

South Australia

# Criminal Law Consolidation Act 1935

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

---

## Contents

### Part 1—Preliminary

- 1 Short title
- 5 Interpretation
- 5AA Aggravated offences
- 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

#### Division 1—Homicide

- 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 1A—Criminal neglect

- 14 Criminal liability for neglect where death or serious harm results from unlawful act

#### 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—Serious vehicle and vessel offences

- 19AAB Interpretation
- 19A Causing death or harm by use of vehicle or vessel
- 19AB Leaving accident scene etc after causing death or harm by careless use of vehicle or vessel
- 19AC Dangerous driving to escape police pursuit etc
- 19AD Street racing
- 19B Alternative verdicts

#### Division 7—Assault

- 20 Assault

#### Division 7A—Causing physical or mental harm

- 21 Harm
- 22 Conduct falling outside the ambit of this Division
- 23 Causing serious harm
- 24 Causing harm
- 25 Alternative verdicts
- 29 Acts endangering life or creating risk of serious harm
- 30 Failing to provide food etc in certain circumstances
- 31 Possession of object with intent to kill or cause serious harm
- 32 Possession of a firearm with intent to commit an offence

#### Division 7B—Throwing objects at vehicles

- 32A Throwing objects at vehicles
- 32B Alternative verdicts

#### Division 7C—Food and beverage spiking

- 32C Spiking of food or beverages

#### Division 8—Female genital mutilation

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

#### Division 9—Kidnapping and unlawful child removal

- 38 Interpretation

- 
- 39 Kidnapping
  - 40 Unlawful removal of child from jurisdiction

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

- 46 Consent to sexual activity
- 47 Reckless indifference
- 48 Rape
- 48A Compelled sexual manipulation
- 49 Unlawful sexual intercourse
- 50 Persistent sexual exploitation of a child
- 56 Indecent assault
- 57 Consent no defence in certain cases
- 57A Power to take plea without evidence
- 58 Acts of gross indecency
- 59 Abduction of male or female person
- 60 Procuring sexual intercourse
- 61 Householder etc not to permit unlawful sexual intercourse on premises

#### Division 11A—Child pornography and related offences

- 62 Interpretation
- 63 Production or dissemination of child pornography
- 63A Possession of child pornography
- 63B Procuring child to commit indecent act etc
- 63C Pornographic nature of material

#### 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

#### Division 13—Miscellaneous sexual offences

- 68A Abolition of crime of sodomy
- 69 Bestiality
- 72 Incest

#### Division 14—Procedure in sexual offences

- 72A Former time limit abolished
- 73 Proof of certain matters
- 75 Alternative verdict on charge of rape etc
- 76 Corroborative evidence in certain cases

#### Division 15—Bigamy

- 78 Bigamy
- 79 Defences in cases of bigamy

#### Division 16—Abduction of children

- 80 Abduction of child under 16 years

#### Division 17—Abortion

- 81 Attempts to procure abortion
- 82 Procuring drugs etc to cause abortion

82A Medical termination of pregnancy

#### Division 18—Concealment of birth

83 Concealment of birth

#### Part 3A—Offences relating to public order

83A Interpretation

83B Riot

83C Affray

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

84 Preliminary

85 Arson and other property damage

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

#### Part 4A—Computer offences

86B Interpretation

86C Meaning of unauthorised access to or modification of computer data

86D Meaning of unauthorised impairment of electronic communication

86E Use of computer with intention to commit, or facilitate the commission of, an offence

86F Use of computer to commit, or facilitate the commission of, an offence outside the State

86G Unauthorised modification of computer data

86H Unauthorised impairment of electronic communication

86I Possession of computer viruses etc with intent to commit serious computer offence

#### Part 5—Offences of dishonesty

##### Division 1—Preliminary

130 Interpretation

131 Dishonesty

132 Consent of owner

133 Operation of this Part

##### Division 2—Theft

134 Theft (and receiving)

135 Special provision with regard to land and fixtures

136 General deficiency

##### Division 3—Robbery

137 Robbery

##### Division 4—Money laundering and dealing in instruments of crime

138 Money laundering

138A Dealing in instruments of crime

##### Division 5—Deception

139 Deception

---

**Division 6—Dishonest dealings with documents**

140 Dishonest dealings with documents

**Division 7—Dishonest manipulation of machines**

141 Dishonest manipulation of machines

**Division 8—Dishonest exploitation of advantage**

142 Dishonest exploitation of position of advantage

**Division 9—Miscellaneous offences of dishonesty**

143 Dishonest interference with merchandise

144 Making off without payment

**Part 5A—Identity theft**

144A Interpretation

144B False identity etc

144C Misuse of personal identification information

144D Prohibited material

144E Attempt offence excluded

144F Application of Part

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

145 Interpretation

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

146 Fiduciaries

147 Exercise of fiduciary functions

148 Unlawful bias

149 Offence for fiduciary to exercise unlawful bias

150 Bribery

**Division 3—Exclusion of defence**

151 Exclusion of defence

**Part 6A—Serious criminal trespass**

167 Sacrilege

168 Serious criminal trespass

169 Serious criminal trespass—non-residential buildings

170 Serious criminal trespass—places of residence

170A Criminal trespass—places of residence

**Part 6B—Blackmail**

171 Interpretation

172 Blackmail

**Part 6C—Piracy**

173 Interpretation

174 Piracy

## Part 7—Offences of a public nature

### Division 1—Preliminary

- 237 Definitions
- 238 Acting improperly
- 239 General attempt offence excluded
- 240 Parliamentary privilege not affected

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

- 241 Impeding investigation of offences or assisting offenders

### Division 3—Offences relating to judicial proceedings

- 242 Perjury and subornation
- 243 Fabricating, altering or concealing evidence
- 244 Offences relating to witnesses
- 245 Offences relating to jurors
- 246 Confidentiality of jury deliberations and identities
- 247 Harassment to obtain information about jury's deliberations
- 248 Threats or reprisals relating to persons involved in criminal investigations or judicial proceedings

### Division 4—Offences relating to public officers

- 249 Bribery or corruption of public officers
- 250 Threats or reprisals against public officers
- 251 Abuse of public office
- 252 Demanding or requiring benefit on basis of public office
- 253 Offences relating to appointment to public office

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

- 254 Escape or removal from lawful custody
- 255 Harbouring or employing escapee etc

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

- 256 Attempt to obstruct or pervert course of justice or due administration of law

### Division 7—Criminal defamation

- 257 Criminal defamation

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

- 258 Offences limited in relation to industrial disputes and restraint of trade

## Part 7A—Goods contamination and comparable offences

- 259 Interpretation
- 260 Unlawful acts of goods contamination or other acts prejudicing the health or safety of the public
- 261 Goods contamination unrelated to issues of public health and safety

## Part 7B—Accessories

- 267 Aiding and abetting

---

## Part 8—Intoxication

- 267A Definitions
- 268 Mental element of offence to be presumed in certain cases
- 269 Question of intoxication must be specifically raised

## Part 8A—Mental impairment

### Division 1—Preliminary

- 269A Interpretation
- 269B Distribution of judicial functions between judge and jury
- 269BA Charges on which alternative verdicts are possible

### Division 2—Mental competence to commit offences

- 269C Mental competence
- 269D Presumption of mental competence
- 269E Reservation of question of mental competence
- 269F What happens if trial judge decides to proceed first with trial of defendant's mental competence to commit offence
- 269G What happens if trial judge decides to proceed first with trial of objective elements of offence

### Division 3—Mental unfitness to stand trial

- 269H Mental unfitness to stand trial
- 269I Presumption of mental fitness to stand trial
- 269J Order for investigation of mental fitness to stand trial
- 269K Preliminary prognosis of defendant's condition
- 269L Trial judge's discretion about course of trial
- 269M What happens if trial judge decides to proceed first with trial of defendant's mental fitness to stand trial
- 269N What happens if trial judge decides to proceed first with trial of objective elements of offence

### Division 4—Disposition of persons declared to be liable to supervision under this Part

- 269O Supervision
- 269P Variation or revocation of supervision order
- 269Q Report on mental condition of the defendant
- 269R Reports and statements to be provided to court
- 269S Principle on which court is to act
- 269T Matters to which court is to have regard
- 269U Revision of supervision order
- 269V Custody, supervision and care
- 269VA Effect of supervening imprisonment

### Division 5—Miscellaneous

- 269W Counsel to have independent discretion
- 269WA Power to order examination etc in pre-trial proceedings
- 269X Power of court to deal with defendant before proceedings completed
- 269Y Appeals
- 269Z Counselling of next of kin and victims
- 269ZA Exclusion of evidence

269ZB Arrest of person who escapes from detention etc

## Part 9—Miscellaneous and procedure

### Division 1—Punishment for certain common law offences

270 Punishment for certain offences

### Division 2—Attempts

270A Attempts

270AB Attempted manslaughter

### Division 3—Assaults with intent

270B Assaults with intent

### Division 4—Preparatory conduct

270C Going equipped for commission of offence of dishonesty or offence against property

270D Going equipped for commission of offence against the person

### Division 5—Apprehension of offenders

271 General power of arrest

273 Judge's warrant for arrest of person charged

### Division 6—Informations

274 Interpretation

275 Information may be presented in the name of the Director of Public Prosecutions

276 Director of Public Prosecutions may decline to prosecute

277 General provisions as to informations

278 Joinder of charges

279 Joint trial of accessories

280 Coin and bank notes may be described simply as money

281 Objections to informations, amendments and postponement of trial

### Division 7—Saving and transitional provisions

282 Saving provisions

283 Rules of court

### Division 8—Pleas and proceedings on trial

284 Plea of not guilty and refusal to plead

285 Form of plea of *autrefois convict* or *autrefois acquit*

285A Certain questions of law may be determined before jury empanelled

285B Conviction on plea of guilty of offence other than that charged

285BA Power to serve notice to admit facts

285BB Power to require notice of intention to adduce certain kinds of evidence

285BC Expert evidence

285C Notice of certain evidence to be given

286 Inspection and copies of depositions

288 Right to counsel

288A Defence to be invited to outline issues in dispute at conclusion of opening address for the prosecution

288AB Right to call or give evidence

288B Right of reply



---

289	Postponement of trial
290	Verdict for attempt where full offence charged
Division 9—Proceedings against corporations	
291	Proceedings against corporations
Division 10—Verdicts and abolition of forfeiture etc	
294	Defects cured by verdict
295	Forfeiture abolished
Division 11—Witness fees and expenses	
297	Witness fees
Division 12—Orders relating to firearms and other offensive weapons	
299A	Orders as to firearms and offensive weapons
Division 13—Abolition of presumption of marital coercion	
328A	Abolition of presumption of marital coercion
Division 14—Provision as to persons convicted of offence	
329	Provision as to persons convicted of an offence
Division 15—Overlapping offences	
330	Overlapping offences
Part 10—Limitations on rules relating to double jeopardy	
Division 1—Preliminary	
331	Interpretation
332	Meaning of fresh and compelling evidence
333	Meaning of tainted acquittal
334	Application of Part
Division 2—Circumstances in which police may investigate conduct relating to offence of which person previously acquitted	
335	Circumstances in which police may investigate conduct relating to offence of which person previously acquitted
Division 3—Circumstances in which trial or retrial of offence will not offend against rules of double jeopardy	
336	Retrial of relevant offence of which person previously acquitted where acquittal tainted
337	Retrial of Category A offence of which person previously acquitted where there is fresh and compelling evidence
338	Circumstances in which person may be charged with administration of justice offence relating to previous acquittal
Division 4—Prohibition on making certain references in retrial	
339	Prohibition on making certain references in retrial

## Part 10A—Appeal against sentence

340 Appeal against sentence

## Part 11—Appellate proceedings

### Division 1—Preliminary

348 Interpretation

349 Court to decide according to opinion of majority

### Division 2—Reference of questions of law

350 Reservation of relevant questions

351 Case to be stated by trial judge

351A Powers of Full Court on reservation of question

351B Costs

### Division 3—Appeals

352 Right of appeal in criminal cases

353 Determination of appeals in ordinary cases

354 Powers of Court in special cases

354A Right of appeal against ancillary orders

355 Revesting and restitution of property on conviction

356 Jurisdiction of Full Court

356A Enforcement of orders

357 Appeal to Full Court

359 Supplemental powers of Court

361 Right of appellant to be present

362 Director of Public Prosecutions to be represented

363 Costs of appeal

364 Admission of appellant to bail and custody when attending Court

365 Duties of registrar with respect to notices of appeal etc

366 Notes of evidence on trial

367 Powers that may be exercised by a judge of the Court

### Division 5—References on petitions for mercy

369 References by Attorney-General

## Part 12—Regulations

370 Regulations

## Schedule 1

## Schedule 2

## Schedule 3—Rules

1 Form of information etc

2 Form of commencement of an information

3 Charges may be joined in one information

4 Setting out of offences and counts in information

5 Alternative offences may be stated in an information

6 Description of property in an information

- 7 Description of accused in an information
- 8 Description of document in an information
- 9 Description of sundry matters in an information
- 10 Not necessary to state intent in an information in certain circumstances
- 11 Statement of previous convictions in an information

## Schedule 10

## Schedule 11—Abolition of certain offences

- 1 Certain common law offences abolished
- 2 Certain offences under Imperial law abolished
- 3 Special provisions relating to maintenance and champerty

## Appendix 1

## Legislative history

---



**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

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

### **5—Interpretation**

(1) In this Act—

**aggravated offence**—where a provision differentiates between the penalty for an aggravated offence and the penalty for a basic offence, the reference to an aggravated offence is a reference to the offence in its aggravated form (see section 5AA);

**basic offence**—where a provision differentiates between the penalty for an aggravated offence and the penalty for a basic offence, the reference to a basic offence is a reference to the offence in its non-aggravated form (see section 5AA);

**bestiality** means sexual activity between a person and an animal;

**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;

**domestic partner** means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

**drive** includes ride;

**driver's licence** includes a learner's permit;

**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;

**Full Court** means the Supreme Court constituted of an uneven number of judges, not being less than 3;

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

**local government body** means—

- (a) a council or other body constituted under the *Local Government Act 1999*; or
- (b) a regional development assessment panel or a council development assessment panel constituted under section 34 or 56A of the *Development Act 1993*;

**motor vehicle** means a vehicle that is propelled by a motor;

**motor vessel** means a vessel that is propelled by a motor;

**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 a person's vagina, labia majora or anus by any part of the body of another person or by any object; or
- (b) fellatio; or
- (c) cunnilingus,

and includes a continuation of such activity;

**spouse**—a person is the spouse of another if they are legally married;

**vehicle** includes an animal;

**vessel** has the same meaning as in the *Harbors and Navigation Act 1993*.

- (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.

