

# CRIMINAL LAW CONSOLIDATION ACT 1935

Reprint No. 1—1.7.91	
Reprint No. 2—31.10.91	
Reprint No. 3—12.12.91	
Reprint No. 4—16.1.92	[New Part 11 and Appendix 2]
Reprint No. 5—16.4.92	[New Part 3 and Appendix 2]
Reprint No. 6—6.7.92	[New Parts 1, 3, 4, 7, 8, 9, 11, Schedules and Appendices 2 and 3]
Reprint No. 7—12.11.92	[New Parts 1, 3 and Appendices 2 and 3]
Reprint No. 8—1.1.93	[New Part 9 and Appendices 2 and 3]
Reprint No. 9—1.7.93	[New Parts 3, 9 and Appendices 2 and 3]
Reprint No. 10—15.7.93	[New Part 11 and Appendices 2 and 3]
Reprint No. 11—1.6.94	[New Parts 1, 3 and Appendices 2 and 3]
Reprint No. 12—9.6.94	[New Parts 1, 9, 11 and Appendices 2 and 3]
Reprint No. 13—1.8.94	[New Parts 3, 11 and Appendices 2 and 3]
Reprint No. 14—1.1.95	[Whole Act replaced]
Reprint No. 15—10.7.95	[New Part 9 and Appendices 2 and 3]
Reprint No. 16—4.1.96	[New Part 11 and Appendices 2 and 3]
Reprint No. 17—2.3.96	[New Parts 8A, 9 and Appendices 2 and 3]
Reprint No. 18—12.9.96	[New Part 11 and Appendices 2 and 3]
Reprint No. 19—17.10.96	[New Part 11 and Appendices 2 and 3]
Reprint No. 20—27.3.97	[New Part 3 and Appendices 2 and 3]
Reprint No. 21—27.4.97	[New Part 3 and Appendices 2 and 3]
Reprint No. 22—7.7.97	[New Part 5 and Appendices 2 and 3]
Reprint No. 23—14.7.97	[New Part 6 and Appendices 2 and 3]
Reprint No. 24—13.12.98	[New Part 11 and Appendices 2 and 3]
Reprint No. 25—11.3.99	[New Part 7A and Appendices 2 and 3]
Reprint No. 26—1.4.99	[New Parts 7B, 8 and Appendices 2 and 3]
Reprint No. 27—16.5.99	[New Parts 7, 11 and Appendices 2 and 3]
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Reprint No. 29—25.12.99	[New Parts 1, 5 and Appendices 2 and 3]
Reprint No. 30—8.6.00	[New Parts 1, 3 and Appendices 2 and 3]
Reprint No. 31—6.7.00	[New Part 11 and Appendices 2 and 3]
Reprint No. 32—14.8.00	[New Part 7 and Appendices 2 and 3]
Reprint No. 33—29.10.00	[New Part 8A and Appendices 2 and 3]
Reprint No. 34—12.4.01	[New Parts 1, 9, 11 and Appendix 2]
Reprint No. 35—13.1.02	[New Part 3 and Appendix 2]
Reprint No. 36—3.2.02	[New Part 4 and Appendix 2]
Reprint No. 37—31.10.02	[New Part 4 and Appendix 2]
Reprint No. 38—1.12.02	[New Parts 1, 1A and Appendix 2]
Reprint No. 39—16.1.03	[Whole Act replaced]
Reprint No. 40—17.6.03	[New Part 3 and Appendix 2]
Reprint No. 41—5.7.03	[New Parts 5, 6, 6A, 6B, 6C, 9 and Appendix 2]
Reprint No. 42—27.7.03	[New Part 3 and Appendix 2]

[Each Part is numbered from page 1. Subscribers to the Consolidation Service will receive complete replacement Parts incorporating amendments to this Act as they come into force.]



South Australia

**CRIMINAL LAW CONSOLIDATION ACT 1935**

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An Act to consolidate certain Acts relating to the criminal law; and for other purposes.

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*This Act is published under the Legislation Revision and Publication Act 2002 and incorporates all amendments in force as at **27 July 2003**.*

*Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.*

**CRIMINAL LAW CONSOLIDATION ACT 1935**

being

Criminal Law Consolidation Act 1935 No. 2252 of 1935  
[Assented to 21 December 1935]<sup>1</sup>

as amended by

Criminal Law Consolidation Act Amendment Act 1940 No. 54 of 1940 [Assented to 5 December 1940]  
Criminal Law Consolidation Act Amendment Act 1952 No. 27 of 1952 [Assented to 27 November 1952]  
Coroners Act Amendment Act 1952 No. 53 of 1952 [Assented to 4 December 1952]  
Criminal Law Consolidation Act Amendment Act 1956 No. 54 of 1956 [Assented to 29 November 1956]  
Statute Law Revision Act 1957 No. 42 of 1957 [Assented to 14 November 1957]  
Maintenance Act Amendment Act 1965 No. 54 of 1965 [Assented to 23 December 1965]<sup>2</sup>  
Criminal Law Consolidation Act Amendment Act 1966 No. 7 of 1966 [Assented to 24 February 1966]  
Criminal Law Consolidation Act Amendment Act (No. 2) 1969 No. 71 of 1969 [Assented to 11 December 1969]<sup>3</sup>  
Criminal Law Consolidation Act Amendment Act (No. 3) 1969 No. 88 of 1969 [Assented to 11 December 1969]<sup>4</sup>  
Criminal Law Consolidation Act Amendment Act 1969 No. 109 of 1969 [Assented to 8 January 1970]  
Age of Majority (Reduction) Act 1971 No. 15 of 1971 [Assented to 8 April 1971]<sup>5</sup>  
Fisheries Act 1971 No. 29 of 1971 [Assented to 22 April 1971]<sup>6</sup>  
Corporal Punishment Abolition Act 1971 No. 58 of 1971 [Assented to 14 October 1971]<sup>7</sup>  
Criminal Law Consolidation Act Amendment Act 1971 No. 96 of 1971 [Assented to 3 December 1971]  
Local and District Criminal Courts Act Amendment Act 1972 No. 54 of 1972 [Assented to 27 April 1972]<sup>8</sup>  
Criminal Law Consolidation Act Amendment Act 1972 No. 74 of 1972 [Assented to 21 September 1972]<sup>9</sup>  
Criminal Law Consolidation Act Amendment Act 1972 No. 94 of 1972 [Assented to 9 November 1972]  
Criminal Law Consolidation Act Amendment Act (No. 3) 1972 No. 102 of 1972 [Assented to 16 November 1972]<sup>10</sup>  
Criminal Law Consolidation Act Amendment Act (No. 5) 1972 No. 109 of 1972 [Assented to 23 November 1972]<sup>11</sup>  
Criminal Law Consolidation Act Amendment Act (No. 6) 1972 No. 122 of 1972 [Assented to 30 November 1972]<sup>12</sup>  
Statute Law Revision Act 1973 No. 77 of 1973 [Assented to 6 December 1973]  
Criminal Law Consolidation Act Amendment Act 1974 No. 13 of 1974 [Assented to 4 April 1974]  
Criminal Law (Sexual Offences) Amendment Act 1975 No. 66 of 1975 [Assented to 2 October 1975]  
Statute Law Revision Act (No. 3) 1975 No. 88 of 1975 [Assented to 20 November 1975]  
Criminal Law Consolidation Act Amendment Act 1976 No. 83 of 1976 [Assented to 9 December 1976]  
Statutes Amendment (Capital Punishment Abolition) Act 1976 No. 115 of 1976 [Assented to 23 December 1976]  
Criminal Law Consolidation Act Amendment Act 1978 No. 14 of 1978 [Assented to 16 March 1978]<sup>13</sup>  
Criminal Law (Prohibition of Child Pornography) Act 1978 No. 92 of 1978 [Assented to 7 December 1978]  
Criminal Law Consolidation Act Amendment Act 1980 No. 67 of 1980 [Assented to 13 November 1980]<sup>14</sup>  
Criminal Law Consolidation Act Amendment Act 1981 No. 107 of 1981 [Assented to 23 December 1981]<sup>15</sup>  
Criminal Law Consolidation Act Amendment Act (No. 2) 1981 No. 108 of 1981 [Assented to 23 December 1981]  
Statutes Amendment (Jurisdiction of Courts) Act 1981 No. 109 of 1981 [Assented to 23 December 1981]<sup>16</sup>  
Criminal Law Consolidation Act Amendment Act 1983 No. 45 of 1983 [Assented to 16 June 1983]  
Criminal Law Consolidation Act Amendment Act (No. 2) 1983 No. 51 of 1983 [Assented to 16 June 1983]  
Criminal Law Consolidation Act Amendment Act (No. 3) 1983 No. 84 of 1983 [Assented to 1 December 1983]

**NOTE:**

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix 2.

**Criminal Law Consolidation Act 1935**

- Statutes Amendment (Criminal Law Consolidation and Police Offences) Act 1983 No. 114 of 1983 [Assented to 22 December 1983]<sup>17</sup>
- Criminal Law Consolidation Act Amendment Act 1984 No. 49 of 1984 [Assented to 24 May 1984]
- Statute Law Revision Act 1984 No. 50 of 1984 [Assented to 24 May 1984]<sup>18</sup>
- Statutes Amendment (Oaths and Affirmations) Act 1984 No. 56 of 1984 [Assented to 24 May 1984]<sup>19</sup>
- Criminal Law Consolidation Act Amendment Act (No. 2) 1984 No. 78 of 1984 [Assented to 15 November 1984]
- Evidence Act Amendment Act (No. 3) 1984 No. 107 of 1984 [Assented to 20 December 1984]
- Police Offences Act Amendment Act 1985 No. 46 of 1985 [Assented to 2 May 1985]<sup>20</sup>
- Criminal Law Consolidation Act Amendment Act 1985 No. 98 of 1985 [Assented to 1 November 1985]<sup>21</sup>
- Statutes Amendment (Victims of Crime) Act 1986 No. 16 of 1986 [Assented to 20 March 1986]<sup>22</sup>
- Statutes Amendment (Parole) Act 1986 No. 69 of 1986 [Assented to 20 November 1986]<sup>23</sup>
- Criminal Law Consolidation Act Amendment Act 1986 No. 90 of 1986 [Assented to 4 December 1986]<sup>24</sup>
- Criminal Law Consolidation Act Amendment Act (No. 2) 1986 No. 91 of 1986 [Assented to 4 December 1986]<sup>25</sup>
- Criminal Law (Enforcement of Fines) Act 1987 No. 49 of 1987 [Assented to 30 April 1987]<sup>26</sup>
- Statutes Amendment and Repeal (Sentencing) Act 1988 No. 51 of 1988 [Assented to 5 May 1988]<sup>27</sup>
- Criminal Law Consolidation Act Amendment Act 1988 No. 78 of 1988 [Assented to 1 December 1988]
- Statutes Amendment (Criminal Law Consolidation and Summary Offences) Act 1988 No. 103 of 1988 [Assented to 15 December 1988]<sup>28</sup>
- Statutes Amendment (Attorney-General's Portfolio) Act 1991 No. 33 of 1991 [Assented to 24 April 1991]<sup>29</sup>
- Criminal Law Consolidation (Abolition of Year-and-a-day Rule) Amendment Act 1991 No. 40 of 1991 [Assented to 31 October 1991]
- Director of Public Prosecutions Act 1991 No. 49 of 1991 [Assented to 21 November 1991]<sup>30</sup>
- Criminal Law Consolidation (Self-Defence) Amendment Act 1991 No. 68 of 1991 [Assented to 12 December 1991]
- Statutes Repeal and Amendment (Courts) Act 1991 No. 69 of 1991 [Assented to 12 December 1991]<sup>31</sup>
- Statutes Amendment (Crimes Confiscation and Restitution) Act 1991 No. 75 of 1991 [Assented to 12 December 1991]<sup>32</sup>
- Criminal Law Consolidation (Rape) Amendment Act 1992 No. 9 of 1992 [Assented to 16 April 1992]
- Criminal Law Consolidation (Detention of Insane Offenders) Amendment Act 1992 No. 22 of 1992 [Assented to 14 May 1992]<sup>33</sup>
- Statutes Amendment (Attorney-General's Portfolio) Act 1992 No. 26 of 1992 [Assented to 14 May 1992]<sup>31</sup>
- Statutes Amendment and Repeal (Public Offences) Act 1992 No. 35 of 1992 [Assented to 21 May 1992]<sup>31</sup>
- Statutes Amendment (Illegal Use of Motor Vehicles) Act 1992 No. 37 of 1992 [Assented to 21 May 1992]<sup>34</sup>
- Criminal Law Consolidation (Application of Criminal Law) Amendment Act 1992 No. 63 of 1992 [Assented to 12 November 1992]
- Statutes Amendment (Right of Reply) Act 1992 No. 76 of 1992 [Assented to 26 November 1992]<sup>35</sup>
- Evidence (Miscellaneous) Amendment Act 1993 No. 37 of 1993 [Assented to 13 May 1993]<sup>36</sup>
- Statutes Amendment (Courts) Act 1993 No. 62 of 1993 [Assented to 27 May 1993]<sup>37</sup>
- Criminal Law Consolidation (Stalking) Amendment Act 1994 No. 7 of 1994 [Assented to 14 April 1994]<sup>38</sup>
- Criminal Law Consolidation (Sexual Intercourse) Amendment Act 1994 No. 19 of 1994 [Assented to 12 May 1994]<sup>39</sup>
- Domestic Violence Act 1994 No. 22 of 1994 [Assented to 26 May 1994]<sup>40</sup>
- Criminal Law Consolidation (Child Sexual Abuse) Amendment Act 1994 No. 23 of 1994 [Assented to 26 May 1994]<sup>41</sup>
- Statutes Amendment (Courts) Act 1994 No. 43 of 1994 [Assented to 2 June 1994]<sup>42</sup>
- Criminal Law Consolidation (Felonies and Misdemeanours) Amendment Act 1994 No. 59 of 1994 [Assented to 27 October 1994]<sup>43</sup>
- Statutes Amendment (Female Genital Mutilation and Child Protection) Act 1995 No. 24 of 1995 [Assented to 27 April 1995]<sup>44</sup>
- Statutes Amendment (Attorney-General's Portfolio) Act 1995 No. 27 of 1995 [Assented to 27 April 1995]<sup>45</sup>
- Criminal Law Consolidation (Appeals) Amendment Act 1995 No. 90 of 1995 [Assented to 7 December 1995]<sup>46</sup>
- Criminal Law Consolidation (Mental Impairment) Amendment Act 1995 No. 91 of 1995 [Assented to 7 December 1995]<sup>47</sup>
- Statutes Amendment (Attorney-General's Portfolio) Act 1996 No. 67 of 1996 [Assented to 15 August 1996]<sup>48</sup>
- Criminal Assets Confiscation Act 1996 No. 95 of 1996 [Assented to 19 December 1996]<sup>49</sup>
- Criminal Law Consolidation (Self Defence) Amendment Act 1997 No. 10 of 1997 [Assented to 27 March 1997]
- Statutes Amendment (References to Banks) Act 1997 No. 30 of 1997 [Assented to 12 June 1997]<sup>50</sup>
- Statutes Amendment (Attorney-General's Portfolio) Act 1998 No. 59 of 1998 [Assented to 3 September 1998]<sup>51</sup>
- Criminal Law Consolidation (Contamination of Goods) Amendment Act 1999 No. 2 of 1999 [Assented to 11 March 1999]
- Statutes Amendment (Sentencing—Miscellaneous) Act 1999 No. 13 of 1999 [Assented to 18 March 1999]<sup>52</sup>
- Criminal Law Consolidation (Intoxication) Amendment Act 1999 No. 15 of 1999 [Assented to 1 April 1999]
- Criminal Law Consolidation (Juries) Amendment Act 1999 No. 16 of 1999 [Assented to 1 April 1999]<sup>53</sup>
- Financial Sector Reform (South Australia) Act 1999 No. 33 of 1999 [Assented to 17 June 1999]<sup>54</sup>
- Criminal Law Consolidation (Serious Criminal Trespass) Amendment Act 1999 No. 80 of 1999 [Assented to 2 December 1999]<sup>55</sup>
- Criminal Law Consolidation (Sexual Servitude) Amendment Act 2000 No. 20 of 2000 [Assented to 8 June 2000]
- Criminal Law Consolidation (Appeals) Amendment Act 2000 No. 31 of 2000 [Assented to 6 July 2000]
- Criminal Law Consolidation (Mental Impairment) Amendment Act 2000 No. 39 of 2000 [Assented to 13 July 2000]<sup>56</sup>

Statutes Amendment and Repeal (Attorney-General's Portfolio) Act 2000 No. 57 of 2000 [Assented to 20 July 2000]<sup>57</sup>

Legal Assistance (Restrained Property) Amendment Act 2001 No. 10 of 2001 [Assented to 12 April 2001]<sup>58</sup>

Statutes Amendment (Stalking) Act 2001 No. 55 of 2001 [Assented to 8 November 2001]<sup>59</sup>

Statutes Amendment (Courts and Judicial Administration) Act 2001 No. 69 of 2001 [Assented to 6 December 2001]<sup>60</sup>

Statutes Amendment (Bushfires) Act 2002 No. 24 of 2002 [Assented to 31 October 2002]<sup>61</sup>

Criminal Law Consolidation (Offences of Dishonesty) Amendment Act 2002 No. 26 of 2002 [Assented to 31 October 2002]<sup>62</sup>

Criminal Law Consolidation (Territorial Application of the Criminal Law) Amendment Act 2002 No. 28 of 2002 [Assented to 7 November 2002]<sup>63</sup>

Criminal Law Consolidation (Abolition of Time Limit for Prosecution of Certain Sexual Offences) Amendment Act 2003 No. 14 of 2003 [Assented to 17 June 2003]

**Criminal Law Consolidation (Self Defence) Amendment Act 2003 No. 28 of 2003 [Assented to 24 July 2003]<sup>64</sup>**

- 1 Came into operation 2 January 1936: *Gaz.* 2 January 1936, p. 1.
- 2 Came into operation 27 January 1966: *Gaz.* 27 January 1966, p. 145.
- 3 Came into operation 31 August 1970: *Gaz.* 20 August 1970, p. 701.
- 4 Came into operation 17 September 1970: *Gaz.* 17 September 1970, p. 1198.
- 5 Came into operation 15 April 1971: *Gaz.* 15 April 1971, p. 1598.
- 6 Came into operation 1 December 1971: *Gaz.* 30 November 1971, p. 2261.
- 7 Came into operation 18 November 1971: *Gaz.* 18 November 1971, p. 2070.
- 8 Came into operation 9 November 1972: *Gaz.* 9 November 1972, p. 2252.
- 9 Came into operation 2 November 1972: *Gaz.* 2 November 1972, p. 2132.
- 10 Came into operation 1 February 1973: *Gaz.* 1 February 1973, p. 377.
- 11 Came into operation 15 February 1973: *Gaz.* 15 February 1973, p. 497.
- 12 Came into operation 15 February 1973: *Gaz.* 15 February 1973, p. 496.
- 13 Came into operation 1 July 1979: *Gaz.* 14 June 1979, p. 1824.
- 14 Came into operation 11 December 1980: *Gaz.* 11 December 1980, p. 2119.
- 15 Came into operation 11 February 1982: *Gaz.* 11 February 1982, p. 361.
- 16 Came into operation 1 February 1982: *Gaz.* 28 January 1982, p. 209.
- 17 Came into operation 22 December 1983: *Gaz.* 22 December 1983, p. 1718.
- 18 Came into operation (except Scheds. 1, 3, 4 and 5) 1 November 1984: *Gaz.* 1 November 1984, p. 1398; Scheds. 1, 3, and 5 came into operation 1 January 1985: *Gaz.* 13 December 1984, p. 1811; Sched. 4 came into operation 6 July 1985: *Gaz.* 9 May 1985, p. 1398.
- 19 Came into operation 1 July 1984: *Gaz.* 28 June 1984, p. 1897.
- 20 Came into operation (except ss. 4, 9, 21, 26, 28-36) 10 May 1985; remainder of Act came into operation 8 July 1985: *Gaz.* 9 May 1985, p. 1398.
- 21 Came into operation 1 December 1985: *Gaz.* 14 November 1985, p. 1478.
- 22 Came into operation (except s. 26) 1 October 1986: *Gaz.* 4 September 1986, p. 696; s. 26 will not be brought into operation (the section it inserted was subsequently repealed by Act No. 51 of 1988, s. 35).
- 23 Came into operation 8 December 1986: *Gaz.* 27 November 1986, p. 1700.
- 24 Came into operation 1 February 1987: *Gaz.* 15 January 1987, p. 52.
- 25 Came into operation 18 December 1986: *Gaz.* 18 December 1986, p. 1877.
- 26 Came into operation (except ss. 5, 6(4), (5) and (6)) 21 June 1987: *Gaz.* 4 June 1987, p. 1430; remainder of Act came into operation 1 November 1987: *Gaz.* 29 October 1987, p. 1449.
- 27 Came into operation (except ss. 3-6, 12, 15-20, 22-27, 30-39, 41-68, 70-78) 12 May 1988: *Gaz.* 12 May 1988, p. 1181; ss. 3 and 4 came into operation 8 September 1988: *Gaz.* 8 September 1988, p. 994; remainder of Act came into operation 1 January 1989: *Gaz.* 15 December 1988, p. 2009.
- 28 Came into operation 6 March 1989: *Gaz.* 23 February 1989, p. 539.
- 29 Came into operation 6 June 1991: *Gaz.* 6 June 1991, p. 1776.
- 30 Came into operation 6 July 1992: *Gaz.* 25 June 1992, p. 1869.
- 31 Came into operation 6 July 1992: *Gaz.* 2 July 1992, p. 209.
- 32 Came into operation 16 January 1992: *Gaz.* 16 January 1992, p. 126.
- 33 Came into operation 6 July 1992: *Gaz.* 25 June 1992, p. 1880.
- 34 Came into operation (except new s. 86B as inserted by s. 4) 6 July 1992: *Gaz.* 2 July 1992, p. 209; new s. 86B (as inserted by s. 4) will not be brought into operation as it was subsequently repealed by Act No. 62 of 1993, s. 25.
- 35 Came into operation 1 January 1993: *Gaz.* 10 December 1992, p. 1752.
- 36 Came into operation 15 July 1993: *Gaz.* 15 July 1993, p. 520.
- 37 Came into operation 1 July 1993: *Gaz.* 24 June 1993, p. 2047.
- 38 Came into operation 1 June 1994: *Gaz.* 12 May 1994, p. 1187.
- 39 Came into operation 26 May 1994: *Gaz.* 26 May 1994, p. 1262.
- 40 Came into operation 1 August 1994: *Gaz.* 14 July 1994, p. 68.
- 41 Came into operation 28 July 1994: *Gaz.* 28 July 1994, p. 170.
- 42 Came into operation 9 June 1994: *Gaz.* 9 June 1994, p. 1669.
- 43 Came into operation 1 January 1995: *Gaz.* 8 December 1994, p. 1942.
- 44 Came into operation 27 April 1997 (by virtue of the Acts Interpretation Act 1915, s. 7(5)).
- 45 Came into operation 10 July 1995: *Gaz.* 29 June 1995, p. 2973.
- 46 Came into operation (except s. 10) 4 January 1996: *Gaz.* 4 January 1996, p. 2; s. 10 came into operation 12 September 1996: *Gaz.* 12 September 1996, p. 1124.
- 47 Came into operation 2 March 1996: *Gaz.* 11 January 1996, p. 94.
- 48 Came into operation 17 October 1996: *Gaz.* 17 October 1996, p. 1361.
- 49 Came into operation 7 July 1997: *Gaz.* 12 June 1997, p. 2962.
- 50 Part 4 (s. 6) came into operation 3 July 1997: *Gaz.* 3 July 1997, p. 4.
- 51 Part 3 (ss. 5-7) came into operation 13 December 1998: *Gaz.* 3 December 1998, p. 1676.
- 52 Part 2 (ss. 4 & 5) came into operation 16 May 1999: *Gaz.* 13 May 1999, p. 2502.
- 53 Came into operation 16 May 1999: *Gaz.* 13 May 1999, p. 2502.

- <sup>54</sup> Schedule (item 16) came into operation 1 July 1999: being the date specified under section 3(16) of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth as the transfer date for the purposes of that Act.
- <sup>55</sup> Came into operation 25 December 1999: *Gaz.* 23 December 1999, p. 3668.
- <sup>56</sup> Came into operation 29 October 2000: *Gaz.* 26 October 2000, p. 2786.
- <sup>57</sup> Part 6 (s. 14) came into operation 14 August 2000: *Gaz.* 10 August 2000, p. 444.
- <sup>58</sup> Section 6 came into operation 12 April 2001: *Gaz.* 12 April 2001, p. 1582.
- <sup>59</sup> Part 2 (s. 4) came into operation 13 January 2002: *Gaz.* 10 January 2002, p. 4.
- <sup>60</sup> Part 4 (ss. 7 & 8) came into operation 3 February 2002: *Gaz.* 24 January 2002, p. 346.
- <sup>61</sup> Part 2 (s. 4) came into operation 31 October 2002: *Gaz.* 31 October 2002, p. 3979.
- <sup>62</sup> Came into operation (except ss. 4-8 and 12-16) 16 January 2003: *Gaz.* 16 January 2003, p. 180; ss. 4-8 and 12-16 came into operation 5 July 2003: *Gaz.* 15 May 2003, p. 1979.
- <sup>63</sup> Came into operation 1 December 2002: *Gaz.* 28 November 2002, p. 4292.
- <sup>64</sup> **Came into operation 27 July 2003: *Gaz.* 24 July 2003, p. 3103.**

N.B. The amendments effected to this Act by the *South Australian Health Commission Act 1976*, the *Criminal Law Consolidation (Identity Theft) Amendment Act 2003*, the *Statutes Amendment (Honesty and Accountability in Government) Act 2003* and the *Statutes Amendment (Computer Offences) Act 2004* have not been brought into operation.



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**SUMMARY OF PROVISIONS**

**Part 1—Preliminary**

- 1. Short title
- 5. Interpretation
- 5A. Abolition of capital punishment
- 5B. Proof of lawful authority or lawful or reasonable excuse
- 5D. Abolition of historical classifications

**Part 1A—Territorial application of the criminal law**

- 5E. Interpretation
- 5F. Application
- 5G. Territorial requirements for commission of offence against a law of this State
- 5H. Procedural provisions
- 5I. Double criminality

**Part 2—Treason**

- 6. Repeal
- 7. Treason
- 8. Time within which prosecution shall be commenced and warrant issued
- 9. In informations more than one overt act may be charged
- 10. Nothing herein to affect 25 Edward III Stat 5, c. 2
- 10A. Penalty for treason

**Part 3—Offences against the person**

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- 11. Murder
- 12. Conspiring or soliciting to commit murder
- 12A. Causing death by an intentional act of violence
- 13. Manslaughter
- 13A. Criminal liability in relation to suicide

**Division 2—Defence of life and property**

- 15. Self-defence
- 15A. Defence of property etc
- 15B. Reasonable proportionality
- 15C. Requirement of reasonable proportionality not to apply in case of an innocent defence against home invasion

**Division 3—Miscellaneous**

- 16. Petit treason
- 18. Abolition of year-and-a-day rule

**Division 4—Unlawful threats**

- 19. Unlawful threats

**Division 5—Stalking**

- 19AA. Unlawful stalking

## **Division 6—Death and injury arising from reckless driving etc**

- 19A. Death and injury arising from reckless driving etc
- 19B. Alternative verdicts

## **Division 7—Acts causing or intended to cause danger to life or bodily harm etc**

- 20. Impeding a person endeavouring to save himself from shipwreck
- 21. Wounding etc with intent to do grievous bodily harm
- 23. Malicious wounding etc
- 24. Verdict of unlawful wounding
- 25. Choking or stupefying to commit indictable offence
- 27. Maliciously administering poison etc with intent to injure, aggrieve or annoy any other person
- 29. Acts endangering life or creating risk of grievous bodily harm
- 30. Failing to provide food etc in certain circumstances
- 31. Possession of object with intent to kill or cause grievous bodily injury
- 32. Possession of a firearm with intent to commit an offence

## **Division 8—Female genital mutilation**

- 33. Definitions
- 33A. Prohibition of female genital mutilation
- 33B. Removal of child from State for genital mutilation

## **Division 9—Assaults**

- 39. Common assault
- 40. Assaults occasioning harm
- 41. Obstructing or assaulting clergyman in discharge of his duties
- 42. Assaulting a magistrate preserving wreck
- 43. Assaults in the course of resisting arrest etc
- 44. Forcibly hindering seaman

## **Division 10—Threatening another person with firearm**

- 47A. Threatening another person with a firearm

## **Division 11—Rape and other sexual offences**

- 48. Rape
- 49. Unlawful sexual intercourse
- 56. Indecent assault
- 57. Consent no defence in certain cases
- 57A. Power to take plea without evidence
- 58. Acts of gross indecency
- 58A. Offence if person for prurient purposes incites or procures commission by child of indecent act etc
- 59. Abduction of male or female person
- 64. Procuring sexual intercourse
- 65. Householder etc not to permit unlawful sexual intercourse on premises

## **Division 12—Commercial sexual services and related offences**

- 65A. Definitions relating to commercial sexual services
- 66. Sexual servitude and related offences
- 67. Deceptive recruiting for commercial sexual services
- 68. Use of children in commercial sexual services

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- 68A. Abolition of crime of sodomy
- 69. Offences with animals
- 72. Incest

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- 72A. Former time limit abolished
- 73. Offences involving sexual intercourse
- 74. Persistent sexual abuse of a child
- 75. Alternative verdict on charge of rape etc
- 76. Corroborative evidence in certain cases

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- 78. Bigamy
- 79. Defences in cases of bigamy

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- 80. Abduction of child under 16 years

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- 81. Attempts to procure abortion
- 82. Procuring drugs etc to cause abortion
- 82A. Medical termination of pregnancy

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- 83. Concealment of birth

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- 84. Preliminary
- 85. Damaging property
- 85A. Recklessly endangering property
- 85B. Special provision for causing a bushfire
- 86. Possession of object with intent to damage property
- 86A. Using motor vehicle without consent

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- 130. Interpretation
- 131. Dishonesty
- 132. Consent of owner
- 133. Operation of this Part

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- 134. Theft (and receiving)
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#### **APPENDIX 1 THE TREASON ACT**

#### **APPENDIX 2 LEGISLATIVE HISTORY**

The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### Short title

1. This Act may be cited as the *Criminal Law Consolidation Act 1935*.

\* \* \* \* \*

### Interpretation

5. (1) In this Act—

"**cattle**" means horse, mare, gelding, colt, filly, mule, ass, bull, cow, ox, heifer, calf, ram, ewe, sheep, lamb, camel, llama, alpaca, goat or pig;

"**common prostitute**" includes any male person who prostitutes his body for fee or reward;

"**court**" means, except where a contrary intention is indicated or appears from the context, the Supreme Court, the District Court or a court of summary jurisdiction;

"**dwelling house**" does not include a building, although within the curtilage of a dwelling house and occupied with the dwelling house, unless there is a communication between the building and dwelling house, either immediate or by means of a covered and enclosed passage leading from the one to the other;

"**firearm**" means—

- (a) a device designed to be carried by hand and to fire shot, bullets or other projectiles by means of burning propellant or by means of compressed air or other compressed gas;
- (b) a device of a kind declared by regulation under the *Firearms Act 1977* to be a firearm for the purposes of that Act,

but does not include a device of a kind excluded by regulation under the *Firearms Act 1977* from the provisions of that Act;

"**liable to be imprisoned for life**" means liable to be imprisoned for life or any lesser term;

"**local government body**" means a council or other body constituted under the *Local Government Act 1999*;

"**night**" means the interval between nine o'clock in the evening and six o'clock in the morning of the next day;

"**offensive weapon**" means—

- (a) an article or substance made or adapted for use for causing, or threatening to cause, personal injury or incapacity including—

- (i) a firearm or imitation firearm (*ie* an article intended to be taken for a firearm); or
  - (ii) an explosive or an imitation explosive (*ie* an article or substance intended to be taken for an explosive); or
- (b) an article or substance that a person has—
- (i) for the purpose of causing personal injury or incapacity; or
  - (ii) in circumstances in which another is likely to feel reasonable apprehension that the person has it for the purpose of causing personal injury or incapacity;

**"the Parole Board"** means the Parole Board of South Australia;

**"place of divine worship"** means any church, chapel, meeting house or other place of divine worship;

**"property"** means real or personal property whether tangible or intangible and includes a wild animal that is in captivity or ordinarily kept in captivity;

**"sexual intercourse"** includes any activity (whether of a heterosexual or homosexual nature) consisting of or involving—

- (a) penetration of the labia majora or anus of a person by any part of the body of another person or by any object; or
- (b) fellatio; or
- (c) cunnilingus.

(2) A note to a section or subsection of this Act forms part of the text of the Act unless the note clearly has no substantive effect.

### **Abolition of capital punishment**

**5A.** (1) Notwithstanding any provision of any Act or law, no sentence of death shall be—

- (a) imposed on, or recorded against, any person; or
- (b) carried into execution on any person.

(2) Where any person is liable to sentence of death under any Act or law, the court before which that person is convicted shall, instead of sentencing him to death, sentence him to be imprisoned for life.

(3) Any sentence of death that was imposed or recorded before the commencement of the *Statutes Amendment (Capital Punishment Abolition) Act 1976* shall (whether or not that sentence has been commuted to a sentence of imprisonment for life) be deemed to be a sentence of imprisonment for life imposed by a court of competent jurisdiction.

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(4) Any direction or order made by the Governor on, or in relation to, the commutation of a sentence of death to a sentence of imprisonment for life shall be deemed to be a direction or order given or made by a court of competent jurisdiction.

**Proof of lawful authority or lawful or reasonable excuse**

**5B.** In proceedings for an offence against this Act in which it is material to establish whether an act was done with or without lawful authority, lawful excuse or reasonable excuse the onus of proving the authority or excuse lies on the defendant and in the absence of such proof it will be presumed that no such authority or excuse exists.

\* \* \* \* \*

**Abolition of historical classifications**

**5D.** (1) The classification of offences as felonies is abolished.

(2) The classification of offences as misdemeanours is abolished.

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**Part 1A—Territorial application of the criminal law****Interpretation**

**5E.** (1) In this Part—

"**necessary territorial nexus**"—*see* section 5G(2);

"**State**" includes the Northern Territory and the Australian Capital Territory;

"**relevant act**" in relation to an offence means—

- (a) an act or omission that is, or causes or contributes to, an element of the offence; or
- (b) an act or omission that is, or causes or contributes to, something that would, assuming the necessary territorial nexus existed, be an element of the offence; or
- (c) a state of affairs that is an element of the offence, or would, assuming the necessary territorial nexus existed, be an element of the offence.

(2) The question whether the necessary territorial nexus exists in relation to an alleged offence is a question of fact to be determined, where a court sits with a jury, by the jury.

**Application**

**5F.** (1) The law of this State operates extra-territorially to the extent contemplated by this Part.

(2) However—

- (a) this Part does not operate to extend the operation of a law that is expressly or by necessary implication limited in its application to this State or a particular part of this State; and
- (b) this Part operates subject to any other specific provision as to the territorial application of the law of the State; and
- (c) this Part is in addition to, and does not derogate from, any other law providing for the extra-territorial operation of the criminal law.<sup>1</sup>

<sup>1</sup> For example, the *Crimes at Sea Act 1998*.

**Territorial requirements for commission of offence against a law of this State**

**5G.** (1) An offence against a law of this State is committed if—

- (a) all elements necessary to constitute the offence (disregarding territorial considerations) exist; and
- (b) the necessary territorial nexus exists.

