionally engages in the conduct; and

(b) is reckless as to the result.

Maximum penalty: Imprisonment for life.

(2) A person who is convicted of the offence of attempting to commit an offence against subsection (1) is punishable by imprisonment not exceeding 14 years.

Note for subsection (2)

For the offence of attempting to commit the offence, see section 43BF.

247 Obstructing runways

A person is guilty of an offence if the person obstructs any aircraft in its passage on a runway.

Fault element:

The person intentionally obstructs, or is reckless as to obstructing, any aircraft in its passage on a runway.

Maximum penalty: Imprisonment for 5 years.

Subdivision 3 Circumstances in which there is no criminal responsibility

248 Consent

A person (the ***defendant***) is not criminally responsible for an offence against this Division that involves damage to property (other than section 242) if, at the time of the conduct constituting the offence:

(a) the person entitled to consent to the damage to the property concerned had so consented; or

(b) the defendant believed that:

(i) the person whom the defendant believed was entitled to consent to the damage of the property concerned had so consented; or

(ii) such a person would have so consented if that person had known about the damage to be caused to the property and its circumstances.

Note for section 248

Part IIAA, Division 3, provides for other circumstances in which there is no criminal liability.

249 Claim of right

(1) A person is not criminally responsible for an offence against this Division (other than section 242) if, at the time of the conduct constituting the offence, the person believed:

(a) that the person had a right or interest in the property concerned; and

(b) the right or interest authorised the person to engage in the conduct.

(2) For this section, a right or interest in property includes a right or privilege in or over land or waters, whether created by a grant, licence or otherwise.

Note for section 249

Part IIAA, Division 3, provides for other circumstances in which there is no criminal liability.

Division 7 Forgery and like offences

258 Forgery

Any person who, in order to obtain a benefit for himself or another, or to cause a person to act to his or another's prejudice, or to induce a person to do or refrain from doing an act whether in the Territory or elsewhere:

(a) makes a false writing in any register or record kept by lawful authority or in any document that purports to be issued by lawful authority as testifying to the contents of any such register or record or to any fact or event;

(b) makes a copy of an existing document or writing with the intention of representing it to be the original document or writing;

(c) alters an existing document or writing with the intention of representing the altered document or writing to be the original document or writing;

(d) makes a document or writing that purports to be made or issued by or on behalf of a person who did not make or issue it or authorize its making or issue or who does not exist with the intention of representing it was made or issued by or on behalf of that person;

(e) makes a document or writing that falsely purports to be made at a particular place or time or before or witnessed by a particular person with the intention of representing that such particulars are true; or

(f) makes a document or writing in the nature of an order or a warrant or a receipt for or with respect to the payment of money or any valuable consideration for a greater or lower amount than that which the person on whose behalf the order, warrant or receipt is made out is entitled to or has paid,

is said to forge the document or writing and is guilty of an offence and is liable to imprisonment for 7 years.

259 Counterfeiting tokens

Any person who makes a counterfeit token with intent that it be used as a means of committing or attempting to commit the offence of criminal deception is guilty of an offence and is liable to imprisonment for 5 years.

260 Uttering forged documents or writings or counterfeit tokens

Any person who, knowing that a document or writing has been forged or that any token is counterfeit, utters such document, writing or token is guilty of an offence and is liable to the same punishment as if he had forged the document or writing or made the counterfeit token.

261 Uttering cancelled or exhausted documents

Any person who knowingly utters as and for a subsisting and effectual document or writing any document or writing that has by any lawful authority been ordered to be revoked, cancelled or suspended, or the operation of which has ceased by effluxion of time or by death or by the happening of any other event, is guilty of an offence and is liable to the same punishment as if he had forged the document or writing.

262 Uttering cancelled stamps

Any person who knowingly utters as and for a valid and uncancelled stamp a stamp, or an impression of a seal, used for any purpose connected with the public revenue of the Territory or of any other part of the Commonwealth that has been already used, or that has been cancelled, is guilty of an offence and is liable to the same punishment as if he had forged the stamp or seal.

263 Procuring execution of documents by deception

Any person who, by means of any deception as to the nature, contents or operation of a document, procures another to sign or execute the document is guilty of an offence and is liable to the same punishment as if he had forged the document.

264 Purchase of forged document or writing or counterfeit token, &c.

Any person who purchases, receives or has in his possession a forged document or writing or counterfeit token knowing it to be forged or counterfeit and with intent that it be uttered, is guilty of an offence and is liable to imprisonment for 5 years.

265 Falsification of registers

Any person who, having the actual custody of any register or record kept by lawful authority, knowingly permits any entry that, in any material particular, is to his knowledge false to be made in the register or record, is guilty of an offence and is liable to imprisonment for 7 years.

266 Sending false certificate of marriage to registrar

Any person who signs or transmits to a person authorized by law to register marriages a certificate of marriage, or any document purporting to be a certificate of marriage, that in any material particular is to his knowledge false, is guilty of an offence and is liable to imprisonment for 7 years.

268 Attempts to procure unauthorized status

Any person who:

(a) by deception procures any authority authorized by any statute to issue certificates testifying that the holders thereof are entitled to exercise any profession, trade or business or are entitled to any right or privilege or to enjoy any rank or status to issue to him or any other person any such certificate;

(b) falsely represents to any person that he has obtained any certificate issued by any such authority; or

(c) by deception procures himself or any other person to be registered on any register kept by lawful authority as a person entitled to such a certificate, or as a person entitled to exercise any profession, trade or business or entitled to any right or privilege or to enjoy any rank or status,

is guilty of an offence and is liable to imprisonment for 3 years.

269 Circulating false copies of rules or lists of members of societies or corporations

Any person who, knowingly and with intent to deceive or to enable another person to deceive, utters to any person a document that purports to be a copy of the constitution of a corporation, or of the rules or by-laws of any corporation or society constituted under the authority of any statute, but which is not a true copy thereof, or a document that purports to be a list of the members of any such corporation or society, but which is not a true list of such members, is guilty of an offence and is liable to imprisonment for 3 years.

Division 8 Preparation for forgery

270 Instruments and material for forgery

Any person who, without authorization or excuse, the proof of which lies on him:

(a) makes, or begins or prepares to make, or uses, or knowingly has in his possession or disposes of, any paper or other material resembling any paper or other material such as is specially provided by the proper authority for the purpose of being used for or making:

(i) any document acknowledging or being evidence of the indebtedness of the government of the Territory or of any other government;

(ii) any stamp, licence, permit or other document issued by or on behalf of the government of the Territory or any of its departments or statutory bodies or by any other government or its departments or statutory bodies; or

(iii) any bank note,

or any machinery or instrument or material for making any such paper or material, or capable of producing in or on paper or material any writing used in or on any paper or material specially provided for any such purpose;

(b) impresses or makes upon any plate or material any writing resembling, in whole or part, the writing used in any such document as aforesaid; or

(c) uses, or knowingly has in his possession, or disposes of any plate or material upon which such writing is impressed or made,

is guilty of an offence and is liable to imprisonment for 7 years.

271 Counterfeit stamps

Any person who, without authorization or excuse, the proof of which lies on him:

(a) makes or mends, or begins or prepares to make or mend, or uses, or knowingly has in his possession or disposes of, any die, plate or instrument capable of making an impression resembling that made by any die, plate or instrument used for the purpose of making any stamp, whether impressed or adhesive, that is used for the purposes of the public revenue of the Territory or any other part of the Commonwealth or in any foreign state, or capable of producing in or on paper or other material any writing used in or on any paper or other material specially provided by the proper authority for any such purpose;

(b) knowingly has in his possession or disposes of any paper or other material that has on it the impression of any such die, plate or instrument, or any paper that has on it or in it any such writing as aforesaid;

(c) fraudulently and with intent that use may be made of any such stamp as aforesaid, or of any part of it, removes the stamp from any material in any way;

(d) fraudulently and with intent that use may be made of any part of any stamp, mutilates the stamp;

(e) fraudulently fixes or places upon any material, or upon any such stamp, any stamp or part of a stamp that has been in any way removed from any other material, or out of or from any other stamp;

(f) fraudulently and with intent that use may be made of any such stamp that has been already impressed upon or attached to any material, erases or otherwise removes, either really or apparently, from such material anything written on it; or

(g) knowingly has in his possession or disposes of anything obtained or prepared by any such unlawful act as aforesaid,

is guilty of an offence and is liable to imprisonment for 7 years.

Division 9 Personation

272 Personation in general

(1) Any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead, is, unless otherwise stated, guilty of an offence and is liable to imprisonment for 3 years.

(2) If the representation is that the offender is a person entitled by will or operation of law to any specific property and he commits the offence with intent to obtain such property or possession thereof he is liable to imprisonment for 14 years.

273 Falsely acknowledging deeds, recognizances, &c.

Any person who, without authorization or excuse, the proof of which lies on him, makes in the name of any other person before any court or person lawfully authorized to take such an acknowledgment, an acknowledgment of liability of any kind, or an acknowledgment of a deed or other instrument, is guilty of an offence and is liable to imprisonment for 7 years.

274 Personation of a person named in a certificate

Any person who utters any document that has been issued by lawful authority to another person and whereby that other person is certified to be a person possessed of any qualification recognized by law for any purpose, or to be the holder of any office, or to be entitled to exercise any profession, trade or business, or to be entitled to any right or privilege, or to enjoy any rank or status, and falsely represents himself to be the person named in the document is guilty of an offence and is liable to imprisonment for 7 years.

275 Lending certificates for personation

Any person who, being a person to whom any document has been issued by lawful authority whereby he is certified to be a person possessed of any qualification recognized by law for any purpose, or to be the holder of any office, or to be entitled to exercise any profession, trade or business, or to be entitled to any right or privilege, or to enjoy any rank or status, lends the document to another person with intent that that other may represent himself to be the person named therein is guilty of an offence and is liable to imprisonment for 3 years.

Division 10 Computer offences

276 Interpretation

(1) In this Division, unless the contrary intention appears:

computer includes:

(a) a single computer, whether or not connected to a network or communications system; and

(b) more than one computer forming or connected to a network or communications system.

data includes:

(a) information in any form; and

(b) any program or part of a program.

data held in a computer includes:

(a) data entered or copied into the computer;

(b) data held in any removable data storage device that may be used in, or attached to, the computer; and

(c) data held in a data storage device on a computer network of which the computer forms part.

data storage device means any thing containing or designed to contain data that may be used in a computer and includes:

(a) a device that may be used to gain access to, or perform a function on, a communications system or telecommunications network; and

(b) an internet web site.

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

telecommunications network means a system or series of systems for carrying electronic communications.

(2) For the purposes of an offence against this Division, a person accesses data or causes modification of data or impairment of electronic communication if the person's conduct substantially contributes to the access, modification or impairment.

276A Meaning of *access to data*, *modification of data* and *impairment of electronic communication*

In this Division:

(a) access to data held in a computer means:

(i) the display of the data by the computer or any other output of the data from the computer;

(ii) the recording or monitoring of the data by a remote computer or other device;

(iii) the copying or moving of the data to any other place in the computer or to a data storage device; or

(iv) if the data is a program – the execution of the program;

(b) modification of data held in a computer means:

(i) the alteration or removal of the data; or

(ii) an addition to the data;

(c) impairment of electronic communication to or from a computer includes:

(i) the prevention of any such communication; or

(ii) the impairment of any such communication on an electronic link or network used by the computer,

but only if the prevention or impairment is caused (whether directly or indirectly) by the execution of a function of a computer; and

(d) use of data includes:

(i) use by a third party; and

(ii) use at the time the data was accessed or at a later time.

276B Unlawful access to data

(1) A person who unlawfully accesses data held in a computer with intent to:

(a) cause loss or harm to the person entitled to the data or a third person; or

(b) gain a benefit or advantage, whether personally or for a third party,

is guilty of an offence and is liable to imprisonment for 10 years.

(2) A person who unlawfully uses data that has been accessed unlawfully, whether or not he or she is the person who gained the access to the data, is guilty of an offence and is liable to imprisonment for 10 years.

276C Unlawful modification of data

(1) A person:

(a) who unlawfully causes any modification of data held in a computer; and

(b) who intends by the modification to impede access to, or to adversely affect the reliability, security or operation of, data held in a computer,

is guilty of an offence and is liable to imprisonment for 10 years.

(2) A person causes modification of data held in a computer if the person sets in train a course of events that results in the modification, even if the person did not himself or herself access the particular computer in which the data is modified but the modification would not have occurred but for the person's action.

276D Unlawful impairment of electronic communication

A person:

(a) who unlawfully causes impairment of electronic communication to or from a computer; and

(b) who intends to impair electronic communication to or from the computer or any other computer,

is guilty of an offence and is liable to imprisonment for 10 years.

276E Unlawful appropriation of access time

(1) A person who unlawfully uses access time to a computer or telecommunications network, the access being charged to another person, is guilty of an offence and is liable to imprisonment for 3 years.

(2) A person who unlawfully makes available for use by another person access time to a computer or telecommunications network, the access being charged to a third person, is guilty of an offence and is liable to imprisonment for 3 years.

276F Territorial nexus for offences

A person is guilty of an offence against this Division:

(a) if the person does an unlawful act within the Territory that leads to the unlawful access to, or modification of, data held in a computer or impairment of electronic communication, irrespective of whether or not the affected computer or data storage device is in the Territory; or

(b) if the person does an unlawful act, whether within the Territory or not, that leads to the unlawful access to, or modification of, data held in a computer or impairment of electronic communication, where the affected computer or data storage device is in the Territory.

Part VIII Attempts and preparation to commit offences: conspiracy: accessories after the fact

Division 1 Attempts and preparation to commit offences

277 Attempts to commit offences

(1) Any person who attempts to commit an offence is guilty of an offence.

(2) If the offence attempted to be committed is an indictable offence he is, unless otherwise stated, guilty of an indictable offence.

(3) If a charge of the offence attempted to be committed may be heard and determined summarily, a charge of the offence of attempting to commit the offence may also be heard and determined summarily.

278 Punishment of attempts to commit offences

(1) Any person who attempts to commit an indictable offence of such a kind that a person found guilty of it is liable to the punishment of imprisonment for life or of imprisonment for 14 years or longer is liable, if no other punishment is provided, to imprisonment for 7 years.

(2) Any person who attempts to commit any other offence is liable, if no other punishment is provided, to a punishment equal to one-half of the greatest punishment to which an offender found guilty of the offence that he attempted to commit is liable.

280 Attempts to procure commission of criminal offences

(1) Any person who attempts to procure another to do any act, make any omission or cause any event, whether in the Territory or elsewhere, of such a nature that, if the act were done or the omission were made or the event were caused, an offence would thereby be committed under the laws of the Territory or the laws in force in the place where the act, omission or event is proposed to be done, made or caused whether by himself or by that other person, is guilty of an offence of the same kind and is liable to the same punishment as if he had himself attempted to do the same act, make the same omission or cause the same event in the Territory.

(2) If the act, omission or event is proposed to be done, made or caused at a place not in the Territory, the punishment cannot exceed that which he would have incurred under the laws in force where the act, omission or event was proposed to be done, made or caused if he had himself attempted to do the proposed act, make the proposed omission or cause the proposed event.

(3) A prosecution with respect to a matter referred to in subsection (2) cannot be instituted except at the request of the government of the state having jurisdiction in the place where the act, omission or event was proposed to be done, made or caused.

281 Preparation to commit indictable offence with explosives, &c.

Any person who makes or knowingly has in his possession any explosive substance or any dangerous or noxious thing with intent by means thereof to commit, or for the purpose of enabling any other person by means thereof to commit, an indictable offence is guilty of an offence and is liable to imprisonment for 5 years.

Division 2 Conspiracy: accessories after the fact

282 Conspiracy to commit indictable offence

Any person who conspires with another to commit an indictable offence, or to do any act, make any omission or cause any event in any part of the world that, if done in the Territory, would be an indictable offence and that is an offence under the laws in force in the place where it is proposed to be done, is guilty of an offence

and is liable, if no other punishment is provided, to imprisonment for 7 years; or, if the greatest punishment to which a person found guilty of the offence in question is liable is less than imprisonment for 7 years, then to such lesser punishment.

283 Conspiracy to commit summary offence

Any person who conspires with another to commit a summary offence or to do any act, make any omission or cause any event in any part of the world that if done in the Territory would be a simple offence and that is an offence under the laws in force in the place where it is proposed to be done, is guilty of an offence and is liable to imprisonment for one year.

284 Conspiracy to deceive or defraud

Any person who conspires with another by deception or any fraudulent conduct to affect the market price of anything publicly sold or to defraud the public or any person, whether a particular person or not, or to extort any property from any person is guilty of an offence and is liable to imprisonment for 7 years.

285 Conspiracy to lay false charge

(1) Any person who conspires with another to charge any person or cause any person to be charged with an offence, whether alleged to have been committed in the Territory or elsewhere, knowing that such person is innocent of the alleged offence is guilty of an offence.

(2) If the offence is such that a person found guilty of it is liable to be sentenced to imprisonment for life the offender is liable to imprisonment for life.

(3) In any other case the offender is liable to imprisonment for 7 years.

286 Conspiracy to pervert justice

Any person who conspires with another to obstruct, prevent, pervert or defeat the course of justice is guilty of an offence and is liable to imprisonment for 15 years.

288 Conspiracy to carry out seditious enterprise

Any person who conspires with another to carry out any seditious enterprise is guilty of an offence and is liable to imprisonment for 3 years.

289 Other conspiracies

Any person who conspires with another:

(a) to prevent or defeat the execution or enforcement of any statute law;

(b) to prevent or obstruct the free and lawful disposition of any property by the owner thereof for its fair value; or

(c) to prevent or obstruct, by means of any conduct that, if engaged in by an individual person, would constitute an offence on his part, the free and lawful exercise of the trade, profession or occupation of any person,

is guilty of an offence and is liable to imprisonment for 3 years.