- 
- (3) For the purposes of this Act, a reference to a breast, vagina, labia majora, penis or other sexual organ includes a reference to a surgically constructed or altered breast, vagina, labia majora, penis or sexual organ (as the case may be).

### **5AA—Aggravated offences**

- (1) Subject to this section, an aggravated offence is an offence committed in 1 or more of the following circumstances:
- (a) the offender committed the offence in the course of deliberately and systematically inflicting severe pain on the victim;
  - (b) the offender used, or threatened to use, an offensive weapon to commit, or when committing, the offence;
  - (c) the offender committed the offence against a police officer, prison officer or other law enforcement officer—
    - (i) knowing the victim to be acting in the course of his or her official duty; or
    - (ii) in retribution for something the offender knows or believes to have been done by the victim in the course of his or her official duty;
  - (d) the offender committed the offence—
    - (i) intending to prevent or dissuade the victim from taking legal proceedings or from pursuing a particular course in legal proceedings; or
    - (ii) in connection with the victim's conduct or future conduct (as party, witness or in any other capacity) in legal proceedings; or
    - (iii) in retribution against the victim for taking legal proceedings or for the victim's conduct (as party, witness or in any other capacity) in legal proceedings;
  - (e) the offender committed the offence knowing that the victim of the offence was, at the time of the offence—
    - (i) in the case of an offence against Part 3 Division 11A—under the age of 14 years;
    - (ii) in any other case—under the age of 12 years;
  - (f) the offender committed the offence knowing that the victim of the offence was, at the time of the offence, over the age of 60 years;
  - (g) the offender committed the offence knowing that the victim of the offence was—
    - (i) a spouse or former spouse of the offender; or
    - (ii) a domestic partner or former domestic partner of the offender; or
    - (iii) a child of whom—
      - (A) the offender; or
      - (B) a spouse or former spouse of the offender; or

- (C) a domestic partner or former domestic partner of the offender,  
has custody as a parent or guardian; or
- (iv) a child who normally or regularly resides with—
  - (A) the offender; or
  - (B) a spouse or former spouse of the offender; or
  - (C) a domestic partner or former domestic partner of the offender;
- (h) except in the case of an offence against Part 3A, the offender committed the offence in company with 1 or more other persons (including persons who are children);
- (ha) in the case of an offence against Division 2 or 3 of Part 5, or Part 6A—the offender committed the offence in a place in relation to which, at the time of the offence—
  - (i) there was in force a declaration under Part 4 of the *Emergency Management Act 2004*; or
  - (ii) —
    - (A) residents and others in the place, or in the vicinity of the place, had been advised (by radio broadcast) by the CFS that, as a result of a severe, extreme or catastrophic fire danger rating in respect of the place, they should activate their bushfire survival plan; and
    - (B) that advice had not been withdrawn or ceased to apply; or
  - (iii) residents and others had not been able to return to the place after leaving in response to a declaration referred to in subparagraph (i) or the provision of advice referred to in subparagraph (ii),  
and the offender knew, ought reasonably to have known, or was reckless with respect to, that fact;
- (i) the offender abused a position of authority, or a position of trust, in committing the offence;
- (ia) in the case of an offence constituted under Part 7B where the principal offence is an aggravated offence—the principal offender was, to the knowledge of the offender under that Part, a child;
- (j) the offender committed the offence knowing that the victim was, at the time of the offence, in a position of particular vulnerability because of physical or mental disability;
- (k) in the case of an offence against the person—
  - (i) the victim was, to the knowledge of the offender, in a position of particular vulnerability at the time of the offence because of the nature of his or her occupation or employment; or



- 
- (ii) the victim was, at the time of the offence, engaged in a prescribed occupation or employment and the offender committed the offence knowing that the victim was then engaged in an occupation or employment and knowing the nature of the occupation or employment;
- (l) the offender was, at the time of the offence, acting in contravention of an injunction or other order of a court (made in the exercise of either state or federal jurisdiction) and the offence lay within the range of conduct that the injunction or order was designed to prevent.
- (1a) For the purposes of section 19A, an aggravated offence is an offence committed in 1 or more of the following circumstances:
- (a) the offender committed the offence in the course of attempting to escape pursuit by a police officer;
  - (ab) the offender was, at the time of the offence, driving a motor vehicle in a street race;
  - (b) the offender was, at the time of the offence, driving a vehicle knowing that he or she was disqualified, under the law of this State or another State or Territory of the Commonwealth, from holding or obtaining a driver's licence or that his or her licence was suspended by notice given under the *Road Traffic Act 1961*;
  - (c) the offender committed the offence as part of a prolonged, persistent and deliberate course of very bad driving or vessel operation;
  - (d) the offender committed the offence while there was present in his or her blood a concentration of .08 grams or more of alcohol in 100 millilitres of blood;
  - (e) the offender was, at the time of the offence, driving a vehicle in contravention of section 45A, 47 or 47BA of the *Road Traffic Act 1961* or operating a vessel in contravention of section 70(1) of the *Harbors and Navigation Act 1993*.
- (1b) For the purposes of section 19AC, an aggravated offence is an offence committed in 1 or more of the following circumstances:
- (a) the offender was, at the time of the offence, driving or using a motor vehicle that—
    - (i) was stolen; or
    - (ii) was being driven or used without the consent of the owner of the vehicle,and the offender knew, or was reckless with respect to, that fact;
  - (b) the offender was, at the time of the offence, driving a motor vehicle knowing that he or she was disqualified, under the law of this State or another State or Territory of the Commonwealth, from holding or obtaining a driver's licence or that his or her licence was suspended by notice given under the *Road Traffic Act 1961*;

- (c) the offender committed the offence while there was present in his or her blood a concentration of .08 grams or more of alcohol in 100 millilitres of blood;
  - (d) the offender was, at the time of the offence, driving a motor vehicle in contravention of section 47 or 47BA of the *Road Traffic Act 1961*.
- (1c) For the purposes of section 19AD, an aggravated offence is an offence committed by the driver of a motor vehicle in 1 or more of the following circumstances:
- (a) the offender knew that, at the time of the offence, he or she was driving the motor vehicle in circumstances of heightened risk;
  - (b) the offender committed the offence knowing that there were 1 or more passengers in or on the motor vehicle;
  - (c) the offender knew, or ought reasonably to have known, that, at the time of the offence, he or she was driving a motor vehicle that had a major defect.
- (2) A person is taken to know a particular fact if the person, knowing of the possibility that it is true, is reckless as to whether it is true or not.
- (3) If a person is charged with an aggravated offence, the circumstances alleged to aggravate the offence must be stated in the instrument of charge.
- (4) If a jury finds a person guilty of an aggravated offence, and 2 or more aggravating factors are alleged in the instrument of charge, the jury must state which of the aggravating factors it finds to have been established.
- (5) In this section—
- CFS** means the South Australian Country Fire Service;
- child** means a person under 18 years of age;
- circumstances of heightened risk**, in relation to the driving of a motor vehicle, means—
- (a) driving the motor vehicle between sunset on one day and sunrise on the next day; or
  - (b) driving the motor vehicle in circumstances where traction between the vehicle and the surface being driven on is adversely affected; or
  - (c) driving the motor vehicle in circumstances where visibility is adversely affected;
- major defect**—a motor vehicle has a major defect if use of the motor vehicle constitutes a serious risk to the safety of any person;
- street race** has the meaning given in section 19AD.
- (6) This section does not prevent a court from taking into account, in the usual way, the circumstances of and surrounding the commission of an offence for the purpose of determining sentence.

**Examples—**

- 1 A person is charged with a basic offence and the court finds that the offence was committed in circumstances that would have justified a charge of the offence in its aggravated form. In this case, the court may, in sentencing, take into account the circumstances of aggravation for the purpose of determining penalty but must (of course) fix a penalty within the limits appropriate to the basic offence.
- 2 A person is charged with an aggravated offence and the court finds a number (but not all) of the circumstances alleged in the instrument of charge to aggravate the offence have been established. In this case, the court may, in sentencing, take into account the established circumstances of and surrounding the aggravated offence (whether alleged in the instrument of charge or not) but must not (of course) take account of circumstances alleged in the instrument of charge that were not established.

**5A—Abolition of capital punishment**

- (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.
- (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.

**5B—Proof of lawful authority or lawful or reasonable excuse**

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.

**5D—Abolition of historical classifications**

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



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

### 5E—Interpretation

- (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.

### 5F—Application

- (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>

**Note—**

- 1 For example, the *Crimes at Sea Act 1998*.

### 5G—Territorial requirements for commission of offence against a law of this State

- (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.

## **5H—Procedural provisions**

- (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).

## 5I—Double criminality

- (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.





---

## Part 2—Treason

### 6—Repeal

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.

### 7—Treason

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.

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

- (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.

### **9—In informations more than one overt act may be charged**

- (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.

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

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".

### **10A—Penalty for treason**

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

## **Part 3—Offences against the person**

### **Division 1—Homicide**

#### **11—Murder**

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

#### **12—Conspiring or soliciting to commit murder**

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.

#### **12A—Causing death by an intentional act of violence**

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—

- 1           ie an offence against section 81(2).

#### **13—Manslaughter**

- (1) 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.
- (2) If a court convicting a person of manslaughter is satisfied that the victim's death was caused by the convicted person's use of a motor vehicle, the court must order that the person be disqualified from holding or obtaining a driver's licence for 10 years or such longer period as the court orders.
- (3) 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.

#### **13A—Criminal liability in relation to suicide**

- (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 (11), 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 1A—Criminal neglect

### 14—Criminal liability for neglect where death or serious harm results from unlawful act

- (1) A person (the *defendant*) is guilty of the offence of criminal neglect if—
- a child or a vulnerable adult (the *victim*) dies or suffers serious harm as a result of an unlawful act; and
  - the defendant had, at the time of the act, a duty of care to the victim; and
  - the defendant was, or ought to have been, aware that there was an appreciable risk that serious harm would be caused to the victim by the unlawful act; and
  - the defendant failed to take steps that he or she could reasonably be expected to have taken in the circumstances to protect the victim from harm and the defendant's failure to do so was, in the circumstances, so serious that a criminal penalty is warranted.

Maximum penalty:

- where the victim dies—imprisonment for 15 years; or
  - where the victim suffers serious harm—imprisonment for 5 years.
- (2) If a jury considering a charge of criminal neglect against a defendant finds that—
- there is reasonable doubt as to the identity of the person who committed the unlawful act that caused the victim's death or serious harm; but
  - the unlawful act can only have been the act of the defendant or some other person who, on the evidence, may have committed the unlawful act,

the jury may find the defendant guilty of the charge of criminal neglect even though of the opinion that the unlawful act may have been the act of the defendant.

- (3) For the purposes of this section, the defendant has a duty of care to the victim if the defendant is a parent or guardian of the victim or has assumed responsibility for the victim's care.
- (4) In this section—
- act* includes—
- an omission; and
  - a course of conduct;

*child* means a person under 16 years of age;

*serious harm* means—

- (a) harm that endangers, or is likely to endanger, a person's life; or
- (b) harm that consists of, or is likely to result in, loss of, or serious and protracted impairment of, a part of the body or a physical or mental function; or
- (c) harm that consists of, or is likely to result in, serious disfigurement;

*unlawful*—an act is unlawful if it—

- (a) constitutes an offence; or
- (b) would constitute an offence if committed by an adult of full legal capacity;

*vulnerable adult* means a person aged 16 years or above whose ability to protect himself or herself from an unlawful act is significantly impaired through physical or mental disability, illness or infirmity.