(2) The necessary territorial nexus exists if—

- (a) a relevant act occurred wholly or partly in this State; or

- (b) it is not possible to establish whether any of the relevant acts giving rise to the alleged offence occurred within or outside this State but the alleged offence caused harm or a threat of harm in this State; or
- (c) although no relevant act occurred in this State—
  - (i) the alleged offence caused harm or a threat of harm in this State and the relevant acts that gave rise to the alleged offence also gave rise to an offence against the law of a jurisdiction in which the relevant acts, or at least one of them, occurred; or
  - (ii) the alleged offence caused harm or a threat of harm in this State and the harm, or the threat, is sufficiently serious to justify the imposition of a criminal penalty under the law of this State; or
  - (iii) the relevant acts that gave rise to the alleged offence also gave rise to an offence against the law of a jurisdiction in which the relevant acts, or at least one of them, occurred and the alleged offender was in this State when the relevant acts, or at least one of them, occurred; or
- (d) the alleged offence is a conspiracy to commit, an attempt to commit, or in some other way preparatory to the commission of another offence for which the necessary territorial nexus would exist under one or more of the above paragraphs if it (the other offence) were committed as contemplated.

### **Procedural provisions**

**5H.** (1) In proceedings for an offence against a law of the State, the existence of the necessary territorial nexus will be presumed and the presumption is conclusive unless rebutted under subsection (2).

(2) If a person charged with an offence disputes the existence of the necessary territorial nexus, the court will proceed with the trial of the offence in the usual way and if at the conclusion of the trial, the court is satisfied, on the balance of probabilities, that the necessary territorial nexus does not exist, it must, subject to subsection (3), make a finding to that effect and the charge will be dismissed.

(3) If the court would, disregarding territorial considerations, find the person not guilty of the offence, the court must—

- (a) if the finding is based on the defendant's mental impairment—record a finding of not guilty on the ground of mental impairment; and
- (b) in any other case—record a finding of not guilty.

(4) The issue of whether the necessary territorial nexus exists must, if raised before the trial, be reserved for consideration at the trial.

(5) A power or authority exercisable on reasonable suspicion that an offence has been committed may be exercised in the State if the person in whom the power or authority is vested suspects on reasonable grounds that the elements necessary to constitute the offence exist (whether or not that person suspects or has any ground to suspect that the necessary territorial nexus exists).

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**Double criminality**

**5I.** (1) If—

- (a) an offence against the law of another State (the **external offence**) is committed wholly or partly in this State; and
- (b) a corresponding offence (the **local offence**) exists under the law of this State,

an offence (an **auxiliary offence**) arises under the law of this State.

(2) The maximum penalty for an auxiliary offence is the maximum penalty for the external offence or the maximum penalty for the local offence (whichever is the lesser).

(3) If a person is charged with an offence (but not specifically an auxiliary offence) and the court finds that the defendant has not committed the offence as charged but has committed the relevant auxiliary offence, the court may make or return a finding that the defendant is guilty of the auxiliary offence.

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## Part 2—Treason

### Repeal

6. The Acts 36 George III C. 7 and 57 George III C. 6 of the Imperial Parliament, except those provisions which relate to the compassing, imagining, inventing, devising or intending of the death or destruction, or any bodily harm tending to the death or destruction, maiming or wounding, imprisonment or restraint, of the person of Her Majesty, and the expressing, uttering or declaring of such compassings, imaginations, inventions, devices or intentions, are repealed.

### Treason

7. Any person who compasses, imagines, invents, devises or intends—

- (a) to deprive or depose Her Majesty from the style, honour or Royal name of the Imperial Crown of the United Kingdom or of any other of Her Majesty's dominions and countries; or
- (b) to levy war against Her Majesty within any part of the United Kingdom or any other of Her Majesty's dominions in order—
  - (i) by force or constraint, to compel Her to change Her measures or counsels; or
  - (ii) to put any force or constraint on, or to intimidate or overawe, both Houses or either House of the Parliament of the United Kingdom or the Parliament of this State; or
- (c) to move or stir any foreigner or stranger with force to invade the United Kingdom or any other of Her Majesty's dominions or countries under the obeisance of Her Majesty,

and expresses, utters or declares such compassings, imaginations, inventions, devices or intentions by publishing any printing or writing, or by open and advised speaking, or by any overt act or deed, shall be guilty of an offence and liable to be imprisoned for life or for a term of not less than six months.

### Time within which prosecution shall be commenced and warrant issued

8. (1) No person shall be prosecuted under section 7 in respect of any compassings, imaginations, inventions, devices or intentions which are expressed, uttered or declared by open and advised speaking only, unless—

- (a) information of the compassings, imaginations, inventions, devices or intentions and of the words by which they were expressed, uttered or declared is given on oath to a justice within six days after the words were spoken; and
- (b) a warrant for the apprehension of the person by whom the words were spoken is issued within ten days after that information was given.

(2) No person shall be convicted of any such compassings, imaginations, inventions, devices or intentions which are expressed, uttered or declared by open or advised speaking except on his own confession in open court or unless the words so spoken are proved by two credible witnesses.



**In informations more than one overt act may be charged**

**9.** (1) It shall be lawful in any information under section 7 to charge against the offender any number of the matters, acts or deeds by which the compassings, imaginations, inventions, devices or intentions were expressed, uttered or declared.

(2) If the facts or matters alleged in an information under section 7 amount in law to treason, the information shall not for that reason be deemed void, erroneous or defective and, if the facts or matters proved on the trial of any person so informed against amount in law to treason, the accused person shall not for that reason be entitled to be acquitted of the offence charged, but no person tried for that offence shall be afterwards prosecuted for treason on the same facts.

**Nothing herein to affect 25 Edward III Stat. 5, c. 2**

**10.** The provisions of this Part shall not lessen the force of, or in any manner affect, anything enacted by the Statute passed in the twenty-fifth year of King Edward the Third: "A Declaration which Offences shall be adjudged Treason".

**Penalty for treason**

**10A.** Any person who is convicted of treason shall be imprisoned for life.

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## Part 3—Offences against the person

### Division 1—Homicide

#### Murder

11. Any person who commits murder shall be guilty of an offence and shall be imprisoned for life.

#### Conspiring or soliciting to commit murder

12. Any person who—

- (a) conspires, confederates and agrees with any other person to murder any person, whether he is a subject of Her Majesty or not and whether he is within the Queen's dominions or not;
- (b) solicits, encourages, persuades or endeavours to persuade, or proposes to, any person to murder any other person, whether he is a subject of Her Majesty or not and whether he is within the Queen's dominions or not,

shall be guilty of an offence and liable to be imprisoned for life.

#### Causing death by an intentional act of violence

12A. A person who commits an intentional act of violence while acting in the course or furtherance of a major indictable offence punishable by imprisonment for ten years or more (other than abortion<sup>1</sup>), and thus causes the death of another, is guilty of murder.

#### Note—

<sup>1</sup> ie. an offence against section 81(2).

#### Manslaughter

13. Any person who is convicted of manslaughter shall be liable to be imprisoned for life or to pay such fine as the court awards or to both such imprisonment and fine.

#### Criminal liability in relation to suicide

13A. (1) It is not an offence to commit or attempt to commit suicide.

(2) Notwithstanding the provisions of subsection (1), a person who finds another committing or about to commit an act which he believes on reasonable grounds would, if committed or completed, result in suicide is justified in using reasonable force to prevent the commission or completion of the act.

(3) If on the trial of a person for the murder of another the jury is satisfied that the accused killed the other, or was a party to the other being killed by a third person, but is further satisfied that the acts or omissions alleged against the accused were done or made in pursuance of a suicide pact with the person killed, then, subject to subsection (1), the jury shall not find the accused guilty of murder but may bring in a verdict of manslaughter.

(4) The killing of another or an attempt to kill another in pursuance of a suicide pact shall, for the purposes of determining the criminal liability of a person who was a party to the killing or attempt but not a party to the suicide pact, be regarded as murder or attempted murder, as the case may require.

(5) A person who aids, abets or counsels the suicide of another, or an attempt by another to commit suicide, shall be guilty of an indictable offence.

(6) The penalty for an offence against subsection (5) shall be—

(a) subject to paragraph (b)—

(i) where suicide was committed—imprisonment for a term not exceeding fourteen years;

(ii) where suicide was attempted—imprisonment for a term not exceeding eight years;

(b) where the convicted person committed the offence in pursuance of a suicide pact and—

(i) suicide was committed—imprisonment for a term not exceeding five years;

(ii) suicide was attempted—imprisonment for a term not exceeding two years.

(7) A person who, by fraud, duress or undue influence, procures the suicide of another or an attempt by another to commit suicide shall (whether or not he was a party to a suicide pact with the other person) be guilty of murder or attempted murder, as the case may require.

(8) If on the trial of a person for murder or attempted murder the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that he is guilty of an offence against subsection (5), the jury may bring in a verdict that he is guilty of an offence against that subsection.

(9) In any criminal proceedings in which it is material to establish the existence of a suicide pact and whether an act was done, or an omission made, in pursuance of the pact, the onus of proving the existence of the pact and that the act was done, or the omission made, in pursuance of the pact shall lie on the accused.

(10) For the purposes of this section—

(a) "**suicide pact**" means an agreement between two or more persons having for its object the death of all of them whether or not each is to take his own life; and

(b) nothing done or omitted to be done by a person who enters into a suicide pact shall be treated as done or omitted to be done in pursuance of the pact unless it is done or omitted to be done while he has the settled intention of dying in pursuance of the pact.

(11) Where a person induced another to enter into a suicide pact by means of fraud, duress or undue influence, the person is not entitled in relation to an offence against the other to any mitigation of criminal liability or penalty under this section based on the existence of the pact.

\* \* \* \* \*

## **Division 2—Defence of life and property**

### **Self defence**

15. (1) It is a defence to a charge of an offence if—

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- (a) the defendant genuinely believed the conduct to which the charge relates to be necessary and reasonable for a defensive purpose; and
  - (b) the conduct was, in the circumstances as the defendant genuinely believed them to be, reasonably proportionate to the threat that the defendant genuinely believed to exist<sup>1</sup>.
- (2) It is a partial defence to a charge of murder (reducing the offence to manslaughter) if—
- (a) the defendant genuinely believed the conduct to which the charge relates to be necessary and reasonable for a defensive purpose; but
  - (b) the conduct was not, in the circumstances as the defendant genuinely believed them to be, reasonably proportionate to the threat that the defendant genuinely believed to exist.<sup>2</sup>
- (3) For the purposes of this section, a person acts for a **defensive purpose** if the person acts—
- (a) in self defence or in defence of another; or
  - (b) to prevent or terminate the unlawful imprisonment of himself, herself or another.
- (4) However, if a person—
- (a) resists another who is purporting to exercise a power of arrest or some other power of law enforcement; or
  - (b) resists another who is acting in response to an unlawful act against person or property committed by the person or to which the person is a party,

the person will not be taken to be acting for a defensive purpose unless the person genuinely believes, on reasonable grounds, that the other person is acting unlawfully.

(5) If a defendant raises a defence under this section, the defence is taken to have been established unless the prosecution disproves the defence beyond reasonable doubt.

<sup>1</sup> See, however, section 15C. If the defendant establishes that he or she is entitled to the benefit of that section, this paragraph will be inapplicable.

<sup>2</sup> See, however, section 15C. If the defendant establishes that he or she is entitled to the benefit of that section, the defendant will be entitled to a complete defence.

**Defence of property etc**

**15A.** (1) It is a defence to a charge of an offence if—

- (a) the defendant genuinely believed the conduct to which the charge relates to be necessary and reasonable—
  - (i) to protect property from unlawful appropriation, destruction, damage or interference; or
  - (ii) to prevent criminal trespass to land or premises, or to remove from land or premises a person who is committing a criminal trespass; or

- (iii) to make or assist in the lawful arrest of an offender or alleged offender or a person who is unlawfully at large; and
  - (b) if the conduct resulted in death—the defendant did not intend to cause death nor did the defendant act recklessly realising that the conduct could result in death; and
  - (c) the conduct was, in the circumstances as the defendant genuinely believed them to be, reasonably proportionate to the threat that the defendant genuinely believed to exist<sup>1</sup>.
- (2) It is a partial defence to a charge of murder (reducing the offence to manslaughter) if—
- (a) the defendant genuinely believed the conduct to which the charge relates to be necessary and reasonable—
    - (i) to protect property from unlawful appropriation, destruction, damage or interference; or
    - (ii) to prevent criminal trespass to land or premises, or to remove from land or premises a person who is committing a criminal trespass; or
    - (iii) to make or assist in the lawful arrest of an offender or alleged offender or a person who is unlawfully at large; and
  - (b) the defendant did not intend to cause death; but
  - (c) the conduct was not, in the circumstances as the defendant genuinely believed them to be, reasonably proportionate to the threat that the defendant genuinely believed to exist.<sup>2</sup>
- (3) For the purposes of this section, a person commits a criminal trespass if the person trespasses on land or premises—
- (a) with the intention of committing an offence against a person or property (or both); or
  - (b) in circumstances where the trespass itself constitutes an offence.
- (4) If a defendant raises a defence under this section, the defence is taken to have been established unless the prosecution disproves the defence beyond reasonable doubt.

<sup>1</sup> See, however, section 15C. If the defendant establishes that he or she is entitled to the benefit of that section, this paragraph will be inapplicable.

<sup>2</sup> See, however, section 15C. If the defendant establishes that he or she is entitled to the benefit of that section, the defendant will be entitled to a complete defence.

### **Reasonable proportionality**

**15B.** A requirement under this Division that the defendant's conduct be (objectively) reasonably proportionate to the threat that the defendant genuinely believed to exist does not imply that the force used by the defendant cannot exceed the force used against him or her.

### **Requirement of reasonable proportionality not to apply in case of an innocent defence against home invasion**

**15C.** (1) This section applies where—

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(a) a relevant defence would have been available to the defendant if the defendant's conduct had been (objectively) reasonably proportionate to the threat that the defendant genuinely believed to exist (the **perceived threat**); and

(b) the victim was not a police officer acting in the course of his or her duties.

(2) In a case to which this section applies, the defendant is entitled to the benefit of the relevant defence even though the defendant's conduct was not (objectively) reasonably proportionate to the perceived threat if the defendant establishes, on the balance of probabilities, that—

(a) the defendant genuinely believed the victim to be committing, or to have just committed, home invasion; and

(b) the defendant was not (at or before the time of the alleged offence) engaged in any criminal misconduct that might have given rise to the threat or perceived threat; and

(c) the defendant's mental faculties were not, at the time of the alleged offence, substantially affected by the voluntary and non-therapeutic consumption of a drug.

(3) In this section—

"**criminal misconduct**" means conduct constituting an offence for which a penalty of imprisonment is prescribed;

"**drug**" means alcohol or any other substance that is capable (either alone or in combination with other substances) of influencing mental functioning;

"**home invasion**" means a serious criminal trespass committed in a place of residence;

"**non-therapeutic**"—consumption of a drug is to be considered non-therapeutic unless—

(a) the drug is prescribed by, and consumed in accordance with the directions of, a medical practitioner; or

(b) the drug is of a kind available, without prescription, from registered pharmacists, and is consumed for a purpose recommended by the manufacturer and in accordance with the manufacturer's instructions;

"**relevant defence**" means a defence under section 15(1) or section 15A(1).

**Division 3—Miscellaneous**

**Petit treason**

16. Every offence which, before the commencement of the Act 9 George IV C. 31 of the Imperial Parliament, would have amounted to petit treason shall be deemed to be murder only, and no greater offence, and shall be punishable accordingly.

\* \* \* \* \*

**Abolition of year-and-a-day rule**

18. An act or omission that in fact causes death will be regarded in law as the cause of death even though the death occurs more than a year and a day after the act or omission.

## Division 4—Unlawful threats

### Unlawful threats

19. (1) Where—

- (a) a person, without lawful excuse, threatens to kill or endanger the life of another; and
- (b) the person making the threat intends to arouse a fear that the threat will be, or is likely to be, carried out, or is recklessly indifferent as to whether such a fear is aroused,

that person shall be guilty of an indictable offence and liable to be imprisoned for a term not exceeding 10 years or, where the person whose life was threatened was at the time of the commission of the offence under the age of 12 years, for a term not exceeding 12 years.

(2) Where—

- (a) a person, without lawful excuse, threatens to cause harm to the person or property of another; and
- (b) the person making the threat intends to arouse a fear that the threat will be, or is likely to be, carried out, or is recklessly indifferent as to whether such a fear is aroused,

that person shall be guilty of an indictable offence and liable to be imprisoned for a term not exceeding 5 years.

(3) This section applies to a threat directly or indirectly communicated by words (written or spoken) or by conduct, or partially by words and partially by conduct.

## Division 5—Stalking

### Unlawful stalking

19AA. (1) A person stalks another if—

- (a) on at least two separate occasions, the person—
  - (i) follows the other person; or
  - (ii) loiters outside the place of residence of the other person or some other place frequented by the other person; or
  - (iii) enters or interferes with property in the possession of the other person; or
  - (iv) gives or sends offensive material to the other person, or leaves offensive material where it will be found by, given to or brought to the attention of the other person; or
  - (iva) publishes or transmits offensive material by means of the internet or some other form of electronic communication in such a way that the offensive material will be found by, or brought to the attention of, the other person; or

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- (ivb) communicates with the other person, or to others about the other person, by way of mail, telephone (including associated technology), facsimile transmission or the internet or some other form of electronic communication in a manner that could reasonably be expected to arouse apprehension or fear in the other person; or
  - (v) keeps the other person under surveillance; or
  - (vi) acts in any other way that could reasonably be expected to arouse the other person's apprehension or fear; and
- (b) the person—
- (i) intends to cause serious physical or mental harm to the other person or a third person; or
  - (ii) intends to cause serious apprehension or fear.

(2) A person who stalks another is guilty of an offence.

**Penalty:**

- (a) if—
  - (i) the offender's conduct contravened an injunction or an order imposed by a court (either under a law of the State or the Commonwealth); or
  - (ii) the offender was, on any occasion to which the charge relates, in possession of an offensive weapon,  
imprisonment for not more than 5 years;
- (b) in any other case—imprisonment for not more than 3 years.

(3) A person who is charged with stalking is (subject to any exclusion in the instrument of charge) to be taken to have been charged in the alternative with offensive behaviour<sup>1</sup> so that if the court is not satisfied that the charge of stalking has been established but is satisfied that the charge of offensive behaviour has been established, the court may convict the person of offensive behaviour.

(4) A person who has been acquitted or convicted on a charge of stalking may not be convicted of another offence arising out of the same set of circumstances and involving a physical element that is common to that charge.

(5) A person who has been acquitted or convicted on a charge of an offence other than stalking may not be convicted of stalking if the charge of stalking arises out of the same set of circumstances and involves a physical element that is common to the charge of that other offence.

(6) For the purposes of this section, the circumstances of a dealing with material may be taken into account in determining whether the material was offensive material but, if material was inherently offensive material, the circumstances of a dealing with the material cannot be taken to have deprived it of that character.

<sup>1</sup> See section 7 of the *Summary Offences Act 1953*.



## **Division 6—Death and injury arising from reckless driving etc**

### **Death and injury arising from reckless driving etc**

**19A.** (1) A person who—

- (a) drives a motor vehicle in a culpably negligent manner, recklessly, or at a speed or in a manner dangerous to the public; and
- (b) by that culpable negligence, recklessness or other conduct, causes the death of another,

is guilty of an indictable offence.

(2) The penalty for an offence against subsection (1) is as follows:

- (a) for a first offence—imprisonment for a term not exceeding 10 years and disqualification from holding or obtaining a driver's licence for 5 years or such longer period as the court orders;
- (b) for a subsequent offence—imprisonment for a term not exceeding 15 years and disqualification from holding or obtaining a driver's licence for 10 years or such longer period as the court orders.

(3) A person who—

- (a) drives or rides a vehicle or an animal in a culpably negligent manner, recklessly, or at a speed or in a manner dangerous to the public; and
- (b) by that culpable negligence, recklessness or other conduct, causes bodily harm to another,

is guilty of an indictable offence.

(4) The penalty for an offence against subsection (3) is as follows:

- (a) where a motor vehicle was used in commission of the offence and grievous bodily harm was caused to a person—
  - (i) for a first offence—imprisonment for a term not exceeding 10 years and disqualification from holding or obtaining a driver's licence for 5 years or such longer period as the court orders;
  - (ii) for a subsequent offence—imprisonment for a term not exceeding 15 years and disqualification from holding or obtaining a driver's licence for 10 years or such longer period as the court orders;
- (b) where a motor vehicle was used in commission of the offence but grievous bodily harm was not caused to any person—
  - (i) for a first offence—imprisonment for a term not exceeding 4 years and disqualification from holding or obtaining a driver's licence for one year or such longer period as the court orders;

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(ii) for a subsequent offence—imprisonment for a term not exceeding 6 years and disqualification from holding or obtaining a driver's licence for 3 years or such longer period as the court orders;

(c) where a motor vehicle was not used in commission of the offence—imprisonment for a term not exceeding 2 years.

(5) In determining whether an offence is a first or subsequent offence for the purposes of this section all previous offences against subsection (1) or (3), or a corresponding previous enactment, that involved the driving of a motor vehicle, shall be taken into account except that such an offence shall not be taken to be a previous offence for the purposes of subsection (2) or (4)(a) unless it resulted in the death of, or grievous bodily harm to, the victim.

(6) Where a convicted person is disqualified from holding or obtaining a driver's licence—

(a) the disqualification operates to cancel any driver's licence held by the convicted person as at the commencement of the period of disqualification; and

(b) the disqualification may not be reduced or mitigated in any way or be substituted by any other penalty or sentence.

(7) A person is liable to be charged with and convicted of an offence against subsection (1) in respect of each person killed, and of an offence against subsection (3) in respect of each person who suffers bodily harm, in consequence of the same act or omission.

(8) Where at the trial of a person for an offence against this section it appears that the defendant was, or may have been, in a state of self-induced intoxication at the time of the alleged offence but the evidence adduced at the trial would, assuming that the defendant had been sober, be sufficient to establish the mental elements of the alleged offence, the mental elements of the alleged offence shall be deemed to have been established against the defendant.

(9) For the purposes of subsection (8), intoxication shall be taken to be self-induced if it results from the voluntary consumption of alcohol or a drug (not being a drug supplied on the prescription of, and consumed in accordance with the directions of, a legally qualified medical practitioner).

(10) In this section—

**"consumption"** in relation to a drug includes injection and any other form of administration;

**"motor vehicle"** means—

(a) a vehicle, tractor or mobile machine driven or propelled or ordinarily capable of being driven or propelled by a steam engine, internal combustion engine, electricity or any other power, not being human or animal power; and

(b) a caravan or trailer,

but does not include a mobile machine controlled and guided by a person walking, or a vehicle run upon a railway or tramway;

"vehicle" means—

- (a) a motor vehicle; or
- (b) a vehicle drawn by an animal; or
- (c) a bicycle, tricycle or other similar vehicle for which the rider provides the motive force.

**Alternative verdicts**

**19B.** (1) If at the trial of a person for murder or manslaughter the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of the offence constituted by section 19A(1) or (3), the jury may bring in a verdict that the accused is guilty of that offence.

(2) The following offences (which are listed in order of seriousness) are offences to which subsection (3) applies:

- (a) the offence constituted by section 19A(1);
- (b) the offence constituted by section 19A(3);
- (c) the offence constituted by section 46 of the *Road Traffic Act 1961*;
- (d) the offence constituted by section 45 of the *Road Traffic Act 1961*.

(3) If at the trial of a person for an offence to which this subsection applies (being an offence mentioned in subsection (2)(a) or (b)) the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of a less serious offence to which this subsection applies, the jury may bring in a verdict that the accused is guilty of that less serious offence.

**Division 7—Acts causing or intended to cause danger to life or bodily harm etc**

**Impeding a person endeavouring to save himself from shipwreck**

**20.** Any person who unlawfully and maliciously—

- (a) prevents or impedes any person, being on board, or having quitted, any ship or vessel in distress, or wrecked, stranded or cast on shore, in his endeavour to save his life;
- (b) prevents or impedes any person in his endeavour to save the life of any person on board, or having quitted, any such ship or vessel,

shall be guilty of an offence and liable to be imprisoned for life.

**Wounding etc with intent to do grievous bodily harm**

**21.** Any person who unlawfully and maliciously, by any means—

- (a) wounds any person;
- (b) causes any grievous bodily harm to any person;

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- (c) shoots at any person;
- (d) attempts to discharge loaded arms of any kind at any person,

with intent to—

- (e) maim, disfigure, disable, or do other grievous bodily harm to, any person;
- (f) resist, or prevent the lawful apprehension or detainer of, any person,

shall be guilty of an offence and liable to be imprisoned for life.

\* \* \* \* \*

**Malicious wounding etc**

23. Any person who unlawfully and maliciously wounds or inflicts any grievous bodily harm on any other person, either with or without a weapon or instrument, shall be guilty of an offence and liable to be imprisoned for a term not exceeding five years or, where the victim was at the time of the commission of the offence under the age of twelve years, for a term not exceeding eight years.

**Verdict of unlawful wounding**

24. If on the trial of any person for any offence, except murder or manslaughter, the information alleges that the accused person wounded any person and the jury is satisfied that the accused person is guilty of the wounding charged in the information but is not satisfied that he is guilty of the offence so charged, the jury may acquit him of that offence and find him guilty of unlawful wounding and thereupon he shall be liable to be imprisoned for a term not exceeding five years or, where the victim was at the time of the commission of the offence under the age of twelve years, for a term not exceeding eight years.

**Choking or stupefying to commit indictable offence**

25. Any person who, with intent to enable himself or any other person to commit any indictable offence or to assist any other person in committing any indictable offence—

- (a) by any means attempts to choke, suffocate or strangle any other person;
- (b) by any means calculated to choke, suffocate or strangle attempts to render any other person insensible, unconscious or incapable of resistance;
- (c) applies or administers, or attempts to apply or administer, to any person, or causes to be taken by any person, any chloroform, laudanum or other stupefying or overpowering drug, matter or thing,

shall be guilty of an offence and liable to imprisonment for life.

\* \* \* \* \*

**Maliciously administering poison etc with intent to injure, aggrieve or annoy any other person**

27. Any person who unlawfully and maliciously administers to, or causes to be administered to or taken by, any other person any poison or other destructive or noxious thing with intent to injure, aggrieve or annoy that other person shall be guilty of an offence and liable to be imprisoned for a term not exceeding three years.

\* \* \* \* \*

**Acts endangering life or creating risk of grievous bodily harm**

**29.** (1) Where a person, without lawful excuse, does an act or makes an omission—

- (a) knowing that the act or omission is likely to endanger the life of another; and
- (b) intending to endanger the life of another or being recklessly indifferent as to whether the life of another is endangered,

that person shall be guilty of an indictable offence and liable to be imprisoned for a term not exceeding 15 years.

(2) Where a person, without lawful excuse, does an act or makes an omission—

- (a) knowing that the act or omission is likely to cause grievous bodily harm to another; and
- (b) intending to cause such harm or being recklessly indifferent as to whether such harm is caused,

that person shall be guilty of an indictable offence and liable to be imprisoned for a term not exceeding 10 years.

(3) Where a person, without lawful excuse, does an act or makes an omission—

- (a) knowing that the act or omission is likely to cause harm to the person of another; and
- (b) intending to cause such harm or being recklessly indifferent as to whether such harm is caused,

the person shall be guilty of an indictable offence and liable to be imprisoned for a term not exceeding 5 years.

**Failing to provide food etc in certain circumstances**

**30.** Where—

- (a) a person is liable to provide necessary food, clothing or accommodation to another person who is—
  - (i) a minor; or
  - (ii) suffering from an illness; or
  - (iii) disabled; and
- (b) the person, without lawful excuse, fails to provide that food, clothing or accommodation,

that person shall be guilty of an indictable offence and liable to be imprisoned for a term not exceeding 3 years.

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**Possession of object with intent to kill or cause grievous bodily injury**

**31.** (1) A person who, without lawful excuse, has the custody or control of an object that the person intends to use, or to cause or permit another to use—

- (a) to kill, or to endanger the life of, another; or
- (b) to cause grievous bodily harm to another,

shall be guilty of an indictable offence and liable to be imprisoned for a term not exceeding 10 years.

(2) A person who, without lawful excuse, has the custody or control of an object that the person intends to use, or to cause or permit another to use, to cause harm to the person of another, shall be guilty of an indictable offence and liable to be imprisoned for a term not exceeding 5 years.

**Possession of a firearm with intent to commit an offence**

**32.** A person who has the custody or control of a firearm or imitation firearm for the purpose of—

- (a) using, or causing or permitting another person to use, the firearm in the course of committing an offence punishable by a term of imprisonment of 2 years or more; or
- (b) carrying, or causing or permitting another person to carry, the firearm when committing an offence punishable by a term of imprisonment of 2 years or more,

is guilty of an indictable offence.

Penalty: Imprisonment for 10 years.

**Division 8—Female genital mutilation****Definitions**

**33.** (1) In this Division—

"**child**" means a person under 18;

"**female genital mutilation**" means—

- (a) clitoridectomy; or
- (b) excision of any other part of the female genital organs; or
- (c) a procedure to narrow or close the vaginal opening; or
- (d) any other mutilation of the female genital organs,

but does not include a sexual reassignment procedure or a medical procedure that has a genuine therapeutic purpose;

"**sexual reassignment procedure**" means a surgical procedure to give a female, or a person whose sex is ambivalent, genital characteristics, or ostensible genital characteristics, of a male.

(2) A medical procedure has a genuine therapeutic purpose only if directed at curing or alleviating a physiological disability or physical abnormality.

**Prohibition of female genital mutilation**

**33A.** (1) A person who performs female genital mutilation is guilty of an offence.

Penalty: Imprisonment for 7 years.

(2) This section applies irrespective of whether the victim, or a parent or guardian of the victim, consents to the mutilation.

**Removal of child from State for genital mutilation**

**33B.** (1) A person must not take a child from the State, or arrange for a child to be taken from the State, with the intention of having the child subjected to female genital mutilation.

Penalty: Imprisonment for 7 years.

(2) In proceedings for an offence against subsection (1), if it is proved that—

(a) the defendant took a child, or arranged for a child to be taken from the State; and

(b) the child was subjected, while outside the State, to female genital mutilation,

it will be presumed, in the absence of proof to the contrary, that the defendant took the child, or arranged for the child to be taken, from the State (as the case may be) with the intention of having the child subjected to female genital mutilation.

\* \* \* \* \*

**Division 9—Assaults**

**Common assault**

**39.** (1) A person convicted of common assault is liable to be imprisoned for a term not exceeding two years or, where the victim was at the time of the commission of the offence a family member of the offender, for a term not exceeding three years.

(2) In this section—

"**child**" means a person who has not attained 18 years of age;

"**family member**" of an offender means—

(a) a spouse or former spouse of the offender;

(b) a child of whom the offender, or a spouse or former spouse of the offender, is the parent or guardian;

(c) a child who normally or regularly resides with the offender or a spouse or former spouse of the offender;

"**spouse**" of an offender includes a person of the opposite sex who is cohabiting with the defendant as the husband or wife *de facto* of the defendant.

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**Assaults occasioning harm**

40. Any person convicted of assault occasioning actual bodily harm shall be liable to be imprisoned for a term not exceeding five years or, where the victim was at the time of the commission of the offence under the age of twelve years, for a term not exceeding eight years.

**Obstructing or assaulting clergyman in discharge of his duties**

41. Any person who—

- (a) by threats or force, obstructs or prevents, or endeavours to obstruct or prevent, any clergyman or other minister in or from celebrating divine service or otherwise officiating in any place of divine worship, or in or from the performance of his duty in the lawful burial of the dead in any cemetery or other burial place;
- (b) strikes, or offers any violence to, or, on any civil process or under the pretence of executing any civil process, arrests, any clergyman or other minister who is engaging or, to the knowledge of the offender, about to engage, in any of the rites or duties referred to in paragraph (a) or, to the knowledge of the offender, is going to perform, or is returning from the performance of, those rites or duties,

shall be guilty of an offence and liable to be imprisoned for a term not exceeding two years.

**Assaulting a magistrate preserving wreck**

42. Any person who assaults and strikes, or wounds, any magistrate, officer, or other person whomsoever lawfully authorised, in, or on account of, the exercise of his duty in, or concerning, the preservation of any vessel in distress, or of any vessel, goods or effects wrecked, stranded, cast on shore or lying under water, shall be guilty of an offence and liable to be imprisoned for a term not exceeding seven years.

**Assaults in the course of resisting arrest etc**

43. Any person who—

\* \* \* \* \*

- (b) assaults, resists or wilfully obstructs any police officer in the due execution of his duty or any person acting in aid of such an officer;
- (c) assaults any person with intent to resist or prevent the lawful apprehension or detention of himself, or of any other person, for any offence,

shall be guilty of an offence and liable to be imprisoned for a term not exceeding five years.

**Forcibly hindering seaman**

44. Any person who—

- (a) unlawfully and with force hinders or prevents any seaman from working at or exercising his lawful trade, business or occupation;
- (b) beats, or uses any violence against, any seaman with intent to hinder or prevent him from working at or exercising his lawful trade, business or occupation,

shall be guilty of an offence punishable summarily and liable to be imprisoned for a term not exceeding six months.



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**Division 10—Threatening another person with firearm**

**Threatening another person with a firearm**

**47A.** A person who, without lawful excuse, threatens another person with a firearm, or imitation firearm, is guilty of an indictable offence.

Penalty: \$15 000 or imprisonment for 4 years.

**Division 11—Rape and other sexual offences**

**Rape**

**48.** A person who has sexual intercourse with another person without the consent of that other person—

- (a) knowing that that other person does not consent to sexual intercourse with him; or
- (b) being recklessly indifferent as to whether that other person consents to sexual intercourse with him,

shall (whether or not physical resistance is offered by that other person) be guilty of rape and liable to be imprisoned for life.

\* \* \* \* \*

**Unlawful sexual intercourse**

**49.** (1) A person who has sexual intercourse with any person under the age of twelve years shall be guilty of an offence and liable to be imprisoned for life.

\* \* \* \* \*

(3) A person who has sexual intercourse with a person of or above the age of twelve years and under the age of seventeen years shall be guilty of an offence and liable to be imprisoned for a term not exceeding seven years.

(4) It shall be a defence to a charge under subsection (3) to prove that—

- (a) the person with whom the accused is alleged to have had sexual intercourse was, on the date on which the offence is alleged to have been committed, of or above the age of sixteen years; and
- (b) the accused—
  - (i) was, on the date on which the offence is alleged to have been committed, under the age of seventeen years; or
  - (ii) believed on reasonable grounds that the person with whom he is alleged to have had sexual intercourse was of or above the age of seventeen years.

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(5) A person who, being the guardian, schoolmaster, schoolmistress or teacher of a person under the age of eighteen years, has sexual intercourse with that person shall be guilty of an offence and liable to be imprisoned for a term not exceeding seven years.

(6) A person who, knowing that another is by reason of intellectual disability unable to understand the nature or consequences of sexual intercourse, has sexual intercourse with that other person is guilty of an indictable offence.

Penalty: Imprisonment for a term not exceeding seven years.

(7) Consent to sexual intercourse is not a defence to a charge of an offence under this section.

(8) This section does not apply to sexual intercourse between persons who are married to each other.

\* \* \* \* \*

**Indecent assault**

**56.** A person who indecently assaults another shall be guilty of an offence and liable to be imprisoned for a term not exceeding eight years or, where the victim was at the time of the commission of the offence under the age of twelve years, for a term not exceeding ten years.

**Consent no defence in certain cases**

**57.** (1) No person under the age of eighteen years shall be deemed capable of consenting to any indecent assault committed by any person who is his or her guardian, teacher, schoolmaster or schoolmistress.