290 Industrial disputes

Notwithstanding anything contained in section 293, no act done, omission made or event caused by any 2 or more persons in contemplation or furtherance of any industrial dispute and no agreement or combination by any 2 or more persons to do any act, make any omission or cause any event or to procure any act to be done, omission to be made or event to be caused in contemplation or furtherance of any industrial dispute, shall render any of such persons guilty of an offence if such act, omission or event when done, made or caused by an individual person would not have rendered such person guilty of an offence.

291 Conspiracy by husband and wife

Any rule of law under which a husband and wife are incapable of criminally conspiring together is abolished.

292 Position of other conspirators no defence

It shall not be a defence to a charge of conspiracy that the person with whom the accused is alleged to have conspired:

(a) has not been prosecuted;

(b) has been found guilty of a different offence;

(c) is not amenable to justice;

(d) has been acquitted; or

(e) lacked the capacity to commit an offence.

293 Conspiracy to commit more than one offence

If a person conspires to engage in conduct that would constitute the offence of conspiracy under any 2 or more of the foregoing provisions, he is guilty of only one conspiracy so long as such conduct is part of one agreement or continuous conspiratorial relationship.

294 Punishment of accessories after the fact

(1) Any person who becomes an accessory after the fact to murder or terrorism is guilty of an indictable offence and is liable to imprisonment for 14 years.

(2) Any person who becomes an accessory after the fact to any other offence of such a nature that the offender may be sentenced to imprisonment for a term greater than 3 years is guilty of an indictable offence and is liable, if no other punishment is provided, to imprisonment for 2 years.

(3) Any person who becomes an accessory after the fact to any other offence of such a nature that the offender may be sentenced to imprisonment for one year, is guilty of an offence and is liable to a punishment equal to one-half of the greatest punishment to which the perpetrator is liable on being found guilty.

(4) If a charge of the offence to which the person is an accessory may be heard and determined summarily, a charge of the offence of being an accessory to the offence may also be heard and determined with summarily.

Part IX Procedure

Division 1 Preliminary proceedings: change of place of trial: no true bill

295 Jurisdiction

The jurisdiction of courts of justice with respect to hearing and determining charges of offences is set forth in the laws relating to the constitution and jurisdiction of those courts respectively.

297 Change of place of trial

(1) When a person has been committed for trial at a court held at any place, whether he has been admitted to bail or not, the Supreme Court or a Judge may, on the application of the Crown or of the accused person and upon good cause shown, order that the trial

shall be held at some other place.

(2) When an indictment has been presented against any such person the court may, on the application of the Crown or the accused person and upon good cause shown, order that the trial shall be held at some place other than that named in the indictment and at a time to be named in the order.

(4) The obligations of any persons who are bound to attend as witnesses or to produce any documents are in like manner to be deemed to be altered to the same time and place upon their being given written notice to that effect.

297A No true bill

(1) When a person charged with an indictable offence has been committed for trial and it is not intended to put him on his trial a Crown Law Officer shall:

(a) issue a certificate to that effect; and

(b) deliver it to the person committed:

(i) if the person is not in custody, by giving it to him personally or sending it by post to his last known address; or

(ii) if the person is in custody, by sending it by post or giving it to the person who has custody of him.

(2) If the committed person has been released on bail, upon the issue of the certificate, the bail undertaking and any conditions of bail shall cease to have effect and any security or money deposited thereunder shall be returned to the person who deposited it.

(3) If the committed person has not been released on bail, upon the delivery of the certificate, the warrant of commitment shall cease to have effect.

Division 2 Indictments

298 Nature of indictments

(1) When a person charged with an indictable offence has been committed for trial and it is intended to put him on his trial for the offence the charge is to be reduced to writing in a document that is called an indictment.

(2) The indictment is to be signed by a Crown Law Officer.

299 Altering charges after committal

When a person charged with an indictable offence has been committed for trial and if, in the opinion of the person responsible for the presentation of the indictment, the evidence produced at the preliminary proceedings is such that he ought to be charged with some further or other offence he may present an indictment charging such further or other offence.

300 Ex officio information

A Crown Law Officer may sign an indictment against any person for any offence whether the accused person has been committed for trial or not.

301 Arrest of person charged in ex officio information

(1) When an indictment has been presented against a person who is not in custody and has not been committed for trial or held to bail to attend to be tried upon the charge set forth in the indictment, or who does not appear to be tried upon the charge set forth in the indictment, a judge of the court in which the indictment is presented may issue a warrant under his hand to arrest the accused person and bring him before a the Local Court.

(2) The Local Court may commit him into the custody of the Commissioner of Correctional Services until he can be tried on the indictment or may, in a proper case, admit him to bail to attend to be tried on the indictment.

302 Nolle prosequi

(1) A Crown Law Officer may inform any court, by writing under his hand, that the Crown will not further proceed upon an indictment, or in relation to a charge contained in an indictment, then pending in that court.

(2) When such information is given to the court the accused person is to be discharged from any further proceedings upon that indictment or in relation to the charge.

303 General rule as to indictments

Except as otherwise expressly provided an indictment must charge one offence against one person.

304 Commencement of indictment

The commencement of an indictment shall indicate the name of the person by whom it is signed and the authority of that person to sign it.

305 Form of indictment

(1) An indictment shall contain a statement of the offence charged together with such particulars as may be necessary to give reasonable information as to the nature of the charge.

(2) If more than one offence is charged each offence shall be set out in a separate paragraph called a count and numbered consecutively.

(3) The statement of the offence shall describe the offence shortly in ordinary language in which the use of technical terms is unnecessary and it need not state all the elements of the offence, but it shall contain a reference to the section and the enactment defining the offence.

(4) If any circumstance of aggravation is intended to be relied upon it shall be charged in the indictment.

306 Description of property

(1) A description of property in an indictment may be in ordinary language and shall be such as to indicate with reasonable clarity the property referred to and, if the property is so described, it shall not be necessary, except when required for the purpose of describing an offence depending on any special ownership of property or special value of property, to name the person to whom the property belongs or the value of the property.

(2) Where property is vested in more than one person and the owners of the property are referred to in an indictment it is sufficient to describe the property as owned by one of those persons by name and others and if the persons owning the property are a body of persons with a collective name it is sufficient to use the collective name without naming any individual.

307 Description of persons

The description or designation in an indictment of the accused person or of any other person to whom reference is made shall be such as is reasonably sufficient to identify him without necessarily stating his correct name or his address or occupation and if, owing to the name of the person being unknown or for any other reason, it is impossible or impracticable to give such a description or designation, such description or designation shall be given as is

reasonably practicable in the circumstances or he may be described as "a person unknown".

308 Circumstances in which more than one person may be charged in the same indictment

(1) Any number of persons charged with committing or with counselling or procuring the commission of the same offence, although at different times, or of being accessories after the fact to the same offence, although at different times, and any number of persons charged with receiving, although at different times, any property that has been obtained by means of an indictable offence, or by means of an act that, if it had been done in the Territory, would be an indictable offence and that is an offence under the laws in force in the place where it was done, or any part of any property so obtained, may be charged with substantive offences in the same indictment and may be tried together notwithstanding that the perpetrator or the person who so obtained the property is not included in the same indictment or is not amenable to justice.

(2) Any number of persons charged with committing different or separate offences arising substantially out of the same facts or out of closely related facts so that a substantial part of the facts is relevant to all the charges may be charged in the same indictment and tried together.

309 Circumstances in which more than one charge may be joined against the one person

(1) Charges for more than one offence may be joined in the same indictment against the same person, whether he is being proceeded against separately or with another or others, if those charges are founded on the same facts or are, or form part of, a series of offences of the same or similar character or a series of offences committed in the prosecution of a single purpose.

(1A) To avoid doubt, charges for more than one offence may be joined in the same indictment even if the offences are alleged to have been committed against different persons.

(2) Charges of stealing any property or, alternatively, of receiving the same property knowing or believing it to have been stolen may be joined in the same indictment.

310 Circumstances where more than one offence may be charged as one offence

(1) In an indictment against a person for an assault the accused person may be charged and proceeded against notwithstanding that such assault is alleged to be constituted by a number of assaults

provided they were committed on the same person in the prosecution of a single purpose or at about the same time.

(2) In an indictment against a person for stealing property where the property was stolen over a period of time the accused person may be charged and proceeded against for stealing the property over the period of time, notwithstanding that different acts of stealing took place at different times and it is not possible to identify in all instances each particular act of stealing.

311 Formal defect

Without in any way limiting the power of the court to order an indictment to be amended, an indictment shall not be quashed by reason of formal defect if it is shown that such formal defect would not cause surprise or uncertainty to the accused person as to the true nature of the charge or charges brought against him.

312 Order for amendment of indictment

(1) Where, before trial or at any stage of a trial, it appears to the court that the indictment is defective or that there appears to be a variance between the indictment and the evidence, the court shall make such order for the amendment of the indictment as the court thinks necessary to meet the circumstances of the case if it is shown that the required amendment can be made without injustice.

(2) Where an indictment is so amended a note of the order for amendment shall be endorsed on the indictment and the indictment shall be treated for the purposes of the trial and for the purposes of all proceedings in connection therewith as having been presented in the amended form.

313 Particulars

The court may in any case direct particulars to be delivered to the accused person of any matter alleged in the indictment and unless they are delivered he is entitled to be discharged.

314 Application to complaints if charge heard and determined summarily

The provisions of this Division relating to indictments apply to complaints preferred against offenders, the charges against whom are heard and determined summarily.

Division 3 Effect of indictment: alternative verdicts

315 Offences involving circumstances of aggravation

(1) Upon an indictment charging a person with an offence committed with circumstances of aggravation he may be found guilty alternatively of the offence charged without any of such circumstances of aggravation or of the offence charged with any other circumstances of lesser aggravation contained in the section defining that offence.

(2) Upon an indictment charging a person with an offence of such a nature that he may be found guilty alternatively of some other offence, he may be found guilty of that other offence with or without any circumstance of aggravation prescribed for that offence.

316 Indictment containing count of murder or manslaughter

(1) On an indictment charging a person with murder, the person may alternatively be found guilty of manslaughter or an offence against section 161A, but not of any other offence unless as otherwise expressly provided.

(2) On an indictment charging a person with manslaughter, the person may alternatively be found guilty of an offence against section 161A, 174F(1) or 174FC(1).

317 Charge of homicide of child

Upon an indictment charging a person with murder or manslaughter, if it appears that the person alleged to have been killed was a child of which a woman had recently been delivered, the accused person may be found guilty alternatively of the offence of preventing the child from being born alive by an act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child, or of the offence of disposing of the dead body of a child with the intention of concealing the child's birth.

318 Charge of offence against the person where section 31 or intoxication is a defence

Upon an indictment charging a person with an offence against the person other than murder or manslaughter, if he is found not guilty of the offence charged or any other offence of which he might otherwise be found guilty upon that indictment by reason of the provisions of section 31 or intoxication, other than intoxication of such a nature that the provisions of section 43C apply, he may be found guilty alternatively of an offence against Part VI, Division 3A, Subdivision 2.

319 Charge of offence against morality, sexual intercourse or gross indecency without consent

(1) Upon an indictment charging a person with an offence against section 127, 128, 130, 131, 132 or 134 he may be found guilty alternatively of any other offence against the same section.

(2) Upon an indictment charging a person with an offence against section 192(3) the person may be found guilty alternatively of:

(a) an attempt to commit that offence; or

(b) an offence against section 127, 128, 130, 132(2)(a) or 134 or an attempt to commit such an offence.

320 Charge of causing event, &c.

(1) Upon an indictment charging a person with an offence of which causing an event is an element he may be found guilty alternatively of any offence of which causing an event of a similar, but less injurious, nature is an element.

(2) Upon an indictment charging a person with an offence of which an intent to cause an event is an element he may be found guilty alternatively of any offence of which the unlawful causing of that event is an element.

321 Charge of property offence

Upon an indictment charging a person with a property offence he may be found guilty of having committed that offence or any other offence available upon that indictment with respect to some, but not all, of the property described in the indictment.

322 Charge of stealing and criminal deception

Upon an indictment charging a person with stealing any property he may be found guilty alternatively of obtaining the property by deception and upon an indictment charging a person with obtaining property by deception he may be found guilty alternatively of stealing the property.

323 Charge of stealing or receiving

Upon an indictment charging a person with:

(a) stealing any property;

(b) receiving any property knowing or believing it to have been stolen; or

(c) stealing any property or, alternatively, receiving the same property knowing or believing it to have been stolen,

the person may be found guilty of:

(d) stealing the property;

(e) receiving the property; or

(f) either stealing or receiving the property.

324 Charge of counselling or procuring commission of an offence

Upon an indictment charging a person with counselling or procuring the commission of an offence he may be found guilty alternatively of counselling or procuring the commission of any other offence of such a nature that a person may be found guilty of it upon an indictment charging him with committing the offence of which the accused person is alleged to have counselled or procured the commission.

325 Finding of guilt for attempt to commit offence, &c.

(1) Upon an indictment charging a person with committing an offence he may be found guilty alternatively of attempting to commit that offence, or of attempting to commit any other offence of which he might be found guilty upon the indictment.

(2) Upon an indictment charging a person with procuring the commission of an offence he may be found guilty alternatively of attempting to procure the commission of that offence, or of attempting to procure the commission of any other offence of such a nature that a person may be found guilty of it upon an indictment charging him with committing the offence of which the accused person is alleged to have procured the commission.

(3) Upon an indictment charging a person with attempting to commit an offence he may be found guilty alternatively of attempting to commit any other offence of such a nature that a person may be found guilty of it upon an indictment charging him with committing the offence that the accused person is alleged to have attempted to commit.

(4) Upon an indictment charging a person with attempting to procure the commission of an offence he may be found guilty alternatively of attempting to procure the commission of any other offence of such a nature that a person may be found guilty of it upon an indictment charging him with committing the offence of which the accused person is alleged to have attempted to procure the commission.

(5) Upon an indictment charging a person with attempting to procure another to do an act, make an omission or cause an event of such a nature that if the act had been done, the omission had been made or the event had been caused an offence would thereby have been committed he may be found guilty alternatively of attempting to procure that other person to do any other act, make any other omission or cause any other event of such a nature that if the act had been done, the omission had been made or the event had been caused an offence would thereby have been committed, such last-mentioned offence being itself of such a nature that a person may be found guilty of it upon an indictment charging him with doing the act, making the omission or causing the event that the accused person is alleged in the indictment to have attempted to procure that other person to do, make or cause.

326 When evidence shows offence of similar nature

(1) Upon an indictment charging a person with an offence if the evidence establishes that he is guilty of another offence of such a nature that upon an indictment charging him with it he might have been found guilty of the offence with which he is actually charged, he may be found guilty of the offence with which he is so charged.

(2) A person so tried is not liable to be afterwards prosecuted for the offence so established by the evidence unless the presiding Judge thinks fit to discharge the jury from giving any verdict and to direct the accused person to be indicted for that offence; in which case he may be dealt with in all respects as if he had not been put upon his trial for the offence with which he is actually charged.

327 Charge of corrupt practices at elections

Upon an indictment charging a person with an offence relating to elections he may be found guilty alternatively of an offence relating to elections a charge of which may be heard and determined summarily.

328 Charge of stealing animals

Upon an indictment charging a person with stealing an animal he may be found guilty alternatively of an offence against section 225 or any summary offence dealing with:

(a) unlawfully using an animal; or

(b) unlawfully branding or marking an animal or altering the brand or mark.

329 Charge of joint receiving

Upon an indictment charging 2 or more persons jointly with an indictable offence of which the receiving of any property is an element if the evidence establishes that one or more of them separately received any part or parts of the property under such circumstances as to constitute an indictable offence, such one or more of the accused persons may be found guilty of the offence or offences so established by the evidence.

330 Court to determine availability of alternative charge

It is the duty of the court to determine at the conclusion of the evidence whether or not, upon the evidence, any other charge is in fact available for the consideration of the jury.

Division 4 Alibi, expert evidence, trial adjournment, pleas and practice

331 Notice of alibi

(1) An accused person shall not upon his trial on indictment, without the leave of the court, adduce evidence of an alibi unless, before the expiration of the prescribed period, he gives to the Director of Public Prosecutions written notice of particulars of the alibi and unless the notice contains the name and address of any person whom he claims can support the alibi or, if such name or address is not known to him at the time he gave the notice:

(a) he gives in the notice all information in his possession that may be of material assistance in locating that person; and

(b) the court is satisfied that before giving that notice he had made all reasonable attempts to obtain that name and address and that thereafter he continued to make all reasonable attempts to obtain and to inform the Director of Public Prosecutions of that name and address.

(2) A notice under this section shall be duly given if it is delivered to or left at the office of the Director of Public Prosecutions or sent by certified mail addressed to him at his office.

(3) The court shall not refuse leave under this section if it appears to the court that the accused person was not, upon his committal for trial, informed by that court of the requirements of this section.

(4) Evidence tending to disprove an alibi may, subject to a direction by the court, be given before or after evidence is given in support of the alibi.

(5) A notice purporting to be given under this section on behalf of the accused person by his solicitor shall, until the contrary is proved, be deemed to be given with the authority of the accused person.

(6) In this section:

evidence of an alibi means evidence tending to show that by reason of the presence of the accused person at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission.

the prescribed period means the period of 14 days after the date of the committal for trial of the accused person.

331A Notice of expert evidence

(1) This section applies if a person (the ***accused***) is to be tried in a court on indictment.

(2) If the accused intends to adduce any expert evidence during the trial, the accused must give written notice in accordance with this section to the court and prosecution:

(a) at least 14 days before the start of the trial; or

(b) within another time allowed by the court.

(3) The notice:

(a) must specify:

(i) the name, address and qualifications of the witness who is to give the expert evidence; and

(ii) the substance of the expert evidence; and

(b) must be accompanied by a copy of any existing document containing opinions or findings (or both) made by the witness that the accused intends to rely on as all or part of the expert evidence.

(4) If a document mentioned in subsection (3)(b) comes into existence after the notice was given but before the start of the trial, the accused must give a copy of it to the court and prosecution before the start of the trial.