## Division 2—Defence of life and property

### 15—Self defence

- (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 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.

**Notes—**

- 1 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.
- 2 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.

**15A—Defence of property etc**

- (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 or is an element of the 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.

**Notes—**

- 1 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.
- 2 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.

**15B—Reasonable proportionality**

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.

**15C—Requirement of reasonable proportionality not to apply in case of an innocent defence against home invasion**

- (1) This section applies where—
- (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

### 16—Petit treason

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.

### 18—Abolition of year-and-a-day rule

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

### 19—Unlawful threats

- (1) A person who—
  - (a) threatens, without lawful excuse, to kill or endanger the life of another; and
  - (b) 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,

is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—imprisonment for 10 years;
- (b) for an aggravated offence—imprisonment for 12 years.

- (2) A person who—
  - (a) threatens, without lawful excuse, to cause harm to another; and
  - (b) 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,

is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—imprisonment for 5 years;
- (b) for an aggravated offence—imprisonment for 7 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.

(4) In this section—

*harm*, in relation to a person, has the same meaning as in section 21.

## Division 5—Stalking

### 19AA—Unlawful stalking

(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
- (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.

Maximum penalty:

- (a) for a basic offence—imprisonment for 3 years;
- (b) for an aggravated offence—imprisonment for 5 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.

**Note—**

- 1 See section 7 of the *Summary Offences Act 1953*.

**Division 6—Serious vehicle and vessel offences****19AAB—Interpretation**

In this Division—

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

*harm, physical harm* and *serious harm* have the same meanings as in section 21.

**19A—Causing death or harm by use of vehicle or vessel**

- (1) A person who—
  - (a) drives a vehicle or operates a vessel 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.

Maximum penalty:

- (a) where a motor vehicle or motor vessel was used in the commission of the offence—
  - (i) for a first offence that is a basic offence—imprisonment for 15 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 10 years or such longer period as the court orders;
  - (ii) for a first offence that is an aggravated offence or for any subsequent offence—imprisonment for life and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 10 years or such longer period as the court orders;
- (b) where neither a motor vehicle nor motor vessel was used in the commission of the offence—imprisonment for 7 years.

- (3) A person who—
- (a) drives a vehicle or operates a vessel 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 harm to another,

is guilty of an indictable offence.

Maximum penalty:

- (a) where a motor vehicle or motor vessel was used in the commission of the offence and serious harm was caused to a person—
    - (i) for a first offence that is a basic offence—imprisonment for 15 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 10 years or such longer period as the court orders;
    - (ii) for a first offence that is an aggravated offence or for any subsequent offence—imprisonment for life and, in the case of an offence involving the use of a motor vehicle, 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 or motor vessel was used in the commission of the offence but serious harm was not caused to any person—
    - (i) for a first offence that is a basic offence—imprisonment for 5 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 1 year or such longer period as the court orders;
    - (ii) for a first offence that is an aggravated offence or for any subsequent offence—imprisonment for 7 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 3 years or such longer period as the court orders;
  - (c) where neither a motor vehicle nor motor vessel was used in the commission of the offence—imprisonment for 5 years.
- (5) In determining whether an offence is a first or subsequent offence for the purposes of this section a previous offence against—
- (a) this section; or
  - (b) section 19AC; or
  - (c) section 46 of the *Road Traffic Act 1961*; or
  - (d) section 69A of the *Harbors and Navigation Act 1993*,

for which the defendant has been convicted will be taken into account.

- (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 harm, in consequence of the same act or omission (but in determining whether an offence arising out of a particular act or omission is a first or subsequent offence for the purposes of this section, a conviction for an offence arising out of the same act or omission cannot be taken into account).
- (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) It is a defence to a charge of an offence against this section for the defendant to prove that he or she was, at the time of the offence—
- (a) carrying out duties as an emergency worker; and
  - (b) acting in accordance with the directions of his or her employing authority; and
  - (c) acting reasonably in the circumstances as he or she believed them to be.
- (11) In this section—
- emergency worker*** means a police officer or a person who is an emergency worker as defined by the regulations for the purposes of this section;
- employing authority*** means—
- (a) in relation to a police officer—the Commissioner of Police; or
  - (b) in relation to a person who is an emergency worker as defined by the regulations for the purposes of this section—the person defined by the regulations as the employing authority for that person.

### **19AB—Leaving accident scene etc after causing death or harm by careless use of vehicle or vessel**

- (1) A person who—
- (a) drives a vehicle or operates a vessel without due care or attention; and

- (b) by that conduct, causes the death of another; and
- (c) fails to satisfy the statutory obligations of a driver of a vehicle or an operator of a vessel (as the case may be) in relation to the incident,

is guilty of an offence.

Maximum penalty:

- (a) where a motor vehicle or motor vessel was used in the commission of the offence—
  - (i) for a first offence—imprisonment for 15 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 10 years or such longer period as the court orders;
  - (ii) for a subsequent offence—imprisonment for life and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 10 years or such longer period as the court orders;
- (b) where neither a motor vehicle nor motor vessel was used in the commission of the offence—imprisonment for 7 years.

(2) A person who—

- (a) drives a vehicle or operates a vessel without due care or attention; and
- (b) by that conduct, causes physical harm to another; and
- (c) fails to satisfy the statutory obligations of a driver of a vehicle or an operator of a vessel (as the case may be) in relation to the incident,

is guilty of an offence.

Maximum penalty:

- (a) where a motor vehicle or motor vessel was used in the commission of the offence and the physical harm caused to a person amounts to serious harm—
  - (i) for a first offence—imprisonment for 15 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 10 years or such longer period as the court orders;
  - (ii) for a subsequent offence—imprisonment for life and, in the case of an offence involving the use of a motor vehicle, 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 or motor vessel was used in the commission of the offence but the physical harm caused to any person does not amount to serious harm—
  - (i) for a first offence—imprisonment for 5 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 1 year or such longer period as the court orders;

- (ii) for a subsequent offence—imprisonment for 7 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 3 years or such longer period as the court orders;
  - (c) where neither a motor vehicle nor motor vessel was used in the commission of the offence—imprisonment for 5 years.
- (3) For the purposes of subsection (1) and (2)—
  - (a) a person fails to satisfy the statutory obligations of a driver of a vehicle in relation to an incident if the person commits an offence against section 43 of the *Road Traffic Act 1961* in relation to the incident; and
  - (b) a person fails to satisfy the statutory obligations of an operator of a vessel in relation to an incident if the person commits an offence against section 75 or 76 of the *Harbors and Navigation Act 1993* in relation to the incident.
- (4) In determining whether an offence is a first or subsequent offence for the purposes of this section, all previous offences against this section or section 19A that involved the driving of a motor vehicle or operation of a motor vessel must be taken into account except that such an offence will not be taken to be a previous offence for the purposes of subsection (1), or an offence against subsection (2) in which serious harm was caused to a person, unless it resulted in the death of, or grievous bodily or serious harm to, the victim.
- (5) 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.
- (6) 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 (2) in respect of each person who suffers physical harm, in consequence of the same act or omission (but in determining whether an offence arising out of a particular act or omission is a first or subsequent offence for the purposes of this section, a conviction for an offence arising out of the same act or omission cannot be taken into account).

### **19AC—Dangerous driving to escape police pursuit etc**

- (1) A person who, intending to—
  - (a) escape pursuit by a police officer; or
  - (b) cause a police officer to engage in a pursuit,
 drives a motor vehicle in a culpably negligent manner, recklessly, or at a speed or in a manner dangerous to the public is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—imprisonment for 3 years;
- (b) for an aggravated offence—imprisonment for 5 years.

- (2) Where a court convicts a person of an offence against subsection (1) the following provisions apply:
  - (a) the court must order that the person be disqualified from holding or obtaining a driver's licence for such period, being not less than 2 years, as the court thinks fit;
  - (b) the disqualification prescribed by paragraph (a) may not be reduced or mitigated in any way or be substituted by any other penalty or sentence;
  - (c) the disqualification operates to cancel any driver's licence held by the convicted person as at the commencement of the period of disqualification.
- (3) If a person is tried on a charge of an offence against section 29—
  - (a) the person may not be convicted of both the offence against section 29 and an offence against subsection (1) if the charge under subsection (1) arises out of the same set of circumstances that gave rise to the charge under section 29; and
  - (b) an offence against subsection (1) is not available as an alternative verdict to the charge under section 29 unless the offence against subsection (1) was specified in the instrument of charge as an alternative offence.

### **19AD—Street racing**

- (1) A person who participates in a street race, or in preparations for a proposed street race, is guilty of an offence.

Maximum penalty:

  - (a) for a first offence that is a basic offence—imprisonment for 3 years and disqualification from holding or obtaining a driver's licence for 1 year or such longer period as the court orders;
  - (b) for a first offence that is an aggravated offence or for any subsequent offence—imprisonment for 5 years and disqualification from holding or obtaining a driver's licence for 3 years or such longer period as the court orders.
- (2) For the purposes of this section, a person participates in a street race, or in preparations for a proposed street race, if the person—
  - (a) drives a motor vehicle in the street race; or
  - (b) promotes, or assists in the promotion of, the street race or proposed street race in any way; or
  - (c) engages in any other conduct that assists, or is intended to assist, in the street race or proposed street race taking place.
- (3) However, subsection (1) does not apply to a street race that occurs in a place with the consent of the owner or occupier of the place or the person who has the care, control and management of the place.



- (4) Where a person is, on conviction of an offence against this section, 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.
- (5) For the avoidance of doubt, a person may be found guilty of an offence against this section relating to a proposed street race whether or not the street race in fact took place.
- (6) In determining whether an offence is a first or subsequent offence for the purposes of this section—
- (a) a previous offence against section 45A, 46, 47 or 47B (other than a category 1 offence against that section) of the *Road Traffic Act 1961* for which the defendant has been convicted and that was committed within the period of 5 years immediately preceding the commission of the offence under consideration will be taken into account; and
  - (b) a previous offence (whenever occurring) against this section or another provision of this Division, or a corresponding previous enactment, for which the defendant has been convicted will be taken into account.
- (7) In this section—
- promote**, in relation to a street race or proposed street race, includes—
- (a) organise or conduct the street race; or
  - (b) offer an inducement to another person to participate in the street race;
- road** and **road-related area** have the same meaning as in the *Road Traffic Act 1961*;
- street race** means any or all of the following when conducted on a road or a road-related area:
- (a) a race between 2 or more motor vehicles (whether the race is a drag race or otherwise, and whether the race is over a predetermined or indeterminate course);
  - (b) a trial to determine how quickly a motor vehicle can cover the distance between 2 points;
  - (c) a competition between, or display involving, 2 or more motor vehicles consisting of or including the production of sustained wheel spin;
  - (d) a trial of a motor vehicle's speed or performance, or of a driver's skill,
- but does not include conduct declared by the regulations not to be included within the ambit of this definition.
- (8) A regulation made for the purposes of the definition of **street race** may confer a discretionary power on the Attorney-General, the Commissioner of Police or any other specified person or body.

## **19B—Alternative verdicts**

- (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* or section 69A of the *Harbors and Navigation Act 1993*;
  - (d) the offence constituted by section 45 of the *Road Traffic Act 1961* or section 69 of the *Harbors and Navigation Act 1993*.
- (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.
- (4) If at the trial of a person for an offence against section 19A(1) or (3) that is alleged to be an aggravated offence committed in the course of attempting to escape pursuit by a police officer, the jury is not satisfied that the accused is guilty of the aggravated offence charged but is satisfied that the accused is guilty of an offence against section 19AC(1), the jury may bring in a verdict that the accused is guilty of an offence against section 19AC(1).
- (4a) If at the trial of a person for an offence against section 19A(1) or (3) that is alleged to be an aggravated offence committed whilst the person was driving a motor vehicle in a street race, the jury is not satisfied that the accused is guilty of the aggravated offence charged but is satisfied that the accused is guilty of an offence against section 19AD, the jury may bring in a verdict that the accused is guilty of an offence against section 19AD.
- (5) If at the trial of a person for an offence against section 19AC(1), the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of—
  - (a) an offence against section 46 of the *Road Traffic Act 1961*; or
  - (b) an offence against section 45 of the *Road Traffic Act 1961*,

the jury may bring in a verdict that the accused is guilty of the relevant offence against the *Road Traffic Act 1961*.