(2) Subject to subsection (3), no person under the age of seventeen years shall be deemed capable of consenting to any indecent assault.

(3) Where the person is between the age of sixteen and seventeen years, his or her consent shall be a defence to a charge of indecent assault if the accused proves that at the time of the indecent assault—

- (a) he or she was under the age of seventeen years; or
- (b) he or she believed on reasonable grounds that the person was of or above the age of seventeen years.

**Power to take plea without evidence**

**57A.** (1) When a person is charged with sexual intercourse with, or an indecent assault upon, a person under the age of seventeen years, the justice sitting to conduct the preliminary examination of the witnesses may, without taking any evidence, accept a plea of guilty and commit the defendant to gaol, or admit him to bail, to appear for sentence.

(2) The justice shall take written notes of any facts stated by the prosecutor as the basis of the charge and of any statement made by the defendant in contradiction or explanation of the facts stated by the prosecutor and shall forward those notes to the Director of Public Prosecutions together with any proofs of witnesses tendered by the prosecutor to the justice.

(3) The Director of Public Prosecutions shall cause the notes and proofs of witnesses to be delivered to the proper officer of the court at which the defendant is to appear for sentence before or at the opening of the court on the first sitting thereof or at such other time as the judge who is to preside in the court may order.

(4) This section does not restrict or take away any right of the defendant to withdraw a plea of guilty and substitute a plea of not guilty.

\* \* \* \* \*

**Acts of gross indecency**

**58.** (1) Any person who, in public or in private—

- (a) commits any act of gross indecency with, or in the presence of, any person under the age of sixteen years;
- (b) incites or procures the commission by any such person of any act of gross indecency with the accused, or in the presence of the accused, or with any other person in the presence of the accused;
- (c) is otherwise a party to the commission of any act of gross indecency by or with, or in the presence of, any such person, or by or with any other person in the presence of any such person, or by any such person with any other person in the presence of the accused,

shall be guilty of an offence and liable for a first offence to be imprisoned for a term not exceeding three years and for any subsequent offence to be imprisoned for a term not exceeding five years.

(2) It is no defence to a charge under this section that the act of indecency was committed with the consent of the person concerned.

\* \* \* \* \*

**Offence if person for prurient purposes incites or procures commission by child of indecent act etc**

**58A.** (1) A person who with a view to gratifying prurient interest (whether of that person or some other person)—

- (a) incites or procures the commission by a child of an indecent act; or
- (b) causes or induces a child to expose any part of his or her body,

shall be guilty of an indictable offence and liable for a first offence to be imprisoned for a term not exceeding two years and for any subsequent offence to be imprisoned for a term not exceeding three years.

(2) Subsection (1) applies whether events referred to in the subsection occur in public or in private or with or without the consent of the child.

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(3) In this section—

"**child**" means a person under the age of sixteen years.

**Abduction of male or female person**

**59.** A person who takes away by force, or detains against his will, any other person—

- (a) with intent to marry, or to have sexual intercourse with, that other person; or
- (b) with intent to cause that other person to be married to, or to have sexual intercourse with, a third person,

shall be guilty of an offence and liable to be imprisoned for a term not exceeding fourteen years.

\* \* \* \* \*

**Procuring sexual intercourse**

**64.** Any person who—

- (a) by threats or intimidation, procures any person to have sexual intercourse;
- (b) by false pretences, false representations or other fraudulent means, procures any person to have sexual intercourse,

\* \* \* \* \*

shall be guilty of an offence and liable to be imprisoned for a term not exceeding seven years.

**Householder etc not to permit unlawful sexual intercourse on premises**

**65.** Any person who, being the owner or occupier of any premises or having, or acting or assisting in, the management or control thereof, induces or knowingly suffers any person under the age of seventeen years to resort to, or be in, those premises for the purpose of having sexual intercourse shall be guilty of an offence and liable to be imprisoned for a term not exceeding seven years.

**Division 12—Commercial sexual services and related offences**

**Definitions relating to commercial sexual services**

**65A.** (1) For the purposes of this Division—

"**ask**" connotes a request made with serious intentment (as distinct from one made without an actual intention of obtaining the ostensible object of the request);

"**child**" means a person under the age of 18 years;

"**commercial sexual services**" means services provided for payment involving the use or display of the body of the person who provides the services for the sexual gratification of another or others;

"**compulsion**"—a person compels another (the **victim**) if the person controls or influences the victim's conduct by means that effectively prevent the victim from exercising freedom of choice;

"**payment**" includes any form of commercial consideration;

"**sexual servitude**" means the condition of a person who provides commercial sexual services under compulsion;

"**undue influence**"—a person exerts undue influence on another (the **victim**) if the person uses unfair or improper means to influence the victim's conduct.

(2) For the purposes of this Division, a person whose conduct causes a particular result is taken to have intended that result if the person is reckless about whether that result ensues.

### Sexual servitude and related offences

**66.** (1) A person who compels another to provide or to continue to provide commercial sexual services is guilty of the offence of inflicting sexual servitude.

Maximum penalty—

- (a) if the victim is a child under the age of 12 years—imprisonment for life;
- (b) if the victim is a child of or over the age of 12 years—imprisonment for 19 years;
- (c) in any other case—imprisonment for 15 years.

(2) A person who, by undue influence, gets another to provide, or to continue to provide, commercial sexual services is guilty of an offence.

Maximum penalty—

- (a) if the victim is a child under the age of 12 years—imprisonment for life;
- (b) if the victim is a child of or over the age of 12 years—imprisonment for 12 years;
- (c) in any other case—imprisonment for 7 years.

(3) A person charged with an offence against subsection (1) (the **aggravated offence**) may be convicted, on that charge, of an offence against subsection (2) (the **lesser offence**) if the court is not satisfied that the aggravated offence has been established beyond reasonable doubt but is satisfied that the lesser offence has been so established.

(4) The question whether, in a particular case, a defendant's conduct amounts to compulsion or undue influence (or neither) is one of fact to be determined according to the circumstances of the particular case.

(5) Evidence of the following or any combination of the following may be relevant to that question—

- (a) fraud, misrepresentation or suppression of information;
- (b) force or a threat of force;
- (c) any other threat (including a threat to take action that may result in the victim's deportation or a threat to take other lawful action);
- (d) restrictions on freedom of movement;
- (e) supply, or withdrawal of supply, of an illicit drug;
- (f) abuse of a position of guardianship or trust;

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- (g) any other form of unreasonable or unfair pressure.

**Deceptive recruiting for commercial sexual services**

**67.** A person who—

- (a) offers another (the **victim**) employment or some other form of engagement to provide personal services; and
- (b) knows at the time of making the offer—
- (i) that the victim will, in the course of or in connection with the employment or engagement, be asked or expected to provide commercial sexual services; and
- (ii) that the continuation of the employment or engagement, or the victim's advancement in the employment or engagement, will be dependent on the victim's preparedness to provide commercial sexual services; and
- (c) fails to disclose that information to the victim at the time of offering the employment or engagement,

is guilty of an offence.

Maximum penalty—

- (a) if the victim is a child—imprisonment for 12 years;
- (b) in any other case—imprisonment for 7 years.

**Use of children in commercial sexual services**

**68.** (1) A person must not employ, engage, cause or permit a child to provide, or to continue to provide, commercial sexual services.

Maximum penalty—

- (a) if the child is under the age of 12 years—imprisonment for life;
- (b) in any other case—imprisonment for 9 years.

(2) A person must not ask a child to provide commercial sexual services.

Maximum penalty—

- (a) if the child is under the age of 12 years—imprisonment for 9 years;
- (b) in any other case—imprisonment for 3 years.

(3) A person must not—

- (a) have an arrangement with a child who provides commercial sexual services under which the person receives, on a regular or systematic basis, the proceeds, or a share in the proceeds, of commercial sexual services provided by the child; or
- (b) exploit a child by obtaining money knowing it to be the proceeds of commercial sexual services provided by the child.

Maximum penalty—

- (a) if the child is under the age of 12 years—imprisonment for 5 years;
- (b) in any other case—imprisonment for 2 years.

(4) In proceedings for an offence against this section, it is not necessary for the prosecution to establish that the defendant knew the victim of the alleged offence to be a child.

(5) However, it is a defence to a charge of an offence against this section if it is proved that the defendant believed on reasonable grounds that the victim had attained 18 years of age.

### **Division 13—Miscellaneous sexual offences**

#### **Abolition of crime of sodomy**

**68A.** The law relating to unnatural offences shall be as prescribed by this Act and any such offence created under any other enactment or at common law is abolished.

#### **Offences with animals**

**69.** Any person who commits buggery with an animal shall be guilty of an offence and liable to be imprisoned for a term not exceeding ten years.

\* \* \* \* \*

#### **Incest**

**72.** Any persons who, being related, either as parent and child or as brother and sister, have sexual intercourse with each other shall be guilty of incest and liable to be imprisoned for a term not exceeding seven years.

### **Division 14—Procedure in sexual offences**

#### **Former time limit abolished**

**72A.** Any immunity from prosecution arising because of the time limit imposed by the former section 76A<sup>1</sup> is abolished.

<sup>1</sup> Repealed by section 5 of the *Criminal Law Consolidation Act Amendment Act 1985*.

#### **Offences involving sexual intercourse**

**73.** (1) For the purposes of this Act, sexual intercourse is sufficiently proved by proof of penetration.

(2) No person shall, by reason of his age, be presumed incapable of sexual intercourse.

(3) No person shall, by reason only of the fact that he is married to some other person, be presumed to have consented to sexual intercourse with that other person.

(4) No person shall, by reason only of the fact that he is married to some other person, be presumed to have consented to an indecent assault by that other person.

(5) For the purposes of the provisions of this Act dealing with sexual offences, agreement to an act on the basis that it is necessary for the purpose of medical diagnosis, investigation or treatment, or for the purpose of hygiene, is not consent to that act for another purpose.

#### **Persistent sexual abuse of a child**

**74.** (1) A person may be charged with and convicted of the offence of persistent sexual abuse of a child.

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(2) Persistent sexual abuse of a child consists of a course of conduct involving the commission of a sexual offence against a child on at least three separate occasions (whether the offence is of the same nature on each occasion or differs from occasion to occasion).

(3) A person does not however commit the offence of persistent sexual abuse of a child unless the occasions on which a sexual offence is committed against the child fall on at least three days.

(4) A charge of persistent sexual abuse of a child—

- (a) must specify with reasonable particularity when the course of conduct alleged against the defendant began and when it ended; and
- (b) must describe the general nature of the conduct alleged against the defendant and the nature of the sexual offences alleged to have been committed in the course of that conduct,

but the charge need not state the dates on which the sexual offences were committed, the order in which the offences were committed, or differentiate the circumstances of commission of each offence.

(5) Before a jury returns a verdict that a defendant is guilty of persistent sexual abuse of a child—

- (a) the jury must be satisfied beyond reasonable doubt that the evidence establishes at least three separate incidents, falling on separate days, between the time when the course of conduct is alleged to have begun and when it is alleged to have ended in which the defendant committed a sexual offence against the child; and
- (b) the jury must be agreed on the material facts of three such incidents in which the defendant committed a sexual offence of a nature described in the charge (although they need not be agreed about the dates of the incidents, or the order in which they occurred).

(6) The judge must warn a jury, before it retires to consider its verdict on a charge of persistent sexual abuse of a child, of the requirements of subsection (5).

(7) A person convicted of persistent sexual abuse of a child is liable to a term of imprisonment proportionate to the seriousness of the offender's conduct which may, in the most serious of cases, be imprisonment for life.

(8) A charge of persistent sexual abuse of a child subsumes all sexual offences committed by the same person against the same child during the period of the alleged sexual abuse, and hence a person cannot be simultaneously charged (either in the same or in different instruments of charge) with persistent sexual abuse of a child and a sexual offence alleged to have been committed against the same child during the period of the alleged persistent sexual abuse.

(9) A person who has been tried and convicted or acquitted on a charge of persistent sexual abuse of a child may not be charged with a sexual offence against the same child alleged to have been committed during the period over which the defendant was alleged to have committed persistent sexual abuse of the child.



(10) A prosecution on behalf of the Crown for persistent sexual abuse of a child cannot be commenced without the consent of the Director of Public Prosecutions.

(11) In this section—

"**child**" means a person under the age of sixteen years;

"**sexual offence**" means an offence against section 48, 49, 56, 58, 58A, 68 or 72, or an attempt to commit, or an assault with intent to commit, any of those offences.

**Alternative verdict on charge of rape etc**

**75.** If on a trial for rape or unlawful sexual intercourse, or an attempt to commit rape or unlawful sexual intercourse, the jury—

- (a) is not satisfied that the accused is guilty of the offence charged; but
- (b) is satisfied that the accused is guilty of an indecent assault or a common assault, or an attempt to commit indecent assault or a common assault (the "**lesser offence**"),

the jury must find the accused not guilty of the offence charged, but may find the accused guilty of the lesser offence.

**Corroborative evidence in certain cases**

**76.** No person shall be convicted of an offence under section 64, 67 or 68 on the evidence of one witness only unless the evidence of the witness is corroborated in some material particular by evidence implicating the accused.

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**Division 15—Bigamy**

**Bigamy**

**78.** Any person who, being married, goes through the form or ceremony of marriage with any other person during the life of his or her wife or husband shall be guilty of an offence and liable to be imprisoned for a first offence for a term not exceeding four years and for any subsequent offence for a term not exceeding ten years.

**Defences in cases of bigamy**

**79.** The provisions of section 78 do not extend to any person going through the form or ceremony of marriage as mentioned in that section—

- (a) whose husband or wife has then been continuously absent from that person for the last seven years and has not been known by that person to be living within that time; or
- (b) whose marriage has been dissolved or declared void by any court of competent jurisdiction.

**Division 16—Abduction of children**

**Abduction of child under 16 years**

**80.** (1) Any person who—

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- (a) unlawfully, either by force or fraud, leads, takes, decoys or entices away, or detains, any child under the age of sixteen years;
- (b) harbours or receives any such child, knowing him or her to have been, by force or fraud, led, taken, decoyed or enticed away, or detained,

with intent—

- (c) to deprive any parent, guardian or other person, having the lawful care of the child, of the possession of the child; or
- (d) to steal any article on or about the person of the child,

shall be guilty of an offence and liable to be imprisoned for a term not exceeding seven years.

(1a) Any person who unlawfully takes, or causes to be taken, a child under the age of sixteen years out of the possession and against the will of the parent, guardian or other person having the lawful care of the child shall be guilty of an offence and liable to imprisonment for a term not exceeding two years.

(2) This section does not render liable to prosecution any person who, in the exercise of any *bona fide* claim to the right to possession of a child, whether as the mother or father of the child or otherwise, obtains possession of the child or takes the child out of the possession of any person having the lawful charge of the child.

**Division 17—Abortion****Attempts to procure abortion**

**81.** (1) Any woman who, being with child, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent, shall be guilty of an offence and liable to be imprisoned for life.

(2) Any person who, with intent to procure the miscarriage of any woman, whether she is or is not with child, unlawfully administers to her, or causes to be taken by her, any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent, shall be guilty of an offence and liable to be imprisoned for life.

**Procuring drugs etc to cause abortion**

**82.** Any person who unlawfully supplies or procures any poison or other noxious thing, or any instrument or thing whatsoever, knowing that it is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she is or is not with child, shall be guilty of an offence and liable to be imprisoned for a term not exceeding three years.

**Medical termination of pregnancy**

**82A.** (1) Notwithstanding anything contained in section 81 or 82, but subject to this section, a person shall not be guilty of an offence under either of those sections—

- (a) if the pregnancy of a woman is terminated by a legally qualified medical practitioner in a case where he and one other legally qualified medical practitioner are of the opinion, formed in good faith after both have personally examined the woman—

- (i) that the continuance of the pregnancy would involve greater risk to the life of the pregnant woman, or greater risk of injury to the physical or mental health of the pregnant woman, than if the pregnancy were terminated; or
- (ii) that there is a substantial risk that, if the pregnancy were not terminated and the child were born to the pregnant woman, the child would suffer from such physical or mental abnormalities as to be seriously handicapped,

and where the treatment for the termination of the pregnancy is carried out in a hospital, or a hospital of a class, declared by regulation to be a prescribed hospital, or a hospital of a prescribed class, for the purposes of this section; or

- (b) if the pregnancy of a woman is terminated by a legally qualified medical practitioner in a case where he is of the opinion, formed in good faith, that the termination is immediately necessary to save the life, or to prevent grave injury to the physical or mental health, of the pregnant woman.

(2) Subsection (1)(a) does not refer or apply to any woman who has not resided in South Australia for a period of at least two months before the termination of her pregnancy.

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the physical or mental health of a pregnant woman as is mentioned in subsection (1)(a)(i), account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(4) The Governor may make regulations—

- (a) for requiring any such opinion as is referred to in subsection (1) to be certified by the legally qualified medical practitioners or practitioner concerned in such form and at or within such time as may be prescribed and for requiring the preservation and disposal of any such certificate made for the purposes of this Act; and
- (b) for requiring any legally qualified medical practitioner who terminates a pregnancy, and the superintendent or manager of the hospital in which the termination is carried out, to give notice of the termination and such other information relating to the termination as may be prescribed to the Director-General of Medical Services; and
- (c) for prohibiting the disclosure, except to such persons or for such purposes as may be prescribed, of notices or information given pursuant to the regulations; and
- (d) declaring a particular hospital or a class of hospitals to be a prescribed hospital or a prescribed class of hospitals for the purposes of this section; and
- (e) for providing for, and prescribing, any penalty, not exceeding two hundred dollars, for any contravention of, or failure to comply with, any regulations.

(5) Subject to subsection (6), no person is under a duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised by this section to which he has a conscientious objection, but in any legal proceedings the burden of proof of conscientious objection rests on the person claiming to rely on it.

(6) Nothing in subsection (5) affects any duty to participate in treatment which is necessary to save the life, or to prevent grave injury to the physical or mental health, of a pregnant woman.

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(7) The provisions of subsection (1) do not apply to, or in relation to, a person who, with intent to destroy the life of a child capable of being born alive, by any wilful act causes such a child to die before it has an existence independent of its mother where it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother.

(8) For the purposes of subsection (7), evidence that a woman had at any material time been pregnant for a period of twenty-eight weeks or more shall be *prima facie* proof that she was at that time pregnant of a child capable of being born alive.

(9) For the purposes of sections 81 and 82, anything done with intent to procure the miscarriage of a woman is unlawfully done unless authorised by this section.

(10) In this section and in sections 81 and 82—

"**woman**" means any female person of any age.

**Division 18—Concealment of birth****Concealment of birth**

**83.** (1) Any person who, by any secret disposition of the dead body of a child, whether the child died before, at or after its birth, endeavours to conceal the birth of the child shall be guilty of an offence and liable to be imprisoned for a term not exceeding three years.

(2) If on the trial of any person for the murder of a child recently born the jury is not satisfied that the accused is guilty of murder or manslaughter but is satisfied that such accused is guilty of an offence against subsection (1), it shall be lawful for the jury to return a verdict of guilty of concealment of birth and thereupon the accused shall be liable to be punished in the same manner as if convicted on an information under subsection (1).

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**Part 4—Offences with respect to property**

**Preliminary**

**84.** (1) In this Part—

"**to damage**" in relation to property includes—

- (a) to destroy the property;
- (b) to make an alteration to the property that depreciates its value;
- (c) to render the property useless or inoperative;
- (d) in relation to an animal—to injure, wound or kill the animal,

and "**damage**" has a corresponding meaning;

"**owner**" of property means a person wholly entitled to the property both at law and in equity.

(2) Where a person damages, or attempts to damage, property of which the person is not the owner, that property shall (whether or not that person has some legal or equitable interest in it) be regarded as property of another for the purposes of this Part.

(3) In proceedings for an offence against this Part in which it is necessary to quantify damage or potential damage in terms of a monetary amount—

- (a) no regard shall be had to any reduction or possible reduction of the damage through the intervention of some person other than the accused; and
- (b) where actual damage occurred and was in fact reduced by such intervention, the damage shall be deemed to include the potential damage that was prevented by that intervention.

**Damaging property**

**85.** (1) Where a person—

- (a) intending to damage property of another, or being recklessly indifferent as to whether property of another is damaged; and
- (b) without lawful authority to do so, and knowing that no such lawful authority exists,

damages, or attempts to damage, property of another by fire or explosives, the person shall be guilty of an offence.

**Penalty—**

(a) for a completed offence—

- (i) where the damage exceeds \$30 000—imprisonment for life;
- (ii) where the damage exceeds \$2 500 but does not exceed \$30 000—imprisonment for 5 years;
- (iii) where the damage does not exceed \$2 500—imprisonment for 2 years;

(b) for an attempt—

- (i) where the damage would, if the offence had been completed, have exceeded \$30 000—imprisonment for 12 years;
- (ii) where the damage would, if the offence had been completed, have exceeded \$2 500 but would not have exceeded \$30 000—imprisonment for 3 years;
- (iii) where the damage would not, if the offence had been completed, have exceeded \$2 500—imprisonment for 18 months.

(2) The offence of damaging property by fire in contravention of subsection (1) is arson.

(3) Where a person—

(a) intending to damage property of another, or being recklessly indifferent as to whether property of another is damaged; and

(b) without lawful authority to do so, and knowing that no such lawful authority exists,

damages, or attempts to damage, property of another, the person shall be guilty of an offence.

Penalty—

(a) for a completed offence—

(i) where the damage exceeds \$30 000—imprisonment for 10 years;

(ii) where the damage exceeds \$2 500 but does not exceed \$30 000—imprisonment for 3 years;

(iii) where the damage does not exceed \$2 500—imprisonment for 2 years;

(b) for an attempt—

(i) where the damage would, if the offence had been completed, have exceeded \$30 000—imprisonment for 6 years;

(ii) where the damage would, if the offence had been completed, have exceeded \$2 500 but would not have exceeded \$30 000—imprisonment for 2 years;

(iii) where the damage would not, if the offence had been completed, have exceeded \$2 500—imprisonment for 1 year.

(4) It is a defence to a charge of an offence against this section for the accused to prove an honest belief that the act constituting the charge was reasonable and necessary for the protection of life or property.

### **Recklessly endangering property**

**85A.** (1) Where—

(a) a person does an act knowing that the act creates a substantial risk of serious damage to the property of another; and

(b) the person does not have lawful authority to do so and knows that no such lawful authority exists,

the person is guilty of an offence.

Penalty: Imprisonment for 6 years.

(2) It is a defence to a charge of an offence against this section for the accused to prove an honest belief that the act constituting the charge was reasonable and necessary for the protection of life or property.

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**Special provision for causing a bushfire**

**85B.** (1) A person who causes a bushfire—

- (a) intending to cause a bushfire; or
- (b) being recklessly indifferent as to whether his or her conduct causes a bushfire,

is guilty of an offence.

Maximum penalty: Imprisonment for 20 years.

(2) A bushfire is a fire that burns, or threatens to burn, out of control causing damage to vegetation (whether or not other property is also damaged or threatened).

(3) An offence is not committed against this section if—

- (a) the bushfire only damages vegetation (or other property) on either or both of the following:
  - (i) the land of the person who causes the fire;
  - (ii) the land of a person who authorised, or consented, to the act of the person who caused the fire; or
- (b) the bushfire results from operations genuinely directed at preventing, extinguishing or controlling a fire.

**Possession of object with intent to damage property**

**86.** (1) Where—

- (a) a person has custody or control of an object intending to use the object, or to cause or permit a person to use the object, to damage property of another; and
- (b) there is no lawful authority for such use of the object and the person knows that no such lawful authority exists,

the person is guilty of an offence.

Penalty: Imprisonment for 2 years.

(2) It is a defence to a charge of an offence against this section for the accused to prove an honest belief that the intended damage to property was reasonable and necessary for the protection of life or property.

**Using motor vehicle without consent**

**86A.** (1) A person who, on a road or elsewhere, drives, uses or interferes with a motor vehicle without first obtaining the consent of the owner of the vehicle is guilty of an offence.

Penalty:

For a first offence—imprisonment for 2 years;

For a subsequent offence—imprisonment for not less than 3 months and not more than 4 years.

(2) Where an adult court finds a person guilty of an offence against this section, the court must (whether or not it convicts the person of the offence and in addition to any other order that it may make in relation to the person) order that the person be disqualified from holding or obtaining a driver's licence for a period of 12 months.

(3) Notwithstanding the *Children's Protection and Young Offenders Act 1979* where the Children's Court finds a charge of an offence against this section proved against a child, the Court must (whether or not it convicts the child of the offence and in addition to any other order that it may make in relation to the child) order that the child be disqualified from holding or obtaining a driver's licence for a period of 12 months (commencing, in the case of a child who has not attained the qualifying age for a driver's licence, not earlier than when the child attains that age).

(4) The disqualification prescribed by subsection (2) or (3) cannot be reduced or mitigated in any way or be substituted by any other penalty or sentence.

(5) The court may, in addition to imposing a penalty under this section, order the defendant to pay to the owner of the motor vehicle driven, used or interfered with in contravention of this section such sum as the court thinks proper by way of compensation for loss or damage suffered by the owner.

(6) Subsections (1) and (5) do not apply to any person acting in the exercise of any power conferred, or the discharge of any duty imposed, under the *Road Traffic Act 1961* or any other Act.

(7) In this section—

"**drive**", "**driver's licence**", "**motor vehicle**", "**road**" and "**owner**" have the same meanings as in the *Road Traffic Act 1961*.

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## Part 5—Offences of dishonesty

### Division 1—Preliminary

#### Interpretation

130. In this Part—

"**benefit**" means—

- (a) a benefit of a proprietary nature; or
- (b) a financial advantage; or
- (c) a benefit of a kind that might be conferred by the exercise of a public duty in a particular way;

"**deal**"—a person deals with property if the person—

- (a) takes, obtains or receives the property; or
- (b) retains the property; or
- (c) converts or disposes of the property; or
- (d) deals with the property in any other way;

"**deceive**" means to engage in deception;

"**deception**" means a misrepresentation by words or conduct and includes—

- (a) a misrepresentation about a past, present or future fact or state of affairs; or
- (b) a misrepresentation about the intentions of the person making the misrepresentation or another person; or
- (c) a misrepresentation of law;

"**detriment**" means—

- (a) a detriment of a proprietary nature; or
- (b) a financial disadvantage; or
- (c) loss of an opportunity to gain a benefit; or
- (d) a detriment of a kind that might result from the exercise of a public duty in a particular way;

"**document**" includes any record of information whether in documentary, magnetic, electronic or other form;

"**jury**" includes, where an offence is tried by a judge or magistrate sitting alone, the judge or magistrate acting as a tribunal of fact;

"**local conditions**" in relation to a particular situation includes—

- (a) the physical environment; or
- (b) the cultural environment, including—
  - (i) language;
  - (ii) law and customs;
  - (iii) the currency;
  - (iv) the level of prices that generally prevails for goods and services of various kinds;

"**machine**" means a machine, computer or device that stores information in electronic, magnetic or other form and includes anything designed for operation with such a machine, such as a credit card, smart card or other device;

"**manipulate**", in relation to a machine, includes use of the machine to produce a particular result or effect and any act that affects how the machine operates or the result or effect of the machine's operation;

**Examples—**

1. An alteration to a computer program.
2. An alteration to a computer database.

"**owner**" of property means—

- (a) a person who has a proprietary interest in the property other than an equitable interest arising under—
  - (i) an agreement to transfer or grant an interest in the property; or
  - (ii) a constructive trust; or
- (b) in relation to property subject to a trust (other than a trust arising from an agreement to transfer or grant an interest in the property or a constructive trust)—a person who has a right to enforce the trust; or
- (c) in relation to property received from or on account of another by a person who is under an obligation to deal with the property or its proceeds in a particular way—the person from whom, or on whose account, the property was received; or
- (d) a person who is entitled to possession or control of the property,

(and, if there are 2 or more owners of property, a reference in this Part to the owner is a reference to both or all of them);

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"**proceeds**" of property means money or property into which property has been converted by a transaction or series of transactions (involving sale, exchange, or any other form of dealing);

"**property**" means real or personal property and includes—

- (a) money;
- (b) intangible property (including things in action);
- (c) electricity;
- (d) a wild creature that is tamed or ordinarily kept in captivity or is reduced (or in the course of being reduced) into someone's possession;

"**steal**"—a person **steals** property if the person commits theft of the property or obtains it by deception; and "**stolen**" has a corresponding meaning;

"**stolen property**" means property stolen within or outside the State, but property ceases to be stolen property when—

- (a) it is restored to the person from whom it was stolen or other lawful custody;  
or
- (b) the person from whom it was stolen ceases to have a right to restitution;

"**tainted property**" means stolen property or property obtained from any other unlawful act or activity (within or outside the State), or the proceeds of such property (but property ceases to be tainted when it passes into the hands of a person who acquires it in good faith, without knowledge of the illegality, and for value);

"**transaction**" includes a gift.

**Dishonesty**

**131.** (1) A person's conduct is **dishonest** if the person acts dishonestly according to the standards of ordinary people and knows that he or she is so acting.

(2) The question whether a defendant's conduct was dishonest according to the standards of ordinary people is a question of fact to be decided according to the jury's own knowledge and experience and not on the basis of evidence of those standards.

(3) A defendant's willingness to pay for property involved in an alleged offence of dishonesty does not necessarily preclude a finding of dishonesty.

(4) A person does not act dishonestly if the person—

- (a) finds property; and
- (b) keeps or otherwise deals with it in the belief that the identity or whereabouts of the owner cannot be discovered by taking reasonable steps; and
- (c) is not under a legal or equitable obligation with which the retention of the property is inconsistent.

(5) The conduct of a person who acts in a particular way is not dishonest if the person honestly but mistakenly believes that he or she has a legal or equitable right to act in that way.

**Example—**

A takes an umbrella violently from B honestly but mistakenly believing that B has stolen A's umbrella and that A is entitled to use force to get it back. In fact, it belongs to B. A is charged with robbery. A cannot be properly convicted on this charge because of his honest but mistaken belief (however unreasonable). However, he may still be guilty of an assault.

(6) A person who asserts a legal or equitable right to property that he or she honestly believes to exist does not, by so doing, deal dishonestly with the property.

**Example—**

A takes an umbrella violently from B honestly believing that the umbrella belongs to A and that A is entitled to possession of the umbrella (but knowing that she is not entitled to use force to get it back). The assertion of that possessory right (whether or not correctly founded in law) is not dishonest (and therefore cannot amount to theft) although the means used to get the umbrella back may well amount to some other offence.

**Consent of owner**

**132.** (1) A reference to the consent of the owner of property extends to—

- (a) the implied consent of the owner (or owners); or
- (b) the actual or implied consent of a person who has actual or implied authority to consent on behalf of the owner (or owners).

(2) A person is taken to have the implied consent of another if the person honestly believes, from the words or conduct of the other, that he or she has the other's consent.

(3) However, a person who knows that another's consent was obtained by dishonest deception is taken to act without consent.

**Operation of this Part**

**133.** (1) This Part operates to the exclusion of offences of dishonesty that exist at common law or under laws of the Imperial Parliament.

(2) However, the common law offence of conspiracy to defraud continues as part of the criminal law of the State.

**Division 2—Theft**

**Theft (and receiving)**

**134.** (1) A person is guilty of theft if the person deals with property—

- (a) dishonestly; and
- (b) without the owner's consent; and
- (c) intending—
  - (i) to deprive the owner permanently of the property; or

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- (ii) to make a serious encroachment on the owner's proprietary rights.

Maximum penalty: Imprisonment for 10 years.

(2) A person intends to make a serious encroachment on an owner's proprietary rights if the person intends—

- (a) to treat the property as his or her own to dispose of regardless of the owner's rights; or
- (b) to deal with the property in a way that creates a substantial risk (of which the person is aware)—
- (i) that the owner will not get it back; or
- (ii) that, when the owner gets it back, its value will be substantially impaired.

(3) It is possible to commit theft as follows:

- (a) a person may commit theft of property that has come lawfully into his or her possession;
- (b) a person may commit theft of property by the misuse of powers that are vested in the person as agent or trustee or in some other capacity that allows the person to deal with the property.

**Example—**

Suppose that land is vested in a trustee in a fiduciary capacity. She is empowered under the instrument of trust to mortgage the land for the purposes of the trust. The trustee dishonestly mortgages the land as security for a personal liability that is unrelated to the trust. In this case, the trustee commits theft of the interest created by the mortgage.

(4) If a person honestly believes that he or she has acquired a good title to property, but it later appears that the title is defective because of a defect in the title of the transferor or for some other reason, the later retention of the property, or any later dealing with the property, by the person cannot amount to theft.

(5) Theft committed by receiving stolen property from another amounts to the offence of receiving but may be described either as theft or receiving in an instrument of charge and is, in any event, punishable as a species of theft.

(6) If a person is charged with receiving, the court may, if satisfied beyond reasonable doubt that the defendant is guilty of theft but not that the theft was committed by receiving stolen property from another, find the defendant guilty of theft.

**Special provision with regard to land and fixtures**

**135.** (1) A trespass to land, or other physical interference with land, cannot amount to theft of the land (even if it results in acquisition of the land by adverse possession).

(2) A thing attached to land, or forming part of land, can be stolen by severing it from the land.

### General deficiency

**136.** (1) A person may be charged with, and convicted of, theft by reference to a general deficiency in money or other property.

(2) In such a case, it is not necessary to establish any particular act or acts of theft.

## Division 3—Robbery

### Robbery

**137.** (1) A person who commits theft is guilty of robbery if—

- (a) the person—
  - (i) uses force, or threatens to use force, against another in order to commit the theft; or
  - (ii) uses force, or threatens to use force, against another in order to escape from the scene of the offence; and
- (b) the force is used, or the threat is made, at the time of, or immediately before or after, the theft.

Maximum penalty: Imprisonment for 15 years.

(2) A person who commits robbery is guilty of aggravated robbery if the person—

- (a) commits the robbery in company with one or more other persons; or
- (b) has an offensive weapon with him or her when committing the robbery.

Maximum penalty: Imprisonment for life.

(3) If 2 or more persons jointly commit robbery in company, each is guilty of aggravated robbery.

### Example—

Suppose that A and B plan to steal from a service station. A assaults the attendant while B takes money from the till. In this case, each is guilty of robbery on the principle enunciated by the High Court in *McAuliffe v R* ((1995) 183 CLR 108). Robbery committed in these circumstances is to be treated as aggravated robbery. In other words, the principle expressed in subsection (2)(a) applies irrespective of whether all elements of robbery can be established against a particular person.

## Division 4—Money laundering

### Money laundering

**138.** (1) A person who engages, directly or indirectly, in a transaction involving property the person knows to be tainted property is guilty of an offence.

Maximum penalty:

In the case of a natural person—Imprisonment for 20 years.

In the case of a body corporate—\$600 000.

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(2) A person who engages, directly or indirectly, in a transaction involving tainted property in circumstances in which the person ought reasonably to know that the property is tainted is guilty of an offence.

Maximum penalty:

In the case of a natural person—Imprisonment for 4 years.

In the case of a body corporate—\$120 000.

(3) A **transaction** includes any of the following:

- (a) bringing property into the State;
- (b) receiving property;
- (c) being in possession of property;
- (d) concealing property;
- (e) disposing of property.

## **Division 5—Deception**

### **Deception**

**139.** A person who deceives another and, by doing so—

- (a) dishonestly benefits him/herself or a third person; or
- (b) dishonestly causes a detriment to the person subjected to the deception or a third person,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

## **Division 6—Dishonest dealings with documents**

### **Dishonest dealings with documents**

**140.** (1) For the purposes of this section, a document is **false** if the document gives a misleading impression about—

- (a) the nature, validity or effect of the document; or
- (b) any fact (such as, for example, the identity, capacity or official position of an apparent signatory to the document) on which its validity or effect may be dependent; or
- (c) the existence or terms of a transaction to which the document appears to relate.