(5) For subsections (2) and (4), the notice to the prosecution must be served on the Director of Public Prosecutions (the ***Director***) by:

(a) giving it to the Director or someone authorised by the Director to receive the notice; or

(b) sending it by certified mail addressed to the Director at the address of the office of the Director.

(6) Subsections (2) to (5) have effect except as allowed by the court.

(7) If the accused contravenes any provision of this section:

(a) the court may, on application by the prosecution:

(i) if the jury has been empanelled – discharge the jury and adjourn the trial; or

(ii) otherwise – adjourn the trial; and

(b) the court or prosecution may make comment to the jury in relation to the contravention (but must not suggest that, because of the contravention, the accused is guilty of the offence to which the trial relates).

331B Examination if expert psychiatric or medical evidence to be adduced

(1) This section applies:

(a) if a person (the ***accused***):

(i) is to be tried for an offence in a court on indictment; and

(ii) intends to adduce expert psychiatric or medical evidence relating to the state of mind, or a medical condition, of the accused at the time the alleged offence was committed; and

(b) whether or not notice of the accused's intention has been given under section 331A.

(2) The court may, on application by the prosecution, require the accused to be examined by a psychiatrist, or other appropriate expert, (the ***independent expert***) nominated by the prosecution and approved by the court.

(3) The prosecution must pay the costs of the examination.

(4) The court may, on application, allow the independent expert to be called to give evidence in chief for the prosecution or defence in relation to the results of the examination.

(5) If the accused refuses to be examined, at the trial:

(a) the prosecution may cross–examine the accused and any expert witness called by the accused, as to the possible reasons for the accused's refusal to be examined; and

(b) the court or prosecution may make comment to the jury in relation to the refusal (but must not suggest that, because of the refusal, the accused is guilty of the offence to which the trial relates).

(6) This section does not affect the operation of Part IIA.

332 Right to be tried

(1) A person committed for trial may, orally or in writing, at any time during the sittings of the court to which he has been committed or any subsequent sittings, make application to the court for an indictment to be presented against him in order that he may be brought to his trial.

(2) An application pursuant to this section shall be dealt with in open court and where the application is in writing may be dealt with in the absence of the applicant.

(3) The court may, upon an application pursuant to this section, order that:

(a) the application be adjourned for such period as it thinks fit;

(b) an indictment be presented within such period as it thinks fit; or

(c) the applicant be discharged.

333 Accelerating trial of persons not under committal

(1) A person who has not been committed for trial and who is not in custody or admitted to bail, but against whom an indictment has been presented, may apply at any time to the court in which the indictment was presented to be brought to his trial.

(2) Upon such an application the court may order that:

(a) the application be adjourned for such period as it thinks fit;

(b) the trial be held during such sittings of the court as it thinks fit; or

(c) the applicant be discharged.

334 Adjournment of trial

(1) The court to which a person has been committed or remanded for trial on indictment or before which an indictment is presented may, if it thinks fit, adjourn the trial and may remand the accused person accordingly.

(2) A trial may be adjourned whether or not:

(a) the accused person is present; or

(b) the accused person has been called upon to plead to the indictment; or

(c) a jury has been empanelled; or

(d) evidence has been given.

(3) The Crown shall, where it is proposed to make application for an adjournment in the absence of an accused person who is detained in a place of legal detention, notify in writing that accused person:

(a) that the application is to be made and the nature, date, time and place thereof; and

(b) that he may furnish to the court a statement in writing in relation to the application; and

(c) that he may be represented by his counsel on the hearing of the application.

(4) In this section ***adjourn the trial*** includes postpone the trial in a case where the accused person has not been called upon to plead to the indictment.

335 Enlargement of notices to witnesses

(1) Where the trial of a person charged or to be charged with an offence on indictment is adjourned, the court may enlarge the notice given to any witnesses.

(2) Where upon the adjournment of a trial a notice to a witness is enlarged, the witness is bound to attend to give evidence at the time and place to which the trial is adjourned, without being given a fresh notice, in the same manner as if he had been bound originally

by the notice to give evidence at the time and place to which the trial is adjourned.

336 Accused person to be called upon to plead to indictment

(1) An accused person is to be informed in open court of the offence with which he is charged as set forth in the indictment and may be called upon to plead to the indictment and to say whether he is guilty or not guilty of the charge.

(2) The trial is deemed to begin and the accused person is deemed to be brought to trial when he is so called upon.

(3) Nothing in this section prevents different Judges taking the plea of an accused person and presiding at the trial of the issues by the jury.

337 Presence in court and plea where accused is a corporation

(1) Where an indictment is presented against a corporation, the corporation may be present in court by its representative and it may, on arraignment, enter a plea in writing by its representative.

(2) Any plea so entered by the representative shall for all purposes be taken to be a plea entered by the corporation.

(3) If the corporation is not present in court by its representative or if, though it is so present, it does not enter a plea in writing by its representative, the court shall order a plea of not guilty to be entered on behalf of the corporation.

(4) A plea so entered has the same effect as if it had been actually pleaded and the trial of the corporation may proceed accordingly.

(5) In respect of a trial, any requirement by law that anything shall be done in the presence of the accused person or shall be read or said to or asked of the accused person shall, in the case of a corporation present in court by its representative, be construed as a requirement that that thing shall be done in the presence of the representative or read or said to or asked of the representative.

(6) If the corporation is not present in court by its representative it shall not be necessary for the thing to be done or read or said or asked.

(7) Without limiting subsection (1) or section 360 where, in respect of a trial, anything is required to be done or said by the accused person personally, it may, in the case of a corporation present in court by its representative, be done or said by the representative and anything so done or said shall for all purposes be taken to be done or said by the corporation.

(8) In this section ***representative*** means a person appointed by the corporation to represent it for the purposes of this section; but the person so appointed is not, by virtue only of being so appointed, qualified to act on behalf of the corporation before the court for any other purpose.

(9) A representative need not be appointed under the seal of the corporation and a statement in writing purporting to be signed by a managing director of the corporation or by any other person, by whatever name called, having, or being one of the persons having, the management of the affairs of the corporation to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section shall be admissible without further proof as prima facie evidence that that person has been so appointed.

338 Delivery of copy of indictment

When an indictment is presented against any person the court is required, upon his application, to order a copy of the indictment to be delivered to him without fee.

339 Motion to quash indictment

(1) The accused person may before pleading apply to the court:

(a) to quash the indictment on the ground that it is calculated to prejudice or embarrass him in his defence to the charge or that it is formally defective; or

(b) to stay the proceedings on the ground that they are vexatious or harassing.

(2) Upon such motion the court may quash the indictment, order it to be amended in such manner as the court thinks just, stay the proceedings or refuse the motion.

340 Misnomer

If the accused person says that he is wrongly named in the indictment the court may, on being satisfied by affidavit or otherwise of the error, order the indictment to be amended.

341 Separate trials where 2 or more charges against the same person

(1) Where before a trial or at any time during a trial the court is of opinion that the accused person may be prejudiced or embarrassed in his defence by reason of his being charged with more than one offence in the same indictment or that for any other reason it is

desirable to direct that the person should be tried separately for any offence or offences charged in an indictment the court may order a separate trial of any count or counts in the indictment.

(1A) Subsection (1) applies subject to section 341A.

(2) The court may discharge a jury from giving a verdict on the count or counts directed to be tried separately.

(3) The procedure on the separate trial of a count shall be the same in all respects as if the count had been set out in a separate indictment.

(4) The court may adjourn a separate trial, remand the accused person and make such orders as to bail and as to the enlargement of notices to witnesses and otherwise as the court thinks fit.

(5) In this section ***adjourn*** includes postpone in a case where the accused person has not been called upon to plead to the indictment.

341A Presumption of joint trial of sexual offences

(1) Despite any rule of law to the contrary, if an accused person is charged with more than one sexual offence in the same indictment, it is presumed that the charges are to be tried together.

(2) The presumption is not rebutted merely because:

(a) evidence on one charge is not admissible on another charge; or

(b) there is a possibility that evidence may be the result of collusion or suggestion.

(3) In this section:

sexual offence, see section 3 of the *Sexual Offences (Evidence and Procedure) Act 1983*.

342 Pleas

(1) If the accused person does not apply to quash the indictment or move for a separate trial, he must either plead to it, or demur to it on the ground that it does not disclose any offence cognizable by the court.

(2) If he pleads he may plead:

(a) that he is guilty of the offence charged in the indictment or, with the consent of the Crown, of any other offence of which he might be found guilty upon the indictment;

(b) that he is not guilty;

(c) that he has already been found guilty or acquitted of:

(i) the same offence;

(ii) a similar offence;

(iii) an offence of which he might be found guilty upon the trial of the offence charged; or

(iv) an offence upon the trial of which he could have been found guilty of the offence charged;

(d) that he has received the royal pardon for the offence charged; or

(e) that the court has no jurisdiction to try him for the offence charged.

(3) Two or more pleas may be pleaded together except that the plea of guilty cannot be pleaded with any other plea to the same charge.

(4) An accused person may plead and demur together.

343 Defence of truth of defamatory matter to be specially pleaded

A person charged with the unlawful publication of defamatory matter who sets up that the defamatory matter is true must plead that matter specially and may plead it with any other plea except the plea of guilty.

344 Persons committed for sentence

(1) When a person has been committed for sentence for an indictable offence he is to be called upon to plead to the indictment in the same manner as other persons and may plead either that he is guilty of the offence charged in the indictment or, with the consent of the Crown, of any other offence of which he might be found guilty upon the indictment.

(2) If he pleads that he is not guilty the court, upon being satisfied that he duly admitted before the Local Court that he was guilty of the offence charged in the indictment, may direct a plea of guilty to be

entered notwithstanding his plea of not guilty and a plea so entered has the same effect as if it had been actually pleaded.

(3) If, and notwithstanding that the accused person pleads that he is guilty, it appears to the court upon examination of the depositions of the witnesses and any other information given to it that a plea of not guilty ought to be entered, the plea of not guilty is to be entered.

(4) A person who has been committed for sentence may plead any of the other pleas mentioned in section 342.

345 Standing mute

If an accused person who has been committed for trial or proceeded against by way of section 300, on being called upon to plead to an indictment, will not plead or answer directly to the indictment the court may, if it thinks fit, order a plea of not guilty to be entered and a plea so entered has the same effect as if it had been actually pleaded.

346 Plea of autrefois convict, &c.

In a plea that the accused person has already been found guilty or acquitted it is sufficient to state that he has been lawfully found guilty or acquitted of the offence charged in the indictment or of the offence of which he alleges that he has been found guilty or acquitted and, in the latter case, to describe the offence by any term by which it is commonly known.

347 Trial on plea of autrefois convict, &c., royal pardon or to the jurisdiction

Upon a plea that the accused person has already been found guilty or acquitted or has received the royal pardon or to the jurisdiction of the court, the court is to proceed to determine the matter itself in such manner and upon such information as it thinks fit.

348 Trial by jury

Subject to section 348A, if the accused person pleads that he is not guilty he is by such plea, without any further form, deemed to have demanded that the issues raised by such plea shall be tried by a jury and is entitled to have them tried accordingly.

348A Procedure where accused pleads not guilty and crown adduces no evidence

(1) If:

(a) an accused person pleads not guilty of an offence; and

(b) the Crown does not intend to adduce any evidence in respect of the offence,

the Crown must, before a jury is empanelled, inform the court of its intention.

(2) On being informed by the Crown under subsection (1), the court must make a finding that the accused is not guilty of the offence.

(3) A finding of not guilty under subsection (2) has effect as if it were a not guilty verdict of a jury on the offence.

349 Demurrer

(1) When an accused person demurs only and does not plead any plea the court is to proceed to hear and determine the matter forthwith.

(2) If the demurrer is overruled he is to be called upon to plead to the indictment.

(3) When an accused person pleads and demurs together it is in the discretion of the court whether the plea or demurrer shall be first disposed of.

(4) No joinder in demurrer is necessary.

350 Separate trials

When 2 or more persons are charged in the same indictment, whether with the same offence or with different offences, the court may, at any time during the trial, on the application of any of the accused persons, direct that the trial of the accused persons or any of them shall be had separately from the trial of the other or others of them and for that purpose may, if a jury has been empanelled, discharge the jury from giving a verdict as to any of the accused persons.

351 Juries

The law respecting the qualifications of jurors and the summoning of jurors to attend for the trial of persons charged with offences and the challenges allowed to such persons is set forth in the laws relating to juries and jurors.

351A Details of jury panel to be given to accused

(1) Subject to subsection (3), a person who is to be tried on indictment (the ***accused***) must be given a list of the persons on the jury panel for the trial containing:

(a) the full name of each person; and

(b) if requested by the accused – a description of each person.

(2) The list must be given to the accused at least 2 days before the accused is called on to plead to the indictment.

(3) The court may, if it considers it appropriate, refuse to give the list to the accused.

352 Accused person to be informed of his right of challenge

When an accused person has demanded to be tried by a jury the proper officer of the court is to inform him in open court that the persons whose names are to be called are the jurors to be empanelled for his trial and is further to inform him that if he desires to challenge any of them he must do so before they take the oath as jurors.

353 Challenge to array

If the accused person desires to object to the whole panel of jurors he must do so before any juror takes the oath as a juror for his trial.

354 Challenges to individual jurors for cause

(1) The Crown or the accused person may object to a particular juror on the ground:

(a) that the juror is not qualified by law to act as a juror; or

(b) that the juror is not indifferent as between the Crown and the accused person.

(2) Such objections are in addition to any peremptory challenges that are allowed.

355 Time for challenging

An objection to a juror, either by way of peremptory challenge or by way of challenge for cause, may be made at any time before the officer has begun to recite the words of the oath to the juror, but not afterwards.

356 Ascertainment of facts as to challenge

(1) If at any time it becomes necessary to ascertain the truth of any matter alleged as cause for challenge the fact shall be tried by the jurors who have already taken the oath as jurors if more than one or, if one juror only has taken the oath as a juror, by such juror together with some indifferent person chosen by the court from the panel of jurors or, if no juror has taken the oath as a juror, by 2 indifferent persons chosen by the court from such panel.

(2) The persons so appointed are to take an oath to try the cause for challenge and their decision on the fact is final and conclusive.

(3) If the persons so appointed cannot agree the court may discharge them from giving a decision and may appoint 2 other persons to try the fact to be chosen as in the case where no juror has taken the oath as a juror.

358 Jurors to take oath and be informed of charge

(1) Each juror must take an oath to give a true verdict according to the evidence upon the issues to be tried by them.

(2) When all jurors have taken the oath the proper officer of the court is to inform them of the charge set forth in the indictment and of their duty as jurors upon the trial.

359 Discharge of juror by court

If, after a juror has taken the oath as a juror, it appears to the court from his own statement that he is not indifferent as between the Crown and the accused person, or that for any other reason he ought not to be allowed or required to act as a juror on the trial, the court may, without discharging the whole of the jury, discharge that particular juror and direct another juror to take the oath in his place.

360 Defence by accused person

(1) Every accused person is entitled to give evidence, to call evidence and to be represented by counsel, but he is not entitled to make a statement from the dock.

(2) In subsection (1) ***counsel*** includes any person entitled to audience as an advocate.

361 Presence of accused

(1) The court may, if it thinks fit, permit an accused person to be absent during the whole or any part of the trial on such conditions as it thinks fit.

(2) If an accused person so conducts himself as to render the continuance of the proceedings in his presence impracticable the court may order him to be removed and may direct the trial to proceed in his absence.

(3) If an accused person injures himself in order to prevent the trial commencing or continuing the court may direct a plea of not guilty to be entered if no plea has been entered and that the trial shall proceed in his absence.

(4) If the accused person absents himself during the trial without leave the court may direct a warrant to be issued to arrest him and bring him before the court forthwith and may also direct the trial to proceed in his absence.

362 Evidence in defence

At the close of the evidence for the prosecution the proper officer of the court shall ask the accused person if he intends to adduce evidence in his defence.

363 Speeches and their order

(1) The following rules govern the order in which the parties address the jury:

(a) counsel for the Crown must make an opening address, outlining the case for the prosecution, before calling evidence for the prosecution;

(b) if the accused person proposes to call witnesses to give evidence for the defence, the accused person may, at the close of the case for the prosecution, make an opening address, outlining the case for the defence, before giving or calling evidence;

(c) at the conclusion of the evidence, counsel for the Crown may address the jury to sum up the case for the prosecution;

(d) at the conclusion of that address, the accused person may address the jury to sum up the case for the defence.

(2) If, in the opinion of the presiding Judge, the accused person (or counsel for the accused person) made assertions in the course of summing up the case for the defence that are unsupported by the evidence, the Judge may allow counsel for the Crown a further opportunity to address the jury to reply to those assertions.

(3) If there are 2 or more accused persons, the order in which they are to exercise the right to address the jury is to be:

(a) as mutually agreed between them; or

(b) in default of agreement – the reverse of the order in which their names appear on the indictment.

(4) If an accused person is represented by counsel, the right to address the jury is to be exercised on the accused person's behalf by counsel.

(5) The presiding Judge may, if of the opinion that there should be a departure from these rules in the circumstances of a particular case, allow a departure from these rules.

Example

If a particular witness would not otherwise be available to the defence, the presiding Judge might authorise the defence to interpose the witness before the close of the case for the prosecution.

364 Summing up

(1) After the evidence is concluded and the counsel or the accused person or persons, as the case may be, have addressed the jury it is the duty of the court to instruct the jury as to the law applicable to the case with such observations upon the evidence as the court thinks fit to make.

(2) After the court has instructed the jury they are to consider their verdict.

365 Jury not to separate

(1) Except as hereinafter stated after the jury has been empanelled and the charge has been stated to the jury by the proper officer, the jurors must not separate until they have given their verdict or are discharged by the court and no person except the officer of the court who has charge of them is to be allowed to speak to or communicate with any of them without the leave of the court until they are discharged.

(2) The court may, if the court considers it appropriate to do so, permit the jury to separate for any specified period during an adjournment of the court.

(2A) The court may give any direction for the conduct of the jury in relation to the separation.