## Division 7—Assault

### 20—Assault

- (1) A person commits an assault if the person, without the consent of another person (the *victim*)—
- (a) intentionally applies force (directly or indirectly) to the victim; or
  - (b) intentionally makes physical contact (directly or indirectly) with the victim, knowing that the victim might reasonably object to the contact in the circumstances (whether or not the victim was at the time aware of the contact); or
  - (c) threatens (by words or conduct) to apply force (directly or indirectly) to the victim and there are reasonable grounds for the victim to believe that—
    - (i) the person who makes the threat is in a position to carry out the threat and intends to do so; or
    - (ii) there is a real possibility that the person will carry out the threat; or
  - (d) does an act of which the intended purpose is to apply force (directly or indirectly) to the victim; or
  - (e) accosts or impedes another in a threatening manner.
- (2) However—
- (a) conduct that lies within limits of what would be generally accepted in the community as normal incidents of social interaction or community life cannot amount to an assault; and
  - (b) conduct that is justified or excused by law cannot amount to an assault.
- (3) A person who commits an assault is guilty of an offence.
- Maximum penalty:
- (a) for a basic offence—imprisonment for 2 years;
  - (b) for an aggravated offence (except one to which paragraph (c) applies)—imprisonment for 3 years;
  - (c) for an offence aggravated by the use of, or a threat to use, an offensive weapon—imprisonment for 4 years.
- (4) A person who commits an assault that causes harm to another is guilty of an offence.
- Maximum penalty:
- (a) for a basic offence—imprisonment for 3 years;
  - (b) for an aggravated offence (except one to which paragraph (c) applies)—imprisonment for 4 years;
  - (c) for an offence aggravated by the use of, or a threat to use, an offensive weapon—imprisonment for 5 years.

**Note—**

This offence replaces section 40 (assault occasioning actual bodily harm) as in force prior to the commencement of this subsection and, consequently, see *Coulter v The Queen* (1988) 164 CLR 350.

## Division 7A—Causing physical or mental harm

### 21—Harm

In this Division—

**cause**—a person causes harm if the person's conduct is the sole cause of the harm or substantially contributes to the harm;

If a victim suffers serious harm as a result of multiple acts of harm and those acts occur in the course of the same incident, or together constitute a single course of conduct, a person who commits any of the acts causing harm is taken to cause serious harm even though the harm caused by the act might not, if considered in isolation, amount to serious harm.

**harm** means physical or mental harm (whether temporary or permanent);

**lesser offence**, in relation to an offence against this Division, means—

- (a) in relation to an aggravated offence—the basic offence or some other offence against this Division for which a lesser maximum penalty is prescribed;
- (b) in any other case—some other offence against this Division or section 32A for which a lesser maximum penalty is prescribed;

**mental harm** means psychological harm and does not include emotional reactions such as distress, grief, fear or anger unless they result in psychological harm;

**physical harm** includes—

- (a) unconsciousness;
- (b) pain;
- (c) disfigurement;
- (d) infection with a disease;

**recklessly**—a person is reckless in causing harm or serious harm to another if the person—

- (a) is aware of a substantial risk that his or her conduct could result in harm or serious harm (as the case requires); and
- (b) engages in the conduct despite the risk and without adequate justification;

**serious harm** means—

- (a) harm that endangers a person's life; or
- (b) harm that consists of, or results in, serious and protracted impairment of a physical or mental function; or
- (c) harm that consists of, or results in, serious disfigurement.

### 22—Conduct falling outside the ambit of this Division

- (1) This Division does not apply to the conduct of a person who causes harm to another if the victim lawfully consented to the act causing the harm.

- (2) A lawful consent given on behalf of a person who is not of full age and capacity by a parent or guardian will be taken to be the consent of the person for whom the consent was given.
- (3) A person may consent to harm (including serious harm) if the nature of the harm and the purpose for which it is inflicted fall within limits that are generally accepted in the community.

**Examples—**

- 1 A person may (within the limits referred to above) consent to harm that has a religious purpose (eg male circumcision but not female genital mutilation).
  - 2 A person may (within the limits referred to above) consent to harm that has a genuine therapeutic purpose (eg a person with 2 healthy kidneys may consent to donate 1 for the purpose of transplantation to someone with kidney disease).
  - 3 A person may (within the limits referred to above) consent to harm for the purpose of controlling fertility (eg a vasectomy or tubal ligation).
  - 4 A participant in a sporting or recreational activity may (within the limits referred to above) consent to harm arising from a risk inherent in the nature of the activity (eg a boxer may accept the risk of being knocked unconscious in the course of a boxing match and, hence, consent to that harm if it in fact ensues).
- (4) If a defendant's conduct lies within the limits of what would be generally accepted in the community as normal incidents of social interaction or community life, this Division does not apply to the conduct unless it is established that the defendant intended to cause harm.
- (5) If the defendant's conduct caused only mental harm, this Division does not apply to the defendant's conduct unless—
- (a) the defendant's conduct gave rise to a situation in which the victim's life or physical safety was endangered and the mental harm arose out of that situation; or
  - (b) the defendant's primary purpose was to cause such harm.

**Examples—**

- 1 An examiner fails a student in an examination knowing that the student has been diagnosed with schizophrenia and that failure to pass is likely to precipitate a schizophrenic episode. The student in fact suffers such an episode.
- 2 An employer legally terminates an employee's employment knowing that the employee suffers from a mental illness and that the termination is likely to exacerbate the mental illness. The employee in fact suffers an exacerbation of the mental illness.

In both the above examples, it is not sufficient for the prosecution to prove that the defendant acted intentionally knowing that harm would inevitably, probably or possibly result from his or her act. It would be necessary for the prosecution to establish that the defendant wanted to cause harm and that desire was the sole or a significant motivation for the defendant's conduct.

**23—Causing serious harm**

- (1) A person who causes serious harm to another, intending to cause serious harm, is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—imprisonment for 20 years;
  - (b) for an aggravated offence—imprisonment for 25 years.
- (2) If, however, the victim in a particular case suffers such serious harm that a penalty exceeding the maximum prescribed in subsection (1) is warranted, the court may, on application by the Director of Public Prosecutions, impose a penalty exceeding the prescribed maximum.
- (3) A person who causes serious harm to another, and is reckless in doing so, is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—imprisonment for 15 years;
- (b) for an aggravated offence—imprisonment for 19 years.

## **24—Causing harm**

- (1) A person who causes harm to another, intending to cause harm, is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—imprisonment for 10 years;
- (b) for an aggravated offence—imprisonment for 13 years.

- (2) A person who causes harm to another, and is reckless in doing so, is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—imprisonment for 5 years;
- (b) for an aggravated offence—imprisonment for 7 years.

## **25—Alternative verdicts**

If —

- (a) a jury is not satisfied beyond reasonable doubt that a charge of an offence against this Division has been established; but
- (b) the Judge has instructed the jury that it is open to the jury on the evidence to find the defendant guilty of a specified lesser offence or any 1 of a number of specified lesser offences; and
- (c) the jury is satisfied beyond reasonable doubt that the specified lesser offence, or a particular 1 of the specified lesser offences, has been established,

the jury may return a verdict that the defendant is not guilty of the offence charged but is guilty of the lesser offence.

## **29—Acts endangering life or creating risk of serious harm**

- (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 is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—imprisonment for 15 years;
  - (b) for an aggravated offence—imprisonment for 18 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 serious harm to another; and
  - (b) intending to cause such harm or being recklessly indifferent as to whether such harm is caused,

that person is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—imprisonment for 10 years;
  - (b) for an aggravated offence—imprisonment for 12 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 another; and
  - (b) intending to cause such harm or being recklessly indifferent as to whether such harm is caused,

the person is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—imprisonment for 5 years;
  - (b) for an aggravated offence—imprisonment for 7 years.
- (4) If a court convicting a person of an offence against this section is satisfied that the act or omission constituting the offence was done or made by the convicted person in the course of the convicted person's use of a motor vehicle, the court must order that the person be disqualified from holding or obtaining a driver's licence for 5 years or such longer period as the court orders.
- (5) 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.

### **30—Failing to provide food etc in certain circumstances**

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.

### 31—Possession of object with intent to kill or cause serious harm

- (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 serious 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 another, shall be guilty of an indictable offence and liable to be imprisoned for a term not exceeding 5 years.

### 32—Possession of a firearm with intent to commit an offence

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 7B—Throwing objects at vehicles

### 32A—Throwing objects at vehicles

- (1) A person must not throw a prescribed object at, or drop a prescribed object on, a vehicle that is being driven on a road or road-related area or being run on a busway, railway or tramway (whether, at the time the object is thrown or dropped, the vehicle is moving or stationary).

Maximum penalty: Imprisonment for 5 years.

- (2) In this section—

**prescribed object** means an object of a class prescribed by the regulations for the purposes of this section;

**road** and **road-related area** have the same meanings as in the *Road Traffic Act 1961*;

**vehicle** means—

- (a) a vehicle that is propelled by a motor; or



- (b) a vehicle that is run on a busway, railway or tramway; or
- (c) a bicycle, tricycle or other similar vehicle for which the rider provides the motive force; or
- (d) a vehicle that is drawn by an animal; or
- (e) an animal that is being ridden by a person.

### 32B—Alternative verdicts

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 32A, the jury may bring in a verdict that the accused is guilty of that offence.

## Division 7C—Food and beverage spiking

### 32C—Spiking of food or beverages

- (1) A person is guilty of an offence if the person adds a substance, or causes a substance to be added, to any food or beverage intending to cause, or being recklessly indifferent as to causing, impairment of the consciousness or bodily function of another who will or might consume the food or beverage without knowledge of the presence of the substance (whether at all or in the quantity added).

Maximum penalty: Imprisonment for 3 years.

- (2) A person is guilty of an offence if, between the hours of 9 pm on any day and 5 am on the following day, the person enters or remains in licensed premises while in possession of a prescription drug or controlled drug that—
- (a) is such as to be capable of producing a state of intoxication in a person who consumes the drug; and
  - (b) is not contained in packaging on which is affixed a prescribed label indicating that the drug was lawfully prescribed for or supplied to the person.

Maximum penalty: Imprisonment for 30 months.

- (3) It is a defence to a charge of an offence against subsection (2) to prove that the prescription drug or controlled drug was lawfully prescribed for or supplied to the person or that the person had some other lawful reason for being in possession of the prescription drug or controlled drug.

- (4) In this section—

**controlled drug** has the same meaning as in the *Controlled Substances Act 1984*;

**food or beverage** includes any solid or liquid substance prepared or intended for human consumption;

**licensed premises** means—

- (a) licensed premises within the meaning of the *Liquor Licensing Act 1997*, other than premises in respect of which only a restaurant licence or residential licence is in force; and
- (b) the premises defined in the casino licence, within the meaning of the *Casino Act 1997*, as the premises to which the licence relates;

**prescribed label** means a label required by law to be affixed to a prescription drug or controlled drug and specifying—

- (a) the name (or business name) of the person by whom the drug is sold or supplied; and
- (b) the name of the person for whose use the drug is sold or supplied; and
- (c) the trade name or the approved name of the drug or, if it does not have either a trade or approved name, its ingredients;

**prescription drug** has the same meaning as in the *Controlled Substances Act 1984*.

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

### **33—Definitions**

- (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.

### **33A—Prohibition of female genital mutilation**

- (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.

### **33B—Removal of child from State for genital mutilation**

- (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—Kidnapping and unlawful child removal

### 38—Interpretation

In this Division—

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

*detain*—detention is not limited to forcible restraint but extends to any means by which a person gets another to remain in a particular place or with a particular person or persons;

*take*—a person takes another if the person compels, entices or persuades the other to accompany him or her or a third person.

### 39—Kidnapping

- (1) A person who takes or detains another person, without the other person's consent—
- (a) with the intention of holding the other person to ransom or as a hostage; or
  - (b) with the intention of committing an indictable offence against the other person or a third person,

is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—imprisonment for 20 years;
  - (b) for an aggravated offence—imprisonment for 25 years.
- (2) A consent to the taking or detention is to be ignored in the following cases:
- (a) if the person apparently giving the consent is a child or mentally incapable of understanding the significance of the consent;
  - (b) if the consent was obtained by duress or deception.

### 40—Unlawful removal of child from jurisdiction

- (1) A person who wrongfully takes or sends a child out of the jurisdiction is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—imprisonment for 15 years;
  - (b) for an aggravated offence—imprisonment for 19 years.
- (2) For the purposes of subsection (1), a person acts wrongfully if—
- (a) the person acts in the knowledge that a person who has the lawful custody of the child (either alone or jointly with someone else) does not consent to the child being taken or sent out of the jurisdiction; and

**Note—**

As a general rule, the parents of a child have joint custody of the child (see *Guardianship of Infants Act 1940*, section 4).

- (b) there is no judicial or statutory authority for the person's act.

## Division 11—Rape and other sexual offences

### 46—Consent to sexual activity

- (1) In this section—  
*sexual activity* includes sexual intercourse.
- (2) For the purposes of this Division, a person consents to sexual activity if the person freely and voluntarily agrees to the sexual activity.
- (3) Without limiting subsection (2), a person is taken not to freely and voluntarily agree to sexual activity if—
- (a) the person agrees because of—
    - (i) the application of force or an express or implied threat of the application of force or a fear of the application of force to the person or to some other person; or
    - (ii) an express or implied threat to degrade, humiliate, disgrace or harass the person or some other person; or
  - (b) the person is unlawfully detained at the time of the activity; or
  - (c) the activity occurs while the person is asleep or unconscious; or
  - (d) the activity occurs while the person is intoxicated (whether by alcohol or any other substance or combination of substances) to the point of being incapable of freely and voluntarily agreeing to the activity; or
  - (e) the activity occurs while the person is affected by a physical, mental or intellectual condition or impairment such that the person is incapable of freely and voluntarily agreeing; or
  - (f) the person is unable to understand the nature of the activity; or
  - (g) the person agrees to engage in the activity with a person under a mistaken belief as to the identity of that person; or
  - (h) the person is mistaken about the nature of the activity.