(2) A document that is a true copy of a document that is false under the criteria prescribed by subsection (1) is also false.

(3) A person engages in conduct to which this section applies if the person—

- (a) creates a document that is false; or
- (b) falsifies a document; or
- (c) has possession of a document knowing it to be false; or
- (d) produces, publishes or uses a document knowing it to be false; or
- (e) destroys, conceals or suppresses a document.

(4) A person is guilty of an offence if the person dishonestly engages in conduct to which this section applies intending—

- (a) one of the following:
  - (i) to deceive another, or people generally, or to facilitate deception of another, or people generally, by someone else;
  - (ii) to exploit the ignorance of another, or the ignorance of people generally, about the true state of affairs;
  - (iii) to manipulate a machine or to facilitate manipulation of a machine by someone else; and
- (b) by that means—
  - (i) to benefit him/herself or another; or
  - (ii) to cause a detriment to another.

Maximum penalty: Imprisonment for 10 years.

(5) A person cannot be convicted of an offence against subsection (4) on the basis that the person has concealed or suppressed a document unless it is established that—

- (a) the person has taken some positive step to conceal or suppress the document; or
- (b) the person was under a duty to reveal the existence of the document and failed to comply with that duty; or
- (c) the person, knowing of the existence of the document, has responded dishonestly to inquiries directed at finding out whether the document, or a document of the relevant kind, exists.

(6) A person who has, in his or her possession, without lawful excuse, any article for creating a false document or for falsifying a document is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.



## Division 7—Dishonest manipulation of machines

### Dishonest manipulation of machines

**141.** (1) A person who dishonestly manipulates a machine in order to—

- (a) benefit him/herself or another; or
- (b) cause a detriment to another,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

(2) A person who dishonestly takes advantage of the malfunction of a machine in order to—

- (a) benefit him/herself or another; or
- (b) cause a detriment to another,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

## Division 8—Dishonest exploitation of advantage

### Dishonest exploitation of position of advantage

**142.** (1) This section applies to the following advantages:

- (a) the advantage that a person who has no disability or is not so severely disabled has over a person who is subject to a mental or physical disability<sup>1</sup>;
- (b) the advantage that one person has over another where they are both in a particular situation and one is familiar with local conditions while the other is not<sup>2</sup>.

(2) A person is guilty of an offence if the person dishonestly exploits an advantage to which this section applies in order to—

- (a) benefit him/herself or another; or
- (b) cause a detriment to another.

Maximum penalty: Imprisonment for 10 years.

<sup>1</sup> Compare *R v Hinks* [2000] 4 All ER 833.

<sup>2</sup> Compare *R v Lawrence* [1972] AC 626.

## **Division 9—Miscellaneous offences of dishonesty**

### **Dishonest interference with merchandise**

**143.** A person who dishonestly interferes with merchandise, or a label attached to merchandise, so that the person or someone else can get the merchandise at a reduced price is guilty of an offence<sup>1</sup>.

Maximum penalty: Imprisonment for 2 years.

<sup>1</sup> Compare *R v Morris* [1984] AC 320.

### **Making off without payment**

**144.** (1) A person who, knowing that payment for goods or services is required or expected, dishonestly makes off intending to avoid payment is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

(2) This section does not apply if the transaction for the supply of the goods or services is—

- (a) unlawful; or
- (b) unenforceable as contrary to public policy.

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**Part 6—Secret commissions****Division 1—Preliminary****Interpretation**

**145.** (1) In this Part—

"**benefit**" includes an indirect benefit;

"**indirect benefit**"—a benefit given or offered by a person (A) to another person (B) is taken to be an indirect benefit to a third person (C) if it is given or offered with the intention of influencing C and C, knowing of A's intention, acquiesces in A's act;

"**public agency**" means—

- (a) the police force; or
- (b) a department or administrative unit of the public service; or
- (c) any other agency or instrumentality of the State; or
- (d) a body that is subject to control or direction by a Minister, agency or instrumentality of the State; or
- (e) a body whose members, or a majority of whose members, are appointed by the Governor or a Minister, agency or instrumentality of the State; or
- (f) a local government body;

"**public officer**" means a member, officer or employee of a public agency.

(2) A person, who works for a public agency by agreement between the person's employer and the public agency or an authority responsible for staffing the public agency, is to be regarded, for the purposes of this Part, as an employee of the public agency.

**Division 2—Unlawful bias in commercial relationships****Fiduciaries**

**146.** (1) For the purposes of this Part, a person is to be regarded as a fiduciary of another (**the principal**) if—

- (a) the person is an agent of the other (under an express or implied authority to act on behalf of the other); or
- (b) the person is an employee of the other; or
- (c) the person is a public officer and the other is the public agency of which the person is a member or for which the person acts; or
- (d) the person is a partner and the other is another partner in the same partnership; or
- (e) the person is an officer of a body corporate and the other is the body corporate; or

- (f) the person is a lawyer and the other is a client; or
- (g) the person is engaged on a commercial basis to provide advice or recommendations to the other on—
  - (i) investment; or
  - (ii) business management; or
  - (iii) the sale or purchase of a business or real or personal property; or
- (h) the person is engaged on a commercial basis to provide advice or recommendations to the other on any other subject and the terms or circumstances of the engagement are such that the other (that is, the principal) is reasonably entitled to expect—
  - (i) that the advice or recommendations will be disinterested; or
  - (ii) that, if a possible conflict of interest exists, it will be disclosed.

(2) A reference to a fiduciary extends to a person who is to become one.

**Exercise of fiduciary functions**

**147.** A fiduciary exercises a fiduciary function if the fiduciary—

- (a) exercises or intentionally refrains from exercising a power or function in the affairs of the principal; or
- (b) gives or intentionally refrains from giving advice, or makes or intentionally refrains from making a recommendation, to the principal; or
- (c) exercises an influence that the fiduciary has because of the fiduciary's position as such over the principal or in the affairs of the principal.

**Unlawful bias**

**148.** (1) A fiduciary exercises an unlawful bias if—

- (a) the fiduciary—
  - (i) has received or expects to receive a benefit from a third party for exercising a fiduciary function in a particular way; and
  - (ii) exercises a fiduciary function in the relevant way without appropriate disclosure of the benefit or expected benefit; and
- (b) the fiduciary's failure to make appropriate disclosure of the benefit or expected benefit is intentional or reckless.

(2) A fiduciary makes appropriate disclosure of a benefit or expected benefit if the fiduciary discloses to the principal—

- (a) the nature and value (or approximate value) of the benefit; and

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- (b) the identity of the third party from whom the benefit has been, or is to be, received.

**Offence for fiduciary to exercise unlawful bias**

**149.** A fiduciary who exercises an unlawful bias is guilty of an offence.

Maximum penalty: Imprisonment for 7 years.

**Bribery**

**150.** (1) A person who bribes a fiduciary to exercise an unlawful bias is guilty of an offence.

Maximum penalty: Imprisonment for 7 years.

(2) A person bribes a fiduciary to exercise an unlawful bias if the person—

- (a) gives or offers to give a benefit intending that the fiduciary will, in return for the benefit, exercise a fiduciary function in a particular way; and
- (b) knows or believes that the fiduciary will not make an appropriate disclosure of the benefit or expected benefit to the principal or is reckless as to whether or not the fiduciary will make such a disclosure.

(3) A fiduciary who accepts a bribe to exercise an unlawful bias is guilty of an offence.

Maximum penalty: Imprisonment for 7 years.

(4) A fiduciary accepts a bribe to exercise an unlawful bias if—

- (a) a person gives or offers to give a benefit intending that the fiduciary will, in return for the benefit, exercise a fiduciary function in a particular way; and
- (b) the fiduciary accepts the benefit or the offer—
- (i) intending not to disclose the benefit or expected benefit to the principal; or
- (ii) later forms the intention not to disclose it to the principal.

(5) This section applies even though the relevant fiduciary relationship had not been formed when the benefit was given or offered if, at the relevant time, the fiduciary and the person who gave or offered to give the benefit anticipated the formation of the relevant fiduciary relationship or the formation of fiduciary relationships of the relevant kind.

**Division 3—Exclusion of defence**

**Exclusion of defence**

**151.** It is not a defence to a charge of an offence against this Part to establish that the provision or acceptance of benefits of the kind to which the charge relates is customary in a trade or business in which the fiduciary or the person giving or offering the benefit was engaged.

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**Part 6A—Serious criminal trespass****Sacrilege**

**167.** A person who—

- (a) breaks and enters a place of divine worship and commits an offence to which this section applies<sup>1</sup> in that place; or
- (b) breaks out of a place of divine worship after committing an offence to which this section applies<sup>1</sup> in that place,

is guilty of sacrilege and liable to be imprisoned for life.

**Note—**

<sup>1</sup> ie. theft or an offence of which theft is an element; an offence against the person; or an offence involving interference with, damage to, or destruction of, property punishable by imprisonment for 3 years or more.

**Serious criminal trespass**

**168.** (1) For the purposes of this Act, a person commits a **serious criminal trespass** if the person enters or remains in a place (other than a place that is open to the public) as a trespasser with the intention of committing an offence to which this section applies<sup>1</sup>.

(2) A place is to be regarded as open to the public if the public is admitted even though—

- (a) a charge is made for admission; or
- (b) the occupier limits the purposes for which a person may enter or remain in the place by express or implied terms of a public invitation.

(3) A person who enters or remains in a place with the consent of the occupier is not to be regarded as a trespasser unless that consent was obtained by—

- (a) force; or
- (b) a threat; or
- (c) an act of deception.

(4) A reference in this section to the **occupier** of a place extends to any person entitled to control access to the place.

**Note—**

<sup>1</sup> ie. theft or an offence of which theft is an element; an offence against the person; or an offence involving interference with, damage to, or destruction of property punishable by imprisonment for 3 years or more.

**Serious criminal trespass—non-residential buildings**

**169.** (1) A person who commits a serious criminal trespass in a non-residential building is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

(2) A person who commits a serious criminal trespass in a non-residential building is guilty of an aggravated offence if—

- (a) the person has, when committing the serious criminal trespass, an offensive weapon in his or her possession; or
- (b) the person commits the serious criminal trespass in company with one or more other persons.

Maximum penalty: Imprisonment for 20 years.

(3) In this section—

**"non-residential building"** means a building or part of a building that is not a place of residence.

#### **Serious criminal trespass—places of residence**

**170.** (1) A person who commits a serious criminal trespass in a place of residence is guilty of an offence.

Maximum penalty: Imprisonment for 15 years.

(2) A person who commits a serious criminal trespass in a place of residence is guilty of an aggravated offence if—

- (a) the person has, when committing the trespass, an offensive weapon in his or her possession; or
- (b) the person commits the trespass in company with one or more other persons; or
- (c) another person is lawfully present in the place and the person knows of the other's presence or is reckless about whether anyone is in the place.

Maximum penalty: Imprisonment for life.

(3) In this section—

**"place of residence"** means a building, structure, vehicle or vessel, or part of a building, structure, vehicle or vessel, used as a place of residence.

#### **Criminal trespass—places of residence**

**170A.** (1) A person who trespasses in a place of residence is guilty of an offence if another person is lawfully present in the place and the person knows of the other's presence or is reckless about whether anyone is in the place.

Maximum penalty: Imprisonment for 3 years.

(2) In this section—

**"place of residence"** means a building, structure, vehicle or vessel, or part of a building, structure, vehicle or vessel, used as a place of residence.

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**Part 6B—Blackmail****Interpretation**

**171.** (1) In this Part—

"**demand**" includes an implied demand;

"**harm**" means—

- (a) physical or mental harm (including humiliation or serious embarrassment); or
- (b) harm to a person's property (including economic harm);

"**menace**"—a person who makes a threat **menaces** the person to whom the threat is addressed (the **victim**) if—

- (a) the threat is a threat of harm to the victim or a third person (to be inflicted by the person making the threat or someone else); and
- (b) the threat is unwarranted; and
- (c) either—
  - (i) the threat would be taken seriously by a reasonable person of normal stability and courage; or
  - (ii) the victim in fact takes the threat seriously because of a particular vulnerability known to the person making the threat;

"**serious offence**" means an offence punishable by imprisonment;

"**threat**" includes an implied threat but, unless the threat is a threat of violence, does not include a threat made in the course of, or incidentally to—

- (a) collective bargaining; or
- (b) negotiations to secure a political or industrial advantage;

"**unwarranted**"—a threat is **unwarranted** if—

- (a) the carrying out of the threat would (if it were carried out in the State) constitute a serious offence; or
- (b) the making of the threat is, in the circumstances in which it is made—
  - (i) improper according to the standards of ordinary people; and
  - (ii) known by the person making the threat to be improper according to the standards of ordinary people.



(2) The question whether a defendant's conduct was improper according to the standards of ordinary people is a question of fact to be decided according to the jury's own knowledge and experience and not on the basis of evidence of those standards.

**Blackmail**

**172.** (1) A person who menaces another intending to get the other to submit to a demand is guilty of blackmail.

Maximum penalty: Imprisonment for 15 years.

(2) The object of the demand is irrelevant.

**Examples—**

1. The person who makes the demand may be demanding marriage or access to children.
2. The person who makes the demand may be seeking to influence the performance of a public duty.

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**Part 6C—Piracy**

**Interpretation**

**173.** (1) A person commits an act of piracy if—

- (a) the person, acting without reasonable excuse, takes control of a ship, while it is in the course of a voyage, from the person lawfully in charge of it; or
- (b) the person, acting without reasonable excuse, commits an act of violence against the captain or a member of the crew of a ship, while it is in the course of a voyage, in order to take control of the ship from the person lawfully in charge of it; or
- (c) the person, acting without reasonable excuse, boards a ship, while it is in the course of a voyage, in order to—
  - (i) take control of the ship from the person lawfully in charge of it; or
  - (ii) endanger the ship; or
  - (iii) steal or damage the ship's cargo; or
- (d) the person boards a ship, while it is in the course of a voyage, in order to commit robbery or any other act of violence against a passenger or a member of the crew.

(2) A person takes control of a ship from another if the person compels the other to navigate the ship in accordance with the person's directions.

**Piracy**

**174.** A person who commits an act of piracy is guilty of an offence.

Maximum penalty: Imprisonment for life.

## Part 7—Offences of a public nature

### Division 1—Preliminary

#### Definitions

237. In this Part—

"**judicial body**" means a court or any tribunal, body or person invested by law with judicial or quasi-judicial powers, or with authority to make any inquiry or to receive evidence;

"**judicial officer**" means a person who alone or with others constitutes a judicial body;

"**judicial proceedings**" means proceedings of any judicial body;

"**public officer**" includes—

- (a) a person appointed to public office by the Governor; or
- (b) a judicial officer; or
- (c) a member of Parliament; or
- (d) a person employed in the Public Service of the State; or
- (e) a member of the police force; or
- (f) any other officer or employee of the Crown; or
- (g) a member of a State instrumentality or of the governing body of a State instrumentality or an officer or employee of a State instrumentality; or
- (h) a member of a local government body or an officer or employee of a local government body,

and "**public office**" has a corresponding meaning;

"**State instrumentality**" means an agency or instrumentality of the Crown or any body (whether or not incorporated) that is established by or under an Act and—

- (a) is comprised of persons, or has a governing body comprised of persons, a majority of whom are appointed by the Governor, a Minister or an agency or instrumentality of the Crown; or
- (b) is subject to control or direction by a Minister.

#### Acting improperly

238. (1) For the purposes of this Part, a public officer acts improperly, or a person acts improperly in relation to a public officer or public office, if the officer or person knowingly or recklessly acts contrary to the standards of propriety generally and reasonably expected by ordinary decent members of the community to be observed by public officers of the relevant kind, or by others in relation to public officers or public offices of the relevant kind.

(2) A person will not be taken to have acted improperly for the purposes of this Part unless the person's act was such that in the circumstances of the case the imposition of a criminal sanction is warranted.

(3) Without limiting the effect of subsection (2), a person will not be taken to have acted improperly for the purposes of this Part if—

- (a) the person acted in the honest and reasonable belief that he or she was lawfully entitled to act in the relevant manner; or
- (b) there was lawful authority or a reasonable excuse for the act; or
- (c) the act was of a trivial character and caused no significant detriment to the public interest.

(4) In this section—

"**act**" includes omission or refusal or failure to act;

"**public officer**" includes a former public officer.

#### **General attempt offence excluded**

**239.** A person may not be charged with or found guilty of an offence of attempting to commit an offence against this Part.

#### **Parliamentary privilege not affected**

**240.** Nothing in this Part derogates from Parliamentary privilege.

### **Division 2—Impeding investigation of offences or assisting offenders**

#### **Impeding investigation of offences or assisting offenders**

**241.** (1) Subject to subsection (2), a person ("the accessory") who, knowing or believing that another person ("the principal offender") has committed an offence, does an act with the intention of—

- (a) impeding investigation of the offence; or
- (b) assisting the principal offender to escape apprehension or prosecution or to dispose of proceeds of the offence,

is guilty of an offence.

(2) An accessory is not guilty of an offence against subsection (1)—

- (a) unless it is established that the principal offender committed—
  - (i) the offence that the accessory knew or believed the principal offender to have committed; or
  - (ii) some other offence committed in the same, or partly in the same, circumstances; or

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(b) if there is lawful authority or a reasonable excuse for the accessory's action.

(3) Subject to subsection (4), the penalty for an offence against subsection (1) is—

(a) where the maximum penalty for the offence established as having been committed by the principal offender is imprisonment for life—imprisonment for a term not exceeding 10 years;

(b) where the maximum penalty for that offence is imprisonment for a term of 10 years or more (but not for life)—imprisonment for a term not exceeding 7 years;

(c) where the maximum penalty for that offence is imprisonment for a term of 7 years or more but less than 10 years—imprisonment for a term not exceeding 4 years;

(d) in any other case—imprisonment for a term not exceeding 2 years or a maximum penalty the same as the maximum penalty for that offence, whichever is the lesser.

(4) Where the offence established as having been committed by the principal offender is not the offence that the accessory knew or believed the principal offender to have committed, the penalty for an offence against subsection (1) is whichever is the lesser of—

(a) the penalty applicable under subsection (3); or

(b) the penalty that would be applicable under subsection (3) if the offence that the accessory knew or believed the principal offender to have committed were the offence established as having been committed by the principal offender.

(5) Where—

(a) a person charged with an offence as a principal offender is found not guilty of the offence charged; but

(b) the court is satisfied that another person was guilty of the offence charged (or some other offence of which the accused might on the charge be found guilty),

the court may, if satisfied that the accused is guilty of an offence against subsection (1) as an accessory in relation to the offence charged (or that other offence), find the accused guilty of an offence against subsection (1).

(6) An accessory may be found guilty of an offence against this section whether committed within or outside this State if a court of this State has jurisdiction to deal with the principal offender.

**Division 3—Offences relating to judicial proceedings**

**Perjury and subornation**

**242.** (1) A person who makes a false statement under oath is guilty of perjury.

Penalty: Imprisonment for 7 years.

(2) A person who counsels, procures, induces, aids or abets another to make a false statement under oath is guilty of subornation of perjury.

Penalty: Imprisonment for 7 years.

(3) In proceedings on a charge of perjury or subornation of perjury, an apparently genuine document that appears to be a transcript of evidence given in other judicial proceedings is to be accepted as evidence—

- (a) of the evidence given in those other proceedings; and
- (b) where evidence appears from the transcripts to have been given by a particular person—that it was so given; and
- (c) where evidence appears from the transcript to have been given under oath—that it was so given.

(4) It is not necessary for the conviction of a person for perjury or subornation of perjury that evidence of the perjury be corroborated.

(5) For the purposes of this section—

- (a) "**oath**" includes an affirmation;  
"**statement**" includes an interpretation by an interpreter; and
- (b) a statement will be taken to be false if it is false in a material particular and—
  - (i) in the case of perjury—the person by whom it was made knew it to be false or did not believe it to be true; or
  - (ii) in the case of subornation of perjury—the person who counselled, procured, induced, aided or abetted the other person to make the statement knew it to be false or did not believe it to be true.

**Fabricating, altering or concealing evidence**

**243.** A person who—

- (a) fabricates evidence or alters, conceals or destroys anything that may be required in evidence at judicial proceedings; or
- (b) uses any evidence or thing knowing it to have been fabricated or altered,

with the intention of—

- (c) influencing a decision by a person whether or not to institute judicial proceedings; or

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- (d) influencing the outcome of judicial proceedings (whether proceedings that are in progress or proceedings that are to be or may be instituted at a later time),

is guilty of an offence.

Penalty: Imprisonment for 7 years.

**Offences relating to witnesses**

**244.** (1) Subject to this section, a person who gives, offers or agrees to give a benefit to another person who is or may be required to be a witness in judicial proceedings (whether proceedings that are in progress or proceedings that are to be or may be instituted at a later time) or to a third person as a reward or inducement for the other person's—

- (a) not attending as a witness at, giving evidence at or producing a thing in evidence at the proceedings; or
- (b) withholding evidence or giving false evidence at the proceedings,

is guilty of an offence.

Penalty: Imprisonment for 7 years.

(2) Subject to this section, a person, who is or may be required to be a witness at judicial proceedings (whether proceedings that are in progress or proceedings that are to be or may be instituted at a later time), who seeks, accepts or agrees to accept a benefit (whether for himself or herself or for a third person) as a reward or inducement for—

- (a) not attending as a witness at, giving evidence at or producing a thing in evidence at the proceedings; or
- (b) withholding evidence or giving false evidence at the proceedings,

is guilty of an offence.

Penalty: Imprisonment for 7 years.

(3) Subject to this section, a person who prevents or dissuades, or attempts to prevent or dissuade, another person from—

- (a) attending as a witness at judicial proceedings (whether proceedings that are in progress or proceedings that are to be or may be instituted at a later time); or
- (b) giving evidence at, or producing a thing in evidence at, such proceedings,

is guilty of an offence.

Penalty: Imprisonment for 7 years.

(4) A person is not guilty of an offence against subsection (3) unless the person knows that, or is recklessly indifferent as to whether, the other person is or may be required to be a witness or to produce a thing in evidence at the proceedings.

(5) A person who does an act with the intention of deceiving another person in any way in order to affect the evidence of the other person at judicial proceedings (whether proceedings that are in progress or proceedings that are to be or may be instituted at a later time) is guilty of an offence.

Penalty: Imprisonment for 7 years.

(6) A person is not guilty of an offence against this section if there is lawful authority or a reasonable excuse for his or her action.

**Offences relating to jurors**

**245.** (1) A person who gives, offers or agrees to give a benefit to another person who is or is to be a juror or to a third person as a reward or inducement for the other person's—

- (a) not attending as a juror; or
- (b) acting or not acting as a juror in a way that might influence the outcome of judicial proceedings,

is guilty of an offence.

Penalty: Imprisonment for 7 years.

(2) A person, who is or is to be a juror, who seeks, accepts or agrees to accept a benefit (whether for himself or herself or for a third person) as a reward or inducement for—

- (a) not attending as a juror; or
- (b) acting or not acting as a juror in a way that might influence the outcome of judicial proceedings,

is guilty of an offence.

Penalty: Imprisonment for 7 years.

(3) Subject to this section, a person who prevents or dissuades, or attempts to prevent or dissuade, another person from attending as a juror at judicial proceedings is guilty of an offence.

Penalty: Imprisonment for 7 years.

(4) A person is not guilty of an offence against subsection (3)—

- (a) unless the person knows that, or is recklessly indifferent as to whether, the other person is or may be required to attend as a juror at the proceedings; or
- (b) if there is lawful authority or a reasonable excuse for his or her action.

(5) A person who—

- (a) takes an oath as a member of a jury in proceedings knowing that he or she has not been selected to be a member of the jury; or



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- (b) takes the place of a member of a jury in proceedings knowing that he or she is not a member of the jury,

is guilty of an offence.

Penalty—

- (a) if the person acted with the intention of influencing the outcome of the proceedings—imprisonment for 7 years;
- (b) in any other case—imprisonment for 2 years.

**Confidentiality of jury deliberations and identities**

**246.** (1) This section applies in relation to juries in criminal, civil or coronial proceedings in a court of the State, the Commonwealth, a Territory or another State whether instituted before or after the commencement of this section.

(2) A person must not disclose protected information if the person is aware that, in consequence of the disclosure, the information will, or is likely to, be published.

Penalty:

- In the case of a body corporate—\$25 000.
- In any other case—\$10 000 or imprisonment for 2 years.

(3) A person must not solicit or obtain protected information with the intention of publishing or facilitating the publication of that information.

Penalty:

- In the case of a body corporate—\$25 000.
- In any other case—\$10 000 or imprisonment for 2 years.

(4) A person must not publish protected information.

Penalty:

- In the case of a body corporate—\$25 000.
- In any other case—\$10 000 or imprisonment for 2 years.

(5) Subsection (2) does not prohibit disclosing protected information—

- (a) to a court; or
- (b) to a Royal Commission; or
- (c) to the Director of Public Prosecutions, a member of the staff of the Director's Office or a member of the police force for the purpose of an investigation concerning an alleged contempt of court or alleged offence relating to jury deliberations or a juror's identity; or
- (d) as part of a fair and accurate report of an investigation referred to in paragraph (c); or
- (e) to a person in accordance with an authorisation granted by the Attorney-General to conduct research into matters relating to juries or jury service.

(6) Subsection (3) does not prohibit soliciting or obtaining protected information—

- (a) in the course of proceedings in a court; or
  - (b) by a Royal Commission; or
  - (c) by the Director of Public Prosecutions, a member of the staff of the Director's Office or a member of the police force for the purpose of an investigation concerning an alleged contempt of court or alleged offence relating to jury deliberations or a juror's identity; or
  - (d) by a person in accordance with an authorisation granted by the Attorney-General to conduct research into matters relating to juries or jury service.
- (7) Subsection (4) does not prohibit publishing protected information—
- (a) in accordance with an authorisation granted by the Attorney-General to conduct research into matters relating to juries or jury service; or
  - (b) as part of a fair and accurate report of—
    - (i) proceedings in respect of an alleged contempt of court, an alleged offence against this section or an alleged offence otherwise relating to jury deliberations or a juror's identity; or
    - (ii) proceedings by way of appeal from proceedings referred to in subparagraph (i); or
    - (iii) if the protected information relates to jury deliberations—proceedings by way of appeal from the proceedings in the course of which the deliberations took place if the nature or circumstances of the deliberations is an issue relevant to the appeal.
- (8) This section does not prohibit a person—
- (a) during the course of proceedings, publishing or otherwise disclosing, with the leave of the court or otherwise with lawful excuse, information that identifies, or is likely to identify, the person or another person as, or as having been, a juror in the proceedings; or
  - (b) after proceedings have been completed, publishing or otherwise disclosing—
    - (i) information that identifies, or is likely to identify, the person as, or as having been, a juror in the proceedings; or
    - (ii) information that identifies, or is likely to identify, another person as, or as having been, a juror in the proceedings if the other person has consented to the publication or disclosure of that information.
- (9) This section does not apply in relation to information about a prosecution for an alleged offence against this section if, before the prosecution was instituted, that information had been published generally to the public.

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

(11) In this section—

**"protected information"** means—

(a) particulars of statements made, opinions expressed, arguments advanced and votes cast by members of a jury in the course of their deliberations, other than anything said or done in open court; or

(b) information that identifies, or is likely to identify, a person as, or as having been, a juror in particular proceedings;

**"publish"**, in relation to protected information, means communicate or disseminate the information in such a way or to such an extent that it is available to, or likely to come to the notice of, the public or a section of the public.

**Harassment to obtain information about jury's deliberations**

**247.** (1) A person who harasses a juror or former juror for the purpose of obtaining information about the deliberations of a jury is guilty of an offence.

Penalty:

In the case of a body corporate—\$25 000.

In any other case—\$10 000 or imprisonment for 2 years.

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(3) For the purposes of this section, the deliberations of a jury include statements made, opinions expressed, arguments advanced or votes cast by members of the jury in the course of their deliberations.

**Threats or reprisals relating to duties or functions in judicial proceedings**

**248.** (1) A person who causes or procures, or threatens or attempts to cause or procure, any injury or detriment with the intention of inducing a person who is or may be—

(a) a judicial officer or other officer at judicial proceedings (whether proceedings that are in progress or proceedings that are to be or may be instituted at a later time); or

(b) involved in such proceedings as a witness, juror or legal practitioner,

to act or not to act in a way that might influence the outcome of the proceedings is guilty of an offence.

Penalty: Imprisonment for 7 years.

(2) A person who causes or procures, or threatens or attempts to cause or procure, any injury or detriment on account of anything said or done by a judicial officer, other officer, witness, juror or legal practitioner in good faith in the discharge or performance or purported discharge or performance of his or her duties or functions in or in relation to judicial proceedings is guilty of an offence.

Penalty: Imprisonment for 7 years.

#### **Division 4—Offences relating to public officers**

##### **Bribery or corruption of public officers**

**249.** (1) A person who improperly gives, offers or agrees to give a benefit to a public officer or former public officer or to a third person as a reward or inducement for—

- (a) an act done or to be done, or an omission made or to be made, by the public officer or former public officer in his or her official capacity; or
- (b) the exercise of power or influence that the public officer or former public officer has or had, or purports or purported to have, by virtue of his or her office,

is guilty of an offence.

Penalty: Imprisonment for 7 years.

(2) A public officer or former public officer who improperly seeks, accepts or agrees to accept a benefit from another person (whether for himself or herself or for a third person) as a reward or inducement for—

- (a) an act done or to be done, or an omission made or to be made, in his or her official capacity; or
- (b) the exercise of power or influence that the public officer or former public officer has or had, or purports or purported to have, by virtue of his or her office,

is guilty of an offence.

Penalty: Imprisonment for 7 years.

(3) In proceedings for an offence against this section, the court must, in determining whether the accused acted improperly in relation to a benefit, take into account any public disclosure of the benefit made by or with the approval of the accused, or any disclosure of the benefit made to a proper authority by or with the approval of the accused.

##### **Threats or reprisals against public officers**

**250.** A person who causes or procures, or threatens or attempts to cause or procure, any physical injury to a person or property—

- (a) with the intention of influencing the manner in which a public officer discharges or performs his or her official duties or functions; or

- (b) 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,

is guilty of an offence.

Penalty: Imprisonment for 7 years.

**Abuse of public office**

**251.** A public officer who improperly—

- (a) exercises power or influence that the public officer has by virtue of his or her public office; or
- (b) refuses or fails to discharge or perform an official duty or function; or
- (c) uses information that the public officer has gained by virtue of his or her public office,

with the intention of—

- (d) securing a benefit for himself or herself or for another person; or
- (e) causing injury or detriment to another person,

is guilty of an offence.

Penalty: Imprisonment for 7 years.

**Demanding or requiring benefit on basis of public office**

**252.** (1) A person who—

- (a) demands or requires from another person a benefit (whether for himself or herself or for a third person); and
- (b) in making the demand or requirement—
  - (i) suggests or implies that it should be complied with because the person holds a public office (whether or not the person in fact holds that office); and
  - (ii) knows that there is no legal entitlement to the benefit,

is guilty of an offence.

Penalty: Imprisonment for 7 years.

(2) Subsection (1) does not apply to a demand made by a public officer to a proper authority in relation to the officer's remuneration or conditions of appointment or employment.

**Offences relating to appointment to public office**

**253.** (1) A person who improperly—

- (a) gives, offers or agrees to give a benefit to another in connection with the appointment or possible appointment of a person to a public office; or
- (b) seeks, accepts or agrees to accept a benefit (whether for himself or herself or for a third person) on account of an act done or to be done with regard to the appointment or possible appointment of a person to a public office,

is guilty of an offence.

Penalty: Imprisonment for 4 years.

(2) In subsection (1)—

"**benefit**" does not include—

- (a) salary or allowances payable in the ordinary course of business or employment; or
- (b) fees or other remuneration paid to a person for services provided to another person in the ordinary course of business or employment in consideration for assistance provided to the other person in qualifying for, preparing an application for or determining suitability for such an appointment.

## **Division 5—Escape, rescue and harbouring of persons subject to detention**

### **Escape or removal from lawful custody**

**254.** (1) Subject to this section, a person subject to lawful detention who—

- (a) escapes, or attempts to escape, from custody; or
- (b) remains unlawfully at large,

is guilty of an offence.

Penalty: Imprisonment for 7 years.

(2) A child is not guilty of an offence against subsection (1) in respect of an act or omission that constitutes an offence against section 48 of the *Young Offenders Act 1993*.

(2a) A term of imprisonment to which a person is sentenced for an offence against subsection (1) is cumulative on any other term of imprisonment or detention in a training centre that the person is liable to serve.

(3) A person who, knowing that, or being recklessly indifferent as to whether, another person is subject to lawful detention—

- (a) assists in the escape or attempted escape of the other person from custody; or

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- (b) without lawful authority, removes, or attempts to remove, the other person from custody,

is guilty of an offence.

Penalty: Imprisonment for 7 years.

(4) A person having custody or authority in respect of another person subject to lawful detention who, knowing that, or being recklessly indifferent as to whether, there is no legal authority to do so—

- (a) releases or procures the release of, or attempts to release or procure the release of, the other person from custody; or
- (b) permits the other person to escape from custody,

is guilty of an offence.

Penalty: Imprisonment for 7 years.

**Harbouring or employing escapee etc**

**255.** A person who, knowing that, or being recklessly indifferent as to whether, another person has escaped from custody or is otherwise unlawfully at large—

- (a) harbours or employs the other person; or
- (b) assists the other person to remain unlawfully at large,

is guilty of an offence.

Penalty: Imprisonment for 4 years.

**Division 6—Attempt to obstruct or pervert course of justice or due administration of law**

**Attempt to obstruct or pervert course of justice or due administration of law**

**256.** (1) A person who attempts to obstruct or pervert the course of justice or the due administration of the law in a manner not otherwise dealt with in the preceding provisions of this Part is guilty of an offence.

Penalty: Imprisonment for 4 years.

(2) Where—

- (a) a person charged with an offence against any of the preceding provisions of this Part is found not guilty of the offence charged; but
- (b) the court is satisfied that the accused is guilty of an offence against subsection (1),

the court may, if the maximum penalty prescribed for an offence against subsection (1) is the same as or less than the maximum penalty prescribed for the offence charged, find the accused guilty of an offence against subsection (1).

## Division 7—Criminal defamation

### Criminal defamation

**257.** (1) A person who, without lawful excuse, publishes defamatory matter concerning another living person—

- (a) knowing the matter to be false or being recklessly indifferent as to whether the matter is true or false; and
- (b) intending to cause serious harm, or being recklessly indifferent as to whether the publication of the defamatory matter will cause serious harm, to a person (whether the person defamed or not),

is guilty of an offence.

Penalty: Imprisonment for 3 years.

(2) A person charged with an offence against this section has a lawful excuse for the publication of the defamatory matter concerning the other person if the person charged would have a defence to an action for damages for defamation if such an action were instituted against him or her by the other person in respect of the publication of the defamatory matter.

(3) On a trial before a jury of an information for an offence against this section—

- (a) the question whether the matter published is capable of bearing a defamatory meaning is a question for determination by the judge; and
- (b) the question whether the matter published does bear a defamatory meaning is a matter for the jury; and
- (c) the jury may give a general verdict of guilty or not guilty on the issues as a whole.

(4) Proceedings for an offence against this section must not be commenced without the consent of the Director of Public Prosecutions.

(5) In any proceedings for an offence against this section, a certificate apparently signed by the Director of Public Prosecutions certifying his or her consent to the proceedings is, in the absence of proof to the contrary, to be accepted as proof of the Director's consent.