(3) If any person disobeys the directions of this section he may be punished summarily as for contempt of court.

(4) The validity of the proceedings is not affected by any such disobedience but, if the fact is discovered before the verdict is given, the court, if it is of opinion that such disobedience is likely to prejudice the fair trial of the charge, may discharge the jury and may direct that a fresh jury be empanelled during the same sittings of the court or may adjourn the trial.

366 Confinement of jury

(1) Until the jury have given their verdict they must be kept during any adjournment of the court in some private place under the charge of an officer of the court and are to be provided with such accommodation, meals and refreshment as the court may allow.

(2) Subsection (1) does not affect the operation of section 365(2) and (2A).

367 View

(1) The court may in any case, if it thinks fit, direct that the jury shall view any place or thing that the court thinks it is desirable that they should see and may give any necessary directions for that purpose.

(2) The validity of the proceedings is not affected by disobedience to any such directions, but if the fact is discovered before the verdict is given the court, if it is of opinion that such disobedience is likely to prejudice the fair trial of the charge, may discharge the jury and may direct that a fresh jury be empanelled during the same sittings of the court or may adjourn the trial.

368 Majority verdict

Where upon a trial a period of not less than 6 hours has elapsed since the jury retired and the jurors are not unanimously agreed upon their verdict the court shall:

(a) if the jury consists of 11 or 12 jurors and 10 of those jurors are agreed upon a verdict to be given, take and enter that verdict as the verdict of the jury; or

(b) if the jury consists of 10 jurors and 9 of those jurors are agreed upon a verdict to be given, take and enter that verdict as the verdict of the jury.

369 Special verdict

In any case in which it appears to the court that the question whether an accused person ought or ought not to be found guilty of an offence may depend upon some specific fact or that the proper punishment to be imposed upon a finding of guilt may depend upon some specific fact the court may require the jury to find that fact specially.

370 General verdict on charge of defamation

Notwithstanding the provisions of section 369 the jury, on the trial of a person charged with the unlawful publication of defamatory matter, may give a general verdict of guilty or not guilty upon the whole matter in issue in like manner as in other cases.

371 Discharge of jury

(1) When the trial of an accused person is adjourned after the jury has been empanelled the court may discharge the jury.

(2) If the jury cannot agree as to the verdict to be given or reach a majority verdict as provided by section 368, or if any emergency arises of such a nature as to render it, in the opinion of the court, necessary or highly expedient for the ends of justice to do so, the court may, in its discretion, discharge the jury without giving a verdict and may direct that a fresh jury be empanelled during the same sittings of the court or may adjourn the trial.

(3) Such an exercise of discretion is not subject to review by any court.

Note

The jury may also be discharged under section 331A(7)(a)(i).

372 Incapacity of Judge

(1) This section applies if the presiding Judge becomes incapable of continuing with a trial.

(2) The Chief Justice or acting Chief Justice may, after hearing submissions from the parties, decide:

(a) to take over, or assign another Judge to take over, the conduct of the trial; or

(b) to terminate the trial.

(3) For the purpose of hearing submissions and making the decision, the Chief Justice or acting Chief Justice may make the orders the Chief Justice or acting Chief Justice considers appropriate.

(4) If a Judge (the ***new presiding Judge***) takes over the conduct of the trial:

(a) rulings of the former presiding judge about the conduct of the trial continue to have effect; and

(b) the rulings may be re-examined only if the new presiding judge is satisfied the re-examination is justified because of fresh evidence or material brought before the court.

(5) However, if the Chief Justice or acting Chief Justice decides to terminate the trial, the Chief Justice or acting Chief Justice must:

(a) discharge the jury; and

(b) remand the accused in custody, or release the accused on bail, to await a further trial.

(6) If, because of the circumstances of the incapacity of the presiding Judge it is impracticable for the Chief Justice or acting Chief Justice to make a decision under subsection (2) in a reasonable time:

(a) a proper officer of the court must discharge the jury; and

(b) if in custody, the accused must remain in custody to await a further trial but has the same rights relating to bail as applied on the original committal for trial.

373 Incapacity of juror

(1) If at any time during the trial:

(a) a juror dies; or

(b) the court is of the opinion that:

(i) the juror is not indifferent as between the Crown and the accused person; or

(ii) by reason of any matter of urgency or importance a juror should be discharged from further attendance,

the court may, in its discretion:

(c) discharge the jury; or

(d) discharge the juror and direct that the trial shall proceed with the remaining jurors.

(2) In any such case the presence of the remaining jurors, not being fewer than 10, shall have the same effect as if all the jurors had continued present.

374 Verdict on Sunday

The taking of a verdict or any other proceedings of the court are not invalid by reason of their happening on a Sunday.

375 Further pleas

When the issues raised by any plea or pleas, except the plea of not guilty, have been found against an accused person who has not pleaded the plea of not guilty, he is to be called upon to plead afresh.

Division 5 Evidence: admissions of fact

376 Evidence on trials for perjury

On the trial of a person charged with an indictable offence of which the giving of false testimony by any person at the trial of a person charged with an offence is an element, a certificate setting out the substance and effect only, without the formal parts of the charge, and the proceedings at the trial and purporting to be signed by the officer having the custody of the records of the court where the charge was tried, or by his deputy, is sufficient evidence of the trial without proof of the signature or official character of the person who appears to have signed the certificate.

377 Evidence of relationship on charge of incest

(1) On the trial of a person charged with an offence against section 134 (***the offender***), the following applies:

(a) it is sufficient to prove that the person with respect to whom the offence is alleged to have been committed (***the victim***) is reputed to be a close family member of the offender;

(b) it is not necessary to prove that the parents of the victim, or of any other person, were married at the time of birth of the victim or other person;

(c) until the contrary is proved, the offender is presumed to have known of the relationship between himself or herself and the victim at the time of the alleged offence.

(2) In subsection (1):

close family member has the same meaning as in section 134.

378 Evidence of authority

The averment in an indictment that the prosecution is instituted by the direction of a Crown Law Officer or at the request of the government of any state is sufficient evidence of the fact until the contrary is shown.

379 Admissions

(1) An accused person may by himself or his counsel admit on the trial any fact alleged against him and such admission is sufficient proof of the fact without other evidence.

(2) The prosecution may admit on the trial any fact alleged by the accused person and such admission is sufficient proof of the fact without other evidence.

(3) In this section ***trial*** also includes proceedings before the Local Court to hear and determine the charge of an indictable offence summarily dealing summarily with a crime.

380 Failure to make admission may, in certain circumstances, be taken into account when passing sentence

If a person found guilty at his trial refused to make an admission requested in writing by the Crown of such a nature that, in the opinion of the court, the making of it could not have prejudiced him in his defence, the court may take such refusal into account when passing sentence.

Division 6 Verdict: judgment

381 Discharge of persons acquitted

If the jury find that the accused person is not guilty, or give any other verdict that shows that he is not liable to punishment, he is entitled to be discharged from the charge of which he is so acquitted.

383 Acquittal on ground of intoxication

(1) If, on the trial of a person charged on indictment with a property offence, it is alleged or appears that he is not guilty by reason of intoxication, other than intoxication of such a nature that section 43C applies, the jury are required to find specially, if they find he is not guilty, whether he is not guilty by reason of intoxication and whether such intoxication was voluntary.

(2) If the jury find he is not guilty by reason of intoxication and his intoxication was voluntary the court may order him to pay by way of

reparation an amount not exceeding the costs of bringing the charge including the costs of all reasonable investigations relating thereto and the costs of the committal proceedings and, in an appropriate case, may make an order for the payment of compensation and restitution pursuant to the *Sentencing Act 1995*.

(3) The court may itself assess such costs or order that they be taxed by the proper officer of the Supreme Court.

(4) A person liable to make reparation may be ordered to make it in instalments or at some future time specified by the court.

(5) An amount ordered to be paid for reparation shall be deemed to be a debt owed to the Attorney-General as agent of the Crown and, upon default being made in its payment, the Attorney-General may bring and maintain civil proceedings for its recovery.

384 Finding of guilt of property offence with respect to some only of property in indictment

If, on the trial of a person charged on indictment with a property offence, the jury find that he committed the offence charged in the indictment or an offence available upon it with respect to some, but not all, of the property described in the indictment the jury shall return a verdict of guilty of the offence found by them to have been committed and, by way of special verdict, shall state with respect to what property the general verdict relates.

385 Finding of guilt of stealing or receiving

If, on the trial of a person charged on indictment with stealing any property or, alternatively, receiving the same property knowing or believing it to have been stolen, the jury find that he either stole the property or received it or some of it knowing or believing it to have been stolen, but they are unable to say which, they shall return that verdict specially and the court shall enter a finding of guilt for the offence for which the lesser punishment is provided or, if the same punishment is provided, for the first such offence charged in the indictment.

387 Arrest of judgment

(1) A person found guilty of an offence, whether on his plea of guilty or otherwise, may at any time before sentence move that judgment be arrested on the ground that the indictment does not disclose any offence.

(2) Upon the hearing of the motion the court may allow any such amendments of the indictment as it might have allowed before verdict.

(3) The court may either hear and determine the motion forthwith or may reserve the question of law for the consideration of the Court of Criminal Appeal as hereinafter provided.

Division 7 Hearing summarily-triable offence with indictable offence

388 Definition

In this Division:

summarily-triable offence means:

(a) a summary offence; or

(b) an indictable offence a charge of which may be heard and determined summarily by the Local Court; or

(c) an offence mentioned in section 22(1) of the *Misuse of Drugs Act 1990* if:

(i) the prosecution has elected under section 23(2) of that Act for the charge of the offence to be heard and determined summarily; and

(ii) the Local Court has not discontinued those summary proceedings under section 23(4) of that Act.

389 Supreme Court may hear and determine summarily-triable offence with indictable offence

(1) When hearing and determining a charge against a person on indictment, the Supreme Court may also, if it considers appropriate, hear and determine summarily any charge of a summarily-triable offence that has been laid against the person.

(2) However, the Supreme Court must not hear and determine the charge of the summarily-triable offence unless the charge has been transmitted to a Registrar of the Supreme Court under section 390.

(3) Subject to this section, the practice and procedure of the Supreme Court and the provisions of this Code relating to taking a plea on an indictment apply in relation to the taking of a plea to the charge of the summarily-triable offence.

(4) On finding the accused person guilty of the summarily-triable offence, the Supreme Court may make any orders in relation to the finding that the Local Court could have made, but may not impose a penalty in excess of the penalty that the court of summary jurisdiction could have imposed.

(5) Within 30 days after the final determination of the charge of the summarily-triable offence, a Registrar of the Supreme Court must notify the result of the determination to a registrar of the Local Court and no further appearance is required in that court by any party to the proceeding.

390 Transmission of charge of summarily-triable offence

(1) This section applies if:

(a) an indictment has been presented against a person; and

(b) the person has been charged with a summarily-triable offence, whether the charge was laid before or after the indictment was presented.

(2) If the person wishes to have the charge of the summarily-triable offence heard and determined by the Supreme Court under section 389, the person may apply to a registrar of the Local Court to transmit the charge to a Registrar of the Supreme Court.

(3) The application must be:

(a) made as a written statutory declaration; and

(b) contain the following:

(i) details of the charge to be transmitted;

(ii) a statement that the applicant wishes to have the charge transmitted to the Supreme Court;

(iii) a statement of the applicant's intention to plead guilty to the charge.

(4) The registrar of the Local Court must transmit the charge to a Registrar of the Supreme Court if satisfied:

(a) the application meets the requirements of this section; and

(b) the Local Court has not started hearing sentencing submissions in relation to the charge.

391 Remission of charge to Local Court

(1) This section applies if a charge of a summarily-triable offence laid against a person has been transmitted to a Registrar of the Supreme Court under section 390.

(2) The Supreme Court must direct that the charge be heard and determined by the Local Court and remit the charge to a registrar of the Local Court if:

(a) the person pleads not guilty to the charge before the Court; or

(b) the Court decides for any other reason not to hear and determine the charge.

Part X Punishment: appeal: miscellaneous matters

Division 2 Appeal: pardon

406 Interpretation

(1) In this Division, unless the contrary intention appears:

appellant means a person who has been found guilty and desires to appeal or to seek leave to appeal under this Division.

Court means the Court of Criminal Appeal.

court of trial means the court from whose finding, sentence or other determination a person is entitled to appeal or to apply for leave to appeal.

Registrar means the Registrar of the Court.

sentence includes any order made by the court of trial on a finding of guilt with reference to the person found guilty or his property.

(2) For the purposes of this Division, if, under Part IIA, a person is found not guilty of committing an offence because of his or her mental impairment and the defence of mental impairment was not raised by him or her, the finding is taken to be a finding of guilt at a trial and is subject to the same rights of appeal, and to appeal in the same manner, as if it were such a finding of guilt.

(3) For the purposes of this Division, if a declaration is made under Part IIA that an accused person is liable to supervision or an order is made under that Part that an accused person be released unconditionally, the declaration or order is taken to be a sentence and is subject to the same rights of appeal, and to appeal in the same manner, as if it were a sentence.

(5) For the purposes of this Division a person against whom an order has been made pursuant to section 383 shall be deemed to be a person found guilty on indictment, the special verdict shall be deemed to be the finding of guilt and the order shall be deemed to

be the sentence.

(7) If the charge of the offence of which a person is found guilty was heard and determined summarily, for the purposes of an appeal the person is taken to have been found guilty of a summary offence.

407 Court of Criminal Appeal

(1) The Supreme Court shall be the Court of Criminal Appeal and the Court shall be duly constituted if it consists of not less than 3 Judges and of an uneven number of Judges.

(2) The determination of any question before the Court shall be according to the opinion of the majority of the members of the Court hearing the case.

(3) The Judge of the court of trial shall not be one of such Judges.

(4) The Registrar of the Supreme Court shall be the Registrar of the Court.

408 Reservation of points of law

(1) When any person is indicted for any offence the court of trial must, on the application of counsel for the accused person made before verdict and may, in its discretion, either before or after judgment, without such application, reserve any question of law that arises on the trial for the consideration of the Court.

(2) If the accused person is found guilty and a question of law has been so reserved before judgment, the court of trial may either pronounce judgment on the finding of guilt and respite execution of the judgment or postpone the judgment until the question has been considered and decided and may either commit the person found guilty into the custody of the Commissioner of Correctional Services or admit him to bail on recognizance, with or without sureties, and in such sum as the court of trial thinks fit, conditioned to appear at such time and place as the court of trial may direct to receive judgment.

(3) The Judge of the court of trial is thereupon required to state, in a case signed by him, the question of law so reserved with the special circumstances upon which it arose and the case is to be transmitted to the Court.

(4) The Judge of the court of trial may state, in a case signed by him, the question of law so reserved before the trial has concluded.

(5) Any question so reserved is to be heard and determined as an appeal by the Court and, in the discretion of the Court, may be heard and determined before the trial has concluded.

(6) The Court may send the case back to be amended or restated if it thinks it necessary so to do.

409 Appeal from arrest of judgment

(1) When the court of trial before which a person is found guilty on indictment arrests judgment that court is required, on the application of counsel for the prosecution, to reserve a case for the consideration of the Court as hereinbefore provided.

(2) On the hearing of the case the Court may affirm or reverse the order arresting judgment.

(3) If the order is reversed the Court is to direct that judgment be pronounced upon the offender and he is to be ordered to appear at such time and place as the Court may direct to receive judgment and any justice of the peace may issue his warrant for the arrest of the offender.

(4) An offender so arrested may be admitted to bail by order of the Court or a Judge thereof, which may be made at the time when the order directing judgment to be pronounced is made or afterwards.

410 Right of appeal

A person found guilty on indictment, or a person found guilty of a summary offence under section 389, may appeal to the Court:

(a) against the finding of guilt or any special finding on any ground that involves a question of law alone;

(b) with the leave of the Court, or upon the certificate of the Judge of the court of trial that it is a fit case for appeal, against the finding of guilt or any special finding on any ground of appeal that involves a question of fact alone or question of mixed law and fact, or any other ground that appears to the Court to be a sufficient ground of appeal; and

(c) with the leave of the Court against the sentence passed on the finding of guilt.

411 Determination of appeal in ordinary cases

(1) The Court on any such appeal against a finding of guilt shall allow the appeal if it is of the opinion that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be

supported having regard to the evidence or that the judgment of the court of trial should be set aside on the ground of the wrong decision on any question of law or that on any ground there was a miscarriage of justice and in any other case shall dismiss the appeal.

(2) The Court may, notwithstanding that it is of the opinion that the point or points raised by the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(3) Subject to the special provisions of this Division the Court shall, if it allows an appeal against a finding of guilt, quash the finding of guilt and direct a judgment and verdict of acquittal to be entered.

(4) On an appeal against a sentence, the Court must:

(a) if it is of the opinion that another sentence, whether more or less severe, is warranted and should have been passed – quash the sentence and either:

(i) impose another sentence; or

(ii) remit the matter to the court of trial; or

(b) in any other case – dismiss the appeal.

412 Powers of Court in special cases

(1) Where an appellant has been found guilty of an indictable offence and on the indictment the jury could have found him guilty of some other, but less serious, offence and it appears to the Court that, although he was not and could not be properly found guilty of the offence of which he was actually found guilty, the evidence given at his trial was such that a reasonable jury correctly instructed must find him guilty of the other offence, the Court may, instead of allowing the appeal, substitute for the verdict found by the jury a verdict of guilty of the other offence and pass such sentence in substitution for the sentence passed at the trial as may be warranted.

(2) Where, on the finding of guilt of the appellant, the jury have found a special verdict and the Court considers that a wrong conclusion has been arrived at by the court of trial on the effect of that verdict, the Court may, instead of allowing the appeal, order such conclusion to be recorded as appears to the Court to be in law required by the verdict and pass such sentence, whether more or less severe, in substitution for the sentence passed at the trial as may be warranted in law.

412A Powers of Court in relation to mental impairment

(1) This section applies if, on an appeal against a finding of guilt or the sentence passed on such a finding, it appears to the Court that the person found guilty should have been found not guilty because of mental impairment under section 43C.