**Example—**

A person is taken not to freely and voluntarily agree to sexual activity if the person agrees to engage in the activity under the mistaken belief that the activity is necessary for the purpose of medical diagnosis, investigation or treatment, or for the purpose of hygiene.

### 47—Reckless indifference

For the purposes of this Division, a person is *recklessly indifferent* to the fact that another person does not consent to an act, or has withdrawn consent to an act, if he or she—

- (a) is aware of the possibility that the other person might not be consenting to the act, or has withdrawn consent to the act, but decides to proceed regardless of that possibility; or

- (b) is aware of the possibility that the other person might not be consenting to the act, or has withdrawn consent to the act, but fails to take reasonable steps to ascertain whether the other person does in fact consent, or has in fact withdrawn consent, to the act before deciding to proceed; or
- (c) does not give any thought as to whether or not the other person is consenting to the act, or has withdrawn consent to the act before deciding to proceed.

#### 48—Rape

- (1) A person (the *offender*) is guilty of the offence of rape if he or she engages, or continues to engage, in sexual intercourse with another person who—

- (a) does not consent to engaging in the sexual intercourse; or
- (b) has withdrawn consent to the sexual intercourse,

and the offender knows, or is recklessly indifferent to, the fact that the other person does not so consent or has so withdrawn consent (as the case may be).

Maximum penalty: Imprisonment for life.

- (2) A person (the *offender*) is guilty of the offence of rape if he or she compels a person to engage, or to continue to engage, in—

- (a) sexual intercourse with a person other than the offender; or
- (b) an act of sexual self-penetration; or
- (c) an act of bestiality,

when the person so compelled does not consent to engaging in the sexual intercourse or act, or has withdrawn consent to the sexual intercourse or act, and the offender knows, or is recklessly indifferent to, the fact that the person does not so consent or has so withdrawn consent (as the case may be).

Maximum penalty: Imprisonment for life.

- (3) In this section—

*compels*—a person compels another person if he or she controls or influences the other person's conduct by means that effectively prevent the other person from exercising freedom of choice;

*sexual self-penetration* means the penetration by a person of the person's vagina, labia majora or anus by any part of the body of the person or by any object.

#### 48A—Compelled sexual manipulation

- (1) A person (the *offender*) is guilty of an offence if he or she, for a prurient purpose, compels a person to engage, or to continue to engage, in—

- (a) an act of sexual manipulation of the offender; or
- (b) an act of sexual manipulation of a person other than the offender; or
- (c) an act of sexual self-manipulation,

when the person so compelled does not consent to engaging in the act, or has withdrawn consent to the act, and the offender knows, or is recklessly indifferent to, the fact that the person does not so consent or has so withdrawn consent (as the case may be).

Maximum penalty:

- (a) for a basic offence—imprisonment for 10 years;
- (b) for an aggravated offence—imprisonment for 15 years.

(2) In this section—

***compels***—a person compels another person if he or she controls or influences the other person's conduct by means that effectively prevent the other person from exercising freedom of choice;

***prurient purpose***—a person acts for a prurient purpose if the person acts with the intention of satisfying his or her own desire for sexual arousal or gratification or of providing sexual arousal or gratification for someone else;

***sexual manipulation*** means the manipulation by a person of another person's genitals or anus (whether or not including sexual intercourse);

***sexual self-manipulation*** means the manipulation by a person of his or her genitals or anus (whether or not including sexual self-penetration, within the meaning of section 48).

#### **49—Unlawful sexual intercourse**

- (1) A person who has sexual intercourse with any person under the age of 14 years shall be guilty of an offence and liable to be imprisoned for life.
- (3) A person who has sexual intercourse with a person under the age of seventeen years is guilty of an offence.

Maximum penalty: Imprisonment for 10 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.

- (5) A person who, being in a position of authority in relation to a person under the age of 18 years, has sexual intercourse with that person is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

- (5a) For the purposes of subsection (5), a person is in *a position of authority* in relation to a person under the age of 18 years (the *child*) if the person is—
- (a) a teacher (within the meaning of the *Education and Early Childhood Services (Registration and Standards) Act 2011*) engaged in the education of the child; or
  - (b) a foster parent, step-parent or guardian of the child; or
  - (c) a religious official or spiritual leader (however described and including lay members and whether paid or unpaid) providing pastoral care or religious instruction to the child; or
  - (d) a medical practitioner, psychologist or social worker providing professional services to the child; or
  - (e) a person employed or providing services in a correctional institution (within the meaning of the *Correctional Services Act 1982*) or a training centre (within the meaning of the *Young Offenders Act 1993*), or any other person engaged in the administration of those Acts, acting in the course of his or her duties in relation to the child; or
  - (f) an employer of the child or other person who has the authority to determine significant aspects of the child's terms and conditions of employment or to terminate the child's employment (whether the child is being paid in respect of that employment or is working in a voluntary capacity).
- (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 offence.  
Maximum penalty: Imprisonment for 10 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.

## 50—Persistent sexual exploitation of a child

- (1) An adult person who, over a period of not less than 3 days, commits more than 1 act of sexual exploitation of a particular child under the prescribed age is guilty of an offence.  
Maximum penalty: Imprisonment for life.
- (2) For the purposes of this section, a person commits an act of sexual exploitation of a child if the person commits an act in relation to the child of a kind that could, if it were able to be properly particularised, be the subject of a charge of a sexual offence.
- (3) If—
- (a) at any time when an act of sexual exploitation of a child was allegedly committed the child was at least 16 years of age; and
  - (b) the defendant proves that he or she believed on reasonable grounds that the child was of or over the prescribed age at that time,

the act of sexual exploitation is not to be regarded for the purposes of an offence against this section.

- (4) Despite any other Act or rule of law, the following provisions apply in relation to the charging of a person on an information for an offence against this section:
- (a) subject to this subsection, the information must allege with sufficient particularity—
    - (i) the period during which the acts of sexual exploitation allegedly occurred; and
    - (ii) the alleged conduct comprising the acts of sexual exploitation;
  - (b) the information must allege a course of conduct consisting of acts of sexual exploitation but need not—
    - (i) allege particulars of each act with the degree of particularity that would be required if the act were charged as an offence under a different section of this Act; or
    - (ii) identify particular acts of sexual exploitation or the occasions on which, places at which or order in which acts of sexual exploitation occurred;
  - (c) the person may, on the same information, be charged with other offences, provided that any sexual offence allegedly committed by the person—
    - (i) in relation to the child who is allegedly the subject of the offence against this section; and
    - (ii) during the period during which the person is alleged to have committed the offence against this section,must be charged in the alternative.
- (5) A person who has been tried and convicted or acquitted on a charge of persistent sexual exploitation of a child may not be convicted of a sexual offence against the same child alleged to have been committed during the period during which the person was alleged to have committed the offence of persistent sexual exploitation of the child.
- (6) This section applies in relation to acts of sexual exploitation of a child whether they were committed before or after the commencement of this section.
- (7) In this section—
- prescribed age***, in relation to a child, means—
- (a) in the case of a person who is in a position of authority in relation to the child—18 years;
  - (b) in any other case—17 years;
- sexual offence*** means—
- (a) an offence against Division 11 (other than sections 59 and 61) or sections 63B, 66, 69 or 72; or
  - (b) an attempt to commit, or assault with intent to commit, any of those offences; or



- (c) a substantially similar offence against a previous enactment.
- (8) For the purposes of this section, a person is in *a position of authority* in relation to a child if the person is—
- (a) a teacher (within the meaning of the *Education and Early Childhood Services (Registration and Standards) Act 2011*) engaged in the education of the child; or
  - (b) a foster parent, step-parent or guardian of the child; or
  - (c) a religious official or spiritual leader (however described and including lay members and whether paid or unpaid) providing pastoral care or religious instruction to the child; or
  - (d) a medical practitioner, psychologist or social worker providing professional services to the child; or
  - (e) a person employed or providing services in a correctional institution (within the meaning of the *Correctional Services Act 1982*) or a training centre (within the meaning of the *Young Offenders Act 1993*), or any other person engaged in the administration of those Acts, acting in the course of his or her duties in relation to the child; or
  - (f) an employer of the child or other person who has the authority to determine significant aspects of the child's terms and conditions of employment or to terminate the child's employment (whether the child is being paid in respect of that employment or is working in a voluntary capacity).

## 56—Indecent assault

- (1) A person who indecently assaults another is guilty of an offence.
- Maximum penalty:
- (a) for a basic offence—imprisonment for 8 years;
  - (b) for an aggravated offence—imprisonment for 10 years.
- (2) If the victim of the offence was at the time of the offence under the age of 14 years, the offence is an aggravated offence and it is unnecessary for the prosecution to establish that the defendant knew of, or was reckless as to, the aggravating factor.

## 57—Consent no defence in certain cases

- (1) A person under the age of 18 years will be taken not to be capable of consenting to an indecent assault committed by a person who is in a position of authority in relation to the person.
- (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.

- (4) For the purposes of subsection (1), a person is in *a position of authority* in relation to a person under the age of 18 years (the *child*) if the person is—
- (a) a teacher (within the meaning of the *Education and Early Childhood Services (Registration and Standards) Act 2011*) engaged in the education of the child; or
  - (b) a foster parent, step-parent or guardian of the child; or
  - (c) a religious official or spiritual leader (however described and including lay members and whether paid or unpaid) providing pastoral care or religious instruction to the child; or
  - (d) a medical practitioner, psychologist or social worker providing professional services to the child; or
  - (e) a person employed or providing services in a correctional institution (within the meaning of the *Correctional Services Act 1982*) or a training centre (within the meaning of the *Young Offenders Act 1993*), or any other person engaged in the administration of those Acts, acting in the course of his or her duties in relation to the child; or
  - (f) an employer of the child or other person who has the authority to determine significant aspects of the child's terms and conditions of employment or to terminate the child's employment (whether the child is being paid in respect of that employment or is working in a voluntary capacity).

#### **57A—Power to take plea without evidence**

- (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.

#### **58—Acts of gross indecency**

- (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.

### **59—Abduction of male or female person**

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,

is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—imprisonment for 14 years;  
 (b) for an aggravated offence—imprisonment for 18 years.

### **60—Procuring sexual intercourse**

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,

is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—imprisonment for 7 years;  
 (b) for an aggravated offence—imprisonment for 10 years.

### **61—Householder etc not to permit unlawful sexual intercourse on premises**

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 11A—Child pornography and related offences**

### **62—Interpretation**

In this Division—

*child pornography* means material—

- (a) that—

- (i) describes or depicts a child under, or apparently under, the age of 17 years engaging in sexual activity; or
  - (ii) consists of, or contains, the image of (or what appears to be the image of) a child under, or apparently under, the age of 17 years, or of the bodily parts of such a child, or in the production of which such a child has been or appears to have been involved; and
- (b) that is intended or apparently intended—
- (i) to excite or gratify sexual interest; or
  - (ii) to excite or gratify a sadistic or other perverted interest in violence or cruelty;

**disseminate**—a person disseminates child pornography if the person—

- (a) sends, supplies, exhibits, transmits or communicates it to another, or enters into an agreement or arrangement to do so; or
- (b) makes it available for access by another (including access by means of a computer) or enters into an agreement or arrangement to do so;

**material** includes—

- (a) any written or printed material; or
- (b) any picture, painting or drawing; or
- (c) any carving, sculpture, statue or figure; or
- (d) any photographic, electronic or other information or data from which an image or representation may be produced or reproduced; or
- (e) any film, tape, disc, or other object or system containing any such information or data;

**pornographic nature** of child pornography means the aspects of the material by reason of which it is pornographic;

**private act** means—

- (a) a sexual act; or
- (b) an act involving an intimate bodily function such as using a toilet; or
- (c) an act or activity involving undressing to a point where the body is clothed only in undergarments; or
- (d) an activity involving nudity or exposure or partial exposure of sexual organs, pubic area, buttocks or female breasts;

**prurient purpose**—a person acts for a prurient purpose if the person acts with the intention of satisfying his or her own desire for sexual arousal or gratification or of providing sexual arousal or gratification for someone else.

## **63—Production or dissemination of child pornography**

A person who—

- (a) produces, or takes any step in the production of, child pornography knowing of its pornographic nature; or

- (b) disseminates, or takes any step in the dissemination of, child pornography knowing of its pornographic nature,

is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—imprisonment for 10 years;
- (b) for an aggravated offence—imprisonment for 12 years.

### **63A—Possession of child pornography**

- (1) A person who—

- (a) is in possession of child pornography knowing of its pornographic nature; or
- (b) intending to obtain access to child pornography, obtains access to child pornography or takes a step towards obtaining access to child pornography,

is guilty of an offence.