## Division 8—Offences limited in relation to industrial disputes and restraint of trade

### Offences limited in relation to industrial disputes and restraint of trade

**258.** (1) An agreement or combination by two or more persons to do, or procure to be done, an act in contemplation or furtherance of an industrial dispute as defined in the *Industrial Relations Act (S.A.) 1972* is not punishable as a conspiracy unless the act, if committed by one person, would be punishable as an indictable offence.

(2) No person is liable to any punishment for doing, or conspiring to do, an act on the ground that the act restrains, or tends to restrain, the free course of trade unless the act constitutes an offence against this Act.



## Part 7A—Goods contamination and comparable offences

### Interpretation

**259.** In this Part—

"**act prejudicing public health or safety**" includes—

- (a) interference with the provision of water, electricity, gas, sewerage, drainage, or waste disposal in a way that prejudices, or could prejudice, the health or safety of the public;
- (b) interference with a transport or communication system in a way that prejudices, or could prejudice, the health or safety of the public;
- (c) interference with any other facility, system or service on which the health or safety of the public is dependent in a way that prejudices, or could prejudice, the health or safety of the public;

"**benefit**" extends to non-material benefits (or what might be conceived to be benefits)—so that a person who (for example) engages in conduct out of anger or malice is taken to gain a benefit from that conduct by indulging that anger or malice;

"**consumer**" of goods means a purchaser of the goods or a person who consumes or uses the goods;

"**to contaminate**" goods means to contaminate or interfere with the goods;

"**goods**" means any article or substance offered for sale, or intended to be offered for sale, to the public;

"**public**" includes a section of the public (such as consumers of goods of a particular description);

"**threat**" includes—

- (a) a threat to be implied from conduct;
- (b) a conditional threat.

### Unlawful acts of goods contamination or other acts prejudicing the health or safety of the public

**260.** (1) A person is guilty of an offence if the person commits an act to which this section applies intending—

- (a) to cause prejudice, to create a risk of prejudice, or to create an apprehension of a risk of prejudice, to the health or safety of the public; and
- (b) by doing so—
  - (i) to gain a benefit for himself, herself or another; or
  - (ii) to cause loss or harm to another; or

- (iii) to cause public alarm or anxiety.

Maximum penalty: Imprisonment for 15 years.

(2) A person commits an act to which this section applies if the person—

- (a) contaminates goods or commits some other act prejudicing public health or safety; or
- (b) makes it appear that—
  - (i) goods have been, or are about to be, contaminated; or
  - (ii) some other act prejudicing public health or safety has been, or is about to be, committed; or
- (c) makes a threat to contaminate goods or to commit some other act prejudicing public health or safety; or
- (d) falsely claims that goods have been or are about to be contaminated, or some other act prejudicing public health or safety has been, or is about to be, committed.

(3) In this section, a reference to the contamination of goods is limited to contamination in a way that prejudices or could prejudice the health or safety of a consumer.

**Goods contamination unrelated to issues of public health and safety**

**261.** A person is guilty of an offence if the person—

- (a) contaminates goods; or
- (b) makes it appear that goods have been, or are about to be contaminated; or
- (c) threatens to contaminate goods; or
- (d) falsely claims that goods have been or are about to be contaminated,

intending—

- (e) to influence the public against purchasing the goods or goods of the relevant class or to create an apprehension that the public will be so influenced; and
- (f) by doing so—
  - (i) to gain a benefit for himself, herself or another; or
  - (ii) to cause loss or harm to another.

Maximum penalty: Imprisonment for 5 years.

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**Part 7B—Accessories**

**Aiding and abetting**

**267.** A person who aids, abets, counsels or procures the commission of an offence is liable to be prosecuted and punished as a principal offender.

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## Part 8—Intoxication

### Definition

**267A.** In this Part—

"**consciousness**" includes—

- (a) volition;
- (b) intention;
- (c) knowledge;
- (d) any other mental state or function relevant to criminal liability;

"**objective element**" of an offence means an element of the offence that is not a subjective element;

"**subjective element**" of an offence means a mental element of the offence and includes voluntariness.

### Mental element of offence to be presumed in certain cases

**268.** (1) If the objective elements of an alleged offence are established against a defendant but the defendant's consciousness was (or may have been) impaired by intoxication to the point of criminal irresponsibility at the time of the alleged offence, the defendant is nevertheless to be convicted of the offence if it is established that the defendant—

- (a) formed an intention to commit the offence before becoming intoxicated; and
- (b) consumed intoxicants in order to strengthen his or her resolve to commit the offence.

(2) A defendant's consciousness is taken to have been impaired to the point of criminal irresponsibility at the time of an alleged offence if, because of impairment of consciousness, a subjective element of the alleged offence cannot be established against the defendant.

### Question of intoxication must be specifically raised by defendant

**269.** (1) On the trial of a defendant who was (or may have been) intoxicated at the time of the alleged offence, the question whether the defendant's consciousness was, or may have been, impaired by intoxication to the point of criminal irresponsibility—

- (a) is not to be put to the jury by the judge, the prosecutor or the defendant; and
- (b) if raised by the jury itself, is to be withdrawn from the jury's consideration,

unless the defendant specifically asks the judge to address the jury on that question.

(2) A defendant's consciousness is taken to have been impaired to the point of criminal irresponsibility at the time of an alleged offence if, because of impairment of consciousness, a subjective element of the alleged offence cannot be established against the defendant.

## Part 8A—Mental impairment

### Division 1—Preliminary

#### Interpretation

269A. (1) In this Part—

"**authorised person**" means a person authorised by the Minister to exercise the powers of an authorised person under this Part;

"**defence**"—a defence exists if, even though the objective elements of an offence are found to exist, the defendant is entitled to the benefit of an exclusion, limitation or reduction of criminal liability at common law or by statute;

"**defensible**"—a defendant's conduct is to be regarded as defensible in proceedings under this Part if, on the trial of the offence to which the proceedings relate, a defence might be found to exist;

"**intoxication**" means a temporary disorder, abnormality or impairment of the mind that results from the consumption or administration of intoxicants and will pass on metabolism or elimination of intoxicants from the body;

"**judge**" includes magistrate;

"**mental illness**" means a pathological infirmity of the mind (including a temporary one of short duration)<sup>1</sup>;

"**mental impairment**" includes—

- (a) a mental illness; or
- (b) an intellectual disability; or
- (c) a disability or impairment of the mind resulting from senility,

but does not include intoxication;

"**Minister**" means the Minister responsible for the administration of the *Mental Health Act 1993*;

"**next of kin**" of a person means a person's spouse (or putative spouse), parents and children;

"**objective element**" of an offence means an element of an offence that is not a subjective element;

"**psychiatrist**" means a person registered under the *Medical Practitioners Act 1983* as a specialist in psychiatry;

"**subjective element**" of an offence means voluntariness, intention, knowledge or some other mental state that is an element of the offence;

"**supervision order**" — *See section 269O*;

"**victim**", in relation to an offence or conduct that would, but for the perpetrator's mental impairment, have constituted an offence, means a person who suffered significant mental or physical injury as a direct consequence of the offence or the conduct.

(2) For the purposes of this Part—

- (a) the question whether a person was mentally competent to commit an offence is a question of fact;
- (b) the question whether a person is mentally unfit to stand trial on a charge of an offence is a question of fact.

<sup>1</sup> A condition that results from the reaction of a healthy mind to extraordinary external stimuli is not a mental illness, although such a condition may be evidence of mental illness if it involves some abnormality and is prone to recur (See *R v Falconer* (1990) 171 CLR 30).

### **Distribution of judicial functions between judge and jury**

**269B.** (1) An investigation under this Part by the Supreme Court or the District Court into—

- (a) a defendant's mental competence to commit an offence or a defendant's mental fitness to stand trial; or
- (b) whether elements of the offence have been established,

is to be conducted before a jury unless the defendant has elected to have the matter dealt with by a judge sitting alone.

(2) The same jury may deal with issues arising under this Part about a defendant's mental competence to commit an offence, or fitness to stand trial, and the issues on which the defendant is to be tried, unless the trial judge thinks there are special reasons to have separate juries.

(3) Any other powers or functions conferred on a court by this Part are to be exercised by the court constituted of a judge sitting alone.

(4) The defendant's right to elect to have an investigation under this Part conducted by a judge sitting alone is not subject to any statutory qualification.<sup>1</sup>

<sup>1</sup> The intention is to ensure that the right to elect for trial by judge alone is unfettered by the statutory qualifications on that right imposed by the *Juries Act 1927* (thus preserving the principle enunciated in *R v T* [1999] SASC 429 on this point).

### **Charges on which alternative verdicts are possible**

**269BA.** (1) A person charged with an offence is taken, for the purposes of this Part, to be charged in the alternative with any lesser offence for which a conviction is possible on that charge.

(2) It follows that a trial of a charge on which an alternative verdict for a lesser offence is possible is taken to be a trial of a charge of each of the offences for which a conviction is possible.

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**Division 2—Mental competence to commit offences****Mental competence**

**269C.** A person is mentally incompetent to commit an offence if, at the time of the conduct alleged to give rise to the offence, the person is suffering from a mental impairment and, in consequence of the mental impairment—

- (a) does not know the nature and quality of the conduct; or
- (b) does not know that the conduct is wrong; or
- (c) is unable to control the conduct.

**Presumption of mental competence**

**269D.** A person's mental competence to commit an offence is to be presumed unless the person is found, on an investigation under this Division, to have been mentally incompetent to commit the offence.

**Reservation of question of mental competence**

**269E.** (1) If, on the trial of a person for an offence—

- (a) the defendant raises a defence of mental incompetence; or
- (b) the court decides, on application by the prosecution or on its own initiative, that the defendant's mental competence to commit the offence should be investigated in the interests of the proper administration of justice,

the question of the defendant's mental competence to commit the offence must be separated from the remainder of the trial.

(2) The trial judge has a discretion to proceed first with the trial of the objective elements of the offence or with the trial of the mental competence of the defendant.

(3) If, at the preliminary examination of a charge of an indictable offence, the question of the defendant's mental competence to commit the offence arises, the question must be reserved for consideration by the court of trial.

**What happens if trial judge decides to proceed first with trial of defendant's mental competence to commit offence**

**269F.** If the trial judge decides that the defendant's mental competence to commit the offence is to be tried first, the court proceeds as follows.

**Trial of defendant's mental competence**

**A.** (1) The court—

- (a) must hear relevant evidence and representations put to the court by the prosecution and the defence on the question of the defendant's mental competence to commit the offence; and
- (b) may require the defendant to undergo an examination by a psychiatrist or other appropriate expert and require the results of the examination to be reported to the court.

(2) The power to require an examination and report under subsection (1)(b) may be exercised—

- (a) on the application of the prosecution or the defence; or
- (b) if the judge considers the examination and report necessary to prevent a possible miscarriage of justice—on the judge’s own initiative.

(3) At the conclusion of the trial of the defendant’s mental competence, the court must decide whether it has been established, on the balance of probabilities, that the defendant was at the time of the alleged offence mentally incompetent to commit the offence and—

- (a) if so—must record a finding to that effect;
- (b) if not—must record a finding that the presumption of mental competence has not been displaced and proceed with the trial in the normal way.

\* \* \* \* \*

(5) The court may, if the prosecution and the defence agree—

- (a) dispense with, or terminate, an investigation into a defendant’s mental competence to commit an offence; and
- (b) record a finding that the defendant was mentally incompetent to commit the offence.

**Trial of objective elements of offence**

**B.** (1) If the court records a finding that the defendant was mentally incompetent to commit the offence, the court must hear evidence and representations put to the court by the prosecution and the defence relevant to the question whether the court should find that the objective elements of the offence are established.

(2) If the court is satisfied that the objective elements of the offence are established beyond reasonable doubt, the court must record a finding that the objective elements of the offence are established.

(3) If the court finds that the objective elements of the offence are established, the court must find the defendant not guilty of the offence but declare the defendant to be liable to supervision under this Part; but otherwise the court must find the defendant not guilty of the offence and discharge the defendant.

(4) On the trial of the objective elements of an offence, the court is to exclude from consideration any question of whether the defendant’s conduct is defensible.

**What happens if trial judge decides to proceed first with trial of objective elements of offence**

**269G.** If the trial judge decides to proceed first with the trial of the objective elements of the offence, the court proceeds as follows.



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**Trial of objective elements of offence**

**A.** (1) The court must first hear evidence and representations put to the court by the prosecution and the defence relevant to the question whether the court should find that the objective elements of the offence are established against the defendant.

(2) If the court is satisfied that the objective elements of the offence are established beyond reasonable doubt, the court must record a finding that the objective elements of the offence are established; but otherwise the court must find the defendant not guilty of the offence and discharge the defendant.

(3) On the trial of the objective elements of an offence, the court is to exclude from consideration any question of whether the defendant's conduct is defensible.

**Trial of defendant's mental competence**

**B.** (1) If the court records a finding that the objective elements of the offence are established, the court—

(a) must hear relevant evidence and representations put to the court by the prosecution and the defence on the question of the defendant's mental competence to commit the offence; and

(b) may require the defendant to undergo an examination by a psychiatrist or other appropriate expert and require the results of the examination to be reported to the court.

(2) The power to require an examination and report under subsection (1)(b) may be exercised—

(a) on the application of the prosecution or the defence; or

(b) if the judge considers the examination and report necessary to prevent a possible miscarriage of justice—on the judge's own initiative.

(3) At the conclusion of the trial of the defendant's mental competence, the court must decide whether it has been established, on the balance of probabilities, that the defendant was at the time of the alleged offence mentally incompetent to commit the offence and—

(a) if so—must declare that the defendant was mentally incompetent to commit the offence, find the defendant not guilty of the offence and declare the defendant to be liable to supervision under this Part;

(b) if not—must record a finding that the presumption of mental competence has not been displaced and proceed with the trial in the normal way.

(4) If the trial is to proceed under subsection B.(3)(b), the objective elements of the offence are to be accepted as established.

(5) The court may, if the prosecution and the defence agree—

(a) dispense with, or terminate, an investigation into a defendant's mental competence to commit an offence; and

- (b) declare that the defendant was mentally incompetent to commit the offence, find the defendant not guilty of the offence, and declare the defendant to be liable to supervision under this Part.

### **Division 3—Mental unfitness to stand trial**

#### **Mental unfitness to stand trial**

**269H.** A person is mentally unfit to stand trial on a charge of an offence if the person's mental processes are so disordered or impaired that the person is—

- (a) unable to understand, or to respond rationally to, the charge or the allegations on which the charge is based; or
- (b) unable to exercise (or to give rational instructions about the exercise of) procedural rights (such as, for example, the right to challenge jurors); or
- (c) unable to understand the nature of the proceedings, or to follow the evidence or the course of the proceedings.

#### **Presumption of mental fitness to stand trial**

**269I.** A person's mental fitness to stand trial is to be presumed unless it is established, on an investigation under this Division, that the person is mentally unfit to stand trial.

#### **Order for investigation of mental fitness to stand trial**

**269J.** (1) If there are reasonable grounds to suppose that a person is mentally unfit to stand trial, the court before which the person is to be tried may order an investigation under this Division of the defendant's mental fitness to stand trial.

(2) The court's power to order an investigation into the defendant's mental fitness to stand trial may be exercised—

- (a) on the application of the prosecution or the defence; or
- (b) if the judge considers the investigation necessary to prevent a possible miscarriage of justice—on the judge's own initiative.

(3) If a court orders an investigation into the defendant's mental fitness to stand trial after the trial begins, the court may adjourn or discontinue the trial to allow for the investigation.

(4) If a court before which a preliminary examination of an indictable offence is conducted is of the opinion that the defendant may be mentally unfit to stand trial, the preliminary examination may continue, but the court must raise for consideration by the court of trial the question whether there should be an investigation under this Division of the defendant's mental fitness to stand trial.

#### **Preliminary prognosis of defendant's condition**

**269K.** (1) Before formally embarking on an investigation under this Division of a defendant's mental fitness to stand trial, a court may require production of psychiatric or other expert reports that may exist on the defendant's mental condition and may, if it thinks fit, itself have a report prepared on the defendant's mental condition.

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(2) If it appears from a report that the defendant is mentally unfit to stand trial but there is a reasonable prospect that the defendant will regain the necessary mental capacity over the next 12 months, the court may adjourn the defendant's trial for not more than 12 months.

(3) If after the adjournment the court is of the opinion that the grounds on which the investigation was thought to be necessary no longer exist, the court may revoke the order for the investigation and the trial will then proceed in the normal way.

**Trial judge's discretion about course of trial**

**269L.** If the court orders an investigation into a defendant's mental fitness to stand trial, the question of the defendant's mental fitness to stand trial may, at the discretion of the trial judge, be separately tried before any other issue that is to be tried or after a trial of the objective elements of the alleged offence.

**What happens if trial judge decides to proceed first with trial of defendant's mental fitness to stand trial**

**269M.** If the trial judge decides that the defendant's mental fitness to stand trial is to be tried first, the court proceeds as follows.

**Trial of defendant's mental fitness to stand trial**

**A.** (1) The court—

- (a) must hear relevant evidence and representations put to the court by the prosecution and the defence on the question of the defendant's mental fitness to stand trial; and
- (b) may require the defendant to undergo an examination by a psychiatrist or other appropriate expert and require the results of the examination to be reported to the court.

(2) The power to require an examination and report under subsection (1)(b) may be exercised—

- (a) on the application of the prosecution or the defence; or
- (b) if the judge considers the examination and report necessary to prevent a possible miscarriage of justice—on the judge's own initiative.

(3) At the conclusion of the trial of the defendant's mental fitness to stand trial, the court must decide whether it has been established, on the balance of probabilities, that the defendant is mentally unfit to stand trial and—

- (a) if so—must record a finding to that effect;
- (b) if not—must proceed with the trial in the normal way.

\* \* \* \* \*

(5) The court may, if the prosecution and the defence agree—

- (a) dispense with, or terminate, an investigation into a defendant's fitness to stand trial; and

- (b) record a finding that the defendant is mentally unfit to stand trial.

**Trial of objective elements of offence**

**B.** (1) If the court records a finding that the defendant is mentally unfit to stand trial, the court must hear evidence and representations put to the court by the prosecution and the defence relevant to the question whether a finding should be recorded under this section that the objective elements of the offence are established.

(2) If the court is satisfied beyond reasonable doubt that the objective elements of the offence are established, the court must record a finding to that effect and declare the defendant to be liable to supervision under this Part; but otherwise the court must find the defendant not guilty of the offence and discharge the defendant.

(3) On the trial of the objective elements of an offence under this section, the court is to exclude from consideration any question of whether the defendant's conduct is defensible.

**What happens if trial judge decides to proceed first with trial of objective elements of offence**

**269N.** If the trial judge decides to proceed first with the trial of the objective elements of the offence, the court proceeds as follows.

**Trial of objective elements of offence**

**A.** (1) The court must first hear evidence and representations put to the court by the prosecution and the defence relevant to the question whether the court should find that the objective elements of the offence are established.

(2) If the court is satisfied beyond reasonable doubt that the objective elements of the offence are established, the court must record a finding to that effect; but otherwise the court must find the defendant not guilty of the offence and discharge the defendant.

(3) On the trial of the objective elements of an offence under this section, the court is to exclude from consideration any question of whether the defendant's conduct is defensible.

**Trial of defendant's mental fitness to stand trial**

**B.** (1) If the court records a finding that the objective elements of the offence are established, the court—

- (a) must hear relevant evidence and representations put to the court by the prosecution and the defence on the question of the defendant's mental fitness to stand trial; and
- (b) may require the defendant to undergo an examination by a psychiatrist or other appropriate expert and require the results of the examination to be reported to the court.

(2) The power to require an examination and report under subsection (1)(b) may be exercised—

- (a) on the application of the prosecution or the defence; or
- (b) if the judge considers the examination and report necessary to prevent a possible miscarriage of justice—on the judge's own initiative.

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(3) If the court is satisfied on the balance of probabilities that the defendant is mentally unfit to stand trial, the court must record a finding to that effect and declare the defendant to be liable to supervision under this Part.

(4) If the court is not satisfied on the balance of probabilities that the defendant is mentally unfit to stand trial, the court must proceed with the trial of the remaining issues (or may, at its discretion, re-start the trial).

(5) The court may, if the prosecution and the defence agree—

(a) dispense with, or terminate, an investigation into a defendant's mental fitness to stand trial; and

(b) declare that the defendant is mentally unfit to stand trial, and declare the defendant to be liable to supervision under this Part.

**Division 4—Disposition of persons declared to be liable to supervision under this Part****Supervision**

**269O.** (1) The court by which a defendant is declared to be liable to supervision under this Part may—

(a) release the defendant unconditionally; or

(b) make an order (a "**supervision order**")—

(i) committing the defendant to detention under this Part; or

(ii) releasing the defendant on licence on conditions decided by the court and specified in the licence.

(2) If a court makes a supervision order, the court must fix a term (a "**limiting term**") equivalent to the period of imprisonment or supervision (or the aggregate period of imprisonment and supervision) that would, in the court's opinion, have been appropriate if the defendant had been convicted of the offence of which the objective elements have been established<sup>1</sup>.

(3) At the end of the limiting term, a supervision order in force against the defendant under this Division lapses.

<sup>1</sup> The court should fix a limiting term by reference to the sentence that would have been imposed if the defendant had been found guilty of the relevant offence and without taking account of the defendant's mental impairment.

**Variation or revocation of supervision order**

**269P.** (1) At any time during the limiting term, the court may, on the application of the Crown, the defendant, Parole Board, the Public Advocate or another person with a proper interest in the matter, vary or revoke a supervision order and, if the order is revoked, make, in substitution for the order, any other order that the court might have made under this Division in the first instance.

(2) If the court refuses an application by or on behalf of a defendant for variation or revocation of a supervision order, a later application for variation or revocation of the order cannot be made by or on behalf of the defendant for six months or such greater or lesser period as the court may direct on refusing the application.

**Report on mental condition of the defendant**

**269Q.** (1) If a defendant is declared to be liable to supervision under this Part, the Minister must, within 30 days after the date of the declaration, prepare and submit to the court by which the declaration was made a report, prepared by a psychiatrist or other appropriate expert, on the mental condition of the defendant containing—

- (a) a diagnosis and prognosis of the condition; and
- (b) a suggested treatment plan for managing the defendant's condition.

(2) If a supervision order is made against the defendant, the Minister must arrange to have prepared and submitted to the court, at intervals of not more than 12 months during the limiting term, a report containing—

- (a) a statement of any treatment that the defendant has undergone since the last report; and
- (b) any changes to the prognosis of the defendant's condition and the treatment plan for managing the condition.

**Report on attitudes of victims, next of kin etc**

**269R.** (1) For the purpose of assisting the court to determine proceedings under this Division, the Crown must provide the court with a report setting out, so far as reasonably ascertainable, the views of—

- (a) the next of kin of the defendant; and
- (b) the victim (if any) of the defendant's conduct; and
- (c) if a victim was killed as a result of the defendant's conduct—the next of kin of the victim.

(2) A report is not, however, required under this section if the purpose of the proceeding is—

- (a) to determine whether a defendant who has been released on licence should be detained or subjected to a more rigorous form of supervision; or
- (b) to vary, in minor respects, the conditions on which a defendant is released on licence.

**Principle on which court is to act**

**269S.** In deciding whether to release a defendant under this Division, or the conditions of a licence, the court must apply the principle that restrictions on the defendant's freedom and personal autonomy should be kept to the minimum consistent with the safety of the community.

**Matters to which court is to have regard**

**269T.** (1) In deciding proceedings under this Division, the court should have regard to—

- (a) the nature of the defendant's mental impairment; and

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- (b) whether the defendant is, or would if released be, likely to endanger another person, or other persons generally; and
- (c) whether there are adequate resources available for the treatment and support of the defendant in the community; and
- (d) whether the defendant is likely to comply with the conditions of a licence; and
- (e) other matters that the court thinks relevant.

(2) The court cannot release a defendant under this Division, or significantly reduce the degree of supervision to which a defendant is subject unless the court—

- (a) has considered at least three reports (**expert reports**) each prepared by a different psychiatrist or other appropriate expert who has personally examined the defendant, on—
  - (i) the mental condition of the defendant; and
  - (ii) the possible effects of the proposed action on the behaviour of the defendant; and
- (b) has considered the report most recently submitted to the court by the Minister under this Division; and
- (c) has considered the report on the attitudes of victims and next of kin prepared under this Division; and
- (d) is satisfied that—
  - (i) the defendant's next of kin; and
  - (ii) the victim (if any) of the defendant's conduct; and
  - (iii) if a victim was killed as a result of the defendant's conduct—the next of kin of the victim,

have been given reasonable notice of the proceedings.

(2a) However, the court may act on the basis of one or two expert reports if—

- (a) the supervision order arose from proceedings based on a charge of a summary (rather than an indictable) offence; and
- (b) satisfied that, in the circumstances of the case, the report or reports adequately cover the matters on which the court needs expert advice.

(3) Notice need not be given under subsection (2)(d) to a person whose whereabouts have not, after reasonable inquiry, been ascertained.

**Revision of supervision order**

**269U.** (1) If a person who has been released on licence under this Division contravenes or is likely to contravene a condition of the licence, the court by which the supervision order was made may, on application by the Crown (which may be made, in a case of urgency, by telephone), review the supervision order.

(2) After allowing the Crown and the person subject to the order a reasonable opportunity to be heard on the application for review, the court may—

- (a) confirm the present terms of the supervision order; or
- (b) amend the order so that it ceases to provide for release on licence and provides instead for detention; or
- (c) amend the order by varying the conditions of the licence,

and make any further order or direction that may be appropriate in the circumstances.

(3) When an application for review of a supervision order is made, the court may issue a warrant to have the person subject to the order arrested and brought before the court and may, if appropriate, make orders for detention of that person until the application is determined.

**Custody, supervision and care**

**269V.** (1) If a defendant is committed to detention under this Part, the defendant is in the custody of the Minister and the Minister may give directions for the custody, supervision and care of the defendant the Minister considers appropriate.

(2) The Minister may—

- (a) place the defendant under the custody, supervision and care of another; and
- (b) if there is no practicable alternative—direct that a defendant be kept in custody in a prison.

(3) Supervisory responsibilities arising from conditions on which a person is released on licence are to be divided between the Parole Board and the Minister in the following way:

- (a) the supervisory responsibilities are to be exercised by the Minister insofar as they relate to treating or monitoring the mental condition of the person; and
- (b) the supervisory responsibilities are in all other respects to be exercised by the Parole Board.

**Effect of supervening imprisonment**

**269VA.** (1) If a person who has been released on licence under this Division commits an offence while subject to the licence and is sentenced to imprisonment for the offence, the supervision order is suspended for the period the person is in prison serving the term of imprisonment.

(2) In determining when the term of a supervision order comes to an end, the period of a suspension under subsection (1) is not to be taken into account.



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**Division 5—Miscellaneous****Counsel to have independent discretion**

**269W.** (1) If the defendant is unable to instruct counsel on questions relevant to an investigation under this Part, the counsel may act, in the exercise of an independent discretion, in what he or she genuinely believes to be the defendant's best interests.

(2) If the counsel for the defendant in criminal proceedings (apart from proceedings under this Part) has reason to believe that the defendant is unable, because of mental impairment, to give rational instructions on questions relevant to the proceedings (including whether to be tried by judge alone), the counsel may act, in the exercise of an independent discretion, in what the counsel genuinely believes to be the defendant's best interests.

**Power to order examination etc in pre-trial proceedings**

**269WA.** (1) If in pre-trial proceedings it appears to the court that it might expedite the trial to order the examination of the defendant under this section in anticipation of trial, the court may, by order—

- (a) require the defendant to undergo an examination by a psychiatrist or other appropriate expert; and
- (b) require that the results of the examination be reported to the court.

(2) The prosecution and the defence are entitled to access to the report.

**Power of court to deal with defendant before proceedings completed**

**269X.** (1) If there is to be an investigation into a defendant's mental competence to commit an offence, or mental fitness to stand trial, or a court conducting a preliminary examination reserves the question whether there should be such an investigation for consideration by the court of trial, the court by which the investigation is to be conducted, or the court reserving the question for consideration, may—

- (a) release the defendant on bail to appear later for the purposes of the investigation; or
- (b) commit the defendant to an appropriate form of custody (but not a prison unless the court is satisfied that there is, in the circumstances, no practicable alternative) until the conclusion of the investigation.

(2) If a court declares a defendant to be liable to supervision under this Part, but unresolved questions remain about how the court is to deal with the defendant, the court may—

- (a) release the defendant on bail to appear subsequently to be dealt with by the court; or
- (b) commit the defendant to some appropriate form of custody (but not a prison unless the court is satisfied that there is, in the circumstances of the case, no practicable alternative) until some subsequent date when the defendant is to be brought again before the court.

**Appeals**

**269Y.** (1) An appeal lies to the appropriate appellate court against a declaration that a defendant is liable to supervision under this Part in the same way as an appeal against a conviction.

(2) An appeal lies to the appropriate appellate court against a supervision order in the same way as an appeal against sentence.

(3) An appeal lies by leave of the court of trial or the appropriate appellate court against a key decision by the court of trial.

(4) A **key decision** is—

- (a) a decision that the defendant was, or was not, mentally competent to commit the offence charged against the defendant; or
- (b) a decision that the defendant is, or is not, mentally unfit to stand trial; or
- (c) a decision that the objective elements of an offence are established against the defendant.

(5) On an appeal, the appellate court may exercise one or more of the following powers:

- (a) confirm, set aside, vary or reverse a decision of the court of trial;
- (b) direct a retrial of the case or an issue arising in the case;
- (c) make any finding or exercise any power that could have been made or exercised by the court of trial;
- (d) make ancillary orders and directions.

#### **Counselling of next of kin and victims**

**269Z.** (1) If an application is made under Division 4 that might result in a defendant being released from detention, the Minister must ensure that counselling services in respect of the application are made available to—

- (a) the defendant's next of kin; and
- (b) the victim (if any) of the defendant's conduct; and
- (c) if a victim was killed as a result of the defendant's conduct—the next of kin of the victim.

(2) A person does not, in disclosing information about the defendant during the course of providing counselling under this section, breach any code or rule of professional ethics.

#### **Exclusion of evidence**

**269ZA.** A finding made on an investigation into a defendant's fitness to stand trial does not establish an issue estoppel against the defendant in any later (civil or criminal) proceedings, and evidence of such a finding is not admissible against the defendant in criminal proceedings against the defendant.

#### **Arrest of person who escapes from detention etc**

**269ZB.** (1) If a person who is committed to detention under this Part—

- (a) escapes from the detention; or

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(b) is absent, without proper authority, from the place of detention,

the person may be arrested without warrant, and returned to the place of detention, by a member of the police force or an authorised person.

(2) A Judge or other proper officer of a court by which a person is released on licence under this Part may, if satisfied that there are proper grounds to suspect that the person may have contravened or failed to comply with a condition of the licence, issue a warrant to have the person arrested and brought before the court.

**Part 9—Miscellaneous and procedure**

**Division 1—Punishment for certain common law offences**

**Punishment for certain offences**

**270.** (1) Any person convicted of any of the following common law offences, that is to say:

\* \* \* \* \*

(b) keeping a common bawdy house or a common ill-governed and disorderly house;

(c) any cheat or fraud punishable at common law;

\* \* \* \* \*

shall be liable to be imprisoned for a term not exceeding two years.

(2) Any person convicted of any of the following common law offences, that is to say, any conspiracy to cheat or defraud, or to extort money or goods, or falsely to accuse of any crime, or to obstruct, prevent, pervert or defeat the course of public justice, shall be liable to be imprisoned for a term not exceeding seven years.

**Division 2—Attempts**

**Attempts**

**270A.** (1) Subject to subsection (2), a person who attempts to commit an offence (whether the offence is constituted by statute or common law) shall be guilty of the offence of attempting to commit that offence.

(2) Where under a provision of any other Act, or any other provision of this Act, an attempt is constituted as an offence, this section—

(a) does not apply in relation to that offence; and

(b) does not operate to create a further or alternative offence with which a person who commits the former offence might be charged.

(3) The penalty for an attempt to which this section applies shall be as follows:

(a) in the case of attempted murder or attempted treason, the penalty shall be life imprisonment or imprisonment for some lesser term;

(b) where the penalty or maximum penalty for the principal offence (not being treason or murder) is life imprisonment, the penalty for the attempt shall be imprisonment for a term not exceeding twelve years;

(c) in any other case, the penalty for the attempt shall be a penalty not exceeding a maximum of two-thirds of the maximum penalty prescribed for the principal offence.

(4) Where the principal offence is an indictable offence, an attempt to commit that offence shall also be an indictable offence; where the principal offence is a minor indictable offence, an attempt to commit that offence shall also be a minor indictable offence; and where the principal offence is a summary offence, an attempt to commit that offence shall also be a summary offence.

### **Attempted manslaughter**

**270AB.** (1) Where—

- (a) a person attempts to kill another or is a party to an attempt to kill another; and
- (b) he would, if the attempt had been successfully carried to completion, have been guilty of manslaughter rather than murder,

he shall be guilty of attempted manslaughter.

(2) The penalty for attempted manslaughter is imprisonment for a term not exceeding twelve years.

(3) If on the trial of a person for attempted murder the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of attempted manslaughter, the jury shall acquit the accused of attempted murder but may find him guilty of attempted manslaughter.

## **Division 3—Assaults with intent**

### **Assaults with intent**

**270B.** (1) Subject to subsection (2), a person who assaults another with intent to commit an offence to which this section applies is guilty of an offence.

(2) Where under a provision of any other Act, or any other provision of this Act, an assault with intent to commit an offence to which this section applies is constituted as an offence, this section—

- (a) does not apply in relation to that offence; and
- (b) does not operate to create a further or alternative offence with which a person who commits the former offence might be charged.

(3) The penalty for assault to which this section applies shall be—

- (a) imprisonment for a term not exceeding seven years; or
- (b) imprisonment for a term not exceeding the maximum term that may be imposed for an attempt to commit the principal offence,

whichever is the greater maximum penalty.

(4) This section applies to the following offences:

- (a) an offence against the person;
- (b) theft or an offence of which theft is an element;

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- (c) an offence involving interference with, damage to, or destruction of property punishable by imprisonment for 3 years or more.

**Division 4—Preparatory conduct****Going equipped for commission of offence of dishonesty or offence against property**

**270C.** (1) A person who is, in suspicious circumstances, in possession of an article intending to use it to commit an offence to which this section applies is guilty of an offence.

Maximum penalty—

- (a) if the maximum penalty for the intended offence is life imprisonment or imprisonment for 14 years or more—imprisonment for 7 years;
- (b) in any other case—imprisonment for one-half the maximum period of imprisonment fixed for the intended offence.

(2) This section applies to the following offences:

- (a) theft (or receiving) or an offence of which theft is an element;
- (b) an offence against Part 6A (Serious criminal trespass);
- (c) unlawfully driving, using or interfering with a motor vehicle;
- (d) an offence against Part 5 Division 6 (Dishonest dealings with documents);
- (e) an offence against Part 5 Division 7 (Dishonest manipulation of machines);
- (f) an offence involving interference with, damage to or destruction of property punishable by imprisonment for 3 years or more.

(3) A person is in **suspicious circumstances** if it can be reasonably inferred from the person's conduct or circumstances surrounding the person's conduct (or both) that the person—

- (a) is proceeding to the scene of a proposed offence; or
- (b) is keeping the scene of a proposed offence under surveillance; or
- (c) is in, or in the vicinity of, the scene of a proposed offence awaiting an opportunity to commit the offence.

**Going equipped for commission of offence against the person**

**270D.** (1) A person who is armed, at night, with a dangerous or offensive weapon intending to use the weapon to commit an offence against the person is guilty of an offence.