(2) The Court must quash the finding of guilt and:

(a) declare that the person is liable to supervision under Part IIA, Division 5; or

(b) order that the person be released unconditionally.

(3) If the Court makes a declaration under subsection (2)(a), the Court must remit the matter to the Supreme Court for the making of a supervision order under Part IIA, Division 5 in respect of the person.

413 Power to grant new trial

On an appeal against a finding of guilt on indictment the Court may, either of its own motion or on the application of the appellant, order a new trial in such manner as it thinks fit if the Court considers that a miscarriage of justice has occurred and that, having regard to all the circumstances, such miscarriage of justice can be more adequately remedied by an order for a new trial than by any other order that the Court is empowered to make.

414 Appeal and reference by Crown Law Officer

(1A) In exercising its discretion on an appeal made under subsection (1)(c) involving a sentence imposed after the commencement of this subsection, the Court must not take into account any element of double jeopardy involving the respondent being sentenced again when deciding whether to do either or both of the following:

(a) allow the appeal;

(b) impose another sentence.

(1) A Crown Law Officer may appeal to the Court:

(a) where proceedings on indictment have been stayed pursuant to section 21;

(b) against any determination made pursuant to section 347;

(c) against any sentence with respect to an indictable offence;

(d) where proceedings have been had as to whether a person ought to be declared an habitual criminal or a person incapable of exercising proper control over his sexual instincts or recommitted as such after his discharge as such and such declaration or recommittal was not made; or

(e) where an indictment has been quashed or proceedings on indictment have been stayed under:

(i) section 339; or

(ii) the inherent jurisdiction of the court of trial,

and the Court may, in its discretion, direct that the proceedings continue or vary the sentence and impose such sentence or make such a declaration or recommittal order, or make an order quashing the order of the court of trial quashing the indictment, and may make any consequent orders including an order for the arrest of the respondent to the appeal as the Court thinks proper.

(2) A Crown Law Officer may, in a case where a person has been acquitted after his trial on indictment, refer any point of law that has arisen at the trial to the Court for its consideration and opinion thereon.

(3) Notice of the reference shall be given to the acquitted person.

(4) Upon the reference the Court shall hear argument:

(a) by the Crown Law Officer or by counsel on his behalf; and

(b) if he so desires, by the acquitted person or by counsel on his behalf; or

(c) by any counsel appointed by the Crown Law Officer to present such argument as might have been presented by the acquitted person if he had appeared,

and thereupon shall consider the point referred and furnish to the Crown Law Officer its opinion thereon.

(5) The opinion of the Court upon the reference shall not affect the trial in respect of which the reference is made or an acquittal in that trial.

415 Revesting and restitution of property on finding of guilt

(1) The operation of any order for the restitution of any property or for the payment of compensation to an aggrieved person made by the court of trial and the operation of the provisions of any civil law relating to the revesting of the property in stolen goods on a finding

of guilt shall (unless such court directs to the contrary in any case in which, in its opinion, the title to the property is not in dispute) be suspended:

(a) until the expiration of the time provided for appealing to the Court; and

(b) where notice of appeal or of application for leave to appeal is given within the time provided, until the determination of the appeal or refusal of the application,

and in cases where the operation of any such order or the operation of the said provisions is suspended until the determination of the appeal, the order or provisions shall not take effect as to the property in question if the finding of guilt is quashed on appeal, except by the special order of the Court.

(2) The Court may annul or vary any such order although the finding of guilt is not quashed.

416 Suspension of order with respect to driver's licence

Where notice of appeal or application for leave to appeal is given the Court may suspend any order made with respect to the driver's licence of the appellant until the determination of the appeal or application.

417 Time for appealing

(1) Any person found guilty desiring to appeal to the Court, or to obtain the leave of the Court to appeal from any finding of guilt or sentence, shall give notice of appeal or notice of application for leave to appeal in the prescribed manner within 28 days after the date of such finding of guilt or sentence.

(2) The time within which notice of appeal, or notice of an application for leave to appeal, may be given may be extended at any time by the Court.

418 Judge's report may be furnished on appeal

The Judge of the court of trial may, in the case of an appeal or application for leave to appeal, furnish to the Registrar a report giving his opinion upon the case or upon any point arising in the case.

419 Supplemental powers

(1) The Court may, if it thinks it necessary or expedient in the interests of justice:

(a) order the production of any document, exhibit or other thing connected with the proceedings;

(b) order any persons who would have been compellable witnesses at the trial to attend and be examined before the Court, whether they were or were not called at the trial, or order any such persons to be examined before any person appointed by the Court for the purpose and admit any depositions so taken as evidence;

(c) receive the evidence, if tendered, of any witness (including the appellant) who is a competent, but not a compellable, witness;

(d) where any question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, that cannot, in the opinion of the Court, be conveniently conducted before the Court, refer the question for inquiry and report to a commissioner appointed by the Court and act upon the report of such commissioner so far as the Court thinks fit; and

(e) appoint any person with special expert knowledge to act as assessor to the Court in any case in which it appears to the Court that such special knowledge is required for the determination of the case,

and exercise in relation to the proceedings of the Court any other powers that may for the time being be exercised by the Supreme Court on appeals or applications in civil matters and issue any warrant or other process necessary for enforcing the orders or sentences of the Court.

(2) In no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial.

420 Presence of appellant

(1) Neither an appellant seeking leave to appeal or to extend the time in which notice of appeal or notice of application for leave to appeal may be given, nor a respondent to the application for the leave or extension, is entitled to be present, except with the leave of the Court, at the hearing of the application or at any proceedings preliminary or incidental to the application.

(2) An appellant who is in custody shall not be entitled to be present at the hearing of his appeal, application for leave to appeal or any proceedings preliminary or incidental thereto except by leave of the Court.

421 Presence of respondent who is in custody when appeal brought by Crown Law Officer

Unless he is represented by counsel a respondent who is in custody is entitled to be present at the hearing of an appeal brought by a Crown Law Officer.

422 Appellant or respondent may be sentenced in his absence

The power of the Court to pass any sentence may be exercised notwithstanding the person to be affected thereby is not present.

423 Written argument

(1) Any party may present his argument with respect to an appeal, application for leave to appeal or any proceedings preliminary or incidental thereto in writing.

(2) Both an appellant seeking leave to appeal or to extend the time in which notice of appeal or notice of application for leave to appeal may be given and a respondent to the application for the leave or extension are to present their arguments, including an argument in relation to proceedings preliminary or incidental to the application, in writing, unless the Court directs otherwise.

424 Costs of appeal

On the hearing or determination of an appeal, application for leave to appeal, any proceedings preliminary or incidental thereto or on a Crown Law Officer's reference no costs shall be allowed on either side.

425 Admission of appellant to bail and custody when attending Court

(1) An appellant who is not admitted to bail shall, pending the determination of his appeal, be treated in such manner as may be directed by regulations made under the *Correctional Services Act 2014*.

(2) The time during which an appellant, pending the determination of his appeal, is liberated on bail and, subject to any directions that the Court may give to the contrary on any appeal, the time during which an appellant, if in custody, is specially treated as an appellant under this section, shall not count as part of any term of imprisonment

under his sentence.

(3) Any imprisonment under such sentence, whether it is the sentence passed by the court of trial or the sentence passed by the Court, shall, subject to any directions that the Court may give as aforesaid, be deemed to be resumed or to begin to run, if the appellant is in custody, as from the day on which the appeal is determined and if he is not in custody as from the day on which he is received into a custodial correctional facility under the sentence.

(4) Provision shall be made by regulations under the *Correctional Services Act 2014* for the manner in which an appellant, when in custody, is to be brought to any place where he is entitled to be present, or ordered to be taken, for the purposes of this Division and for the manner in which he is to be kept in custody whilst absent from a custodial correctional facility for the purpose; and an appellant whilst in custody in accordance with those regulations shall be deemed to be in legal custody.

426 Duties of Registrar

(1) The Registrar shall take all necessary steps for obtaining a hearing of any appeals or applications, notice of which is given to him and shall obtain and lay before the Court in proper form all documents, exhibits and other things relating to the proceedings in the court of trial that appear necessary for the proper determination of the appeal or application.

(2) If it appears to the Registrar that any notice of appeal or of application for leave to appeal against a finding of guilt or sentence does not show any substantial ground of appeal, he may refer the appeal or application to the Court for summary determination; and the Court may thereupon, if it considers that the appeal or application is frivolous or vexatious, dismiss the appeal or refuse the application summarily without calling upon any person to attend the hearing.

(3) The Registrar shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application to any person who demands the same and to officers of courts, the Commissioner of Correctional Services and to such other officers or persons as he thinks fit and the Commissioner of Correctional Services shall cause such forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application and shall cause any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the Registrar.

(4) Where an appellant is in custody, the Registrar shall give reasonable notice to him in writing:

(a) that if he wishes to appear in person at the Court he must seek the leave of the Court;

(b) that he may make such application for leave to appear in writing and may present his argument in support of such application in writing;

(c) that he may present his argument with respect to his appeal, application for leave to appeal or any proceedings preliminary or incidental thereto in writing;

(d) of the date of the sittings of the Court during which it is expected his appeal or application for leave to appeal will be heard; and

(e) of the result of any proceedings preliminary or incidental to his appeal or application for leave to appeal given when he was not present.

(5) Where a respondent to a Crown Law Officer's appeal is in custody, the Registrar shall give reasonable notice to him in writing:

(a) that he may himself appear on the hearing of the appeal if he is not represented by counsel;

(b) that he may present his argument with respect to the appeal or any proceedings preliminary or incidental thereto in writing;

(c) of the date of the sittings of the Court during which it is expected the appeal will be heard; and

(d) of the result of any proceedings preliminary or incidental to the appeal given when he was not present.

427 Documents, exhibits, &c.

Any documents, exhibits or other things connected with any proceedings before a court of trial, in respect of which any person is entitled or may be authorized to appeal, shall be kept in the custody of the court of trial for such time as may be prescribed, subject to such power as may be prescribed for the conditional release of any such documents, exhibits or other things from that custody.

428 Record of trial

(1) A record shall be made of the proceedings of any trial of any person on indictment.

(2) On any notice of appeal or application for leave to appeal the record shall be furnished to the Registrar for the use of the Court or any Judge.

(3) A copy of the record must be furnished to any party interested upon the payment of the charges prescribed by regulation.

429 Powers exercisable by a Judge

(1) The powers of the Court to give leave to appeal, to extend the time in which notice of appeal or of an application for leave to appeal may be given, to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave, to admit an appellant to bail and to suspend any order made with respect to the driver's licence of the appellant may be exercised by any Judge in the same manner as they may be exercised by the Court and subject to the same provisions.

(2) If the Judge refuses an application on the part of the appellant to exercise any such power in his favour, the appellant shall be entitled to have the application determined by the Court.

430 Appeals from the decision of the Court

(1) Where an appeal to the Court is upheld and the appellant is entitled to have the finding of guilt against him quashed by order of the Court the Court may, upon application on behalf of the Crown at any time before the release of such appellant, either by the same or by a separate order, direct that execution of the order quashing the appellant's finding of guilt be stayed for such time, not exceeding 7 days, as the Court thinks fit; and the Court or a Judge shall thereupon make such order for the detention of the appellant, or his return to any former custody, or for releasing him on bail, as the Court or Judge thinks fit, for the time during which such stay has been directed.

(2) The Court or a Judge may, upon application by or on behalf of a Crown Law Officer, make such order for the detention of the appellant or for releasing him on bail pending the hearing of an appeal to the High Court of Australia as the Court or a Judge may think fit and may at any time vary or rescind such order.

(3) On the application of any appellant deeming himself wronged by any failure to diligently prosecute such appeal the Court or a Judge may order the immediate execution of the original order of the Court quashing the finding of guilt and may order the appellant's immediate release and the Court may further, if it thinks fit, award him such compensation as appears just.

431 Pardoning power preserved

Nothing in the foregoing provisions of this Division shall affect the prerogative of mercy, and a Crown Law Officer, on the consideration of any petition for the exercise of the prerogative of mercy having reference to the finding of guilt of any person or to any sentence passed on a person found guilty of an offence, may:

(a) refer the whole case to the Court whereupon the case shall be heard and determined by the Court as in the case of an appeal by a person found guilty of an offence; or

(b) if he desires the assistance of the Court on any point arising in the case with a view to the determination of the petition, refer that point to the Court for its opinion thereon whereupon the Court shall consider the point so referred and furnish the Crown Law Officer with its opinion thereon.

432 Conditional remission of sentence by Administrator

(1) In any case where the prerogative of mercy is extended to an offender, it may be extended upon condition of the offender entering into a recognizance conditioned as in the case of offenders conditionally released by a court of trial.

(2) The offender is thereupon liable to the same obligations and is liable to be dealt with in all respects in the same manner as a person conditionally released by a court of trial.

433 Effect of pardon

A pardon has the effect of discharging the person found guilty of an offence from the consequences of the finding of guilt.

433A Reference by Attorney-General of certain findings of guilt

(1) Where before or after the commencement of this section a person has been found guilty of an indictable offence and the prerogative of mercy has been extended to the person in respect of that finding of guilt, the Attorney-General may, at the request of the person found guilty of the offence, if the Attorney-General is satisfied that it is expedient in the interests of justice so to do, refer the case to the Court to enable the Court to consider or again consider whether the finding of guilt should be quashed and a judgment and verdict of acquittal entered.

(2) Notice of a reference under subsection (1) shall be given to the person found guilty of the offence.

(3) In considering a case referred to it under subsection (1) the Court shall hear argument by the Attorney-General or by counsel on the Attorney-General's behalf and, if the Court considers it necessary to enable it to reach a conclusion on the question before it, may hear argument:

(a) by the person found guilty of the offence or by counsel on that person's behalf; or

(b) by any counsel appointed by the Attorney-General to present such argument as might have been presented by the person found guilty of an offence if the person found guilty of an offence had appeared.

(4) In considering a case referred to it under subsection (1), but subject to subsection (5), the Court has such of the powers it has in relation to a matter brought before it on an appeal under section 410 as are necessary to enable it to determine the question referred to it.

(5) In considering a case referred to it under subsection (1) the Court is not bound by the rules of evidence but may inform itself in such manner as it thinks fit.

(6) Without limiting the generality of subsection (5), the Court may:

(a) receive in evidence:

(i) a transcript of evidence taken, and the exhibits produced, in proceedings before a court of, or in an inquiry by a commission of inquiry (by whatever name called) established by or appointed under a law of, the Commonwealth or a State or Territory of the Commonwealth; or

(ii) a report of a commission of inquiry referred to in subparagraph (i),

and draw such conclusions of fact from the evidence and exhibits or report as it thinks fit; or

(b) adopt, as it thinks fit, the finding, decision, judgment, or reasons for the finding, decision or judgment, of a court or commission of inquiry referred to in paragraph (a) that are relevant to the Court's consideration.

(7) The decision of the Court on a case referred to it under subsection (1) has the same force and effect as its decision on an appeal under section 410.

Division 3 Miscellaneous provisions

435 Court may direct certain persons to be prosecuted for perjury

(1) If it appears to a court dealing with a matter on indictment that any person has been guilty of perjury in any testimony given before it, the court may commit him to take his trial for such perjury in the same manner as if he had been charged before the Local Court with the same perjury and sufficient evidence had been given against him.

(2) A person so committed may be admitted to bail in the same manner as if he had been committed for trial by justices of the peace.

(3) The court may require any person to enter into a recognizance conditioned to appear and give evidence at the trial of a person so directed to be prosecuted.

435A Offences not to attract legal disability except under an Act

A person who has been found guilty of an offence, whether before or after the commencement of this section, shall not, by reason of the finding of guilt, suffer a legal disability except as prescribed by an Act of the Territory or of the Commonwealth.

436 Saving of civil remedies

Except when expressly so provided the prosecution or finding of guilt of a person for an offence does not affect any civil remedy that any person aggrieved by the offence may have against the offender.

437 No court fees in criminal cases

No court fees can be taken in a court of criminal jurisdiction from any person who is charged with an offence for any proceedings had or taken in that court with respect to the charge.

438 Copies of depositions to be allowed to persons committed for trial

(1) Subject to subsection (2) any person who is committed for trial is entitled to have on demand from the person who has the lawful custody thereof copies of the depositions of the witnesses on whose depositions he has been so committed.

(2) If the demand is not made before the day appointed for the commencement of the sittings of the court to which the person on whose behalf the demand is made has been committed for trial, he is not entitled to have any such copy unless the Judge is of opinion

that the copy may be made and delivered without delay or inconvenience.

(3) The court may postpone the trial on account of the person committed for trial not having previously had a copy of the depositions.

439 Inspection of depositions at trial

Any person who is tried for an indictable offence is entitled at the time of his trial to inspect without fee all depositions or copies of depositions that have been taken against him and returned into the court before which the trial is had.

440 Standard of proof

(1) Any matter that has to be proved by the defence in a trial must be proved on the balance of probabilities; otherwise the standard of proof is proof beyond reasonable doubt.

(2) Subsection (1) does not apply in relation to the proof of facts necessary for determining whether evidence should be admitted or excluded.

441 Arrest without warrant

(1) A person shall not be arrested without warrant except in accordance with this Code or an Act expressly giving power to arrest without warrant.

(2) A person, not being a member of the Police Force, may without warrant arrest a person (***the offender***) where the person:

(a) finds the offender committing an offence or doing an act or behaving or conducting himself, or in such circumstances, that the person believes on reasonable grounds that the offender has committed an offence and that the arrest of the offender is necessary:

(i) to ensure the appearance of the offender before a court of competent jurisdiction; or

(ii) to preserve public order; or

(iii) to prevent the continuation or repetition of the offence or the commission of a further offence; or

(iv) for the safety or welfare of members of the public or of the offender; or

(b) is instructed to do so by a member of the Police Force having power under an Act to apprehend the offender; or

(c) believes on reasonable grounds that the offender is escaping from legal custody or aiding or abetting another person to escape from legal custody or avoiding apprehension by some person having authority to apprehend the offender in the circumstances of the case.