Maximum penalty:

- (a) for a first offence—
    - (i) if it is a basic offence—imprisonment for 5 years;
    - (ii) if it is an aggravated offence—imprisonment for 7 years;
  - (b) for a subsequent offence—
    - (i) if it is a basic offence—imprisonment for 7 years;
    - (ii) if it is an aggravated offence—imprisonment for 10 years.
- (2) It is a defence to a charge of an offence against subsection (1) to prove that the material to which the charge relates came into the defendant's possession unsolicited and that the defendant, as soon as he or she became aware of the material and its pornographic nature, took reasonable steps to get rid of it.
  - (3) In determining whether an offence against subsection (1) is a first or subsequent offence, a court must treat a previous offence involving child pornography against any provision of this Division, or a corresponding previous enactment, as a previous offence.

### **63B—Procuring child to commit indecent act etc**

- (1) A person who—

- (a) incites or procures the commission of an indecent act by a child under the prescribed age in relation to that person; or
- (b) acting for a prurient purpose—
  - (i) causes or induces a child under the prescribed age in relation to that person to expose any part of his or her body; or
  - (ii) makes a photographic, electronic or other record from which the image, or images, of a child under the age of 17 years engaged in a private act may be reproduced,

is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—imprisonment for 10 years;
  - (b) for an aggravated offence—imprisonment for 12 years.
- (2) Subsection (1) applies whether the acts alleged to constitute the offence—
- (a) occur in private or in public; or
  - (b) occur with or without the consent of the child, or the child's parent or guardian.
- (3) A person who—
- (a) procures a child under the prescribed age in relation to that person or makes a communication with the intention of procuring a child under the prescribed age in relation to that person to engage in, or submit to, a sexual activity; or
  - (b) makes a communication for a prurient purpose and with the intention of making a child under the prescribed age in relation to that person amenable to a sexual activity,

is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—imprisonment for 10 years;
  - (b) for an aggravated offence—imprisonment for 12 years.
- (4) It is a defence to a charge under subsection (1)(a), (1)(b)(i) or (3) (other than where the defendant was in ***a position of authority*** in relation to the child) if the defendant proves that—
- (a) the child was, on the date on which the offence is alleged to have been committed, of or above the age of 16 years; and
  - (b) the accused—
    - (i) was, on the date on which the offence is alleged to have been committed, under the age of 17 years; or
    - (ii) believed on reasonable grounds that the child was of or above the age of 17 years.
- (5) This section does not apply if the person and the child are legally married to each other.
- (6) For the purposes of this section, a person is in ***a position of authority*** in relation to a child if the person is—
- (a) a teacher (within the meaning of the *Education Act 1972*) engaged in the education of the child; or
  - (b) a foster parent, step-parent or guardian of the child; or
  - (c) a religious official or spiritual leader (however described and including lay members and whether paid or unpaid) providing pastoral care or religious instruction to the child; or
  - (d) a medical practitioner, psychologist or social worker providing professional services to the child; or

- (e) a person employed or providing services in a correctional institution (within the meaning of the *Correctional Services Act 1982*) or a training centre (within the meaning of the *Young Offenders Act 1993*), or any other person engaged in the administration of those Acts, acting in the course of his or her duties in relation to the child; or
  - (f) an employer of the child or other person who has the authority to determine significant aspects of the child's terms and conditions of employment or to terminate the child's employment (whether the child is being paid in respect of that employment or is working in a voluntary capacity).
- (7) For the purposes of this section, the *prescribed age* of a child in relation to a person is—
- (a) if the person is in a position of authority in relation to the child—18 years; or
  - (b) in any other case—17 years.

### 63C—Pornographic nature of material

- (1) In determining whether material to which a charge of an offence relates is of a pornographic nature, the circumstances of its production and its use or intended use may be taken into account but no such circumstance can deprive material that is inherently pornographic of that character.
- (2) No offence is committed against this Division by reason of the production, dissemination or possession of material in good faith and for the advancement or dissemination of legal, medical or scientific knowledge.
- (3) No offence is committed against this Division by reason of the production, dissemination or possession of material that constitutes, or forms part of, a work of artistic merit if, having regard to the artistic nature and purposes of the work as a whole, there is no undue emphasis on aspects of the work that might otherwise be considered pornographic.
- (4) No offence is committed against this Division by reason of—
  - (a) the possession or dissemination of a publication, film or computer game that has been classified under the *Classification (Publications, Films and Computer Games) Act 1995* (unless it is classified as a publication for which classification is refused (RC)); or
  - (b) the possession of a publication, film or computer game for the purposes of obtaining a classification under that Act.

## Division 12—Commercial sexual services and related offences

### 65A—Definitions relating to commercial sexual services

- (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.

## 66—Sexual servitude and related offences

- (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 14 years—imprisonment for life;
- (b) if the victim is a child under the age of 18 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 14 years—imprisonment for life;
- (b) if the victim is a child under the age of 18 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;
- (g) any other form of unreasonable or unfair pressure.

### **67—Deceptive recruiting for commercial sexual services**

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.

### **68—Use of children in commercial sexual services**

- (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 14 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 14 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 14 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**

### **68A—Abolition of crime of sodomy**

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.

### **69—Bestiality**

A person who commits bestiality is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

**Note—**

Bestiality is defined in section 5.

### **72—Incest**

- (1) A person who has sexual intercourse with a close family member is guilty of an offence.
- Maximum penalty: Imprisonment for 10 years.
- (2) It is a defence to a charge of an offence against this section for the accused to prove that he or she did not know, and could not reasonably have been expected to know, that the person was a close family member.
- (3) In this section—

*close family member*, in relation to a person, means—

- (a) a parent; or
- (b) a child; or
- (c) a sibling (including a half-brother or half-sister); or
- (d) a grandparent; or
- (e) a grandchild,

of the person, but does not include such a family member related to the person by marriage or adoption alone.

## Division 14—Procedure in sexual offences

### 72A—Former time limit abolished

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

Note—

1 Repealed by section 5 of the *Criminal Law Consolidation Act Amendment Act 1985*.

### 73—Proof of certain matters

- (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.

### 75—Alternative verdict on charge of rape etc

If on a trial for rape, compelled sexual manipulation or unlawful sexual intercourse, or an attempt to commit rape, compelled sexual manipulation 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.

### 76—Corroborative evidence in certain cases

No person shall be convicted of an offence under section 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.

## Division 15—Bigamy

### 78—Bigamy

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.

## 79—Defences in cases of bigamy

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

### 80—Abduction of child under 16 years

- (1) Any person who—
  - (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

### 81—Attempts to procure abortion

- (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.

## 82—Procuring drugs etc to cause abortion

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.

## 82A—Medical termination of pregnancy

- (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.
- (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**

### **83—Concealment of birth**

- (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).

## Part 3A—Offences relating to public order

### 83A—Interpretation

In this Part—

*violence* means any violent conduct, so that—

- (a) except for the purposes of section 83C, it includes violent conduct towards property as well as violent conduct towards persons; and
- (b) it is not restricted to conduct causing or intended to cause injury or damage but includes any other violent conduct.

**Example—**

Throwing at, or towards, a person a missile of a kind capable of causing injury which does not hit, or falls short of, the person.

### 83B—Riot

- (1) Where 12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety, each of the persons using unlawful violence for the common purpose is guilty of riot.

Maximum penalty:

- (a) for a basic offence—imprisonment for 7 years;
  - (b) for an aggravated offence—imprisonment for 10 years.
- (2) It is immaterial whether or not the 12 or more persons use or threaten unlawful violence simultaneously.
  - (3) The common purpose may be inferred from conduct.
  - (4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.
  - (5) Riot may be committed in private as well as in public places.
  - (6) A person is guilty of riot only if the person intends to use violence or is aware that his or her conduct may be violent.
  - (7) Subsection (6) does not affect the determination for the purposes of subsection (1) of the number of persons who use or threaten violence.
  - (8) If at a trial of a person for riot 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 6A of the *Summary Offences Act 1953* (violent disorder), the jury may bring in a verdict that the accused is guilty of that offence.

### 83C—Affray

- (1) A person who uses or threatens unlawful violence towards another and whose conduct is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety is guilty of affray.

Maximum penalty:

- (a) for a basic offence—imprisonment for 3 years;
  - (b) for an aggravated offence—imprisonment for 5 years.
- (2) If 2 or more persons use or threaten the unlawful violence, it is the conduct of them taken together that must be considered for the purposes of subsection (1).
  - (3) For the purposes of this section, a threat cannot be made by the use of words alone.
  - (4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.
  - (5) Affray may be committed in private as well as in public places.
  - (6) A person is guilty of affray only if the person intends to use or threaten violence or is aware that his or her conduct may be violent or threaten violence.
  - (7) An offence of affray may be charged on complaint and be prosecuted and dealt with by the Magistrates Court as a summary offence but, if the Court determines that a person found guilty of such an offence should be sentenced to a term of imprisonment exceeding 2 years, the Court must commit the person to the District Court for sentence.
  - (8) For the avoidance of doubt, a person who is convicted of the offence of affray that has been prosecuted and dealt with as a summary offence in accordance with subsection (7) is, despite that fact, taken to have been convicted of an indictable offence for the purposes of any Act or law.



## Part 4—Offences with respect to property

### 84—Preliminary

- (1) In this Part—

*building* means any building (whether used for non-residential or residential purposes), and includes—

- (a) a part of a building; and
- (b) a structure, vehicle or vessel, or part of a structure, vehicle or vessel, used for residential purposes;

*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.

### 85—Arson and other property damage

- (1) A person who, without lawful excuse, by fire or explosives, damages property that is a building or motor vehicle (whether the property belongs to the person or to another)—
- (a) intending to damage property; or
  - (b) being recklessly indifferent as to whether his or her conduct damages property,

is guilty of arson.

Maximum penalty: Imprisonment for life.

- (2) A person who, without lawful excuse, damages (other than by fire or explosives) another's property that is a building or motor vehicle—
- (a) intending to damage property; or

- (b) being recklessly indifferent as to whether his or her conduct damages property,
- is guilty of an offence.
- Maximum penalty: Imprisonment for 10 years.
- (3) A person who, without lawful excuse, damages another's property (other than a building or motor vehicle)—
- (a) intending to damage property; or
- (b) being recklessly indifferent as to whether his or her conduct damages property,
- is guilty of an offence.
- Maximum penalty: Imprisonment for 10 years.
- (4) A person who, without lawful excuse, threatens to damage another's property—
- (a) intending to arouse a fear that the threat will be, or is likely to be, carried out; or
- (b) being recklessly indifferent as to whether such a fear is aroused,
- is guilty of an offence.
- Maximum penalty:
- (a) for a basic offence—imprisonment for 5 years;
- (b) for an aggravated offence (other than an offence to which paragraph (c) applies)—imprisonment for 7 years;
- (c) for an offence aggravated by a threat to commit arson—imprisonment for 15 years.
- (5) Subsection (4) applies to a threat directly or indirectly communicated by words (written or spoken) or by conduct, or partially by words and partially by conduct.

### **85A—Recklessly endangering property**

- (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.

### **85B—Special provision for causing a bushfire**

- (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.

### **86—Possession of object with intent to damage property**

- (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.

### **86A—Using motor vehicle without consent**

- (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*.

## Part 4A—Computer offences

### 86B—Interpretation

In this Part—

**computer data** includes data in any form in which it may be stored or processed in a computer (including a computer program or part of a computer program);

**electronic communication** means the communication of computer data between computers by means of an electronic communication network;

**electronic communication network** means devices and systems by which computer data is communicated between computers and includes—

- (a) a link or network that operates wholly or partially by wireless communication; and
- (b) the world wide web;

**impairment** of electronic communication includes prevention or delay but does not include interception if the interception does not impair, prevent or delay the reception, at the intended destination, of the computer data that is being communicated;

**modification** of computer data includes—

- (a) deletion or removal of the data;
- (b) an alteration of the data;
- (c) an addition to the data;

**possession** of computer data includes possession of the medium or device in which the computer data is stored;

**serious computer offence** means an offence against section 86E, 86F, 86G or 86H;

**serious offence** means an offence for which a maximum penalty of life imprisonment or imprisonment for a term of at least 5 years is prescribed;

**use**—a person uses a computer if the person causes the computer to perform a function.

### 86C—Meaning of unauthorised access to or modification of computer data

- (1) Access to, or modification of, computer data is unauthorised unless it is done or made by the owner of the data or some other person who has an authorisation or licence (express or implied) from the owner of the data to have access or to make the modification.
- (2) A person is to be regarded as the owner of computer data if—
  - (a) the person brought the data into existence or stored the data in the computer for his or her own purposes; or
  - (b) the data was brought into existence or stored in the computer at the request or on behalf of that person; or

- (c) the person has a proprietary interest in, or possessory rights over, the medium in which the computer data is stored entitling the person to determine what data is stored in the medium and in what form.
- (3) For the purposes of an offence against this Part, the onus of establishing that access to, or modification of, computer data was unauthorised lies on the prosecution.

#### **86D—Meaning of unauthorised impairment of electronic communication**

- (1) An impairment of electronic communication is unauthorised unless it is caused by the person who is entitled to control use of the relevant electronic communication network or some other person who has an authorisation or licence (express or implied) from the person who is entitled to control use of the relevant electronic communication network to cause the impairment.
- (2) A person is to be regarded as being entitled to control use of the relevant electronic communication network if the person is entitled by law to determine who is to have access to the network for the purpose of sending or receiving electronic communications.
- (3) For the purposes of an offence against this Part, the onus of establishing that an impairment of electronic communication was unauthorised lies on the prosecution.