(2) The maximum penalty for an offence against this section is—

- (a) if the offender has been previously convicted of an offence against the person or an offence against this section (or a corresponding previous enactment)—imprisonment for 10 years;
- (b) in any other case—imprisonment for 7 years.

## Division 5—Apprehension of offenders

### General power of arrest

**271.** (1) A person may, without warrant, arrest and detain a person liable to arrest and detention under this section.

(2) A person who arrests and detains another under this section must take the necessary action to have the other person delivered into the custody of a member of the police force forthwith.

(3) A person is liable to arrest and detention under this section if the person is in the act of committing, or has just committed—

- (a) an indictable offence; or
- (b) theft (whether the theft is a summary or indictable offence); or
- (c) an offence against the person (whether the offence is summary or indictable); or
- (d) an offence involving interference with, damage to or destruction of property (whether the offence is summary or indictable).

\* \* \* \* \*

### Judge's warrant for arrest of person charged

**273.** (1) Whenever it is made to appear to a judge, by affidavit or certificate, that any person is charged with any offence other than treason for which he may be prosecuted in the Supreme Court, it shall be lawful for the judge to issue a warrant and thereby to cause that person to be apprehended and brought before a judge or a justice in order to be bound, with or without two sufficient sureties, in such sum as is stated in the warrant, with condition to appear in that Court at the time mentioned in the warrant and to answer the information.

(2) Where any such person neglects or refuses to become so bound, it shall be lawful for the judge or justice to commit him to gaol until he becomes so bound or is discharged by order of a judge.

## Division 6—Informations

### Interpretation

**274.** (1) The provisions of this Part relating to informations shall apply to any other criminal pleading with any modification made by rules under this Part.

(2) In this Part (except in sections 275 and 276)—

"**information**" means any criminal information presented to the Supreme Court or the District Court.

### Information may be presented in the name of the Director of Public Prosecutions

**275.** (1) Any person may be put upon his trial at any criminal sessions of the Supreme Court or District Court, for any offence, on an information presented to the Court in the name and by the authority of the Director of Public Prosecutions.

(2) Every rule of law and enactment for the time being in force in the State relating to indictments and to the manner and form of pleading thereto and to the trial thereon, and generally to all matters subsequent to the finding of the indictment, shall apply to any information so presented.

**Director of Public Prosecutions may decline to prosecute**

**276.** (1) Subject to subsection (2), in every case in which any person has been lawfully committed for trial at any criminal sessions, it shall be the duty of the Director of Public Prosecutions to present, or cause to be presented, an information against that person.

(2) If on examining the depositions taken in any case the Director of Public Prosecutions is of the opinion that there is no reasonable ground for putting the person committed for trial upon his trial for any offence, he may so certify, in the form contained in Schedule 1, to the judges of the Supreme Court or the District Court, any one of whom may, if the accused person is in prison, thereupon, by warrant in the form contained in Schedule 2, direct the Director of Correctional Services, or the gaoler in whose custody the person is, immediately to discharge him from imprisonment in respect of the offence mentioned in that warrant and, where the person mentioned in the certificate is on bail, the recognizances of bail taken from him and his sureties shall, on the Director of Public Prosecutions so certifying, become void.

**General provisions as to informations**

**277.** (1) Every information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as are necessary for giving reasonable information as to the nature of the charge.

(2) Notwithstanding any rule of law or practice, an information shall, subject to the provisions of this Act, not be open to objection in respect of its form or contents if it is framed in accordance with the rules under this Part.

**Joinder of charges**

**278.** (1) Subject to the provisions of this Act, charges for two or more offences may be joined in the same information if those charges are founded on the same facts, or form, or are a part of, a series of offences of the same or a similar character.

(2) Where before trial, or at any stage of a trial, the court is of the opinion that an accused person may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same information or that, for any other reason, it is desirable to direct that an accused person should be tried separately for any one or more offences charged in an information, the court may order a separate trial of any count or counts of the information.

(3) This section does not affect any other provision of this Act or any other enactment permitting more than one charge to be joined in the same information.

**Joint trial of accessories**

**279.** Any number of accessories at different times to any offence and any number of receivers at different times of property which has been stolen at one time may be charged with substantive offences in the same information and may be tried together, notwithstanding that the principal offender is not included in the same information or is not amenable to justice.



**Coin and bank notes may be described simply as money**

**280.** (1) In every information in which it is necessary to mention or make any allegation as to any money or any note of any bank, it is sufficient to describe the money or bank note simply as money, without specifying any particular coin or bank note.

(2) Any such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank note although the particular species of coin of which the amount was composed or the particular nature of the bank note is not proved and, in cases of embezzlement and obtaining money or bank notes by false pretences, by proof that the offender embezzled or obtained any coin or any bank note, or any portion of the value thereof, although the coin or bank note was delivered to him in order that some part of its value should be returned to the party delivering it, or to some other person, and that part has been returned accordingly.

**Objections to informations, amendments and postponement of trial**

**281.** (1) Every objection to any information for any formal defect apparent on the face thereof shall be taken by demurrer, or motion to quash the information, before the jury is empanelled and not afterwards.

(2) When before trial, or at any stage of a trial, it appears to the court that any information is defective or that there is any variation between any particular stated therein and the evidence offered in proof thereof, the court shall make such order for the amendment of the information as the court thinks necessary to meet the circumstances of the case unless, having regard to the merits of the case, the required amendment cannot be made without injustice.

(3) When an information is so amended, a note of the order for amendment shall be endorsed on the information and the information shall be treated, for the purposes of the trial and all proceedings in connection therewith, as having been presented in the amended form.

(4) When before trial, or at any stage of a trial, the court is of the opinion that the postponement of the trial of a person accused is expedient as a consequence of the exercise of any power of the court under this Act to amend an information or to order a separate trial of a count, the court shall make such order as to the postponement of the trial as appears necessary.

(5) When an order of the court is made for a separate trial or for the postponement of a trial—

(a) if the order is made during a trial, the court may order that the jury be discharged from giving a verdict on the count or counts the trial of which is postponed or on the whole information, as the case may be; and

(b) the procedure on the separate trial of a count shall be the same in all respects as if the count had been presented as a separate information and the procedure on the postponed trial shall be the same in all respects (if the jury has been discharged) as if the trial had not commenced; and

(c) the court may make such order as to admitting the accused person to bail and as to the enlargement of recognizances and otherwise as the court thinks fit.

(6) Any power of the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes.

## Division 7—Saving and transitional provisions

### Saving provisions

**282.** Nothing in this Part—

- (a) affects the law or practice relating to the jurisdiction of any court or the place where an accused person can be tried; or
- (b) (except where expressly provided) prejudices or diminishes in any respect the obligation to establish, by evidence according to law, any acts, omissions or intentions which are legally necessary to constitute the offence with which the accused person is charged; or
- (c) otherwise affects the laws of evidence in criminal cases.

### Rules of court

**283.** (1) Subject to subsection (2), the rules contained in Schedule 3, with any variation thereof or addition thereto under this section, shall have effect as if enacted in this Act.

(2) Rules of court made under the *Supreme Court Act 1935* may revoke, vary or add to the rules contained in the Schedule or any other rules for the time being in force under this Part.

## Division 8—Pleas and proceedings on trial

### Plea of not guilty and refusal to plead

**284.** (1) Any person arraigned on any information who pleads not guilty thereto shall, by that plea, without any further form, be taken to have put himself upon the country for trial; and the court shall, in the usual manner, proceed to the trial of that person accordingly.

(2) If any person, being so arraigned, stands mute, of malice, or is dumb, or will not answer directly to the information, it shall be lawful for the court to order a plea of not guilty to be entered on his behalf and the plea so entered shall have the same effect as if he had actually pleaded not guilty.

### Form of plea of *autrefois convict* or *autrefois acquit*

**285.** In any plea of *autrefois convict* or of *autrefois acquit*, it is sufficient for the accused to allege that he has been lawfully convicted or acquitted, as the case may be, of the offence charged in the information, without specifying the time or place of the previous conviction or acquittal.

### Certain questions of law may be determined before jury empanelled

**285A.** A court before which a person has been arraigned may, if it thinks fit, hear and determine any question relating to the admissibility of evidence, and any other question of law affecting the conduct of the trial, before the jury is empanelled.

### Conviction on plea of guilty of offence other than that charged

**285B.** Where a person arraigned on an information pleads not guilty of an offence charged in the information but guilty of some other offence of which he might be found guilty upon trial for the offence charged, and the plea of guilty is accepted by the prosecution, then (whether or not the two offences are separately charged in distinct counts)—

- (a) the person may be convicted on the plea of guilty and his conviction shall operate as an acquittal of the offence charged; and

- (b) if he has been placed in the charge of the jury, the jury shall be discharged without being required to give a verdict (unless the trial is to continue in respect of further counts that are unaffected by the plea); and
- (c) he shall be liable to be punished for the offence of which he has been convicted in the same manner as if he had been found guilty of the offence upon trial for the offence charged.

**Notice of certain evidence to be given**

**285C.** (1) Subject to subsection (2), if a defendant proposes to introduce evidence of alibi at the trial of an indictable offence in the Supreme Court or the District Court, prior notice of the proposed evidence must be given.

(2) Notice of proposed evidence of alibi is not required under subsection (1) if the same evidence, or evidence to substantially the same effect, was received at the preliminary examination at which the defendant was committed for trial.

(3) The notice—

(a) must be in writing;

(b) must contain—

- (i) a summary setting out with reasonable particularity the facts sought to be established by the evidence; and
- (ii) the name and address of the witness by whom the evidence is to be given; and
- (iii) any other particulars that may be required by the rules;

(c) must be given within seven days after the defendant is committed for trial;

(d) must be given by lodging the notice at the office of the Director of Public Prosecutions or by serving the notice by post on the Director of Public Prosecutions.

(4) Non-compliance with this section does not render evidence inadmissible but the non-compliance may be made the subject of comment to the jury.

(5) Except by leave of the court, evidence in rebuttal of an alibi shall not be adduced after the close of the case for the prosecution.

(6) Leave shall be granted under subsection (5) where the defendant gives or adduces evidence of alibi in respect of which—

(a) no notice was given under this section; or

(b) notice was given but not with sufficient particularity,

(but this section does not limit the discretion of the court to grant such leave in any other case).

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(7) In any legal proceedings, a certificate apparently signed by the Director of Public Prosecutions certifying receipt or non-receipt of a notice under this section, or any matters relevant to the question of the sufficiency of a notice given by a defendant under this section, shall be accepted, in the absence of proof to the contrary, as proof of the matters so certified.

(8) In this section—

\* \* \* \* \*

"**evidence of alibi**" means evidence given or adduced, or to be given or adduced, by a defendant tending to show that he was in a particular place or within a particular area at a particular time and thus tending to rebut an allegation made against him either in the charge on which he is to be tried or in evidence adduced in support of the charge at the preliminary examination at which he was committed for trial.

**Inspection and copies of depositions**

**286.** Every accused person shall be entitled—

- (a) at the time of his trial, to inspect, without fee or reward, all depositions taken against him which are in the custody of the court;
- (b) at any time before his trial, to have a copy of all depositions taken against him from the person having the lawful custody thereof, on payment of such fee as the court or a judge may direct.

\* \* \* \* \*

**Right to counsel**

**288.** A person charged with an offence may be represented by counsel.

**Right to call or give evidence**

**288A.** (1) A person charged with an offence may, at the conclusion of the evidence for the prosecution, give or call evidence in his or her defence.

(2) If evidence is to be given for the defence, the defendant may, before giving or calling the evidence, address the court outlining the case for the defence.

(3) If there are two or more defendants, an address on behalf of any one of those defendants must be given before evidence is given by or on behalf of that defendant and, if the court so directs, before evidence is given by or on behalf of any of the defendants.

**Right of reply**

**288B.** (1) At the conclusion of the evidence, the prosecutor and the defendant are entitled to address the court on the evidence.

(2) The address for the prosecution is to be made before any address for the defence.

### **Postponement of trial**

**289.** (1) No person is entitled to traverse or postpone the trial of any information presented against him in any court of criminal jurisdiction but, if the court is of the opinion that any trial should, for any reason, be adjourned, it may adjourn it to any day during the current sessions, or to the next sessions, on such terms as to bail or otherwise as it thinks fit, and may respite the recognizances of the prosecutor and witnesses accordingly, in which case the prosecutor and witnesses shall be bound to attend on the day to which the trial has been adjourned without entering into any fresh recognizances for that purpose.

(2) Nothing in this section extends to any prosecution by information in the nature of a *quo warranto*.

### **Verdict for attempt where full offence charged**

**290.** If on the trial of any person charged with any offence it appears to the jury on the evidence that the accused did not complete the offence charged but that he was guilty only of an attempt to commit the offence, the jury may return as their verdict that the accused is guilty of an attempt to commit the offence charged and thereupon the accused shall be liable to be punished in the same manner as if he had been convicted on an information for such an attempt.

## **Division 9—Proceedings against corporations**

### **Proceedings against corporations**

**291.** (1) In this section—

"**representative**", in relation to a corporation, means a person appointed by the corporation to represent it for the purposes of this section.

(2) For the purposes of this section—

- (a) a representative need not be appointed under the seal of a corporation; and
- (b) a statement in writing purporting to be signed by a managing director of a corporation or by one or more of the persons having the management of the affairs of a 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 is admissible in evidence and, in the absence of evidence to the contrary, is proof that the person has been so appointed.

(3) A corporation charged with an offence may appear in the proceedings by its representative and may, by its representative, enter or withdraw a plea or make or withdraw an election.

(4) If—

- (a) a representative appears in a proceeding against a corporation for an offence; and
- (b) there is a requirement that something be done in the presence of the defendant, or be said to the defendant,

it is sufficient if that thing is done in the presence of the representative or said to the representative.

(5) The trial of a corporation may proceed in the absence of any representative of the corporation.

(6) If a corporation arraigned on an information fails to appear by a representative to enter a plea in relation to the charge, the court may order that a plea of not guilty be entered.

\* \* \* \* \*

**Division 10—Verdicts and abolition of forfeiture etc**

**Defects cured by verdict**

294. No judgment after verdict for any indictable offence shall be stayed or reversed for want of a similitur, nor by reason of any defect or irregularity in the summoning of the jurors, nor for the misnomer or misdescription of a juror, nor because any person has served as a juror who has not been returned by the sheriff as a juror.

**Forfeiture abolished**

295. (1) No confession, verdict, inquest, conviction or judgment of or for any treason or felony, or an offence formerly classified as a felony, shall cause any attainder, forfeiture or escheat.

(2) When any person is charged with treason or felony, or an offence formerly classified as a felony, the jury shall not be charged to inquire concerning his lands, tenements or goods or whether he fled for the offence.

(3) In this section—

"forfeiture" does not include any fine or penalty imposed by way of sentence.

\* \* \* \* \*

**Division 11—Costs, witness fees and compensation**

**Fees and compensation**

297. (1) The court before which any person is tried, or before which he is committed or bailed to appear for trial, for any indictable offence may order payment of reasonable fees to the witnesses for the prosecution to compensate them for expenses incurred and for their trouble and loss of time in attending before the examining magistrate or justice and in attending the trial and, where there is no trial, in attending the court in good faith in obedience to a recognizance or subpoena.

(2) The examining magistrate or justice may certify the amount which he considers reasonable for the compensation of a witness for his attendance at the preliminary examination and shall forward his certificate to the court.

(2a) This section does not derogate from the powers conferred on an examining magistrate or justice under the *Justices Act 1921* to order payment of any fees or compensation to witnesses in the course, or at the conclusion, of a preliminary examination.

(3) The court may, at the request of any witness for the defence, certify that the witness ought to be paid his expenses and in that case the amount to be paid to the witness shall be the same, and shall be ascertained and paid in the same manner, as if he had been a witness for the prosecution.

(4) Any court or judge may, in addition to any fees, order the payment of such sum of money as it or he considers reasonable to compensate any person who appears to the court or judge to have been active in or towards the apprehension of any person charged with an indictable offence, for his expenses, exertions and loss of time.

\* \* \* \* \*

(6) Orders for witness fees and other amounts directed to be paid pursuant to this section shall be forthwith made out and delivered by the proper officer to the sheriff, who shall pay the specified amounts to the persons named in the orders out of any moneys in his hands or voted to him for that purpose. If such an order is endorsed "PAY BEARER", or words to that effect, and signed by the person named therein and witnessed by an independent witness, the sheriff shall pay the amount set out therein to the bearer, and that payment shall effectually discharge him from any claims by the person named in the order or any person claiming by, through or under him.

(7) The Governor may make regulations prescribing—

- (a) the rates of expenses and compensation to be allowed or ordered by the court to witnesses or to be certified by the examining magistrate or justice;
- (b) the amount which may be paid to any person who has been active in or towards the apprehension of any person charged with an indictable offence;
- (c) the forms of certificates to be granted by the examining magistrate or justice and the details to be inserted therein.

(8) Such regulations shall not prevent the court from making a special allowance to any person who appears to the court to have shown extraordinary courage, diligence or exertion in or towards the apprehension of any person charged with an indictable offence.

\* \* \* \* \*

## **Division 12—Orders relating to firearms and other offensive weapons**

### **Orders as to firearms and offensive weapons**

**299A.** (1) Where a court is satisfied by evidence adduced before it that—

- (a) a firearm or other offensive weapon was used in the commission of an offence; or
- (b) the commission of an offence was facilitated by the use of a firearm or other offensive weapon; or
- (c) in the circumstances it is expedient that an order or orders be made under this section,

the court may make any one or more of the following orders;

- (d) an order that the firearm or other weapon be forfeited to the Crown;
- (e) an order that the firearm or other weapon be delivered into the custody of the Commissioner of Police for a period specified in the order or until further order;
- (f) any other order as to the custody or disposition of the firearm;

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(g) an order prohibiting any person or persons specified in the order from using or possessing a firearm or offensive weapon of any kind, or of a kind specified in the order, for a period specified in the order or until further order.

(2) Upon application by a person with a proper interest in the matter, the court may vary or revoke an order under subsection (1)(e), (f) or (g).

(3) Where an application is made under subsection (2), the court shall not vary or revoke the order in respect of which the application is made unless it is satisfied that it is not inimical to the safety of the community to do so.

(4) A person who contravenes or fails to comply with an order under this section shall be guilty of an offence cognizable by the court by which the order was made and liable to a penalty not exceeding five hundred dollars or imprisonment for twelve months.

(5) Subsection (4) shall not derogate from the power of a court to punish for contempt.

(6) In this section—

"**court**" means the Supreme Court, the District Court or a court of summary jurisdiction and includes any judge or special magistrate or justices entitled to preside over or constitute the court.

\* \* \* \* \*

**Division 13—Abolition of presumption of marital coercion**

**Abolition of presumption of marital coercion**

**328A.** Any presumption of law that an offence committed by a wife in the presence of her husband is committed under the coercion of the husband is abolished; but, on a charge against a wife for any offence other than treason or murder, it shall be a good defence to prove that the offence was committed in the presence, and under the coercion, of the husband.

**Division 14—Provision as to persons convicted of offence**

**Provision as to persons convicted of an offence**

**329.** A person who has been convicted of any offence shall not, by reason of that conviction, suffer any legal disability except such as is prescribed by an Act of the State or the Commonwealth.

**Division 15—Overlapping offences**

**Overlapping offences**

**330.** No objection to a charge or a conviction can be made on the ground that the defendant might, on the same facts, have been charged with, or convicted of, some other offence.

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**Part 11—Cases stated and appeals**

**Division 1—Preliminary**

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**Interpretation**

**348.** In this Part, unless inconsistent with the context or subject matter—

"**ancillary order**" means—

- (a) a forfeiture order under section 8 or 9 of the *Criminal Assets Confiscation Act 1996*; or
- (b) a restraining order under section 15 of the *Criminal Assets Confiscation Act 1996*; or
- (ba) a restraining order issued under section 19A of the *Criminal Law (Sentencing) Act 1988*; or
- (c) an order for the restitution of property under section 52 of the *Criminal Law (Sentencing) Act 1988*; or
- (d) an order for compensation under section 53 of the *Criminal Law (Sentencing) Act 1988*,

made by the District Court, or by the Supreme Court in the exercise of its criminal jurisdiction at first instance;

"**appellant**" includes a person who has been convicted and desires to appeal under this Act;

"**conviction**" in relation to a case where a court finds a person guilty of an offence but does not record a conviction, includes the formal finding of guilt;

"**court**" means the Supreme Court or the District Court;

"**Full Court**" means the Supreme Court constituted of an uneven number of judges, not being less than three;

"**information**" means an information on which a person is put upon his trial for any crime or offence at any criminal session of the Supreme Court or before any court of Oyer and Terminer and General Gaol Delivery or at any sitting of the District Court, as the case may be;

"**issue antecedent to trial**" means a question (whether arising before or at trial) as to whether proceedings on an information or a count of an information should be stayed on the ground that the proceedings are an abuse of process of the court;

"**judge**" means a judge of the Supreme Court or the District Court;

"**sentence**" includes any order of the court of trial or of the judge thereof made on, or in connection with, a conviction with reference to the convicted person, or any property, or with reference to any moneys to be paid by the person, and also includes an order under section 39 of the *Criminal Law (Sentencing) Act 1988* discharging the convicted person, without imposing a penalty, on the person entering into a bond.

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**Court to decide according to opinion of majority**

**349.** The determination of any question before the Full Court under this Act shall be according to the opinion of the majority of the members of the Court hearing the case.

\* \* \* \* \*

**Division 2—Reference of questions of law**

**Reservation of relevant questions**

**350.** (a1) In this section—

"**relevant question**" means—

- (a) a question of law; or
- (b) to the extent that it does not constitute a question of law—a question about how a judicial discretion should be exercised or whether a judicial discretion has been properly exercised.

(1) A court by which a person has been, is being or is to be tried or sentenced for an indictable offence may reserve for consideration and determination by the Full Court a relevant question on an issue—

- (a) antecedent to trial; or
- (b) relevant to the trial or sentencing of the defendant,

and the court may (if necessary) stay the proceedings until the question has been determined by the Full Court.

(2) A relevant question must be reserved for consideration and determination by the Full Court if—

- (a) the Full Court so requires (on an application under this section or under another provision of this Part<sup>1</sup>); or
- (b) the question arises in the course of a trial that results in an acquittal and the Attorney-General or the Director of Public Prosecutions applies to the court of trial to have the question reserved for consideration and determination by the Full Court.

(3) Unless required to do so by the Full Court, a court must not reserve a question for consideration and determination by the Full Court if reservation of the question would unduly delay the trial or sentencing of the defendant.

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(4) If a person is convicted, and a question relevant to the trial or sentencing is reserved for consideration and determination by the Full Court, the court of trial or the Supreme Court may release the person on bail on conditions the court considers appropriate.

<sup>1</sup> See section 352(2).

**Case to be stated by trial judge**

**351.** (1) When a court reserves a question for consideration and determination of the Full Court, the presiding judge must state a case setting out—

- (a) the question reserved; and
- (b) the circumstances out of which the reservation arises; and
- (c) any findings of fact necessary for the proper determination of the question reserved.

(2) The Full Court may, if it thinks necessary, refer the stated case back for amendment.

**Powers of Full Court on reservation of question**

**351A.** (1) The Full Court may determine a question reserved under this Part and make consequential orders and directions.

**Examples—**

The Full Court might, for example, quash an information or a count of an information or stay proceedings on an information or a count of an information if it decides that prosecution of the charge is an abuse of process.

The Full Court might, for example, set aside a conviction and order a new trial.

(2) However—

- (a) a conviction must not be set aside on the ground of the improper admission of evidence if—
  - (i) the evidence is merely of a formal character and not material to the conviction; or
  - (ii) the evidence is adduced for the defence; and
- (b) a conviction need not be set aside if the Full Court is satisfied that, even though the question reserved should be decided in favour of the defendant, no miscarriage of justice has actually occurred; and
- (c) if the defendant has been acquitted by the court of trial, no determination or order of the Full Court can invalidate or otherwise affect the acquittal.

**Costs**

**351B.** (1) If a question is reserved on application by the Attorney-General or the Director of Public Prosecutions on an acquittal, the Crown is liable to pay the taxed costs of the defendant in proceedings for the reservation and determination of the question.

(2) If the defendant does not appear in the proceedings, the Crown must instruct counsel to present argument to the Court that might have been presented by counsel for the defendant.

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### Division 3—Appeals

#### Right of appeal in criminal cases

**352.** (1) Appeals lie to the Full Court as follows:

- (a) if a person is convicted on information—
  - (i) the convicted person may appeal against the conviction as of right on any ground that involves a question of law alone;
  - (ii) the convicted person may appeal against the conviction on any other ground with the leave of the Full Court or on the certificate of the court of trial that it is a fit case for appeal;
  - (iii) the convicted person or the Director of Public Prosecutions may appeal against sentence passed on the conviction (other than a sentence fixed by law), or a decision of the court to defer sentencing the convicted person, on any ground with the leave of the Full Court;
- (ab) if a person is tried on information and acquitted and the trial was by a judge sitting alone, the Director of Public Prosecutions may appeal against the acquittal on any ground with the leave of the Full Court;
- (b) if a court makes a decision on an issue antecedent to trial that is adverse to the prosecution, the Director of Public Prosecutions may appeal against the decision—
  - (i) as of right, on any ground that involves a question of law alone; or
  - (ii) on any other ground with the leave of the Full Court;
- (c) if a court makes a decision on an issue antecedent to trial that is adverse to the defendant—
  - (i) the defendant may appeal against the decision before the commencement or completion of the trial with the leave of the court of trial (but leave will only be granted if it appears to the court that there are special reasons why it would be in the interests of the administration of justice to have the appeal determined before commencement or completion of the trial);
  - (ii) the defendant may, if convicted, appeal against the conviction under paragraph (a) asserting as a ground of appeal that the decision was wrong.

(2) If an appeal or an application for leave to appeal is made to the Full Court under this section, the Full Court may require the court of trial to state a case on the questions raised in the appeal or proposed appeal and the matter will then be dealt with in accordance with the provisions applicable to cases stated in the same way as if the questions had been reserved.

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**Determination of appeals in ordinary cases**

**353.** (1) The Full Court on any such appeal against conviction shall allow the appeal if it thinks 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 before which the appellant was convicted should be set aside on the ground of a 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; but the Full Court may, notwithstanding that it is of the opinion that the point raised in 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.

(2) Subject to the special provisions of this Act, the Full Court shall, if it allows an appeal against conviction, quash the conviction and either direct a judgment and verdict of acquittal to be entered or direct a new trial.

(2a) On an appeal against acquittal brought by the Director of Public Prosecutions, the Full Court may exercise any one or more of the following powers:

- (a) it may dismiss the appeal;
- (b) it may allow the appeal and direct a new trial;
- (c) it may make any consequential or ancillary orders that may be necessary or desirable in the circumstances.

(3) Where a new trial is directed, the Full Court may make such order as it thinks fit for the safe custody of the appellant or for admitting him to bail.

(3a) If an appeal is brought against a decision on an issue antecedent to trial, the Full Court may exercise any one or more of the following powers:

- (a) it may confirm, vary or reverse the decision subject to the appeal; and
- (b) it may make any consequential or ancillary orders that may be necessary or desirable in the circumstances.

(4) Subject to subsection (5), on an appeal against sentence, the Full Court shall, if it thinks that a different sentence should have been passed, quash the sentence passed at the trial and pass such other sentence warranted in law (whether more or less severe) in substitution therefor as it thinks ought to have been passed, and in any other case shall dismiss the appeal.

(5) The Full Court must not increase the severity of a sentence on an appeal by the convicted person except to extend the non-parole period where the Court passes a shorter sentence.

**Powers of Court in special cases**

**354.** (1) If it appears to the Full Court that an appellant, although not properly convicted on some count or part of the information, has been properly convicted on some other count or part of the information, the Court may either affirm the sentence passed on the appellant at the trial or pass such sentence in substitution therefor as it thinks proper and as may be warranted in law by the verdict on the count or part of the information on which the Court considers that the appellant has been properly convicted.

(2) Where an appellant has been convicted of an offence and the jury could, on the information, have found him guilty of some other offence and, on the finding of the jury, it appears to the Full Court that the jury must have been satisfied of facts which proved him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.

(3) Where on the conviction of the appellant the jury has found a special verdict and the Full Court considers that a wrong conclusion has been arrived at by the court before which the appellant has been convicted on the effect of that verdict, the Full 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 in substitution for the sentence passed at the trial as may be warranted in law.

\* \* \* \* \*

**Right of appeal against ancillary orders**

**354A.** (1) A person against whom an ancillary order has been made may, in accordance with rules of court, appeal to the Full Court against that order.

(2) The Attorney-General may, in accordance with rules of court, appeal to the Full Court against an ancillary order or a decision not to make an ancillary order.

(3) An appeal under this section (whether relating to civil or criminal proceedings) may, if appropriate, be heard together with an appeal against sentence and may be brought as part of such an appeal.

(4) If an appeal against sentence and an appeal against an ancillary order are brought separately the Supreme Court may direct that they be heard together.

**Revesting and restitution of property on conviction**

**355.** (1) The operation of any order for the restitution of any property to any person, or with reference to any property or the payment of money, made on, or in connection with, a conviction on information and the operation, in case of any such conviction, of the provisions of section 24(1) of the *Sale of Goods Act 1895* as to the revesting of the property in stolen goods on conviction shall (unless the court before which the conviction takes place directs to the contrary in any case in which in its opinion the title to the property is not in dispute) be suspended—

- (a) in any case, until the expiration of ten days after the date of the conviction; and
- (b) in cases where notice of appeal or leave to appeal is given within ten days after the date of conviction, until the determination of the appeal,

and, in cases where the operation of any such order or provisions is suspended until the determination of the appeal, the order or provisions (as the case may be) shall not take effect as to the property in question if the conviction is quashed on appeal, except by the special order of the Full Court. Provision may be made by rules of court for securing the safe custody of any property pending the suspension of the operation of any such order or provisions.

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(2) The Full Court may, by order, annul or vary, or refuse to annul or vary, any order made on, or in connection with, a conviction for the restitution of any property to any person, or with reference to any property or the payment of money, whether the conviction or sentence is or is not quashed; and the order, if annulled, shall not take effect and, if varied, shall take effect as so varied.

**Jurisdiction of Full Court**

**356.** All jurisdiction and authority under any other Act in relation to questions of law arising in criminal trials which are vested in the judges of the Supreme Court or the Full Court of the Supreme Court as constituted by the *Supreme Court Act 1935* shall be vested in the Full Court for the purposes of this Act.

**Enforcement of orders**

**356A.** Where a conviction or order has been affirmed, amended or made on appeal to the Full Court under this Part, the District Court has the same authority to enforce that conviction or order as if it had not been appealed against or had been made in the first instance.

\* \* \* \* \*

**Appeal to Full Court**

**357.** (1) An appeal to the Full Court, or an application for leave to appeal to the Full Court under this Act, must be made in accordance with the appropriate rules of court.

(2) The Full Court may (either before or after the time allowed by the rules has expired) extend the time for making such an appeal or application.

\* \* \* \* \*

**Supplemental powers of Court**

**359.** For the purposes of this Act, the Full 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, the production of which appears to it necessary for the determination of the case; and
- (b) order any witnesses 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 the examination of any such witnesses to be conducted in the manner provided by rules of court before any judge of the Supreme Court or before any officer of the Supreme Court or justice of the peace or other person appointed by the Full Court for the purpose, and allow the admission of any depositions so taken as evidence before the Full Court; and
- (c) receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness and, if the appellant consents, of the husband or wife of the appellant in cases where the evidence of the husband or wife could not have been given at the trial except with such consent; and

- (d) where any question arising on the appeal involves prolonged examination of documents or accounts or any scientific or local investigation which cannot, in the opinion of the Full Court, conveniently be conducted before the Court, order the reference of the question in the manner provided by rules of court for inquiry and report to a special commissioner appointed by the Court and act on the report of any such commissioner so far as it thinks fit to adopt it; and
- (e) appoint any person with special expert knowledge to act as assessor to the Full Court in any case where it appears to the Court that such special knowledge is required for the proper determination of the case; and
- (f) exercise in relation to the proceedings of the Court any other powers which may for the time being be exercised by the Supreme Court on appeals or applications in civil matters; and
- (g) issue any warrants necessary for enforcing the orders or sentences of the Court,

but in no case shall any sentence be increased by reason of, or in consideration of, any evidence that was not given at the trial.

\* \* \* \* \*

**Right of appellant to be present**

**361.** (1) An appellant if he so desires shall, notwithstanding that he is in custody, be entitled to be present on the hearing of his appeal except where the appeal is on some ground involving a question of law alone, but in that case, and on an application for leave to appeal and on any proceedings preliminary or incidental to an appeal, he shall not be entitled to be present except where rules of court provide that he shall have the right to be present or where the Full Court gives him leave to be present.

(2) The power of the Full Court to pass any sentence under this Act may be exercised notwithstanding that the appellant is for any reason not present.

**Director of Public Prosecutions to be represented**

**362.** The Director of Public Prosecutions or counsel on his behalf shall appear for the Crown on every appeal to the Full Court under this Act, unless a private prosecutor in the case of a private prosecution undertakes the defence of the appeal, and provision shall be made by rules of court for the transmission to the Director of all such documents, exhibits and other things connected with the proceedings as he may require for the purposes of his duties under this section.

**Costs of appeal**

**363.** (1) On the hearing and determination of an appeal or new trial or any proceedings preliminary or incidental thereto under this Act, no costs shall be allowed on either side.

\* \* \* \* \*

**Admission of appellant to bail and custody when attending Court**

**364.** (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 or under the Acts regulating prisons.



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(2) The Full Court may, if it thinks fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal or, where a new trial is directed, until the commencement of the new trial.

(3) The time during which an appellant, pending the determination of his appeal or pending a new trial, is admitted to bail under this section shall not count as part of any term of imprisonment under his sentence. And, in the case of an appeal under this Act, any imprisonment of the appellant, whether it is under the sentence passed by the court of trial or the sentence passed by the Full Court, shall, subject to any directions which may be given by the Full Court, be deemed to be resumed or begin to run, as the case requires, 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 prison under the sentence.

(4) Where a question of law is reserved under this Part, this section shall apply to the person in relation to whose conviction the case is stated as it applies to an appellant.

(5) Provision shall be made under the Acts regulating prisons for the manner in which an appellant, when in custody, is to be brought to any place at which he is entitled to be present for the purposes of this Act, or to any place to which the Full Court or any judge of the Supreme Court may order him to be taken for the purposes of any proceedings of the Full Court, and for the manner in which he is to be kept in custody while absent from prison for any of those purposes.

**Duties of registrar with respect to notices of appeal etc**

**365.** (1) The registrar shall take all necessary steps for obtaining a hearing under this Act of any appeals or applications, notice of which is given to him under this Act, and shall obtain and lay before the Full Court in proper form all documents, exhibits and other things relating to the proceedings in the court before which the appellant or applicant was tried which appear necessary for the proper determination of the appeal or application.

(2) If it appears to the registrar that any notice of an appeal against a conviction does not show any substantial ground of appeal, the registrar may refer the appeal to the Full Court for summary determination and, where the case is so referred, the Court may, if it considers that the appeal is frivolous or vexatious and can be determined without adjourning it for a full hearing, dismiss the appeal summarily without calling on any persons to attend the hearing or to appear for the Crown.

(3) Any documents, exhibits or other things connected with the trial of any person on information shall be kept in the custody of the court of trial, in accordance with rules of court made for the purpose, for such time as may be provided by the rules and subject to such power as may be given by the rules for the conditional release of any such documents, exhibits or things from that custody.

(4) The registrar shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application under this Act to any person who demands them and to officers of courts, keepers of gaols and such other officers or persons as he thinks fit, and the keeper of a gaol shall cause those forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application under this Act and shall cause any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the registrar.