(2A) A reference in subsection (2) to a member of the Police Force does not include a person who has not taken an oath under section 26 of the *Police Administration Act 1978*.

(3) A person who is arrested under subsection (2) and in custody shall not be questioned in relation to an offence other than by a member of the Police Force in accordance with the *Police Administration Act 1978*.

(4) As soon as practicable after a person is arrested under subsection (2), the person shall be delivered to a member of the Police Force, and the *Police Administration Act 1978* shall apply to and in relation to the person and the member as if the arrest had been made under that Act.

(5) A person who is arrested under subsection (2)(a) shall be held in custody only while the reason for the person's arrest, as referred to in that paragraph, continues.

(6) A person who is arrested under subsection (2)(a) shall be released immediately from custody where it becomes apparent that the person did not commit the offence for which the person was arrested.

(7) For the purposes of subsection (2)(a), ***offence*** does not include a contravention of or failure to comply with an instrument of a legislative or administrative character.

442 Arrest on reasonable grounds not to be taken to be unlawful

Where an arrest is made under section 441 under a belief that is held on reasonable grounds, the arrest shall not cease to be lawful or be taken to be unlawful where it subsequently appears or is found that the person arrested did not commit the offence alleged.

443 Arrest on board aircraft

(1) A person in command of an aircraft may, on board the aircraft, with such assistance as is necessary, arrest without warrant a person whom the person in command finds committing, or reasonably suspects of having committed, or of having attempted to commit, an

offence on or in relation to or affecting the use of the aircraft, and the person in command or a person authorised by that person may hold the person so arrested in custody until that person can be brought before a justice of the peace or a court or other proper authority to be dealt with in accordance with law.

(2) A person in command of an aircraft may, where the person considers it necessary to do so in order to prevent an offence on or in relation to or affecting the use of the aircraft, or to avoid danger to the safety of the aircraft or of persons on board the aircraft, with such assistance as the person thinks necessary:

(a) place a person who is on board the aircraft under restraint or in custody; and/or

(b) if the aircraft is not in the course of a flight, remove a person from the aircraft.

Part XI Transitional matters

Division 1 Criminal Code Amendment (Criminal Responsibility Reform) Act 2005

444 Application of Code to pre-commencement offences

This Code, as in force immediately before the commencement of this section, continues to apply in relation to offences committed before that commencement.

Division 2 Criminal Code Amendment (Expert Evidence) Act 2009

445 Application

The amendments made to this Act by the *Criminal Code Amendment (Expert Evidence) Act 2009* apply only to a trial that starts at least 14 days after the commencement of that Act.

Division 3 Criminal Code Amendment (Mental Impairment and Unfitness for Trial) Act 2010

446 Application to pending matters

(1) Section 43ZD(3A) to (3D) as inserted by the amending Act applies in relation to an application to vary or revoke a supervision order made, but not decided, before the commencement.

(2) Section 43ZE(3A) to (3D) as inserted by the amending Act applies in relation to an application to vary a non-custodial supervision order made, but not decided, before the commencement.

(3) Section 43ZG(5A) to (5C) as inserted by the amending Act applies in relation to a review of a supervision order started, but not completed, before the commencement.

(4) Section 43ZO as inserted by the amending Act applies to any proceedings under Part IIA started, but not completed, before the commencement.

(5) In this section:

amending Act means the *Criminal Code Amendment (Mental Impairment and Unfitness for Trial) Act 2010*.

commencement means the commencement of the amending Act.

Division 4 Criminal Code Amendment (Female Genital Mutilation) Act 2013

447 Application of section 186C

(1) Section 186C, as amended by the *Criminal Code Amendment (Female Genital Mutilation) Act 2013*, applies only in relation to offences committed after the commencement of this section (***commencement***).

(2) Section 186C, as in force before commencement, continues to apply in relation to offences committed before commencement.

(3) For this section:

(a) an offence is taken to have been committed after commencement only if all of the conduct constituting the offence occurred after commencement; and

(b) any other offence is taken to have been committed before commencement.

Division 5 Criminal Code Amendment (Psychiatric or Medical Evidence) Act 2014

448 Application of section 331B

Section 331B applies only in relation to an offence for which an accused is committed for trial after the commencement of the *Criminal Code Amendment (Psychiatric or Medical Evidence) Act 2014*.

Division 6 Criminal Code Amendment (Hit and Run) Act 2014

449 Application of amendments

(1) Section 174FA as amended by the *Criminal Code Amendment (Hit and Run) Act 2014* applies only in relation to offences committed after the commencement of this section (***commencement***).

(2) Section 174FA, as in force before commencement, continues to apply in relation to offences committed before commencement.

(3) For this section:

(a) an offence is taken to have been committed after commencement only if all the conduct constituting the offence occurred after commencement; and

(b) any other offence is taken to have been committed before commencement.

Division 7 Criminal Code Amendment (Child Abuse Material) Act 2014

450 Application of section 125B

(1) Section 125B, as amended by the *Criminal Code Amendment (Child Abuse Material) Act 2014*, applies only in relation to offences committed after the commencement of this section (***commencement***).

(2) Section 125B, as in force before commencement, continues to apply in relation to offences committed before commencement.

(3) For this section:

(a) an offence is taken to have been committed after commencement only if all the conduct constituting the offence occurred after commencement; and

(b) any other offence is taken to have been committed before commencement.

Division 8 Justice and Other Legislation Amendment Act 2014

451 Application of section 389

To avoid doubt, the Supreme Court may exercise powers under section 389 in relation to an indictment that was presented, or a summary offence the charge for which was laid, before the commencement of section 4 of the *Justice and Other Legislation Amendment Act 2014*.

Division 9 Criminal Code Amendment (Presumption of Joint Trials) Act 2014

452 Application of presumption

Section 341A, as inserted by the *Criminal Code Amendment (Presumption of Joint Trials) Act 2014*, applies in relation to an indictment presented or filed in court after the commencement of that Act, even if an offence charged in the indictment is alleged to have been committed before the commencement of that Act.

Division 10 Criminal Code Amendment (Remission for Resentencing) Act 2015

453 Application of section 411(4)

(1) Section 411(4), as amended by the *Criminal Code Amendment (Remission for Resentencing) Act 2015*, applies in relation to an appeal against a sentence that is heard after the commencement of that Act (the ***commencement***).

(2) Subsection (1) applies:

(a) even if the appellant was found guilty before the commencement; and

(b) regardless of when the appellant filed an originating process as defined in rule 82.01 of the *Supreme Court Rules 1987* in relation to the appeal.

Division 11 Statute Law Amendment (Directors' Liability) Act 2015

454 Offences – before and after commencement

(1) Section 125D, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the ***new section***) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 5 of that Act (the ***commencement***) only if:

(a) all the conduct constituting the relevant offence occurred after the commencement; and

(b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.

(2) Section 125D, as in force before the commencement:

(a) continues to apply in relation to offences committed by a body corporate before the commencement; and

(b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

Division 12 Independent Commissioner Against Corruption (Consequential and Related Amendments) Act 2018

455 Definitions

In this Division:

amending Act means the *Independent Commissioner Against Corruption (Consequential and Related Amendments) Act 2018*.

commencement means the commencement of Part 3 of the amending Act.

456 Application of sections 76 to 78, 80 and 81 as inserted by amending Act

(1) Sections 76 to 78, 80 and 81, as inserted by the amending Act, apply only in relation to offences committed after the commencement.

(2) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

457 Application of section 79 as inserted by amending Act

(1) If, before the commencement, there was a failure to disclose a private interest in a company, section 79 as in force immediately before the commencement applies in relation to that failure.

(2) If, before the commencement, there was a failure to disclose a private interest in property, manufacture, trade or business, section 80 as in force immediately before the commencement applies in relation to that failure.

(3) Section 79 as in force after the commencement applies to a failure to disclose a private interest after the commencement irrespective of whether that failure began before or after the commencement.

(4) Section 79, as inserted by the amending Act, applies in relation to offences committed after the commencement.

Division 13 Criminal Code Amendment Act 2019

458 Definitions

In this Division:

amending Act means the *Criminal Code Amendment Act 2019.*

commencement means the commencement of the amending Act.

459 Application of section 189A

(1) Section 189A, as amended by the amending Act, applies only in relation to offences committed after the commencement.

(2) Section 189A, as in force before the commencement, continues to apply in relation to offences committed before the commencement.

(3) For this section:

(a) an offence is taken to have been committed after the commencement only if all of the conduct constituting the offence occurred after the commencement; and

(b) any other offence is taken to have been committed before the commencement.

460 Application of section 316

(1) Section 316, as amended by the amending Act, applies only in relation to offences committed after the commencement.

(2) Section 316, as in force before the commencement, continues to apply in relation to offences committed before the commencement.

(3) For this section:

(a) an offence is taken to have been committed after the commencement only if all of the conduct constituting the offence occurred after the commencement; and

(b) any other offence is taken to have been committed before the commencement.

Division 14 Criminal Code Further Amendment Act 2019

461 Pre-Code offences

(1) Any offence against a law of the Territory in force before the commencement of section 3(1) of this Act that was punishable by a term of imprisonment exceeding 6 months at the time the offence was committed is taken to be an indictable offence for the purposes of this Code and any other law of the Territory.

Note for subsection (1)

Section 3(1) of this Act repealed the Criminal Law Consolidation Act 1876 (SA) in its application to the Territory, on 1 January 1984.

(2) Any proceeding in a court in relation to an offence referred to in subsection (1) that was commenced before the commencement of this section is taken to have always been within the jurisdiction of that court.

(3) Any exercise of jurisdiction or purported exercise of jurisdiction by a court in relation to a proceeding described in subsection (2) is not invalid on the basis that any matter related to the offence was not within the jurisdiction of the court at any time during the proceeding.

(4) In this section:

exercise of jurisdiction includes any of the following:

(a) instituting, adjourning and continuing a proceeding;

(b) issuing a warrant, summons or other process;

(c) making or giving an order, direction, notice, whether by instrument or otherwise;

(d) making a finding of guilt;

(e) imposing a sentence;

(f) doing any other act or thing under an Act.

Schedule 1 Provisions of Code to which Part IIAA applies

section 1, definition ***Schedule 1 provision***

Section 66 (Offences relating to riots)

Section 103A (Threats or reprisals relating to persons involved in criminal investigations or judicial proceedings or against public officers)

Part IV (Offences against the administration of law and justice and against public authority), Division 1 (Disclosure of confidential information and corruption and abuse of office) (other than sections 83, 85 and 86)

Part VI (Offences against the person and related matters), Division 1A (Preliminary matters), Subdivision 2 (Interpretation)

Part VI (Offences against the person and related matters), Division 3 (Homicide: Suicide: Concealment of Birth: Abortion) (other than sections 165, 166 and 170)

Part VI (Offences against the person and related matters), Division 3A (Recklessly endangering life and serious harm, negligently causing serious harm and related offences involving vehicles and vessels)

Section 176A (Drink or food spiking)

Section 180A (Endangering occupants of vehicles and vessels)

Section 192 (Sexual intercourse and gross indecency without consent)

Part VI (Offences against the person and related matters), Division 7A (Distributing intimate images)

Part VI (Offences against the person and related matters), Division 8 (Abortion)

Part VI (Offences against the person and related matters), Division 9 (Defences)

Part VII (Property offences and related matters), Division 2A (Identity crime)

Part VII (Property Offences and Related Matters), Division 5A (Cheating at Gambling)

Part VII (Property offences and related matters), Division 6 (Criminal damage)

Schedule II

Part 1

section 3(1)

South Australian Acts Repealed in their Application to the Northern Territory

Title	Year and number
The Criminal Law Consolidation Act, 1876	1876, No. 38
An Act to amend the "Minor Offences Procedure Act 1869" and "The Criminal Law Consolidation Act, 1876"	1880, No. 166
The Criminal Law Consolidation Amendment Act, 1885	1885, No. 358
The Children's Protection Act, 1899	1899, No. 730
The Criminal Law Amendment Act, 1902	1902, No. 791

Part 2

section 3(2)

Acts Repealed

Title	Number and year
Indictments Ordinance 1968	No. 36, 1968
Criminal Law Amendment Ordinance 1939	No. 17, 1939
Criminal Law Amendment Ordinance 1940	No. 19, 1940
Criminal Law Amendment Ordinance 1956	No. 25, 1956
Criminal Law Amendment Ordinance 1960	No. 17, 1960
Criminal Law Amendment Ordinance 1964	No. 37, 1964
Criminal Law Amendment Ordinance 1968	No. 21, 1968
Criminal Law Consolidation Ordinance (No. 2) 1968	No. 67, 1968
Criminal Law Consolidation Ordinance 1969	No. 39, 1969
Criminal Law Consolidation Amendment Ordinance 1969	No. 47, 1969

Criminal Law Consolidation Ordinance 1973	No. 2, 1973
Criminal Law Consolidation Ordinance (No. 2) 1973	No. 81, 1973
Criminal Law Consolidation Ordinance (No. 3) 1973	No. 6, 1974
Criminal Law Consolidation Ordinance 1974	No. 13, 1974
Criminal Law Consolidation Act (No. 2*) 1978*	No. 121, 1978
Criminal Law Consolidation Act 1978	No. 127, 1978
Criminal Law Consolidation Act 1979	No. 25, 1979
Criminal Law Consolidation Act (No. 2) 1979	No. 110, 1979
Criminal Law Consolidation Amendment Act 1980	No. 7, 1981
Criminal Law Consolidation Amendment Act 1982	No. 40, 1982
Criminal Law and Procedure Ordinance 1978	No. 64, 1978
Criminal Law and Procedure Act (No. 2*) 1978*	No. 126, 1978
Criminal Law and Procedure Act 1979	No. 93, 1979
Criminal Law and Procedure Act (No. 2) 1979	No. 108, 1979
Criminal Law and Procedure Act (No. 3) 1979	No. 142, 1979
Criminal Law and Procedure Amendment Act 1981	No. 76, 1981

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz* = *Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

***Criminal Code Act 1983* (Act No. 47, 1983)**
Assent date 4 October 1983
Commenced ss 406 – 431: 1 March 1986; rem: 1 January 1984 (s 2, *Gaz* G46, 18 November 1983, p 11 and *Gaz* G8, 26 February 1986, p 5)

***Criminal Code Amendment Act 1984* (Act No. 9, 1984)**
Assent date 29 June 1984
Commenced 29 June 1984

***Law Officers Amendment Act (No. 2) 1986* (Act No. 48, 1986)**
Assent date 10 December 1986
Commenced 19 December 1986 (*Gaz* S87, 17 December 1986)

***Criminal Code Amendment Act 1987* (Act No. 42, 1987)**
Assent date 15 October 1987
Commenced 15 October 1987

***Criminal Code Amendment Act 1988* (Act No. 12, 1988)**
Assent date 30 March 1988
Commenced 30 March 1988

***Statute Law Revision Act 1988* (Act No. 66, 1988)**
Assent date 22 December 1988
Commenced 22 December 1988

***Criminal Code Amendment Act 1989* (Act No. 44, 1989)**
Assent date 20 September 1989
Commenced 25 October 1989 (*Gaz* G42, 25 October 1989, p 4)

***Criminal Code Amendment Act (No. 2) 1989* (Act No. 71, 1989)**
Assent date 12 December 1989
Commenced 12 December 1989

***Criminal Code Amendment Act 1990* (Act No. 17, 1990)**

Assent date	12 April 1990
Commenced	1 November 1990 (s 2, s 2 *Misuse of Drugs Act 1990* (Act No. 15, 1990) and *Gaz* G40, 10 October 1990, p 3)

***Director of Public Prosecutions (Consequential Amendments) Act 1990* (Act No. 29, 1990)**

Assent date	11 June 1990
Commenced	21 January 1991 (s 2, s 2 *Director of Public Prosecutions Act 1990* (Act No. 35, 1990) and *Gaz* G2, 16 January 1991, p 9)

***Criminal Code Amendment Act 1991* (Act No. 1, 1991)**

Assent date	22 February 1991
Commenced	1 January 1984 (s 2)

***Criminal Code Amendment Act (No. 2) 1991* (Act No. 35, 1991)**

Assent date	26 September 1991
Commenced	1 November 1991 (*Gaz* S58, 1 November 1991)

***Criminal Code Amendment Act (No. 3) 1991* (Act No. 72, 1991)**

Assent date	6 December 1991
Commenced	6 December 1991

***Dental (Consequential Amendments) Act 1991* (Act No. 75, 1991)**

Assent date	10 December 1991
Commenced	31 January 1992 (*Gaz* S7, 31 January 1992)

***Criminal Code Amendment Act 1992* (Act No. 4, 1992)**

Assent date	8 April 1992
Commenced	8 May 1992 (s 2, s 2 *Prostitution Regulation Act 1992* (Act No. 6, 1992) and *Gaz* S28, 8 May 1992)

***Criminal Code Amendment Act (No. 2) 1992* (Act No. 41, 1992)**

Assent date	7 September 1992
Commenced	7 September 1992

***Criminal Code Amendment Act (No. 3) 1992* (Act No. 83, 1992)**

Assent date	22 December 1992
Commenced	22 December 1992

***Public Sector Employment and Management (Consequential Amendments) Act 1993* (Act No. 28, 1993)**

Assent date	30 June 1993
Commenced	1 July 1993 (s 2, s 2 *Public Sector Employment and Management Act 1993* (Act No. 11, 1993) and *Gaz* S53, 29 June 1993)

***Criminal Code Amendment Act 1993* (Act No. 72, 1993)**

Assent date	16 November 1993
Commenced	1 December 1993 (*Gaz* S95, 1 December 1993)

***Local Government (Consequential Amendments) Act 1993* (Act No. 84, 1993)**

Assent date	31 December 1993
Commenced	1 June 1994 (s 2, s 2 *Local Government Act 1993* (Act No. 83, 1993) and *Gaz* S35, 20 May 1994)

***Criminal Code Amendment Act 1994* (Act No. 11, 1994)**
Assent date 28 March 1994
Commenced 3 April 1994 (*Gaz* S24, 31 March 1994)