#### **86E—Use of computer with intention to commit, or facilitate the commission of, an offence**

- (1) A person who—
  - (a) uses a computer to cause (directly or indirectly)—
    - (i) unauthorised access to or modification of computer data; or
    - (ii) an unauthorised impairment of electronic communication; and
  - (b) knows that the access, modification or impairment is unauthorised; and
  - (c) intends, by that access, modification or impairment to commit, or to facilitate the commission (either by that person or someone else) of, a serious offence (the *principal offence*),

is guilty of an offence.

Maximum penalty: The maximum penalty for an attempt to commit the principal offence.

- (2) An offence may be committed under this section—
  - (a) whether the principal offence was to be committed at the time the computer was used or later; and
  - (b) even though it would have been impossible in the circumstances to commit the principal offence.
- (3) If the principal offence is in fact committed—
  - (a) this section does not prevent the person who used the computer from being convicted as a principal offender or as an accessory to the commission of the principal offence; but
  - (b) a person is not liable to be convicted of the principal offence (or as an accessory to the principal offence) and of an offence against this section.

- (4) A person cannot be convicted of an attempt to commit an offence against this section.

### **86F—Use of computer to commit, or facilitate the commission of, an offence outside the State**

- (1) A person who—
- (a) uses a computer in this State to cause (directly or indirectly)—
    - (i) unauthorised access to or modification of computer data; or
    - (ii) an unauthorised impairment of electronic communication; andknows that the access, modification or impairment is unauthorised; and
  - (b) intends, by that access, modification or impairment, to commit, or to facilitate the commission (either by that person or someone else) of, a prohibited act in another jurisdiction (the *relevant jurisdiction*),

is guilty of an offence.

Maximum penalty: The maximum penalty under the law of this State for an attempt to commit the prohibited act in this State.

- (2) A *prohibited act* is an act that would—
- (a) if committed with intent in the relevant jurisdiction, constitute an offence for which a maximum penalty of life imprisonment or imprisonment for a term of at least 5 years is prescribed; and
  - (b) if committed with intent in this State, constitute an offence for which a maximum penalty of life imprisonment or imprisonment for a term of at least 5 years is prescribed.
- (3) A person may be convicted of an offence against this section—
- (a) whether the prohibited act was to be committed at the time of the conduct to which the charge relates or later; and
  - (b) even though it would have been impossible in the circumstances to commit the prohibited act.
- (4) A person cannot be convicted of an attempt to commit an offence against this section.
- (5) In this section—

*act* includes an omission or state of affairs that is (if it occurred in this State) capable of constituting an element of an offence.

### **86G—Unauthorised modification of computer data**

A person who—

- (a) causes (directly or indirectly) an unauthorised modification of computer data; and
- (b) knows that the modification is unauthorised; and
- (c) intends, by that modification, to cause harm or inconvenience by impairing access to, or by impairing the reliability, security or operation of, computer data, or is reckless as to whether such harm or inconvenience will ensue,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

### **86H—Unauthorised impairment of electronic communication**

A person who—

- (a) causes (directly or indirectly) an unauthorised impairment of electronic communication; and
- (b) knows that the impairment is unauthorised; and
- (c) intends, by that impairment, to cause harm or inconvenience, or is reckless as to whether harm or inconvenience will ensue,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

### **86I—Possession of computer viruses etc with intent to commit serious computer offence**

(1) A person is guilty of an offence if the person—

- (a) produces, supplies or obtains proscribed data or a proscribed object; or
- (b) is in possession or control of proscribed data or a proscribed object,

with the intention of committing, or facilitating the commission (either by that person or someone else) of, a serious computer offence.

Maximum penalty: Imprisonment for 3 years.

(2) In this section—

***proscribed data*** means a computer virus or other computer data clearly designed or adapted to enable or facilitate the commission of a serious computer offence;

***proscribed object*** means a document or other object clearly designed or adapted to enable or facilitate the commission of a serious computer offence.

**Examples—**

- 1 A disk, card or other data storage device containing a computer virus or other computer data adapted for the commission of a serious computer offence.
- 2 Instructions (whether in hard copy or electronic form) for carrying out a serious computer offence.

(3) If it is established in proceedings for an offence against this section that the defendant was in control of proscribed data, it is irrelevant—

- (a) whether the data is stored inside or outside the State; or
- (b) whether the defendant owned or was in possession of the medium or device in which the data was stored.

(4) A person may be convicted of an offence against this section even though it would have been impossible in the circumstances to commit the intended offence.

(5) A person cannot be convicted of an attempt to commit an offence against this section.



## Part 5—Offences of dishonesty

### Division 1—Preliminary

#### 130—Interpretation

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);

**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.

### 131—Dishonesty

- (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.

### **132—Consent of owner**

- (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.

### **133—Operation of this Part**

- (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**

### **134—Theft (and receiving)**

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

Maximum penalty:

- (a) for a basic offence—imprisonment for 10 years;
  - (b) for an aggravated offence—imprisonment for 15 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.

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

- (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.

**136—General deficiency**

- (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****137—Robbery**

- (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:**

- (a) for a basic offence—imprisonment for 15 years;
- (b) for an aggravated offence—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 that, where robbery is committed jointly, each participant in the offence is guilty of aggravated robbery applies irrespective of whether all elements of robbery can be established against a particular person.

## Division 4—Money laundering and dealing in instruments of crime

### 138—Money laundering

- (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.

- (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.

### 138A—Dealing in instruments of crime

- (1) A person who deals in property is guilty of an offence if—

- (a) the person knows that—

- (i) the property is an instrument of crime; and
- (ii) the dealing may facilitate the commission of a crime or assist an offender to escape detection or avoid any other consequence of the crime; and

- (b) the person's conduct is dishonest.

Maximum penalty:

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

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

- (2) A person who deals in property is guilty of an offence if—
- (a) the property is an instrument of crime; and
  - (b) the person—
    - (i) ought reasonably to know that it is an instrument of crime; and
    - (ii) is reckless about whether the dealing may facilitate the commission of a crime or assist an offender to escape detection or avoid any other consequence of the crime; and
  - (c) the person's conduct is dishonest.

Maximum penalty:

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

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

- (3) In this section—

*crime* means—

- (a) an indictable offence against the law of the State or a corresponding offence against the law of the Commonwealth, another State or a Territory, or a place outside Australia; or
- (b) any of the following offences:
  - (i) an offence of a kind that is required to be prosecuted, and dealt with by the Magistrates Court, as a summary offence under a provision of Part 5 Division 2 of the *Controlled Substances Act 1984*; or
  - (ii) an offence against section 68(3) of the *Criminal Law Consolidation Act 1935*; or
  - (iii) an offence against section 28(1)(a) of the *Summary Offences Act 1953*;

*instrument of crime* means—

- (a) property that has been used or is intended for use for or in connection with the commission of a crime; or
- (b) property into which any such property has been converted.

## Division 5—Deception

### 139—Deception

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:

- (a) for a basic offence—imprisonment for 10 years;
- (b) for an aggravated offence—imprisonment for 15 years.

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

### **140—Dishonest dealings with documents**

- (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:

- (a) for a basic offence—imprisonment for 10 years;
- (b) for an aggravated offence—imprisonment for 15 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**

### **141—Dishonest manipulation of machines**

- (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**

### **142—Dishonest exploitation of position of advantage**

- (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.

**Note—**

- 1 Compare *R v Hinks* [2000] 4 All ER 833.
- 2 Compare *R v Lawrence* [1972] AC 626.

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

### **143—Dishonest interference with merchandise**

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.

**Note—**

- 1 Compare *R v Morris* [1984] AC 320.

### **144—Making off without payment**

- (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.

## Part 5A—Identity theft

### 144A—Interpretation

In this Part—

***criminal purpose*** means the purpose of committing, or facilitating the commission of, an offence;

***digital signature*** means encrypted electronic or computer data intended for the exclusive use of a particular person as a means of identifying himself or herself as the sender of an electronic communication;

***electronic communication*** means a communication transmitted in the form of electronic or computer data;

***false identity***—a person assumes a false identity if the person pretends to be, or passes himself or herself off as, some other person;

The other person may be—

- (a) living or dead;
- (b) real or fictional;
- (c) natural or corporate.

***personal identification information***—a person's personal identification information is information used to identify the person, and includes—

- (a) in the case of a natural person—
  - (i) information about the person such as his or her name, address, date or place of birth, marital status, relatives and so on;
  - (ii) the person's driver's licence or driver's licence number;
  - (iii) the person's passport or passport number;
  - (iv) biometric data relating to the person;
  - (v) the person's voice print;
  - (vi) the person's credit or debit card, its number, and data stored or encrypted on it;
  - (vii) any means commonly used by the person to identify himself or herself (including a digital signature);
  - (viii) a series of numbers or letters (or a combination of both) intended for use as a means of personal identification;
- (b) in the case of a body corporate—
  - (i) its name;
  - (ii) its ABN;
  - (iii) the number of any bank account established in the body corporate's name or of any credit card issued to the body corporate;

***prohibited material*** means anything (including personal identification information) that enables a person to assume a false identity or to exercise a right of ownership that belongs to someone else to funds, credit, information or any other financial or non-financial benefit;

***serious criminal offence*** means—

- (a) an indictable offence; or
- (b) an offence prescribed by regulation for the purposes of this definition;

***voice print*** means computer data recording the unique characteristics of a person's voice.

#### **144B—False identity etc**

- (1) A person who—
  - (a) assumes a false identity; or
  - (b) falsely pretends—
    - (i) to have particular qualifications; or
    - (ii) to have, or to be entitled to act in, a particular capacity,makes a false pretence to which this section applies.
- (2) A person who assumes a false identity makes a false pretence to which this section applies even though the person acts with the consent of the person whose identity is falsely assumed.
- (3) A person who makes a false pretence to which this section applies intending, by doing so, to commit, or facilitate the commission of, a serious criminal offence is guilty of an offence and liable to the penalty appropriate to an attempt to commit the serious criminal offence.

#### **144C—Misuse of personal identification information**

- (1) A person who makes use of another person's personal identification information intending, by doing so, to commit, or facilitate the commission of, a serious criminal offence, is guilty of an offence and liable to the penalty appropriate to an attempt to commit the serious criminal offence.
- (2) This section applies irrespective of whether the person whose personal identification information is used—
  - (a) is living or dead; or
  - (b) consents to the use of the personal identification information.

#### **144D—Prohibited material**

- (1) A person who—
  - (a) produces prohibited material; or
  - (b) has possession of prohibited material,intending to use the material, or to enable another person to use the material, for a criminal purpose is guilty of an offence.  
Maximum penalty: Imprisonment for 3 years.

- (2) A person who sells (or offers for sale) or gives (or offers to give) prohibited material to another person, knowing that the other person is likely to use the material for a criminal purpose is guilty of an offence.

Maximum penalty: Imprisonment for 3 years.

- (3) A person who is in possession of equipment for making prohibited material intending to use it to commit an offence against this section is guilty of an offence.

Maximum penalty: Imprisonment for 3 years.

#### **144E—Attempt offence excluded**

A person cannot be convicted of an attempt to commit an offence against this Part.

#### **144F—Application of Part**

This Part does not apply—

- (a) to misrepresentation by a person under the age of 18 years for the purpose of—
- (i) obtaining alcohol, tobacco or any other product not lawfully available to persons under the age of 18; or
  - (ii) gaining entry to premises to which access is not ordinarily allowed to persons under the age of 18; or
- (b) to any thing done by a person under that age to facilitate such a misrepresentation.



## Part 6—Secret commissions

### Division 1—Preliminary

#### 145—Interpretation

- (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

#### 146—Fiduciaries

- (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.

### **147—Exercise of fiduciary functions**

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.

### **148—Unlawful bias**

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

### **149—Offence for fiduciary to exercise unlawful bias**

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

Maximum penalty: Imprisonment for 7 years.



**150—Bribery**

- (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****151—Exclusion of defence**

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.



## Part 6A—Serious criminal trespass

### 167—Sacrilège

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—**

- 1 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.

### 168—Serious criminal trespass

- (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—**

- 1 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.

### 169—Serious criminal trespass—non-residential buildings

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

Maximum penalty:

- (a) for a basic offence—imprisonment for 10 years;
- (b) for an aggravated offence—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.

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

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

Maximum penalty:

- (a) for a basic offence—imprisonment for 15 years;
- (b) for an aggravated offence—imprisonment for life.

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

- (a) any of the factors that generally give rise to aggravation of an offence are applicable;<sup>1</sup> or
- (b) another person is lawfully present in the place of residence when the offence is committed and the offender knows of the other's presence or is reckless about whether anyone is in the place.

- (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.

**Note—**

- 1 See section 5AA.

### **170A—Criminal trespass—places of residence**

- (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:

- (a) for a basic offence—imprisonment for 3 years;
- (b) for an aggravated offence—imprisonment for 5 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.

## Part 6B—Blackmail

### 171—Interpretation

(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.