**Notes of evidence on trial**

**366.** (1) On any appeal, or application for leave to appeal, a transcript of the notes of the judge of the court of trial, or, where shorthand notes have been taken by direction of the judge, a transcript of the notes or any part thereof, shall be made, if the registrar so requests, and furnished to the registrar for the use of the Full Court or any judge thereof; and a transcript shall be furnished to any interested party on the payment of such charges as the Attorney-General may fix.

(2) The Attorney-General or Director of Public Prosecutions may also, if he thinks fit in any case, request a transcript of the notes to be made and furnished to him for his use.

(3) The cost of making any such transcript, where a transcript is requested to be made by the registrar, Attorney-General or Director of Public Prosecutions, shall be defrayed in accordance with scales of payment fixed for the time being by the Attorney-General out of moneys provided by Parliament for the purpose.

(4) Rules of court may make such provision as is necessary for the verification of the transcript.

**Powers which may be exercised by a judge of the Court**

**367.** The powers of the Full Court under this Act to give leave to appeal, to extend the time within 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 direct that time spent in custody by an appellant pending determination of an appeal be counted as part of a term of imprisonment may be exercised by any judge of the Supreme Court in the same manner as they may be exercised by the Full Court, and subject to the same provisions, but, 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 Full Court.

\* \* \* \* \*

**Division 5—References on petitions for mercy**

**References by Attorney-General**

**369.** Nothing in this Part affects the prerogative of mercy but the Attorney-General, on the consideration of any petition for the exercise of Her Majesty's mercy having reference to the conviction of a person on information or to the sentence passed on a person so convicted, may, if he thinks fit, at any time, either—

- (a) refer the whole case to the Full Court, and the case shall then be heard and determined by that Court as in the case of an appeal by a person convicted; or
- (b) if he desires the assistance of the judges of the Supreme Court on any point arising in the case with a view to the determination of the petition, refer that point to those judges for their opinion and those judges, or any three of them, shall consider the point so referred and furnish the Attorney-General with their opinion accordingly.

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**Part 12—Regulations**

**Regulations**

**370.** (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.

(2) Without limiting subsection (1), the regulations may impose a penalty (not exceeding a fine of \$2 500) for contravention of, or non-compliance with, a regulation.

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**Schedule 1**

In the Supreme Court. }  
Criminal Jurisdiction. }

This is to certify that I decline to file any information against A.B., a person lawfully committed for trial at the Criminal Sessions to be held at \_\_\_\_\_ upon a charge of [*state charge*]. Given under my hand this  
day of \_\_\_\_\_ 19 \_\_\_\_ .

Director of Public Prosecutions

To their Honours the Judges of the Supreme Court.

**Schedule 2**

In the Supreme Court. }  
Criminal Jurisdiction. }

Whereas A.B. is detained in your custody under a warrant upon a charge of [*as in the certificate*], and it has been certified to the Judges of this Court by the Director of Public Prosecutions that he declines to file any information against the said A.B. for the said offence, you are therefore hereby required forthwith to discharge the said A.B. from your custody under the said warrant. Given under my hand this                      day of                      19                      .

A Judge of the Supreme Court.

To the Director of Correctional Services and to the Keeper of  
Her Majesty's Prison at                      .

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**Schedule 3—Rules**

**Form of information etc**

1. (1) Informations and other criminal pleadings may be written or printed, or partly written and partly printed, and shall be on white folio foolscap paper on one side only with a quarter margin, and shall be folded lengthwise.

(2) Figures and abbreviations may be used in informations for expressing anything which is commonly expressed thereby.

(3) There shall be endorsed on the back of every information the names of the witnesses intended to be called at the trial.

(4) An information shall not be open to objection by reason only of any failure to comply with this rule.

**Form of commencement of an information**

2. The commencement of an information shall be in the following form:

SOUTH AUSTRALIA

The Queen v. A.B.

COURT OF TRIAL

[e.g., *Supreme Court, Adelaide, or Gladstone Circuit Court.*]

..... Sessions

*Information of the Director of Public Prosecutions*

A.B. is charged with the following offence (offences):

**Charges may be joined in one information**

3. Charges for any offences may be joined in the same information if those charges are founded on the same facts or form, or are a part of, a series of offences of the same or a similar character.

**Setting out of offences and counts in information**

4. (1) A description of the offence charged in an information or, where more than one offence is charged in an information, of each offence so charged, shall be set out in the information in a separate paragraph, called a count.

(2) Account of an information shall commence with a statement of the offence charged, called the statement of offence.

(3) The statement of offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence and, if the offence charged is one created by statute, shall contain a reference to the section of the statute creating the offence and, if the penalty for the offence charged is fixed by statute, may contain a reference to the section of the statute fixing the penalty.

(4) After the statement of the offence, particulars thereof shall be set out in ordinary language in which the use of technical terms shall not be necessary: Provided that where any rule of law or any enactment limits the particulars of an offence which are required to be given in an information, nothing in this rule shall require any more particulars to be given than those so required.

(5) The forms set out in the appendix to these rules, or forms conforming thereto as nearly as may be, shall be used in cases to which they are applicable and in other cases forms to the like effect, or conforming thereto as nearly as may be, shall be used, the statement of offence and the particulars of offence being varied according to the circumstances in each case.

(6) Where an information contains more than one count, the counts shall be numbered consecutively.

**Alternative offences may be stated in an information**

5. (1) Where an enactment constituting an offence states the offence to be the doing or the omission to do any one of any different acts in the alternative, or the doing or the omission to do any act in any one of any different capacities, or with any one of any different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the enactment, may be stated in the alternative in the count charging the offence.

(2) It shall not be necessary, in any count charging a statutory offence, to negative any exception or exemption from, or qualification of, the operation of the statute creating the offence.

**Description of property in an information**

6. (1) The description of property in a count in an information shall be in ordinary language and such as to indicate with reasonable clearness 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 information, it shall be sufficient to describe the property as owned by one of those persons by name with others and, if the persons owning the property are a body of persons with a collective name, such as "Inhabitants", "Trustees", "Commissioners" or "Club", or other such name, it shall be sufficient to use the collective name without naming any individual.

**Description of accused in an information**

7. The description or designation in an information of the accused person, or of any other person to whom reference is made therein, shall be such as is reasonably sufficient to identify him, without necessarily stating his correct name, or his abode, style, degree or occupation; and if, owing to the name of the person not being known or for any other reason, it is impracticable to give such a description or designation, such description or designation shall be given as is reasonably practicable in the circumstances, or the person may be described as "a person unknown".

**Description of document in an information**

8. Where it is necessary to refer to any document or instrument in an information, it shall be sufficient to describe it by any name or designation by which it is usually known, or by the purport thereof, without setting out any copy thereof.

**Description of sundry matters in an information**

9. Subject to any other provisions of these rules, it shall be sufficient to describe any place, time, thing, matter, act or omission whatsoever to which it is necessary to refer in any information in ordinary language, in such a manner as to indicate with reasonable clearness the place, time, thing, matter, act or omission referred to.

**Not necessary to state intent in an information in certain circumstances**

10. It shall not be necessary, in stating any intent to defraud, deceive or injure, to state an intent to defraud, deceive or injure any particular person, where the statute creating the offence does not make an intent to defraud, deceive or injure a particular person an essential ingredient of the offence.

**Statement of previous convictions in an information**

11. Any charge of a previous conviction may be made either by a separate information or at the end of the information by means of a statement that the person accused has been previously convicted of that offence at a certain time and place without stating particulars of that offence.

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**Schedule 10**

**Certificate of determination of question reserved**

Whereas at [*describe the court*] A.B., having been found guilty of \_\_\_\_\_ and judgment having been given that [*state the substance*], the court reserved a certain question of law for the consideration of the Full Court and execution was respited in the meantime.

This is to certify that the Full Court having considered the said question of law on the \_\_\_\_\_ day of \_\_\_\_\_ has decided that the said judgment should be annulled and you are therefore required forthwith to discharge the said A.B. from your custody.

(Signed)

Clerk of Arraignment.

To the Director of Correctional Services and all others whom it may concern.



## Schedule 11—Abolition of certain offences

### Certain common law offences abolished

1. The following common law offences are abolished:

- (1) compounding an offence; and
- (2) misprision of felony; and
- (3) maintenance, including champerty; and
- (4) embracery; and
- (5) interference with witnesses; and
- (6) escape; and
- (7) rescue; and
- (8) bribery or corruption in relation to judges or judicial officers; and
- (9) bribery or corruption in relation to public officers; and
- (10) buying or selling of a public office; and
- (11) obstructing the exercise of powers conferred by statute; and
- (12) oppression by a public officer; and
- (13) breach of trust or fraud by a public officer; and
- (14) neglect of duty by a public officer; and
- (15) refusal to serve in public office; and
- (16) forcible entry and forcible detainer; and
- (17) riot; and
- (18) rout; and
- (19) unlawful assembly; and
- (20) affray; and
- (21) challenges to fight; and
- (22) public nuisance; and
- (23) public mischief; and
- (24) eavesdropping; and
- (25) being a common barrator, a common scold or a common night walker; and
- (26) criminal libel, including obscene or seditious libel; and
- (27) publicly exposing one's person; and
- (28) indecent exhibitions; and
- (29) spreading infectious disease.

### Certain offences under Imperial law abolished

2. An Act of the Imperial Parliament has no further force or effect in this State to the extent that it enacts an offence of a kind referred to in clause 1.

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**Special provisions relating to maintenance and champerty**

3. (1) Liability in tort for conduct constituting maintenance or champerty at common law is abolished.

(2) The abolition of criminal and civil liability for maintenance and champerty does not affect—

- (a) any civil cause of action accrued before the abolition;
- (b) any rule of law relating to the avoidance of a champertous contract as being contrary to public policy or otherwise illegal;
- (c) any rule of law relating to misconduct on the part of a legal practitioner who is party to or concerned in a champertous contract or arrangement.

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## APPENDIX 1

## THE TREASON ACT 1351

The Act 25 Edward III Stat. 5, c 2: "A Declaration which Offences shall be adjudged Treason" reads as follows:

ITEM, Whereas divers Opinions have been before this Time *in what Case Treason shall be said, and in what not*; The King, at the Request of the Lords and of the Commons, hath made a Declaration in the Manner as hereafter followeth; that is to say, When a Man doth compass or imagine the Death of our Lord the King, or of our Lady his Queen, or of their eldest Son and Heir; or if a Man do violate the King's Companion, or the King's eldest Daughter unmarried, or the Wife of the King's Eldest Son and Heir; *or if a Man do levy War against our Lord the King in his Realm*, or be adherent to the King's Enemies in his Realm, giving to them Aid and Comfort, in the Realm, or elsewhere, *and thereof be probably attainted of open Deed by the People of their Condition...* And if a Man slea the Chancellor, Treasurer, or the King's Justices of the one Bench or the other, Justices in Eyre, or Justices of Assize and all other Justices assigned to hear and determine, being in their Places, doing their Offices. And it is to be understood, that in the Cases above rehearsed, that ought to be judged Treason which extends to our Lord the King, and his Royal Majesty: And of such Treason the Forfeiture of the Escheats pertaineth to our Sovereign Lord, as well of the Lands and Tenements holden of other, as of himself... *And because that many other like Cases of Treason may happen in Time to come, which a Man cannot think nor declare at this present Time; it is accorded, That if any other Case, supposed Treason, which is not above specified, doth happen before any Justices, the Justices shall tarry without any going to Judgment of the Treason till the Cause be shewed and declared before the King and his Parliament, whether it ought to be judged Treason or other Felony.* And, if percase any Man of this Realm, ride armed covertly or secretly, with Men of Arms against any other, to slay him, or rob him, or take him, or retain him till he hath made Fine or Ransom for to have his Deliverance, it is not the Mind of the King nor his Council, that in such Case it shall be judged Treason, but shall be judged Felony or Trespass, according to the Laws of the Land of old Time used, and according as the Case requireth. And if in such Case, or other like, before this Time any Justices have judged Treason, and for this Cause the Lands and Tenements have come into the King's Hands as Forfeit, the chief Lords of the Fee shall have the Escheats of the Tenements holden of them, whether that the same Tenements be in the King's Hands, or in others, by Gift or in other Manner; saving always to our Lord the King the year, and the Waste, and the Forfeitures of Chattles, which pertain to him in the Cases above named; and that the Writs of *Scire facias* be granted in such Case against the Land-Tenants without other original, and without allowing the Protection of our Lord the King, in the said Suit; and that of the Lands which be in the King's Hands, Writs be granted to the Sherrif of the Counties where the Lands be, to deliver them out of the King's Hands without Delay.

A Uxint pur ceo qe diverses opinions ount este einz ces heures qen cas quant il avient doit estre dit treson & en quel cas noun le Roi a la requeste des Seignurs & de la Communalte ad fait declarissement qe ensuit cest assavoir Quant homme fait compasser ou imaginer la mort nostre Seigneur le Roi ma dame sa compaignie ou de lour fitz primer & heir ou si homme violast la compaignie le Roi ou leinesce fill le Roi nient marie ou la compaignie leine fitz & heir du Roi & si homme leve de guerre contre nostre dit Seigneur le Roi en son Roialme ou soit aherdant as enemys nostre Seigneur le Roi en le Roialme donant a eux eid ou confort en son Roialme ou par aillours & de ceo provablement soit atteint de overt faite par gentz de lour condition... & si homme tuast Chancellor Tresorer ou Justice nostre Seigneur le Roi del un Baunk ou del autre Justice en Eir & des assises & toutes autres Justices assignez a oier & terminer esteiantz en leurs places en fesantz leurs offices. Et fait a entendre qen les cases suisnomez doit estre ajugge treson qe sestent a nostre Seigneur le Roi & a sa roial majeste & de tiele manere de treson la forfeiture des eschetes appartient a nostre Seigneur le Roi sibien des terres & tenemenz tenuz des autres come de lui meismes... Et pur ceo qe plusurs autres cases de semblable treson purront escheer en temps a venir queux homme ne purra penser ne declarer en present Assentu est qe si autre cas supposee treson qe nest especifie paramount aviegne de novel devant ascunes Justices demoerge la Justices saunz aler au juggement de treson tanqe par devant nostre Seigneur le Roi en son parlement soit le cas monstree & desclarre le que ceo doit estre ajugge treson ou autre felonie. Et si par cas ascun homme de cest roialme chivache arme descovert ou secrement od gentz armees contre ascun autre pur lui tuer ou dérober ou pur lui prendre & retenir tanqil face fyn ou raunceon pur sa deliverance avoir nest pas lentent du Roi & de son conseil qe en tiel cas soit ajugge treson einz soit ajugge felonie ou trespass solonc la lei de la terre auncienement usee & solonc ceo qe le cas demand. Et si en tieu cas ou autre semblable devant ces heures ascune Justice eit ajugge treson & par celle cause les terres & tenemenz soient devenus en la main nostre Seigneur le Roi come forfaitz eient les chiefs Seignures de fee leurs eschetes des tenemenz de eux tenuz le quel qe les tenemenz soient en la main nostre Seigneur le Roi ou en la main des autres par donn ou en autre manere Sauvant totefoitz a nostre Seigneur le Roi lan & le wast & autres forfaitures des chateux qe a lui attenent en les cases suisnomes & qe briefs de Scire facias vers les terres tenantz soient grantez en tieu cas saunz autre originale & saunz allower la protection nostre Seigneur le Roi en la dite seute & qe de les terres qe sont en la main le Roi soit grante brief as viscontes des countees la ou les terres serront de ostier la main le Roi saunz outre delae.

THE TREASON ACT 1795

The Act 36 George III C. 7 reads as follows:

An Act for the Safety and Preservation of His Majesty's Person and Government against treasonable and seditious Practices and Attempts.—[18th December 1795.]

WE, your Majesty's most dutiful and loyal Subjects, the Lords Spiritual and Temporal, and Commons, of *Great Britain*, in this present Parliament assembled, duly considering the daring Outrages offered to your Majesty's most Sacred Person, in your Passage to and from your Parliament at the Opening of this present Session, and also the continued Attempts of wicked and evil-disposed Persons to disturb the Tranquility of this your Majesty's Kingdom, particularly by the Multitude of seditious Pamphlets and Speeches daily printed, published, and dispersed, with unremitted Industry, and with a transcendent boldness, in Contempt of your Majesty's Royal Person and Dignity, and tending to the Overthrow of the Laws, Government, and happy Constitution of these Realms, have judged that it is become necessary to provide a further Remedy against all such treasonable and seditious Practices and Attempts: We, therefore, calling to Mind the good and wholesome Provisions which have at different Times been made by the Wisdom of Parliament for the averting such Dangers, and more especially for the Security and Preservation of the Persons of the Sovereigns of these Realms, do most humbly beseech your Majesty that it may be enacted; and be it enacted by the King's most Excellency Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That if any Person or Persons whatsoever, after the Day of the passing of this Act, during the natural Life of our most Gracious Sovereign Lord the King, (whom Almighty God preserve and bless with a long and prosperous Reign,) and until the End of the next Session of Parliament after a Demise of the Crown, shall, within the Realm or without, compass, imagine, invent, devise, or intend Death or Destruction, or any bodily Harm tending to Death or Destruction, Maim or Wounding, Imprisonment or Restraint, of the person of the same our Sovereign Lord the King, his Heirs and Successors, or to deprive or depose him or them from the Style, Honour, or Kingly Name of the Imperial Crown of this Realm, or of any other of his Majesty's Dominions or Countries; or to levy War against his Majesty, his Heirs and Successors, within this Realm, in order, by Force or Constraint, to compel him or them to change his or their Measures or Counsels, or in order to put any Force or Constraint upon, or to intimidate, or overawe, both Houses, or either House of Parliament; or to move or stir any Foreigner or Stranger with Force to invade this Realm, or any other his Majesty's Dominions or Countries, under the Obeisance of his Majesty, his Heirs and Successors; and such Compassings, Imaginations, Inventions, Devices, or Intentions, or any of them, shall express, utter or declare, by publishing any Printing or Writing, or by any overt Act or Deed; being legally convicted thereof, upon the Oaths of two lawful and credible Witnesses, upon Trial, or otherwise convicted or attainted by due Course of Law, then every such Person and Persons, so as aforesaid offending, shall be deemed, declared, and adjudged to be a Traitor and Traitors, and shall suffer Pains of Death, and also lose and forfeit as in Cases of High Treason.

II. And be it further enacted by the Authority aforesaid, That if any Person or Persons within that Part of *Great Britain*, called *England*, at any Time from and after the Day of passing this Act, during three Years from the Day of passing this Act, and until the End of the then next Session of Parliament, shall maliciously and advisedly, by Writing, Printing, Preaching, or other Speaking, express, publish, utter, or declare any Words or Sentences to incite or stir up the People to Hatred or Contempt of the Person of his Majesty, his Heirs or Successors, or the Government and Constitution of this Realm, as by Law established, then every such Person and Persons, being thereof legally convicted, shall be liable to such Punishment as may by Law be inflicted in Cases of High Misdemeanours; and if any Person or Persons shall, after being so convicted, offend a second Time, and be thereupon convicted, before any Commission of Oyer and Terminer, or Gaol Delivery, or in his Majesty's Court of King's Bench, such Person or Persons may, on such second Conviction, be adjudged, at the Discretion of the Court, either to suffer such Punishment as may now by Law be inflicted in Cases of High Misdemeanours, or to be banished this Realm, or to be transported to such Place as shall be appointed by his Majesty for the Transportation of Offenders; which Banishment or Transportation shall be for such Term as the Court may appoint, not exceeding seven Years.

III. And be it further enacted, That if any Offender or Offenders, who shall be so ordered by any such Court as aforesaid to be banished the Realm, or transported beyond the Seas, in Manner aforesaid, shall be afterwards at large within any Part of the Kingdom of *Great Britain*, without some lawful Cause, before the Expiration of the Term for which such Offender or Offenders shall have been ordered to be banished or transported beyond the Seas as aforesaid, every such Offender being so at large as aforesaid, being thereof lawfully convicted, shall suffer Death, as in Cases of Felony without Benefit of Clergy; and such Offender or Offenders may be Tried, either before Justices of Assize, Oyer and Terminer, Great Sessions, or Gaol Delivery, for the County, City, Liberty, Borough, or Place, where such Offender or Offenders shall be apprehended and taken, or from whence he, she, or they was or were ordered to be banished or transported; and the Clerk of Assize, Clerk of the Peace, or other Clerk or Officer of the Court, having the Custody of the Records where such Orders of Banishment or Transportation shall be made, shall, at the Request of the Prosecutor, or any other Person on his Majesty's Behalf, make out and give a Certificate in Writing, signed by him, containing the Effect and Substance only (omitting the formal Part) of every Indictment and Conviction of such Offender or Offenders, and of the Order for his, her, or their Banishment or Transportation, to the Justices of Assize, Oyer and Terminer, Great Sessions, or Gaol Delivery, where such Offender or Offenders shall be indicted (not taking for the same more than two Shillings and six Pence); which Certificate shall be sufficient Proof of the Conviction and Order for Banishment or Transportation of such Offender or Offenders.

**Criminal Law Consolidation Act 1935**

IV. Provided always, That no Person or Persons, by virtue of this present Act, shall for any Misdemeanour incur any the Penalties hereinbefore mentioned, unless he, she, or they be prosecuted within six Calendar Months next after the Offence committed, and the Prosecution brought to Trial or Judgment within the first Term, Sittings, Assizes, or Sessions in which, by the Course of the Court wherein such Prosecution shall be depending, the Prosecutor could bring on such Trial, or cause such Judgment to be entered, or in the Term, Sittings, Assizes, or Session which shall next ensue, unless the Court in which such Prosecution shall be depending, or before which such Trial ought to be had, shall, on special Ground stated by Motion in open Court, think fit to enlarge the Time for the Trial thereof, or unless the Defendant shall be prosecuted to or towards an Outlawry; and that no Person shall, upon Trial, be convicted by virtue of this Act, for any Misdemeanour, but by the Oaths of two credible Witnesses.

V. Provided always, and be it further enacted, That all and every Person or Persons that shall at any Time be accused, or indicted, or prosecuted, for any Offence made or declared to be Treason by this Act, shall be entitled to the Benefit of the Act of Parliament, made in the seventh Year of his late Majesty King *William* the Third, intituled, *An Act for regulating of Trials in Cases of Treason and Misprision of Treason*; and also to the Provisions made by another Act of Parliament, passed in the seventh Year of her late Majesty Queen *Anne*, intituled, *An Act for improving the Union of the two Kingdoms*.

VI. Provided also, and be it enacted, That nothing in this Act contained shall extend, or be construed to extend, to prevent or affect any Prosecution by Information or Indictment at the Common Law, for any Offence within the Provisions of this Act, unless the Party shall have been first prosecuted under this Act.

**THE TREASON ACT 1817**

The Act 57 George III C. 6 reads as follows:

An Act to make perpetual certain Parts of an Act of the Thirty-sixth Year of His present Majesty, for the Safety and Preservation of His Majesty's Person and Government against Treasonable and Seditious Practices and Attempts; and for the Safety and Preservation of the Person of His Royal Highness The Prince Regent against Treasonable Practices and Attempts.—[17th March 1817.]

WHEREAS by an Act passed in the Thirty sixth Year of His present Majesty's Reign, intituled *An Act for the Safety and Preservation of His Majesty's Person and Government against Treasonable and Seditious Practices and Attempts*, it was amongst other Things enacted, that if any Person or Persons whatsoever, after the Day of the passing of that Act, during the natural Life of His Majesty, and until the End of the next Session of Parliament after the Demise of the Crown, should, within the Realm or without, compass, imagine, invent, devise or intend Death or Destruction, or any bodily Harm tending to Death or Destruction, Maim or Wounding, Imprisonment or Restraint of the Person of His Majesty, His Heirs and Successors, or to deprive or depose Him or them from the Stile, Honour or Kingly Name of the Imperial Crown of this Realm, or of any other of His Majesty's Dominions or Countries, or to levy War against His Majesty, His Heirs and Successors, within this Realm, in order by Force or Constraint to compel Him or them to change His or their Measures or Counsels, or in order to put any Force or Constraint upon or to intimidate or overawe both Houses or either House of Parliament, or to move or stir any Foreigner or Stranger with Force to invade this Realm or any other His Majesty's Dominions or Countries under the Obeisance of His Majesty, His Heirs and Successors, and such Compassings, Imaginations, Inventions, Devices or Intentions, or any of them, should express, utter or declare, by publishing any Printing or Writing, or by any overt Act or Deed, being legally convicted thereof upon the Oaths of Two lawful and credible Witnesses upon Trial, or otherwise convicted or attainted by due Course of Law, then every such Person and Persons so as aforesaid offending should be deemed, declared and adjudged to be a Traitor and Traitors, and should suffer Pains of Death, and also lose and forfeit as in cases of High Treason: And Whereas it is necessary and expedient that such of the Provisions of the said Act as would expire at the End of the next Session of Parliament after the Demise of the Crown should be further continued and made perpetual; Be it therefore enacted by The King's Most Excellent Majesty, and by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all and every the hereinbefore recited Provisions which relate to the Heirs and Successors of His Majesty, the Sovereigns of these Realms, shall be and the same are hereby made perpetual.

II. And Whereas, in consequence of the daring Outrages offered to the Person of His Royal Highness the Prince Regent of the United Kingdom of *Great Britain and Ireland*, in the Exercise and Administration of the Royal Power and Authority to the Crown of these Realms belonging, in His Passage to and from the Parliament, at the Opening of this present Session, it is expedient, for the Security and Preservation of the Person of the same His Royal Highness The Prince Regent, to extend certain of the Provisions of the said Act; Be it therefore enacted, That if any Person or Persons whatsoever, after the Day of passing this Act, during the Period in which His Royal Highness The Prince Regent shall remain in the Personal Exercise of the Royal Authority, shall, within the Realm or without, compass, imagine, invent, devise or intend Death or Destruction, or any bodily Harm tending to Death or Destruction, Maim or Wounding, Imprisonment or Restraint, of the Person of the same His Royal Highness The Prince Regent, and such Compassings, Imaginations, Inventions, Devises or Intentions, or any of them, shall express, utter or declare, by publishing any Printing or Writing, or by any overt Act or Deed, being legally convicted thereof upon the Oaths of Two lawful and credible Witnesses upon Trial, or otherwise convicted or attainted by due Course of Law, then every such Person and Persons so as aforesaid offending shall be deemed, declared and adjudged to be a Traitor and Traitors, and shall suffer Pains of Death, and also lose and forfeit as in cases of High Treason.

III. And Whereas it is expedient to extend the Provisions of a certain Act passed in the Thirty ninth and Fortieth Years of the Reign of His present Majesty, intituled *An Act for regulating Trials for High Treason and Misprision of Treason in certain cases*; Be it therefore enacted, That from and after the passing of this Act, all and every the Clauses, Provisions and Regulations in the said Act contained shall extend and be deemed, taken and construed to extend, to all and every case of High Treason in compassing or imagining the Death of His Royal Highness The Prince Regent, and Misprision of such Treason, where the overt Act or overt Acts which shall be alleged in the Indictment for such Offence shall be Assassination or Killing of His Royal Highness The Prince Regent, or any direct Attempt against His Life, or any direct Attempt against His Person whereby His Life may be endangered or His Person may suffer bodily Harm.

IV. Provided, and be it further enacted, That all and every Person and Persons that shall at any Time be accused, or indicted or prosecuted for any Offence made or declared to be High Treason by this Act, shall be entitled to the Benefit of the Act made in the Seventh Year of His Late Majesty King *William the Third*, intituled *An Act for regulating of Trials in Cases of Treason and Misprision of Treason*; and also to the Provisions made by another Act, passed in the Seventh Year of Her Late Majesty Queen *Anne*, intituled *An Act for improving the Union of the Two Kingdoms*; save and except in Cases of High Treason in compassing or imagining the Death of any Heir or Successor of His Majesty, or the Death of His Royal Highness The Prince Regent, and of Misprision of such Treason, where the overt Act or overt Acts of such Treason which shall be alleged in the Indictment for such Offence shall be Assassination or Killing of any Heir or Successor of His Majesty, or Assassination or Killing of His Royal Highness The Prince Regent, or any direct Attempt against the Life of any Heir or Successor of His Majesty, or any such Attempt against the Life of the Prince Regent, or any Direct Attempt against the Person of any Heir or Successor of His Majesty, or against the Person of The Prince Regent, whereby the Life of such Heir or Successor, or the Life of The Prince Regent, may be endangered, or the Person of such Heir or Successor, or of The Prince Regent, may suffer bodily Harm.

V. Provided also, and be it enacted, That nothing in this Act contained shall extend or be construed to extend to prevent or affect any Prosecution, by Information or Indictment, to which any Person or Persons would have been or would be liable if this Act had not been enacted, for any Offence within the Provisions of this Act, unless the Party shall have been first prosecuted under this Act.

VI. Provided also, and be it enacted, That the Statute of the Fifty fourth Year of His Majesty's Reign, intituled *An Act to alter the Punishment in certain Cases of High Treason*, shall have the same Effect as to Sentences and Judgments to be pronounced and awarded under this Act, as if this Act had been made and passed before the said Act of the Fifty fourth Year of His Majesty's Reign.

**Criminal Law Consolidation Act 1935****APPENDIX 2****LEGISLATIVE HISTORY****Repeals**

The *Criminal Law Consolidation Act 1935* repealed the following Acts:

An Act for adopting certain Acts of Parliament passed in the First Year of the Reign of Her Majesty Queen Victoria in the Administration of Justice in South Australia in like manner as other Laws of England are applied therein (No. 14 of 1842)

An Act for amending the Law of Evidence and Practice on Criminal Trials (No. 13 of 1867)

*Treason Felony Act 1868*

*Habitual Criminals Act 1870*

An Act to abolish Forfeitures for Treason and Felony, and to otherwise amend the law relating thereto (No. 25 of 1874)

*The Criminal Law Consolidation Act 1876*

*Conspiracy and Protection of Property Act 1878*

*The Criminal Law Consolidation Amendment Act 1885*

*The Criminal Law Amendment Act 1902*

*Habitual Criminals Amendment Act 1907*

*Criminal Law Amendment Act 1917*

*Criminal Appeals Act 1924*

*Criminal Law Amendment Act 1925*

*Criminal Law Act 1927*

*Criminal Informations Act 1929*

*Criminal Law Act 1929*

**Amendments**

The *Criminal Law Consolidation Act 1935* amended the following Acts:

*The Children's Protection Act 1899*

*Justices Act 1921*

*Maintenance Act 1926*

*Bushfires Act 1933*

**Transitional Provisions**

*(Transitional provision from Statutes Amendment (Crimes Confiscation and Restitution) Act 1991, s. 11)*

11. The amendments made by this Part apply in respect of proceedings commenced either before or after the commencement of this Part.

*(Transitional provisions from Statutes Repeal and Amendment (Courts) Act 1991, s. 22)*

22. (1) This section applies to amendments made by this Act or the *Justices Amendment Act 1991*.

(2) The following transitional provisions apply in relation to those amendments:

- (a) if the effect of the amendment is to reduce the penalty for an offence, the amendment applies whether the offence was committed before or after the amendment takes effect;
- (b) if the effect of the amendment is to increase the penalty for an offence, the amendment applies only to offences committed after it takes effect;
- (c) if the effect of the amendment is to increase or remove a time limit for commencing proceedings for an offence, the previous limit applies in respect of an offence committed before the amendment takes effect;
- (d) an amendment affecting the classification of an offence as summary or indictable does not apply in relation to an offence committed before the amendment takes effect.

*(Transitional provision from Criminal Law Consolidation (Detention of Insane Offenders) Amendment Act 1992, s. 6)*

6. (1) A person who is, immediately prior to the commencement of this Act, being kept in custody during the Governor's pleasure pursuant to section 292 or 293 of the principal Act will, on that commencement, be taken to be detained until further order of the court pursuant to the principal Act as amended by this Act.

(2) A person who is, immediately prior to the commencement of this Act, subject to a licence pursuant to section 293A of the principal Act will, on that commencement, be taken to have been released by the court on licence pursuant to the principal Act as amended by this Act.

*(Transitional provision from Criminal Law Consolidation (Appeals) Amendment Act 1995, s. 11)*

11. (1) If an information was laid in the Supreme Court or the District Court before the commencement of this Act, the amendments effected by this Act do not apply to the proceedings founded on that information or any related proceedings and the provisions of the principal Act affected by the amendments continue to apply as if the amendments had not been made.

(2) If an information is laid in the Supreme Court or the District Court on or after the commencement of this Act, the amendments effected by this Act apply to the proceedings founded on the information and any related proceedings.

*(Transitional provision from Criminal Law Consolidation (Mental Impairment) Amendment Act 1995, Sched. cl. 2)*

2. The principal Act, as amended by this Act, applies to all trials commencing after the commencement of this Act (whether the offence is alleged to have been committed before or after the commencement of this Act).

*(Transitional provision from Criminal Law Consolidation (Appeals) Amendment Act 2000, s. 4)*

4. The amendments effected by this Act only apply in relation to proceedings for offences alleged to have been committed after its commencement.

*(Transitional provision from Statutes Amendment (Courts and Judicial Administration) Act 2001, s. 8)*

8. The amendments made to the principal Act by this Part do not apply in respect of an offence committed before the commencement of this Part.

*(Transitional provision from Criminal Law Consolidation (Offences of Dishonesty) Amendment Act 2002, Sched. 1, cl. 2)*

2. (1) The principal Act as in force before the commencement of this Act applies to offences committed before the commencement of this Act.

(2) The principal Act as amended by this Act applies to offences committed on or after the commencement of this Act.