***Criminal Code Amendment Act (No. 2) 1994* (Act No. 12, 1994)**
Assent date 31 March 1994
Commenced 1 December 1994 (s 2, s 2 *Police Administration Amendment Act 1994* (Act No. 20, 1994) and *Gaz* S57, 1 December 1994)

Amending Legislation

***Statute Law Revision Act 1994* (Act No. 50, 1994)**
Assent date 20 September 1994
Commenced 20 September 1994 (s 6(2))

***Criminal Code Amendment Act (No. 3) 1994* (Act No. 13, 1994)**
Assent date 6 April 1994
Commenced 1 June 1994 (*Gaz* S35, 20 May 1994)

***Criminal Code Amendment Act (No. 4) 1994* (Act No. 46, 1994)**
Assent date 20 September 1994
Commenced 1 November 1994 (*Gaz* G43, 26 October 1994, p 3)

***Criminal Code Amendment Act 1995* (Act No. 55, 1995)**
Assent date 28 December 1995
Commenced 26 February 1996 (*Gaz* G7, 14 February 1996, p 2)

***Criminal Code Amendment Act (No. 2) 1995* (Act No. 63, 1995)**
Assent date 28 December 1995
Commenced 1 August 1996 (*Gaz* G30, 24 July 1996, p 2)

***Criminal Code Amendment Act 1996* (Act No. 1, 1996)**
Assent date 23 January 1996
Commenced 23 January 1996

***Criminal Code Amendment Act (No. 2) 1996* (Act No. 11, 1996)**
Assent date 10 April 1996
Commenced 20 May 1996 (*Gaz* G20, 15 May 1996, p 3)

***Criminal Code Amendment Act (No. 3) 1996* (Act No. 12, 1996)**
Assent date 10 April 1996
Commenced 20 May 1996 (*Gaz* G20, 15 May 1996, p 3)

***Criminal Code Amendment Act (No. 4) 1996* (Act No. 13, 1996)**
Assent date 10 April 1996
Commenced 10 April 1996

***Sentencing (Consequential Amendments) Act 1996* (Act No. 17, 1996)**
Assent date 19 April 1996
Commenced 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and *Gaz* S15, 13 June 1996)

***Births, Deaths and Marriages Registration (Consequential Amendments) Act 1996* (Act No. 27, 1996)**

Assent date	28 June 1996
Commenced	1 January 1997 (s 2, s 2 *Births, Deaths and Marriages Registration Act 1996* (Act No. 26, 1996) and *Gaz* G49, 4 December 1996, p 5)

***Criminal Code Amendment Act (No. 5) 1996* (Act No. 33, 1996)**

Assent date	5 September 1996
Commenced	1 November 1996 (*Gaz* G43, 23 October 1996, p 4)

***Criminal Code Amendment Act (No. 6) 1996* (Act No. 37, 1996)**

Assent date	17 September 1996
Commenced	17 September 1996

***Criminal Code Amendment Act 1997* (Act No. 4, 1997)**

Assent date	26 March 1997
Commenced	11 May 1997 (*Gaz* G18, 7 May 1997, p 2)

***Criminal Code Amendment Act 1998* (Act No. 79, 1998)**

Assent date	21 October 1998
Commenced	1 December 1998 (*Gaz* G45, 18 November 1998, p 4)

***Criminal Code Amendment Act (No. 2) 1998* (Act No. 85, 1998)**

Assent date	9 December 1998
Commenced	15 February 1999 (s 2, s 2 *Police Administration Amendment Act (No. 2) 1998* (Act No. 87, 1998) and *Gaz* S6, 15 February 1999)

***Criminal Code Amendment Act 1999* (Act No. 8, 1999)**

Assent date	9 March 1999
Commenced	7 April 1999 (*Gaz* G13, 7 April 1999, p 3)

***Criminal Code Amendment Act (No. 2) 1999* (Act No. 9, 1999)**

Assent date	9 March 1999
Commenced	7 April 1999 (*Gaz* G13, 7 April 1999, p 3)

***Statute Law Revision Act 1999* (Act No. 27, 1999)**

Assent date	18 June 1999
Commenced	18 June 1999

***Statute Law Revision Act (No. 2) 1999* (Act No. 48, 1999)**

Assent date	10 November 1999
Commenced	10 November 1999

***Criminal Code Amendment Act 2000* (Act No. 3, 2000)**

Assent date	14 March 2000
Commenced	12 April 2000 (*Gaz* G14, 12 April 2000, p 3)

***Criminal Code Amendment Act 2001* (Act No. 27, 2001)**

Assent date	19 July 2001
Commenced	26 September 2001 (*Gaz* G38, 26 September 2001, p 3)

***Criminal Code Amendment Act (No. 2) 2001* (Act No. 52, 2001)**

Assent date	19 October 2001
Commenced	22 October 2001 (s 2)

Criminal Code Amendment Act (No. 3) 2001 **(Act No. 65, 2001)**

Assent date	21 December 2001
Commenced	30 January 2002 (*Gaz* G4, 30 January 2002, p 4)

Criminal Code Amendment Act 2002 **(Act No. 4, 2002)**

Assent date	28 March 2002
Commenced	8 May 2002 (*Gaz* G18, 8 May 2002, p 7)

Criminal Code Amendment (Mental Impairment and Unfitness to be Tried) Act 2002 **(Act No. 11, 2002)**

Assent date	7 June 2002
Commenced	15 June 2002 (s 2)

Criminal Code Amendment (Witness Intimidation) Act 2002 **(Act No. 25, 2002)**

Assent date	5 July 2002
Commenced	31 July 2002 (*Gaz* G30, 31 July 2002, p 3)

Statute Law Revision (Financial Provisions) Act 2002 **(Act No. 38, 2002)**

Assent date	13 September 2002
Commenced	30 October 2002 (*Gaz* G43, 3 October 2002, p 3)

Statute Law Revision Act (No. 2) 2003 **(Act No. 44, 2003)**

Assent date	7 July 2003
Commenced	7 July 2003

Sentencing (Crime of Murder) and Parole Reform Act 2003 **(Act No. 3, 2004)**

Assent date	7 January 2004
Commenced	11 February 2004 (*Gaz* G6, 11 February 2004, p 2)

Criminal Code Amendment Act 2003 **(Act No. 4, 2004)**

Assent date	7 January 2004
Commenced	11 February 2004 (*Gaz* G6, 11 February 2004, p 2)

Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 **(Act No. 1, 2004)**

Assent date	7 January 2004
Commenced	17 March 2004 (*Gaz* G11, 17 March 2004, p 8)

Criminal Code Amendment (Child Abuse Material) Act 2004 **(Act No. 55, 2004)**

Assent date	25 October 2004
Commenced	10 November 2004 (*Gaz* G45, 10 November 2004, p 2)

Criminal Code Amendment (Money Laundering) Act 2004 **(Act No. 59, 2004)**

Assent date	4 November 2004
Commenced	8 December 2004 (*Gaz* G49, 8 December 2004, p 3)

Criminal Code Amendment Act 2005 **(Act No. 13, 2005)**

Assent date	17 March 2005
Commenced	27 April 2005 (*Gaz* G17, 27 April 2005, p 2)

Youth Justice (Consequential Amendments) Act 2005 **(Act No. 33, 2005)**

Assent date	22 September 2005
Commenced	1 August 2006 (s 2, s 2 *Youth Justice Act 2005* (Act No. 32, 2005) and *Gaz* G30, 26 July 2006, p 3)

***Criminal Code Amendment (Criminal Responsibility Reform) Act 2005* (Act No. 37, 2005)**

Assent date 22 November 2005
Commenced 20 December 2006 (*Gaz* G51, 20 December 2006, p 2)

Amending Legislation

***Criminal Reform Amendment Act 2006* (Act No. 24, 2006)**

Assent date 19 September 2006
Commenced 19 September 2006

***Statute Law Revision Act 2005* (Act No. 44, 2005)**

Assent date 14 December 2005
Commenced 14 December 2005

***Criminal Reform Amendment Act 2006* (Act No. 24, 2006)**

Assent date 19 September 2006
Commenced 19 September 2006

***Criminal Reform Amendment Act (No. 2) 2006* (Act No. 34, 2006)**

Assent date 3 November 2006
Commenced 20 December 2006 (*Gaz* G51, 20 December 2006, p 2)

***Justice Legislation Amendment (Group Criminal Activities) Act 2006* (Act No. 36, 2006)**

Assent date 3 November 2006
Commenced s 15: 13 December 2006 (*Gaz* G50, 13 December 2006, p 2); rem: 20 December 2006 (*Gaz* G51, 20 December 2006, p 2)

***Statute Law Revision Act 2007* (Act No. 4, 2007)**

Assent date 8 March 2007
Commenced 8 March 2007

***Justice Legislation Amendment Act 2007* (Act No. 5, 2007)**

Assent date 24 April 2007
Commenced s 37 (except amd of Criminal Code and *Legal Profession Act 2006*): 1 May 2007 (s 2(1), s 2 *Victims of Crime Assistance Act 2006* (Act No. 15, 2006) and *Gaz* G17, 26 April 2007, p 7); rem: 24 April 2007

***Legal Profession (Consequential Amendments) Act 2007* (Act No. 7, 2007)**

Assent date 17 May 2007
Commenced s 10: 1 July 2007 (*Gaz* G26, 27 June 2007, p 3); rem: 17 May 2007

***Justice Legislation Amendment Act 2008* (Act No. 2, 2008)**

Assent date 11 March 2008
Commenced 2 April 2008 (*Gaz* G13, 2 April 2008, p 6)

***Statute Law Revision Act 2008* (Act No. 6, 2008)**

Assent date 11 March 2008
Commenced 11 March 2008

***Criminal Code Amendment (Assaults on Drivers of Commercial Passenger Vehicles) Act 2008* (Act No. 9, 2008)**

Assent date 15 May 2008
Commenced 11 June 2008 (*Gaz* G23, 11 June 2008, p 3)

Criminal Code Amendment (Drink or Food Spiking) Act 2008 **(Act No. 10, 2008)**

Assent date	23 May 2008
Commenced	18 June 2008 (*Gaz* G24, 18 June 2008, p 6)

Classification of Publications, Films and Computer Games Amendment Act 2008 **(Act No. 25, 2008)**

Assent date	17 October 2008
Commenced	1 July 2009 (*Gaz* G25, 24 June 2009, p 2)

Criminal Code Amendment (Hit and Run and Other Endangerment Offences) Act 2008 **(Act No. 26, 2008)**

Assent date	17 October 2008
Commenced	ss 3 and 4: 17 October 2008 (s 2(1); rem: 19 November 2008 (s 2(2) and *Gaz* S37, 19 November 2008)

Criminal Code Amendment (Expert Evidence) Act 2009 **(Act No. 9, 2009)**

Assent date	26 May 2009
Commenced	26 May 2009

Criminal Code Amendment (Bushfires) Act 2009 **(Act No. 29, 2009)**

Assent date	11 November 2009
Commenced	23 December 2009 (*Gaz* G51, 23 December 2009, p 2)

Serious Crime Control Act 2009 **(Act No. 32, 2009)**

Assent date	11 November 2009
Commenced	1 December 2011 (*Gaz* S69, 1 December 2011)

Justice Legislation Amendment (Penalties) Act 2010 **(Act No. 12, 2010)**

Assent date	20 May 2010
Commenced	1 July 2010 (*Gaz* G24, 16 June 2010, p 2)

Health Practitioner (National Uniform Legislation) Implementation Act 2010 **(Act No. 18, 2010)**

Assent date	20 May 2010
Commenced	1 July 2010 (s 2)

Justice Legislation Amendment Act 2010 **(Act No. 24, 2010)**

Assent date	30 June 2010
Commenced	21 July 2010 (*Gaz* G29, 21 July 2010, p 5)

Justice Legislation Amendment (Committals Reform) Act 2010 **(Act No. 31, 2010)**

Assent date	9 September 2010
Commenced	1 April 2011 (*Gaz* G13, 30 March 2011, p 8)

Criminal Code Amendment (Mental Impairment and Unfitness for Trial) Act 2010 **(Act No. 33, 2010)**

Assent date	18 November 2010
Commenced	18 November 2010

Mineral Titles (Consequential Amendments) Act 2010 **(Act No. 37, 2010)**

Assent date	18 November 2010
Commenced	7 November 2011 (*Gaz* G41, 12 October 2011, p 5)

Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010 **(Act No. 40, 2010)**

Assent date	18 November 2010
Commenced	1 March 2011 (s 2, s 2 *Oaths, Affidavits and Declarations Act 2010* (Act No. 39, 2010) and *Gaz* G7, 16 February 2011, p 4)

Criminal Code Amendment (Criminal Damage) Act 2010 **(Act No. 5, 2011)**

Assent date	16 March 2011
Commenced	1 June 2011 (*Gaz* S19, 4 May 2011)

Criminal Code Amendment (Sentencing Appeals) Act 2011 **(Act No. 10, 2011)**

Assent date	18 April 2011
Commenced	27 April 2011 (*Gaz* G17, 27 April 2011, pp 8 – 9)

Criminal Justice Legislation Amendment Act 2011 **(Act No. 32, 2011)**

Assent date	15 November 2011
Commenced	15 February 2012 (*Gaz* G7, 15 February, p 6)

Disability Services Amendment Act 2012 **(Act No. 11, 2012)**

Assent date	27 April 2012
Commenced	20 August 2012 (*Gaz* G31, 1 August 2012, p 4)

Health Practitioner (National Uniform Legislation) Implementation Act 2012 **(Act No. 17, 2012)**

Assent date	22 May 2012
Commenced	1 July 2012 (s 2)

Criminal Code Amendment (Violent Act Causing Death) Act 2012 **(Act No. 25, 2012)**

Assent date	6 December 2012
Commenced	21 December 2012 (*Gaz* S75, 17 December 2012)

Criminal Code Amendment (Assaults on Workers) Act 2013 **(Act No. 3, 2013)**

Assent date	14 March 2013
Commenced	1 May 2013 (*Gaz* S16, 22 April 2013)

Serious Sex Offenders Act 2013 **(Act No. 9, 2013)**

Assent date	3 May 2013
Commenced	1 July 2013 (*Gaz* G24, 12 June 2013, p 2)

Penalties Amendment (Miscellaneous) Act 2013 **(Act No. 23, 2013)**

Assent date	12 July 2013
Commenced	28 August 2013 (*Gaz* G35, 8 August 2013, p 2)

Criminal Code Amendment (Cheating at Gambling) Act 2013 **(Act No. 24, 2013)**

Assent date	6 September 2013
Commenced	7 October 2013 (*Gaz* S50, 7 October 2013)

Criminal Code Amendment (Female Genital Mutilation) Act 2013 **(Act No. 26, 2013)**

Assent date	8 November 2013
Commenced	4 December 2013 (*Gaz* G49, 4 December 2013, p 2)

Advance Personal Planning (Consequential Amendments) Act 2013 **(Act No. 36, 2013)**

Assent date	19 December 2013
Commenced	pt 3: 5 February 2014 (*Gaz* G5, 5 February 2014, p 2); rem: 17 March 2014 (*Gaz* S14, 17 March 2014)

Criminal Code Amendment (Child Abuse Material) Act 2014 **(Act No. 1, 2014)**

Assent date	6 March 2014
Commenced	2 April 2014 (*Gaz* G13, 2 April 2014, p 2)

Criminal Code Amendment (Expert Psychiatric or Medical Evidence) Act 2014 **(Act No. 3, 2014)**

Assent date	20 March 2014
Commenced	2 April 2014 (*Gaz* S16, 2 April 2014)

Criminal Code Amendment (Hit and Run) Act 2014 **(Act No. 4, 2014)**

Assent date	20 March 2014
Commenced	2 April 2014 (*Gaz* S16, 2 April 2014)

Criminal Code Amendment (Identity Crime) Act 2014 **(Act No. 9, 2014)**

Assent date	16 April 2014
Commenced	1 July 2014 (*Gaz* S52, 1 July 2014)

Justice and Other Legislation Amendment Act 2014 **(Act No. 11, 2014)**

Assent date	16 April 2014
Commenced	1 July 2014 (*Gaz* S54, 1 July 2014)

Criminal Code Amendment (Presumption of Joint Trials) Act 2014 **(Act No. 22, 2014)**

Assent date	2 June 2014
Commenced	1 July 2014 (*Gaz* S53, 1 July 2014)

Correctional Services (Related and Consequential Amendments) Act 2014 **(Act No. 27, 2014)**

Assent date	4 September 2014
Commenced	9 September 2014 (*Gaz* S80, 9 September 2014, p 2)

Criminal Code Amendment (Dangerous Driving During Pursuit) Act 2014 **(Act No. 29, 2014)**

Assent date	18 September 2014
Commenced	29 October 2014 (*Gaz* G43, 29 October 2014, p 1)

Criminal Code Amendment (Remission for Resentencing) Act 2015 **(Act No. 5, 2015)**

Assent date	25 March 2015
Commenced	6 May 2015 (*Gaz* G18, 6 May 2015, p 2)

Statute Law Amendment (Directors' Liability) Act 2015 **(Act No. 26, 2015)**

Assent date	18 September 2015
Commenced	14 October 2015 (*Gaz* G41, 14 October 2015, p 3)

Local Court (Repeals and Related Amendments) Act 2016 **(Act No. 9, 2016)**

Assent date	6 April 2016
Commenced	1 May 2016 (*Gaz* S34, 29 April 2016)

Bushfires Management Act 2016 **(Act No. 14, 2016)**

Assent date	7 June 2016
Commenced	1 November 2016 (*Gaz* S111, 27 October 2016, p 1)

Guardianship of Adults Act 2016 **(Act No. 15, 2016)**

Assent date	7 June 2016
Commenced	28 July 2016 (*Gaz* S74, 27 July 2016, p 1)

Statute Law Revision Act 2017 **(Act No. 4, 2017)**

Assent date	10 March 2017
Commenced	12 April 2017 (*Gaz* G15, 12 April 2017, p 3)