### **Legislative History**

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 3 of The Public General Acts of South Australia 1837-1975 at page 125.
- Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments in force as at 1 January 1985. A Schedule of these alterations was laid before Parliament on 12 February 1985.
- Legislative history since 3 February 1976 (**entries in bold type indicate amendments incorporated since the last reprint**) is as follows:

Section 2:	omitted under <i>Legislation Revision and Publication Act 2002</i> 5.7.03
Section 3:	amended by 83, 1976, s. 2; 115, 1976, s. 3; 107, 1981, s. 3; 49, 1984, s. 2; deleted in pursuance of the <i>Acts Republication Act 1967</i>
Section 4:	repealed by 50, 1984, s. 3(1) (Sched. 1)
Section 5(1):	redesignated as s. 5 in pursuance of the <i>Acts Republication Act 1967</i> ; redesignated as s. 5(1) by 90, 1986, s. 3(b) definition of "carnal knowledge" repealed by 83, 1976, s. 3(a) definition of "court" inserted by 69, 1986, s. 17; amended by 43, 1994, s. 4 definition of "dwelling-house" amended by 50, 1984, s. 3(1) (Sched. 1) definition of "firearm" inserted by 103, 1988, s. 3(a) definition of "local government body" inserted by 26, 2002, s. 3 definition of "offensive weapon" inserted by 80, 1999, s. 3



**Criminal Law Consolidation Act 1935**

	definition of "the Parole Board" amended by 50, 1984, s. 3(1) (Sched. 1)
	definition of "property" substituted by 90, 1986, s. 3(a)
	definition of "rape" repealed and definition of "sexual intercourse" inserted in its place by 83, 1976, s. 3(b)
	definition of "sexual intercourse" substituted by 98, 1985, s. 3; amended by 19, 1994, s. 3
Section 5(2):	repealed by 50, 1984, s. 3(1) (Sched. 1); inserted by 90, 1986, s. 3(b); substituted by 59, 1994, s. 3
Section 5A:	inserted by 115, 1976, s. 4
Section 5B:	inserted by 35, 1992, s. 4
Section 5C:	inserted by 63, 1992, s. 2; repealed by 28, 2002, s. 3
Section 5D:	inserted by 59, 1994, s. 4
	 Part 1A comprising ss. 5E - 5I and heading inserted by 28, 2002, s. 4
	 Part 2 heading:
Section 6:	amended by 59, 1994, Sched. 1
Section 7:	amended by 50, 1984, s. 3(1) (Sched. 1)
Section 8(1):	amended by 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1
Section 9:	amended by 50, 1984, s. 3(1) (Sched. 1)
Section 9(2):	amended by 59, 1994, Sched. 1
Section 10:	amended by 50, 1984, s. 3(1) (Sched. 1)
Section 10A:	inserted by 115, 1976, s. 5
Heading preceding section 11:	substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 11:	amended by 115, 1976, s. 6; 59, 1994, Sched. 1
Section 12:	amended by 59, 1994, Sched. 1
Section 12A:	inserted by 59, 1994, s. 5
Section 13A:	inserted by 45, 1983, s. 2
Section 14:	amended by 51, 1983, s. 2; 50, 1984, s. 3(1) (Sched. 1); repealed by 91, 1986, s. 3
Section 14A:	substituted by 51, 1983, s. 3; repealed by 91, 1986, s. 3
Heading preceding section 15:	inserted by 26, 2002, s. 19(1) (Sched. 2)
Section 15:	substituted by 68, 1991, s. 2; 10, 1997, s. 2
<b>Section 15(1):</b>	<b>amended by 28, 2003, s. 4(1)</b>
<b>Section 15(2):</b>	<b>amended by 28, 2003, s. 4(2)</b>
Section 15A:	inserted by 10, 1997, s. 2
<b>Section 15A(1):</b>	<b>amended by 28, 2003, s. 5(1)</b>
<b>Section 15A(2):</b>	<b>amended by 28, 2003, s. 5(2)</b>
<b>Sections 15B and 15C:</b>	<b>inserted by 28, 2003, s. 6</b>
Heading preceding section 16:	inserted by 26, 2002, s. 19(1) (Sched. 2)
Section 16:	amended by 50, 1984, s. 3(1) (Sched. 1)
Section 17:	repealed by 63, 1992, s. 3
Heading preceding section 18:	repealed by 107, 1981, s. 4
Section 18:	repealed by 107, 1981, s. 4; inserted by 40, 1991, s. 2
Heading preceding section 19:	substituted by 90, 1986, s. 4; 26, 2002, s. 19(1) (Sched. 2)
Section 19:	amended by 50, 1984, s. 3(1) (Sched. 1); substituted by 90, 1986, s. 4
Heading preceding section 19AA:	inserted by 7, 1994, s. 3; substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 19AA:	inserted by 7, 1994, s. 3
Section 19AA(1):	amended by 55, 2001, s. 4(a), (b)
Section 19AA(6):	inserted by 55, 2001, s. 4(c)
Heading preceding section 19A:	inserted by 91, 1986, s. 4; substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 19A:	inserted by 91, 1986, s. 4
Section 19A(6):	amended by 51, 1988, s. 27
Section 19B:	inserted by 91, 1986, s. 4
Heading preceding section 20:	substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 20:	amended by 59, 1994, Sched. 1
Section 21:	amended by 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1
Section 22:	repealed by 50, 1984, s. 3(1) (Sched. 1)
Section 23:	amended by 107, 1981, s. 5; 59, 1994, Sched. 1
Section 24:	amended by 51, 1983, s. 4; 59, 1994, Sched. 1
Section 25:	amended by 59, 1994, Sched. 1
Section 26:	repealed by 59, 1994, Sched. 1
Section 27:	amended by 59, 1994, Sched. 1
Section 28:	amended by 50, 1984, s. 3(1) (Sched. 1); repealed by 59, 1994, Sched. 1
Section 29:	amended by 50, 1984, s. 3(1) (Sched. 1); substituted by 90, 1986, s. 5
Sections 30 and 31:	substituted by 90, 1986, s. 5

Section 32:	repealed by 90, 1986, s. 5; inserted by 103, 1988, s. 3(b); amended by 26, 1992, s. 4
Heading preceding section 33:	inserted by 24, 1995, s. 4; substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 33:	repealed by 90, 1986, s. 5; inserted by 24, 1995, s. 4
Section 33(1):	amended by 26, 2002, s. 19(1) (Sched. 2)
Section 33(1):	amended by 26, 2002, s. 19(1) (Sched. 2)
Sections 33A and 33B:	inserted by 24, 1995, s. 4
Sections 34 and 35:	amended by 50, 1984, s. 3(1) (Sched. 1); repealed by 90, 1986, s. 5
Sections 36 and 37:	repealed by 90, 1986, s. 5
Section 38:	amended by 51, 1983, s. 5; 50, 1984, s. 3(1) (Sched. 1); repealed by 91, 1986, s. 5
Section 38A:	substituted by 51, 1983, s. 6; repealed by 91, 1986, s. 5
Heading preceding section 39:	substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 39:	amended by 107, 1981, s. 6; 69, 1991, s. 15(a); substituted by 22, 1994, Sched. cl. 1(a)
Section 40:	amended by 107, 1981, s. 7
Section 41:	amended by 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1
Section 42:	amended by 59, 1994, Sched. 1
Section 43:	amended by 107, 1981, s. 8(b); 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1
Section 43(a):	repealed by 107, 1981, s. 8(a)
Section 45:	repealed by 50, 1984, s. 3(1) (Sched. 1)
Section 46:	amended by 16, 1986, s. 14; repealed by 62, 1993, s. 24
Section 47:	amended by 50, 1984, s. 3(1) (Sched. 1); 90, 1986, s. 6; repealed by 62, 1993, s. 24
Heading preceding section 47A:	inserted by 103, 1988, s. 3(c); substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 47A:	inserted by 103, 1988, s. 3(c)
Heading preceding section 48:	substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 48:	substituted by 83, 1976, s. 4; amended by 59, 1994, Sched. 1
Section 48(1):	redesignated as s. 48 in pursuance of the <i>Acts Republication Act 1967</i> ; amended by 98, 1985, s. 4
Section 48(2):	repealed by 107, 1981, s. 9
Section 49:	substituted by 83, 1976, s. 4
Section 49(1):	amended by 59, 1994, Sched. 1
Section 49(2):	repealed by 107, 1981, s. 10(a)
Section 49(3):	amended by 107, 1981, s. 10(b); 59, 1994, Sched. 1
Section 49(4):	amended by 107, 1981, s. 10(c)
Section 49(5):	amended by 107, 1981, s. 10(d); 59, 1994, Sched. 1
Section 49(6):	amended by 107, 1981, s. 10(e); substituted by 33, 1991, s. 7
Sections 50 - 55:	repealed by 83, 1976, s. 4
Section 56:	substituted by 107, 1981, s. 11; amended by 59, 1994, Sched. 1
Section 57A:	substituted by 83, 1976, s. 5
Section 57A(2) and (3):	amended by 49, 1991, Sched. 2
Section 57B:	repealed by 83, 1976, s. 6
Section 58(1):	amended by 92, 1978, s. 2(a); 107, 1981, s. 12; 59, 1994, Sched. 1
Section 58(3) - (6):	inserted by 92, 1978, s. 2(b); repealed by 114, 1983, s. 3
Section 58A:	inserted by 84, 1983, s. 2
Section 59:	substituted by 83, 1976, s. 7; amended by 59, 1994, Sched. 1
Sections 60 - 62:	repealed by 83, 1976, s. 7
Section 63:	amended by 107, 1981, s. 13; 59, 1994, Sched. 1; repealed by 20, 2000, s. 2
Section 64:	amended by 83, 1976, s. 8(a), (b); 107, 1981, s. 14; 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1; 20, 2000, s. 3
Section 64(c):	repealed by 83, 1976, s. 8(c)
Section 65:	amended by 83, 1976, s. 9; 59, 1994, Sched. 1
Heading preceding section 65A:	inserted by 20, 2000, s. 4; substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 65A:	inserted by 20, 2000, s. 4
Section 65A(1):	amended by 26, 2002, s. 19(1) (Sched. 2)
Sections 66 - 68:	repealed by 83, 1976, s. 10; inserted by 20, 2000, s. 4
Heading preceding section 68A:	substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 69(1):	redesignated as s. 69 in pursuance of the <i>Acts Republication Act 1967</i> ; amended by 59, 1994, Sched. 1
Section 69(2):	repealed by 107, 1981, s. 15
Section 72:	substituted by 83, 1976, s. 11; amended by 59, 1994, Sched. 1
Heading preceding section 73:	substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 72A:	inserted by 14, 2003, s. 3
Section 73:	substituted by 83, 1976, s. 12
Section 73(5):	substituted by 9, 1992, s. 2

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Section 74:	repealed by 107, 1984, s. 9; inserted by 23, 1994, s. 3
Section 74(11):	definition of "sexual offence" amended by 20, 2000, s. 5
Section 75:	amended by 83, 1976, s. 13; 51, 1983, s. 7; substituted by 59, 1994, s. 6
Section 76:	amended by 83, 1976, s. 14; 20, 2000, s. 6
Section 76A:	amended by 83, 1976, s. 15; repealed by 98, 1985, s. 5
Section 77:	amended by 83, 1976, s. 16; 50, 1984, s. 3(1) (Sched. 1); repealed by 51, 1988, s. 28
Section 77A:	amended by 83, 1976, s. 17; 50, 1984, s. 3(1) (Sched. 1); repealed by 51, 1988, s. 29
Heading preceding section 78:	substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 78:	amended by 59, 1994, Sched. 1
Section 79:	amended by 50, 1984, s. 3(1) (Sched. 1)
Heading preceding section 80:	substituted by 83, 1976, s. 18; 26, 2002, s. 19(1) (Sched. 2)
Section 80(1):	amended by 83, 1976, s. 19(a); 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1
Section 80(1a):	inserted by 83, 1976, s. 19(b); amended by 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1
Section 80(2):	amended by 83, 1976, s. 19(c); 50, 1984, s. 3(1) (Sched. 1)
Heading preceding section 81:	substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 81(1) and (2):	amended by 59, 1994, Sched. 1
Section 82:	amended by 59, 1994, Sched. 1
Section 82A(1):	amended by 59, 1994, Sched. 1
Section 82A(4):	amended by 14, 1978, s. 3
Section 82A(5) and (9):	amended by 50, 1984, s. 3(1) (Sched. 1)
Heading preceding section 83:	substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 83(1):	amended by 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1
Part 4 comprising ss. 84 - 129 and headings amended by 107, 1981, ss. 16 - 19; 50, 1984, s. 3(1) (Sched. 1); 16, 1986, ss. 15 - 18; repealed and ss. 84 - 87 and heading inserted in its place by 90, 1986, s. 7	
Section 85(1):	amended by 69, 1991, s. 15(b); 69, 2001, s. 7(a)-(f)
Section 85(3):	amended by 69, 1991, s. 15(c); 69, 2001, s. 7(g)-(l)
Section 85A:	inserted by 35, 1992, s. 5
Section 85B:	inserted by 24, 2002, s. 4
Section 86(1):	amended by 69, 1991, s. 15(d); substituted by 35, 1992, s. 6
Section 86A:	inserted by 37, 1992, s. 4
Section 87:	repealed by 69, 1991, s. 15(e)
Section 130:	amended by 50, 1984, s. 3(1) (Sched. 1); 33, 1999, Sched. (item 16(a)); repealed by 26, 2002, s. 4
Section 131:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 4
Section 132:	amended by 50, 1984, s. 3(1) (Sched. 1); repealed by 26, 2002, s. 4
Section 133:	repealed by 26, 2002, s. 4
Sections 134 and 135:	repealed by 59, 1994, s. 7
Heading preceding section 136:	repealed by 26, 2002, s. 4
Sections 136 and 137:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 4
Section 138:	amended by 107, 1981, s. 20; 59, 1994, Sched. 1; repealed by 26, 2002, s. 4
Section 139:	amended by 16, 1986, s. 19; 59, 1994, Sched. 1; repealed by 26, 2002, s. 4
Section 140:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 4
Section 141:	amended by 16, 1986, s. 20; repealed by 26, 2002, s. 4
Section 142:	amended by 50, 1984, s. 3(1) (Sched. 1); 16, 1986, s. 21; repealed by 26, 2002, s. 4
Section 143:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 4
Heading preceding section 144:	repealed by 26, 2002, s. 4
Section 144:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 4
Section 145:	amended by 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1; repealed by 26, 2002, s. 4
Section 146:	amended by 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1; repealed by 26, 2002, s. 4
Heading preceding section 147:	repealed by 26, 2002, s. 4
Sections 147 and 148:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 4
Section 149:	amended by 16, 1986, s. 22; 59, 1994, Sched. 1; repealed by 26, 2002, s. 4
Section 150:	amended by 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1; repealed by 26, 2002, s. 4
Section 151:	amended by 16, 1986, s. 23; 59, 1994, Sched. 1; repealed by 26, 2002, s. 4
Heading preceding section 152:	repealed by 26, 2002, s. 4

Section 152:	amended by 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1; repealed by 25, 2002, s. 4
Sections 152A and 153:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 4
Section 153A:	amended by 50, 1984, s. 3(1) (Sched. 1); repealed by 26, 2002, s. 4
Heading preceding section 154:	inserted by 50, 1984, s. 3(1) (Sched. 1); repealed by 26, 2002, s. 4
Section 154:	amended by 50, 1984, s. 3(1) (Sched. 1); repealed by 26, 2002, s. 4
Heading preceding section 155:	repealed by 26, 2002, s. 4
Section 155:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 4
Section 156:	repealed by 107, 1981, s. 21
Section 157:	repealed by 26, 2002, s. 4
Section 158:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 4
Section 159:	amended by 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1; repealed by 26, 2002, s. 4
Section 160:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 4
Sections 161 and 162:	amended by 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1; repealed by 26, 2002, s. 4
Section 163:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 4
Sections 164 and 165:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 4
Section 166:	amended by 50, 1984, s. 3(1) (Sched. 1); repealed by 26, 2002, s. 4
Part 5 comprising ss. 130 - 144 and headings inserted by 26, 2002, s. 4	
Part 6 comprising ss. 145 - 151 and headings inserted by 26, 2002, s. 4	
Heading preceding section 167:	substituted by 80, 1999, s. 4; repealed by 26, 2002, s. 5
Part 6A heading:	inserted by 26, 2002, s. 5
Section 167:	substituted by 59, 1994, s. 8
Section 167 Note:	amended by 26, 2002, s. 6
Section 168:	substituted by 59, 1994, s. 8; 80, 1999, s. 5
Section 168 Note:	amended by 26, 2002, s. 7
Sections 169 and 170:	substituted by 59, 1994, s. 8; 80, 1999, s. 5
Section 170A:	inserted by 80, 1999, s. 5
Section 171:	amended by 50, 1984, s. 3(1) (Sched. 1); substituted by 59, 1994, s. 8; repealed by 26, 2002, s. 8
Section 172:	repealed by 59, 1994, s. 8
Section 173:	amended by 59, 1994, Sched. 1; repealed by 80, 1999, s. 6
Heading preceding section 174:	inserted by 50, 1984, s. 3(1)(Sched. 1); repealed by 26, 2002, s. 8
Section 174:	amended by 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Heading preceding section 175:	repealed by 26, 2002, s. 8
Section 175:	amended by 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Heading preceding section 176:	repealed by 26, 2002, s. 8
Section 176:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Section 177:	amended by 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Section 178:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Section 179:	amended by 50, 1984, s. 3(1) (Sched. 1); repealed by 26, 2002, s. 8
Section 180:	amended by 50, 1984, s. 3(1) (Sched. 1); repealed by 26, 2002, s. 8
Sections 181 and 182:	repealed by 26, 2002, s. 8
Heading preceding section 183:	repealed by 26, 2002, s. 8
Section 183:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Heading preceding section 184:	repealed by 26, 2002, s. 8
Section 184:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Section 185:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Section 186:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Section 187:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Sections 188 - 192:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Section 193:	amended by 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Section 194:	amended by 50, 1984, s. 3(1) (Sched. 1); repealed by 26, 2002, s. 8
Heading preceding section 195:	repealed by 26, 2002, s. 8
Section 195:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Heading preceding section 196:	repealed by 26, 2002, s. 8
Section 196:	amended by 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1; repealed by 26, 2002, s. 8

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Section 197:	repealed by 59, 1994, Sched. 1
Section 197A:	amended by 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Section 198:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Section 199:	repealed by 26, 2002, s. 8
Section 200:	amended by 50, 1984, s. 3(1) (Sched. 1); repealed by 26, 2002, s. 8
Heading preceding section 201:	amended by 51, 1988, s. 30; repealed by 26, 2002, s. 8
Section 201:	amended by 16, 1986, s. 24; repealed by 51, 1988, s. 31
Section 202:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Section 203:	repealed by 26, 2002, s. 8
Heading preceding section 204:	repealed by 26, 2002, s. 8
Section 204:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Section 205:	amended by 107, 1981, s. 22; 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Heading preceding section 206:	repealed by 26, 2002, s. 8
Section 206:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Section 207:	amended by 115, 1976, s. 7; 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Sections 208 and 209:	amended by 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Section 210:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Section 211:	amended by 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Heading preceding section 211A:	inserted by 95, 1996, Sched. 2, cl. 1; repealed by 26, 2002, s. 8
Section 211A:	inserted by 95, 1996, Sched. 2, cl. 1; repealed by 26, 2002, s. 8
Part 6 heading:	repealed by 26, 2002, s. 8
Section 212:	amended by 30, 1997, s. 6; 33, 1999, Sched. (item 16(b)); repealed by 26, 2002, s. 8
Sections 213 - 216:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Heading preceding section 217:	repealed by 26, 2002, s. 8
Sections 217 and 218:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Heading preceding section 219:	repealed by 26, 2002, s. 8
Sections 219 - 221:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Section 222:	amended by 59, 1994, Sched. 1; 33, 1999, Sched. (item 16(c)); repealed by 26, 2002, s. 8
Section 223:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Heading preceding section 224:	repealed by 26, 2002, s. 8
Sections 224 - 227:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Section 228:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Section 229:	amended by 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Section 230:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Section 231:	amended by 50, 1984, s. 3(1) (Sched. 1); repealed by 26, 2002, s. 8
Section 232:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Heading preceding section 233:	repealed by 26, 2002, s. 8
Sections 233 and 234:	amended by 59, 1994, Sched. 1; repealed by 26, 2002, s. 8
Section 235:	repealed by 26, 2002, s. 8
Section 236:	amended by 50, 1984, s. 3(1) (Sched. 1); repealed by 26, 2002, s. 8
	Part 6B comprising ss. 171, 172 and heading inserted by 26, 2002, s. 8
	Part 6C comprising ss. 173, 174 and heading inserted by 26, 2002, s. 8
	Part 7 comprising ss. 237 - 266 and headings amended by 115, 1976, s. 8; 107, 1981, s. 23; 50, 1984, s. 3(1) (Sched. 1); 56, 1984, s. 4; 46, 1985, s. 37; repealed and ss. 237 - 258 and headings inserted in its place by 35, 1992, s. 7
Section 237:	definition of "local government body" repealed by 26, 2002, s. 9
Section 246:	substituted by 16, 1999, s. 3
Section 247(1):	amended by 16, 1999, s. 4(a)
Section 247(2):	repealed by 16, 1999, s. 4(b)
Section 254(2):	amended by 57, 2000, s. 14(a)
Section 254(2a):	inserted by 57, 2000, s. 14(b)
	Part 7A comprising ss. 259 - 261 and heading inserted by 2, 1999, s. 2

	Part 8 comprising s. 267 and heading renumbered Part 7A by 15, 1999, s. 2 (renumbered Part 7B pursuant to the <i>Acts Republication Act 1967</i> )
Section 267:	substituted by 59, 1994, s. 9
Section 268:	amended by 107, 1981, s. 24; repealed by 35, 1992, s. 8
Section 269:	repealed by 59, 1994, s. 9
	Part 8 comprising ss. 267A - 269 and heading inserted by 15, 1999, s. 3
	Part 8A comprising 269A - 269ZB and headings inserted by 91, 1995, s. 3
Section 269A(1):	definition of "authorised person" amended by 39, 2000, s. 3(a) definitions of "defence", "defensible" and "intoxication" inserted by 39, 2000, s. 3(b) definition of "mental impairment" amended by 39, 2000, s. 3(c) definition of "Minister" inserted by 39, 2000, s. 3(d)
Section 269B(4):	inserted by 39, 2000, s. 4
Section 269BA:	inserted by 39, 2000, s. 5
Section 269F A.(3):	substituted by 39, 2000, s. 6(a)
Section 269F A.(4):	repealed by 39, 2000, s. 6(a)
Section 269F B.(4):	inserted by 39, 2000, s. 6(b)
Section 269G A.(2):	amended by 26, 2002, s. 10(a)
Section 269G A.(3):	inserted by 39, 2000, s. 7(a)
Section 269G B.(3):	substituted by 39, 2000, s. 7(b); amended by 26, 2002, s. 10(b)
Section 269G B.(4):	substituted by 39, 2000, s. 7(b)
Section 269G B.(5):	amended by 26, 2002, s. 10(c)
Section 269M A.(3):	substituted by 39, 2000, s. 8(a)
Section 269M A.(4):	repealed by 39, 2000, s. 8(a)
Section 269M B.(2):	substituted by 39, 2000, s. 8(b)
Section 269M B.(3):	inserted by 39, 2000, s. 8(b)
Section 269N A.(2):	substituted by 39, 2000, s. 9
Section 269N A.(3):	inserted by 39, 2000, s. 9
Section 269Q(1) and (2):	amended by 39, 2000, s. 10
Section 269T(2):	amended by 39, 2000, s. 11(a), (b)
Section 269T(2a):	inserted by 39, 2000, s. 11(c)
Section 269U:	substituted by 39, 2000, s. 12
Section 269V(1) - (3):	amended by 39, 2000, s. 13
Section 269VA:	inserted by 39, 2000, s. 14
Section 269W:	redesignated as s. 269W(1) by 39, 2000, s. 15
Section 269W(2):	inserted by 39, 2000, s. 15
Section 269WA:	inserted by 39, 2000, s. 16
Section 269Y(3):	substituted by 39, 2000, s. 17
Section 269Y(4):	inserted by 39, 2000, s. 17
Section 269Y(5):	inserted by 26, 2002, s. 11
Section 269Z(1):	amended by 39, 2000, s. 18
Heading preceding section 270:	amended by 59, 1994, Sched. 1; substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 270(1):	amended by 35, 1992, s. 9(a); 59, 1994, Sched. 1
Section 270(1)(a):	repealed by 107, 1981, s. 25
Section 270(1)(d) and (e):	repealed by 35, 1992, s. 9(b)
Section 270(2):	amended by 59, 1994, Sched. 1
Section 270A:	inserted by 107, 1981, s. 26
Heading preceding section 270A:	inserted by 107, 1981, s. 26; substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 270AB:	inserted by 45, 1983, s. 3
Section 270AB(1):	amended by 59, 1994, Sched. 1
Heading preceding section 270B:	inserted by 107, 1981, s. 26; substituted by 59, 1994, Sched. 1; 26, 2002, s. 19(1) (Sched. 2)
Section 270B:	inserted by 107, 1981, s. 26; amended by 59, 1994, Sched. 1
Section 270B(1):	substituted by 59, 1994, Sched. 1
Section 270B(2):	amended by 59, 1994, Sched. 1
Section 270B(4):	inserted by 26, 2002, s. 12(a)
Section 270B Note:	repealed by 26, 2002, s. 12(b)
	Division 4 of Part 9 comprising ss. 270C, 270D and heading inserted by 26, 2002, s. 13
Heading preceding section 271:	substituted by 26, 2002, s. 19(1) (Sched. 2)

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Section 271:	substituted by 59, 1994, s. 10
Section 271(3):	amended by 26, 2002, s. 14
Section 272:	amended by 50, 1984, s. 3(1) (Sched. 1); repealed by 59, 1994, s. 10
Section 273:	amended by 50, 1984, s. 3(1) (Sched. 1)
Section 274:	substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 274(2):	amended by 50, 1984, s. 3(1) (Sched. 1); 43, 1994, s. 5
Section 275(1):	amended by 49, 1991, Sched. 2; 26, 1992, s. 5
Section 276(1):	amended by 49, 1991, Sched. 2
Section 276(2):	amended by 50, 1984, s. 3(1) (Sched. 1); 49, 1991, Sched. 2; 26, 1992, s. 6
Section 278(1):	amended by 62, 1993, s. 26; 59, 1994, Sched. 1
Section 279:	amended by 59, 1994, Sched. 1
Section 280(2):	amended by 50, 1984, s. 3(1) (Sched. 1)
Heading preceding section 281A:	inserted by 109, 1981, s. 59; repealed by 26, 2002, s. 19(1) (Sched. 2)
Section 281A:	inserted by 109, 1981, s. 59; amended by 49, 1991, Sched. 2; repealed by 69, 1991, s. 15(f)
Heading preceding section 282:	inserted by 109, 1981, s. 60; substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 282:	amended by 50, 1984, s. 3(1) (Sched. 1)
Section 283(2):	amended by 50, 1984, s. 3(1) (Sched. 1)
Heading preceding section 284:	substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 285A:	inserted by 108, 1981, s. 2
Section 285B:	inserted by 45, 1983, s. 4
Section 285C:	inserted by 78, 1984, s. 2
Section 285C(1):	amended by 43, 1994, s. 6
Section 285C(3) and (7):	amended by 49, 1991, Sched. 2
Section 285C(8):	definition of "evidence" repealed by 90, 1986, s. 8
Section 287:	repealed by 10, 2001, s. 6(a)
Section 288:	substituted by 76, 1992, s. 4
Sections 288A and 288B:	inserted by 76, 1992, s. 4
Section 290:	amended by 59, 1994, Sched. 1
Heading preceding section 291:	inserted by 27, 1995, s. 12; substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 291:	amended by 50, 1984, s. 3(1) (Sched. 1); repealed by 59, 1994, Sched. 1; inserted by 27, 1995, s. 12
Heading preceding section 292:	repealed by 91, 1995, Sched. cl. 1
Section 292:	amended by 22, 1992, s. 3; repealed by 91, 1995, Sched. cl. 1
Section 293:	amended by 22, 1992, s. 4; repealed by 91, 1995, Sched. cl. 1
Section 293A:	amended by 78, 1988, s. 2; substituted by 22, 1992, s. 5; repealed by 91, 1995, Sched. cl. 1
Heading preceding section 294:	substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 295(1):	amended by 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1
Section 295(2):	amended by 59, 1994, Sched. 1
Section 295(3):	amended by 50, 1984, s. 3(1) (Sched. 1)
Section 296:	amended by 115, 1976, s. 9; repealed by 49, 1984, s. 3
Heading preceding section 297:	substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 297(1):	amended by 50, 1984, s. 3(1) (Sched. 1)
Section 297(4):	amended by 50, 1984, s. 3(1) (Sched. 1); 59, 1994, Sched. 1
Section 297(5):	amended by 50, 1984, s. 3(1) (Sched. 1); repealed by 51, 1988, s. 32
Section 297(6):	amended by 50, 1984, s. 3(1) (Sched. 1)
Section 297(7) and (8):	amended by 59, 1994, Sched. 1
Section 298:	repealed by 51, 1988, s. 33
Section 299:	substituted by 16, 1986, s. 25; repealed by 51, 1988, s. 33
Heading preceding section 299A:	substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 299A(6):	amended by 43, 1994, s. 7
Heading preceding section 300:	repealed by 51, 1988, s. 34
Section 300:	amended by 50, 1984, s. 3(1) (Sched. 1); repealed by 51, 1988, s. 34
Section 300A:	amended by 49, 1987, Sched. 2; repealed by 51, 1988, s. 34
Sections 300B - 300D:	repealed by 51, 1988, s. 34
Section 300E:	amended by 50, 1984, s. 3(1) (Sched. 1); repealed by 51, 1988, s. 34
Sections 300F and 300G:	repealed by 51, 1988, s. 34
Section 300H:	amended by 50, 1984, s. 3(1) (Sched. 1); repealed by 51, 1988, s. 34
Heading preceding section 301:	amended by 115, 1976, s. 10(1); repealed by 51, 1988, s. 35
Section 301:	repealed by 115, 1976, s. 10(2); inserted by 16, 1986, s. 26; repealed by 51, 1988, s. 35
Section 301A:	repealed by 115, 1976, s. 10(2)
Section 302:	repealed by 115, 1976, s. 10(2); inserted by 69, 1986, s. 18; repealed by 51, 1988, s. 35
Sections 303 - 306:	repealed by 115, 1976, s. 10(2)

Section 309:	repealed by 51, 1988, s. 35
Section 310:	substituted by 67, 1980, s. 3; amended by 69, 1986, s. 19; repealed by 51, 1988, s. 35
Section 311:	repealed by 51, 1988, s. 35
Sections 313 and 313A:	repealed by 51, 1988, s. 35
Section 314:	amended by 115, 1976, s. 11; 50, 1984, s. 3(1) (Sched. 1); repealed by 51, 1988, s. 35
Heading preceding section 315:	amended by 51, 1988, s. 36; repealed by 26, 2002, s. 19(1) (Sched. 2)
Sections 315 and 316:	amended by 50, 1984, s. 3(1) (Sched. 1); repealed by 51, 1988, s. 37
Section 317:	amended by 50, 1984, s. 3(1) (Sched. 1); 51, 1988, s. 38; repealed by 26, 2002, s. 15
Section 318:	amended by 51, 1988, s. 39; repealed by 26, 2002, s. 15
Heading preceding section 319:	repealed by 51, 1988, s. 40
Section 319:	amended by 50, 1984, s. 3(1) (Sched. 1); 90, 1986, s. 9; repealed by 51, 1988, s. 40
Section 320:	repealed by 51, 1988, s. 40
Section 321:	amended by 50, 1984, s. 3(1) (Sched. 1); repealed by 51, 1988, s. 40
Section 323:	repealed by 51, 1988, s. 40
Section 328:	repealed by 51, 1988, s. 40
Heading preceding section 328A:	substituted by 26, 2002, s. 19(1) (Sched. 2)
Heading preceding section 329:	inserted by 26, 2002, s. 19(1) (Sched. 2)
Section 329:	inserted by 49, 1984, s. 4; amended by 59, 1994, Sched. 1
	Division 15 of Part 9 comprising s. 330 and heading inserted by 26, 2002, s. 16
	Part 10 comprising ss. 329 - 346 and heading repealed by 49, 1984, s. 5
Section 347:	repealed by 67, 1980, s. 4
Heading preceding section 348:	inserted by 26, 2002, s. 19(1) (Sched. 2)
Section 348:	definition of "ancillary order" inserted by 75, 1991, s. 9; amended by 43, 1994, s. 8(a); 22, 1994, Sched. cl. 1(b); 59, 1998, s. 5 definition of "conviction" inserted by 90, 1995, s. 3(a) definition of "court" inserted by 90, 1995, s. 3(a) definition of "District Criminal Court" repealed by 43, 1994, s. 8(b) definition of "information" amended by 50, 1984, s. 3(1) (Sched. 1); 43, 1994, s. 8(c) definition of "issue antecedent to trial" inserted by 90, 1995, s. 3(b) definition of "judge" amended by 43, 1994, s. 8(d) definition of "Master" repealed 50, 1984, s. 3(1) (Sched. 1) definition of "question of law" inserted by 90, 1995, s. 3(c); repealed by 67, 1996, s. 8 definition of "sentence" amended by 13, 1999, s. 4
Section 348A:	inserted by 67, 1980, s. 5; repealed by 49, 1991, Sched. 2
Section 349(1):	redesignated as s. 349 in pursuance of the <i>Acts Republication Act 1967</i>
Heading preceding section 350:	substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 350:	amended by 67, 1980, s. 6; 50, 1984, s. 3(1) (Sched. 1); 49, 1991, Sched. 2; substituted by 90, 1995, s. 4
Section 350(a1):	inserted by 67, 1996, s. 9(a)
Section 350(1):	amended by 67, 1996, s. 9(b)
Section 350(2):	amended by 67, 1996, s. 9(c)
Section 350(3):	amended by 67, 1996, s. 9(d)
Section 350(4):	amended by 67, 1996, s. 9(e)
Section 351:	amended by 67, 1980, s. 7; 50, 1984, s. 3(1) (Sched. 1); 49, 1991, Sched. 2; substituted by 90, 1995, s. 5
Section 351(1):	amended by 67, 1996, s. 10
Section 351A:	inserted by 67, 1980, s. 8; repealed by 37, 1993, Sched.; inserted by 90, 1995, s. 5
Section 351A(1):	amended by 67, 1996, s. 11
Section 351B:	inserted by 90, 1995, s. 5
Section 351B(1):	amended by 67, 1996, s. 12
Heading preceding section 352:	substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 352:	amended by 67, 1980, s. 9; 50, 1984, s. 3(1) (Sched. 1); 49, 1991, Sched. 2; 43, 1994, s. 9; substituted by 90, 1995, s. 6
Section 352(1):	amended by 13, 1999, s. 5; 31, 2000, s. 2
Section 353(1) and (2):	amended by 50, 1984, s. 3(1) (Sched. 1)



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Section 353(2a):	inserted by 31, 2000, s. 3
Section 353(3a):	inserted by 90, 1995, s. 7
Section 353(4):	amended by 67, 1980, s. 10(a)
Section 353(5):	inserted by 67, 1980, s. 10(b); amended by 49, 1991, Sched. 2; substituted by 59, 1998, s. 6
Section 354(4):	repealed by 26, 2002, s. 17
Section 354A:	inserted by 75, 1991, s. 10
Section 354A(3):	substituted by 59, 1998, s. 7
Section 354A(4):	inserted by 59, 1998, s. 7
Section 355(1):	amended by 50, 1984, s. 3(1) (Sched. 1)
Section 356A:	inserted by 43, 1994, s. 10
Heading preceding section 357:	repealed by 26, 2002, s. 19(1) (Sched. 2)
Section 357:	amended by 115, 1976, s. 12; 33, 1991, s. 8; substituted by 90, 1995, s. 8
Section 358:	amended by 50, 1984, s. 3(1) (Sched. 1); 43, 1994, s. 11; repealed by 90, 1995, s. 9
Section 360:	repealed by 10, 2001, s. 6(b)
Section 362:	amended by 49, 1991, Sched. 2
Section 363(2):	repealed by 10, 2001, s. 6(c)
Section 364(1):	amended by 50, 1984, s. 3(1) (Sched. 1)
Section 364(3):	amended by 33, 1991, s. 9
Section 364(5):	amended by 50, 1984, s. 3(1) (Sched. 1)
Section 365(1), (2) and (4):	amended by 50, 1984, s. 3(1)(Sched. 1)
Section 366(1):	amended by 50, 1984, s. 3(1) (Sched. 1)
Section 366(2):	amended by 49, 1991, Sched. 2
Section 366(3):	amended by 50, 1984, s. 3(1) (Sched. 1); 49, 1991, Sched. 2
Section 367:	amended by 67, 1980, s. 11
Section 368:	amended by 50, 1984, s. 3(1) (Sched. 1); 43, 1994, s. 12; repealed by 90, 1995, s. 10
Heading preceding section 369:	substituted by 26, 2002, s. 19(1) (Sched. 2)
Section 369:	amended by 115, 1976, s. 13; 49, 1991, Sched. 2
	Part 12 comprising s. 370 and heading inserted by 26, 2002, s. 18
Schedules 1 and 2:	amended by 49, 1991, Sched. 2
Schedule 3:	amended by 50, 1984, s. 3(1) (Sched. 1); 49, 1991, Sched. 2; 59, 1994, Sched. 1
Appendix to Rules:	repealed by 26, 2002, s. 19(1) (Sched. 2)
Schedules 8 and 9:	repealed by 115, 1976, s. 14
Schedule 11:	inserted by 35, 1992, s. 10 (Sched.)