Criminal Code Amendment (Mental Impairment and Unfitness to be Tried) Act 2017 **(Act No. 8, 2017)**

Assent date	31 May 2017
Commenced	15 June 2017 (*Gaz* S31, 15 June 2017)

Termination of Pregnancy Law Reform Act 2017 **(Act No. 7, 2017)**

Assent date	24 April 2017
Commenced	1 July 2017 (*Gaz* S38, 28 June 2017)

Supreme Court Amendment (Associate Judges) Act 2017 **(Act No. 18, 2017)**

Assent date	5 September 2017
Commenced	22 November 2017 (*Gaz* S84, 21 November 2017, p 1)

Criminal Code Amendment (Dangerous Navigation of Vessels) Act 2017 **(Act No. 21, 2017)**

Assent date	8 November 2017
Commenced	29 November 2017 (*Gaz* G48, 29 November 2017, p 2)

Independent Commissioner Against Corruption (Consequential and Related Amendments) Act 2018 **(Act No. 3, 2018)**

Assent date	21 February 2018
Commenced	30 November 2018 (s 2, s 2 *Independent Commissioner Against Corruption Act 2017* (Act No. 23, 2017) and *Gaz* S30 November 2018)

Criminal Code Amendment (Intimate Images) Act 2018 **(Act No. 6, 2018)**

Assent date	19 April 2018
Commenced	9 May 2018 (*Gaz* G19, 9 May 2018, p 8)

Health Practitioner Regulation (National Uniform Legislation) and Other Legislation Amendment Act 2018 **(Act No. 28, 2018)**

Assent date	30 November 2018
Commenced	1 December 2018 (s 2)

Births, Deaths and Marriages Registration and Other Legislation Amendment 2018 **(Act No. 30, 2018)**

Assent date	5 December 2018
Commenced	6 December 2018 (s 2)

Criminal Code Amendment Act 2019 **(Act No. 9, 2019)**

Assent date	28 March 2019
Commenced	24 April 2019 (*Gaz* G17, 24 April 2019, p 3)

Criminal Code Further Amendment Act 2019 **(Act No. 10, 2019)**

Assent date	28 March 2019
Commenced	28 March 2019

Statute Law Revision and Repeals Act 2019 **(Act No. 33, 2019)**

Assent date	6 November 2019
Commenced	pts 2 and 3: nc; rem: 7 November 2019 (s 2)

3 SAVINGS AND TRANSITIONAL PROVISIONS

s 5 *Criminal Code Amendment Act 1991* (Act No. 1, 1991)
s 4 *Criminal Code Amendment Act (No. 2) 1995* (Act No. 63, 1995)
s 6 *Criminal Code Amendment (Mental Impairment and Unfitness to be Tried) Act 2002* (Act No. 11, 2002)
s 7 *Criminal Code Amendment Act 2003* (Act No. 4, 2004)

4 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1, 4 and 6 and sch 1 – ss 1, 28, 43A, 43M, 43ZA, 43ZG, 43ZI, 75A, 79, 112, 113, 119, 125A, 157, 174FB, 208A, 226, note for pt VII, div 2A, 236, 244, 341A, 383, 388, 425, 441 and 453.

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ss 148B – 148D	ins No. 8, 1999, s 3 amd No. 9, 2016, s 74
s 148E	ins No. 8, 1999, s 3
pt VI	
div 1A hdg	ins No. 27, 2001, s 4 sub No. 34, 2006, s 15
pt VI div 1A subdiv 1 hdg	ins No. 34, 2006, s 15
s 149A	ins No. 27, 2001, s 4
pt VI div 1A subdiv 2 hdg	ins No. 34, 2006, s 16
s 149B	ins No. 34, 2006, s 16 amd No. 6, 2018, s 5
s 149C	ins No. 34, 2006, s 16 amd No. 9, 2016, s 74
pt VI	
div 2 hdg	sub No. 13, 2005, s 5; No. 37, 2005, s 8
s 154	amd No. 9, 1984, s 7; No. 1, 1991, s 4 rep No. 37, 2005, s 9
s 155	amd No. 9, 2016, s 74
s 155A	ins No. 13, 2005, s 6 amd No. 5, 2007 s 37; No. 9, 2016, s 74
s 156	sub No. 34, 2006, s 17 amd No. 9, 2016, s 74
s 157	sub No. 34, 2006, s 17 amd No. 5, 2007 s 37; No. 9, 2016, s 74
ss 158 – 159	sub No. 34, 2006, s 17
s 160	amd No. 37, 2005, s 19 sub No. 34, 2006, s 17 amd No. 9, 2016, s 74
s 161	sub No. 34, 2006, s 17 amd No. 9, 2016, s 74
s 161A	ins No. 25, 2012, s 4 amd No. 9, 2016, s 74
s 162	amd No. 55, 1995, s 3; No. 37, 2005, s 19 sub No. 34, 2006, s 17
s 163	sub No. 37, 2005, s 10; No. 34, 2006, s 17
s 164	amd No. 17, 1996, s 6 sub No. 3, 2004, s 4 amd No. 33, 2005, s 5 rep No. 34, 2006, s 17
ss 165 – 166	amd No. 9, 2016, s 74
s 167	rep No. 34, 2006, s 18
s 168	amd No. 1, 1996, s 3 rep No. 34, 2006, s 18
s 169	rep No. 1, 1996, s 4
s 170	amd No. 9, 2016, s 74
ss 171 – 174	rep No. 34, 2006, s 18
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div 3A hdg	ins No. 37, 2005, s 12 amd No. 29, 2014, s 4; No. 21, 2017, s 4

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div 3A	
subdiv 1 hdg	ins No. 37, 2005, s 12
s 174A	ins No. 37, 2005, s 12
	rep No. 34, 2006, s 18
s 174B	ins No. 37, 2005, s 12
	amd No. 9, 2016, s 74
s 174FC	ins No. 21, 2017, s 5
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div 3A	
subdiv 2 hdg	ins No. 37, 2005, s 12
ss 174C – 174F	ins No. 37, 2005, s 12
	amd No. 23, 2013, s 8; No. 9, 2016, s 74
s 174FA	ins No. 26, 2008, s 5
	amd No. 4, 2014, s 4; No. 9, 2016, s 74
s 174FB	ins No. 29, 2014, s 5
pt VI	
div 3A	
subdiv 3 hdg	ins No. 37, 2005, s 12
s 174G	ins No. 37, 2005, s 12
	amd No. 27, 2014, s 57
s 174H	ins No. 37, 2005, s 12
pt VI	
div 4 hdg	sub No. 37, 2005, s 13; No. 10, 2008, s 4
ss 175 – 176	amd No. 9, 2016, s 74
s 176A	ins No. 10, 2008, s 5
s 177	amd No. 37, 2005, s 19; No. 5, 2007, s 37; No. 24, 2010, s 4; No. 9, 2016, s 74
ss 178 – 180	amd No. 9, 2016, s 74
s 180A	ins No. 26, 2008, s 6
	amd No. 9, 2016, s 74
ss 181 – 182	amd No. 37, 2005, s 19; No. 9, 2016, s 74
ss 183 – 184	amd No. 9, 2016, s 74
s 185	amd No. 37, 2005, s 19; No. 9, 2016, s 74
s 186	amd No. 17, 1996, s 6; No. 37, 2005, s 19; No. 9, 2016, s 74
pt VI	
div 4A hdg	ins No. 63, 1995, s 3
s 186A	ins No. 63, 1995, s 3
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s 186B	ins No. 63, 1995, s 3
	amd No. 9, 2016, s 74
s 186C	ins No. 63, 1995, s 3
	amd No. 26, 2013, s 4; No. 9, 2016, s 74
s 186D	ins No. 63, 1995, s 3
	amd No. 9, 2016, s 74
s 187	amd No. 37, 2005, s 19; No. 9, 2019, s 5
s 188	sub No. 9, 1984, s 8
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s 188A	ins No. 3, 2013, s 5
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s 189A	ins No. 12, 1994, s 3
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s 189	rep No. 9, 1984, s 8
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s 190	amd No. 9, 2016, s 74; No. 18, 2017, s 33
s 191	amd No. 9, 2016, s 74
s 192	sub No. 13, 1994, s 12
	amd No. 37, 2005, s 14; No. 23, 2013, s 8; No. 9, 2016, s 74
ss 192A – 192B	ins No. 13, 1994, s 12
	amd No. 9, 2016, s 74
s 193	amd No. 9, 2016, s 74
s 194	amd No. 37, 2005, s 19; No. 9, 2016, s 74
ss 195 – 200	amd No. 9, 2016, s 74
s 201	amd No. 13, 1994, s 14; No. 1, 2004, s 11; No. 9, 2016, s 74
s 202	amd No. 1, 2004, s 12; No. 9, 2016, s 74
pt VI	
div 6A hdg	ins No. 4, 2002, s 3
s 202A	ins No. 4, 2002, s 3
ss 202B – 202E	ins No. 4, 2002, s 3
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ss 204 – 208	amd No. 9, 2016, s 74
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div 7A	ins No. 6, 2018, s 6
ss 208AA – 208AE	ins No. 6, 2018, s 6
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div 8 hdg	ins No. 34, 2006, s 19
	sub No. 7, 2017, s 20
s 208A	ins No. 34, 2006, s 19
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ss 208B – 208C	ins No. 34, 2006, s 19
	rep No. 7, 2017, s 20
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div 9 hdg	ins No. 34, 2006, s 19
s 208D	ins No. 34, 2006, s 19
s 208E	ins No. 34, 2006, s 19
	amd No. 27, 2014, s 57
s 208F	ins No. 34, 2006, s 19
s 210	amd No. 9, 2016, s 74
ss 211 – 212	amd No. 37, 2005, s 19; No. 9, 2016, s 74
s 213	amd No. 9, 2016, s 74
s 214	amd No. 17, 1996, s 6; No. 9, 2016, s 74
ss 215 – 225	amd No. 9, 2016, s 74
s 226	amd No. 37, 2010, s 13; No. 9, 2016, s 74
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ss 226A – 226B	ins No. 52, 2001, s 4
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s 228	amd No. 9, 2016, s 74
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ss 228C – 228E	ins No. 9, 2014, s 5 amd No. 9, 2016, s 74
s 228F	ins No. 9, 2014, s 5
ss 239 – 231	amd No. 9, 2016, s 74
pt VII div 3A hdg	ins No. 59, 2004, s 3
s 231A	ins No. 59, 2004, s 3
ss 231B – 231E	ins No. 59, 2004, s 3 amd No. 9, 2016, s 74
s 231F	ins No. 59, 2004, s 3
ss 232 – 235	amd No. 9, 2016, s 74
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s 237	amd No. 9, 2016, s 74
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pt VII div 5A sdiv 1 hdg	ins No. 24, 2013, s 5
ss 237A – 237G	ins No. 24, 2013, s 5
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ss 237H – 237L	ins No. 24, 2013, s 5 amd No. 9, 2016, s 74
ss 237M – 237N	ins No. 24, 2013, s 5
pt VII div 6 hdg	sub No. 5, 2011, s 5
pt VII div 6 sdiv 1 hdg	ins No. 5, 2011, s 5
ss 238 – 240	sub No. 5, 2011, s 5
s 240A	ins No. 29, 2009, s 4 rep No. 5, 2011, s 5
pt VII div 6 sdiv 2 hdg	ins No. 5, 2011, s 5
ss 241 – 243	sub No. 5, 2011, s 5 amd No. 9, 2016, s 74
s 244	sub No. 5, 2011, s 5 amd No. 9, 2016, s 74; No. 14, 2016, s 120
s 245	sub No. 5, 2011, s 5
ss 246 – 247	sub No. 5, 2011, s 5 amd No. 9, 2016, s 74
pt VII div 6 sdiv 3 hdg	ins No. 5, 2011, s 5
ss 248 – 249	sub No. 5, 2011, s 5
s 250	rep No. 5, 2011, s 5
s 251	amd No. 52, 2001, s 5 rep No. 5, 2011, s 5
ss 252 – 257	rep No. 5, 2011, s 5

ss 258 – 266	amd No. 9, 2016, s 74
s 267	rep No. 27, 1996, s 4
s 268	amd No. 9, 2016, s 74
s 269	amd No. 48, 1999, s 3; No. 9, 2016, s 74
ss 270 – 275	amd No. 9, 2016, s 74
pt VII	
div 10 hdg	sub No. 65, 2001, s 6
s 276	sub No. 65, 2001, s 6 amd No. 9, 2016, s 74
s 276A	ins No. 65, 2001, s 6
ss 276B – 276F	ins No. 65, 2001, s 6 amd No. 9, 2016, s 74
s 277	amd No. 17, 1996, s 6; No. 9, 2016, s 69
s 278	amd No. 17, 1996, s 6; No. 9, 2016, s 74
s 279	amd No. 17, 1996, s 6 rep No. 9, 1999, s 3
s 281	amd No. 9, 2016, s 74
s 282	amd No. 17, 1996, s 6; No. 9, 2016, s 74
ss 283 – 284	amd No. 9, 2016, s 74
s 285	amd No. 17, 1996, s 6; No. 9, 2016, s 74
s 286	amd No. 12, 2010, s 3; No. 9, 2016, s 74
s 287	rep No. 34, 2006, s 20
ss 288 – 289	amd No. 9, 2016, s 74
s 291	sub No. 30, 2018, s 13
s 292	amd No. 17, 1996, s 6
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s 295	amd No. 9, 2016, s 74
s 296	amd No. 9, 1984, s 10 rep No. 9, 2016, s 71
s 297	amd No. 9, 2016, s 74
s 297A	ins No. 9, 1984, s 11
s 298	amd No. 29, 1990, s 7; No. 9, 2016, s 74
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s 315	amd No. 9, 1984, s 13; No. 17, 1996, s 6
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s 317	amd No. 17, 1996, s 6; No. 34, 2006, s 21; No. 9, 2016, s 74
s 318	amd No. 17, 1996, s 6; No. 44, 2003, s 5; No. 37, 2005, s 16; No. 9, 2016, s 74
s 319	amd No. 9, 1984, s 14; No. 13, 1994, s 13; No. 17, 1996, s 6; No. 1, 2004, s 13; No. 9, 2016, s 74
s 320	amd No. 17, 1996, s 6; No. 9, 2016, s 74
ss 321 – 322	amd No. 17, 1996, s 6
s 323	amd No. 17, 1996, s 6 sub No. 9, 1999, s 4
ss 324 – 325	amd No. 17, 1996, s 6
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div 4 hdg	sub No. 9, 2009, s 3
s 331	amd No. 48, 1986, s 9; No. 29, 1990, s 7
s 331A	ins No. 9, 2009, s 4
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s 331B	ins No. 3, 2014, s 4
s 332	amd No. 9, 1984, s 15
s 333	sub No. 9, 1984, s 16
s 334	amd No. 40, 2010, s 26
s 336	amd No. 9, 1984, s 17; No. 9, 2016, s 74
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s 341A	ins No. 22, 2014, s 6
s 342	amd No. 17, 1996, s 6
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s 345	amd No. 9, 1984, s 18
ss 346 – 347	amd No. 17, 1996, s 6
s 348	amd No. 79, 1998, s 3
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s 351A	ins No. 2, 2008, s 7
s 352	amd No. 40, 2010, s 29
s 353	amd No. 40, 2010, s 30
s 356	amd No. 40, 2010, s 31
s 357	amd No. 9, 1984, s 19
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s 358	amd No. 40, 2010, s 32
s 359	amd No. 40, 2010, s 33
s 363	sub No. 5, 2007, s 10
s 365	amd No. 5, 2007, s 11; No. 40, 2010, s 34
s 366	amd No. 5, 2007, s 12
s 367	amd No. 40, 2010, s 35
s 369	amd No. 17, 1996, s 6
s 371	amd No. 9, 1984, s 20; No. 9, 2009, s 5; No. 40, 2010, s 36
s 372	sub No. 5, 2007, s 13
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s 373	amd No. 4, 1997, s 3
s 374	amd No. 9, 2016, s 74
s 376	amd No. 9, 2016, s 74
s 377	sub No. 1, 2004, s 14
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s 379	amd No. 9, 2016, s 74
s 380	amd No. 17, 1996, s 6
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s 385	amd No. 17, 1996, s 6
s 386	rep No. 9, 1984, s 22
s 387	amd No. 17, 1996, s 6
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ss 394 – 395	rep No. 17, 1996, s 6
s 396	amd No. 9, 1984, s 25
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s 397	amd No. 71, 1989, s 2
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s 398	rep No. 17, 1996, s 6
s 399	amd No. 71, 1989, s 3
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s 406	amd No. 9, 1984, s 26; No. 17, 1996, s 6; No. 4, 2004, s 6; No. 9, 2016, s 73
s 407	amd No. 9, 2016, s 74
s 408	amd No. 17, 1996, s 6; No. 27, 2014, s 57; No. 9, 2016, s 74
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s 412	amd No. 17, 1996, s 6; No. 44, 2005, s 7; No. 9, 2016, s 74
s 412A	ins No. 44, 2005, s 8
s 413	amd No. 17, 1996, s 6
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s 415	amd No. 17, 1996, s 6
s 417	amd No. 17, 1996, s 6
s 418	amd No. 9, 2016, s 74
s 420	amd No. 3, 2000, s 5
s 421	amd No. 29, 1990, s 7
s 423	amd No. 3, 2000, s 6
s 424	amd No. 29, 1990, s 7
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s 426	amd No. 29, 1990, s 7; No. 17, 1996, s 6; No. 27, 2014, s 57
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s 429	amd No. 9, 2016, s 74
s 430	amd No. 17, 1996, s 6; No. 9, 2016, s 74
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s 443	ins No. 72, 1993, s 3 amd No. 9, 2016, s 74
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s 447	ins No. 26, 2013, s 8
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s 449	ins No. 4, 2014, s 5
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s 450	ins No. 1, 2014, s 7
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s 451	ins No. 11, 2014, s 6
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s 452	ins No. 22, 2014, s 7
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s 453	ins No. 5, 2015, s 5
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