### 172—Blackmail

(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.

## Part 6C—Piracy

### 173—Interpretation

- (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.

### 174—Piracy

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

#### 237—Definitions

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; or
- (i) a person who personally performs work for the Crown, a State instrumentality or a local government body as a contractor or as an employee of a contractor or otherwise directly or indirectly on behalf of a contractor,

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.

#### 238—Acting improperly

- (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.

### **239—General attempt offence excluded**

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

### **240—Parliamentary privilege not affected**

Nothing in this Part derogates from Parliamentary privilege.

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

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

- (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
  - (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**

#### **242—Perjury and subornation**

- (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.

### **243—Fabricating, altering or concealing evidence**

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
  - (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.

### **244—Offences relating to witnesses**

- (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.

### **245—Offences relating to jurors**

- (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
- (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.

## **246—Confidentiality of jury deliberations and identities**

- (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 permission 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.
- (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.

#### **247—Harassment to obtain information about jury's deliberations**

- (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.

- (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.

#### **248—Threats or reprisals relating to persons involved in criminal investigations or judicial proceedings**

- (1) A person who—
  - (a) stalks another person; or
  - (b) causes or procures, or threatens or attempts to cause or procure, any physical injury to a person or property,

with the intention of inducing a person who is or may be involved in a criminal investigation or judicial proceedings, to act or not to act in a way that might influence the outcome of the investigation or proceedings, is guilty of an offence.

Penalty: Imprisonment for 7 years.

- (2) A person who—
  - (a) stalks another person; or



- (b) causes or procures, or threatens or attempts to cause or procure, any physical injury to a person or property,

on account of anything said or done by a person involved in a criminal investigation or judicial proceedings in good faith in the conduct of the investigation or proceedings, is guilty of an offence.

Penalty: Imprisonment for 7 years.

- (3) For the purposes of this section, a person *stalks* another if the person does any of the following, in a manner that could reasonably be expected to arouse the other person's apprehension or fear:
- (a) follows the other person; or
  - (b) loiters outside the place of residence of the other person or some other place frequented by the other person; or
  - (c) enters or interferes with property in the possession of the other person; or
  - (d) 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
  - (e) 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
  - (f) 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; or
  - (g) keeps the other person under surveillance; or
  - (h) acts in any other way.
- (4) For the purposes of this section—
- (a) a person is *involved in a criminal investigation* if the person is involved in such an investigation as a witness, victim or legal practitioner or is otherwise assisting police with their inquiries; and
  - (b) a person is *involved in judicial proceedings* if the person is—
    - (i) a judicial officer or other officer at judicial proceedings; or
    - (ii) involved in such proceedings as a witness, juror or legal practitioner, whether the proceedings are in progress or are proceedings that are to be or may be instituted at a later time.

## Division 4—Offences relating to public officers

### 249—Bribery or corruption of public officers

- (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.

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

- (1) A person who—

- (a) stalks another person; or
- (b) causes or procures, or threatens or attempts to cause or procure, any physical injury to a person or property,

with the intention of influencing the manner in which a public officer discharges or performs his or her official duties or functions, is guilty of an offence.

Penalty: Imprisonment for 7 years.

- (2) A person who—

- (a) stalks another person; or
- (b) causes or procures, or threatens or attempts to cause or procure, any physical injury to a person or property,

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.

- (3) For the purposes of this section, a person *stalks* another if the person does any of the following, in a manner that could reasonably be expected to arouse the other person's apprehension or fear:

- (a) follows the other person; or

- (b) loiters outside the place of residence of the other person or some other place frequented by the other person; or
- (c) enters or interferes with property in the possession of the other person; or
- (d) 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
- (e) 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
- (f) 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; or
- (g) keeps the other person under surveillance; or
- (h) acts in any other way.

### **251—Abuse of public office**

- (1) 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.

- (2) A former public officer who improperly uses information that he or she gained by virtue of his or her public office with the intention of—
- (a) securing a benefit for himself or herself or for another person; or
  - (b) causing injury or detriment to another person,
- is guilty of an offence.

Penalty: Imprisonment for 7 years.

### **252—Demanding or requiring benefit on basis of public office**

- (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.

### **253—Offences relating to appointment to public office**

- (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**

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

- (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
  - (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.

### **255—Harbouring or employing escapee etc**

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**

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

- (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**

### **257—Criminal defamation**

- (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, having regard only to the circumstances happening before or at the time of the publication, 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**

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

- (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

### 259—Interpretation

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.

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

- (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.

### **261—Goods contamination unrelated to issues of public health and safety**

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.

## **Part 7B—Accessories**

### **267—Aiding and abetting**

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



## Part 8—Intoxication

### 267A—Definitions

(1) In this Part—

**alleged offence** means the offence with which the defendant is charged but also extends to any other offence of which the defendant could be found guilty on the charge;

**consciousness** includes—

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

**consumption** of a drug includes—

- (a) injection of the drug (either by the person to whom the drug is administered or someone else); and
- (b) inhalation of the drug; and
- (c) any other means of introducing the drug into the body;

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

**medical practitioner** means a registered medical practitioner or registered dentist;

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

**recreational use** of a drug—consumption of a drug is to be regarded as recreational use of the drug unless—

- (a) the drug is administered against the will, or without the knowledge, of the person who consumes it; or
- (b) the consumption occurs accidentally; or
- (c) the person who consumes the drug does so under duress, or as a result of fraud or reasonable mistake; or
- (d) the consumption is therapeutic;

**self-induced**—see subsections (2) and (3);

**serious harm** means—

- (a) serious mental or physical harm; or
- (b) loss of, or damage to property, where the amount or value of the loss or damage exceeds \$10 000;

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

*therapeutic*—the consumption of a drug is to be regarded as therapeutic if—

- (a) the drug is prescribed by, and consumed in accordance with the directions of, a medical practitioner; or
  - (b) the drug—
    - (i) is a drug of a kind available, without prescription, from registered pharmacists; and
    - (ii) is consumed for a purpose recommended by the manufacturer and in accordance with the manufacturer's instructions.
- (2) Intoxication resulting from the recreational use of a drug is to be regarded as self-induced.
- (3) If a person becomes intoxicated as a result of the combined effect of the therapeutic consumption of a drug and the recreational use of the same or another drug, the intoxication is to be regarded as self-induced even though in part attributable to therapeutic consumption.

## **268—Mental element of offence to be presumed in certain cases**

- (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) 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 self-induced 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 the defendant would, if his or her conduct had been voluntary and intended, have been guilty of the offence.
- (3) However, subsection (2) does not extend to—
  - (a) a case in which it is necessary to establish that the defendant foresaw the consequences of his or her conduct; or
  - (b) except where the alleged offence is an offence against section 48 (rape)—a case in which it is necessary to establish that the defendant was aware of the circumstances surrounding his or her conduct.

### **Example—**

A, whose consciousness is impaired by self-induced intoxication to the point of criminal irresponsibility at the time of the alleged offence, beats B up and B dies of the injuries. In this case, A could be convicted of manslaughter but not of murder (because A is taken to have intended to do the act that results in death but not the death).

- (4) If—
  - (a) the objective elements of an alleged offence are established against a defendant but the defendant's consciousness was (or may have been) impaired by self-induced intoxication to the point of criminal irresponsibility at the time of the alleged offence; and

- (b) the defendant's conduct resulted in death; and
- (c) the defendant is not liable to be convicted of the offence under subsection (1) or (2); and
- (d) the defendant's conduct, if judged by the standard appropriate to a reasonable and sober person in the defendant's position, falls so short of that standard that it amounts to criminal negligence,

the defendant may be convicted of manslaughter and liable to imprisonment for life.

(5) If—

- (a) the objective elements of an alleged offence are established against a defendant but the defendant's consciousness was (or may have been) impaired by self-induced intoxication to the point of criminal irresponsibility at the time of the alleged offence; and
- (b) the defendant's conduct resulted in serious harm (but not death); and
- (c) the defendant is not liable to be convicted of the offence under subsection (1) or (2); and
- (d) the defendant's conduct, if judged by the standard appropriate to a reasonable and sober person in the defendant's position, falls so short of that standard that it amounts to criminal negligence,

the defendant may be convicted of causing serious harm by criminal negligence.

Maximum penalty: Imprisonment for 4 years.

- (6) A defendant's consciousness is taken to have been impaired to the point of criminal irresponsibility at the time of the alleged offence if it is impaired to the extent necessary at common law for an acquittal by reason only of the defendant's intoxication.

### **269—Question of intoxication must be specifically raised**

- (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 or the prosecutor 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

#### 269A—Interpretation

(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, domestic partner, 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 *Health Practitioner Regulation National Law* 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.

**Note—**

- 1 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).

**269B—Distribution of judicial functions between judge and jury**

- (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>

**Note—**

- 1 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).

**269BA—Charges on which alternative verdicts are possible**

- (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.

## **Division 2—Mental competence to commit offences**

### **269C—Mental competence**

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.

### **269D—Presumption of mental competence**

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.

### **269E—Reservation of question of mental competence**

- (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.

### **269F—What happens if trial judge decides to proceed first with trial of defendant's mental competence to commit offence**

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.

#### **A—Trial of defendant's mental competence**

- (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.

### **B—Trial of objective elements of offence**

- (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.

### **269G—What happens if trial judge decides to proceed first with trial of objective elements of offence**

If the trial judge decides to proceed first with the trial of the objective elements of the offence, the court proceeds as follows.

**A—Trial of objective elements of offence**

- (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.

**B—Trial of defendant's mental competence**

- (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 unfit to stand trial**

#### **269H—Mental unfit to stand trial**

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.

#### **269I—Presumption of mental fitness to stand trial**

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.

#### **269J—Order for investigation of mental fitness to stand trial**

- (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.

**269K—Preliminary prognosis of defendant's condition**

- (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.
- (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.

**269L—Trial judge's discretion about course of trial**

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.

**269M—What happens if trial judge decides to proceed first with trial of defendant's mental fitness to stand trial**

If the trial judge decides that the defendant's mental fitness to stand trial is to be tried first, the court proceeds as follows.

**A—Trial of defendant's mental fitness to stand trial**

- (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.

### **B—Trial of objective elements of offence**

- (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.

### **269N—What happens if trial judge decides to proceed first with trial of objective elements of offence**

If the trial judge decides to proceed first with the trial of the objective elements of the offence, the court proceeds as follows.

#### **A—Trial of objective elements of offence**

- (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.

#### **B—Trial of defendant's mental fitness to stand trial**

- (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.
- (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**

### **2690—Supervision**

- (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.

**Note—**

- 1 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.

**269P—Variation or revocation of supervision order**

- (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.

**269Q—Report on mental condition of the defendant**

- (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.

**269R—Reports and statements to be provided to court**

- (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 subsection (1) 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.

- (3) If a court is fixing a limiting term in proceedings under this Division relating to an alleged indictable offence or prescribed summary offence, a person who has suffered injury, loss or damage resulting from the defendant's conduct may furnish the court with a statement of a kind referred to in section 7A of the *Criminal Law (Sentencing) Act 1988* (a **victim impact statement**), as if the defendant had been convicted of the offence and the court was determining sentence (and the court must deal with the statement in all respects as if it were a statement furnished under that section).
- (4) However, the court need not comply with section 7A(3b) and (3c) of the *Criminal Law (Sentencing) Act 1988* if the court is satisfied that—
- (a) the defendant is incapable of understanding the victim impact statement; or
  - (b) having regard to the nature of the defendant's mental impairment, it would be inappropriate for the defendant to be present.
- (5) If a court is fixing a limiting term in proceedings under this Division, the Crown or the Commissioner for Victim's Rights may furnish the court with a statement of a kind referred to in section 7B of the *Criminal Law (Sentencing) Act 1988* (a **neighbourhood impact statement** or a **social impact statement**) as if the court were determining sentence for an offence (and the court must deal with the statement in all respects as if it were a statement furnished under that section).
- (6) In this section—
- prescribed summary offence** has the same meaning as in section 7A of the *Criminal Law (Sentencing) Act 1988*.

### 269S—Principle on which court is to act

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.

### 269T—Matters to which court is to have regard

- (1) In deciding proceedings under this Division, the court should have regard to—
- (a) the nature of the defendant's mental impairment; and
  - (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.

### **269U—Revision of supervision order**

- (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.

### **269V—Custody, supervision and care**

- (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.
- (4) The Minister or the Parole Board (as the case may be) may delegate a power or function under this section—
  - (a) to a person for the time being performing particular duties or holding or acting in a particular position; or
  - (b) to any other person or body that, in the delegator's opinion, is competent to perform or exercise the relevant functions or powers.
- (5) A delegation under subsection (4)—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the ability of the delegator to act in any matter; and
  - (d) is revocable at will by the delegator.

### **269VA—Effect of supervening imprisonment**

- (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.

## **Division 5—Miscellaneous**

### **269W—Counsel to have independent discretion**

- (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.

### **269WA—Power to order examination etc in pre-trial proceedings**

- (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.

### **269X—Power of court to deal with defendant before proceedings completed**

- (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.

### **269Y—Appeals**

- (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 with the permission 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.

### **269Z—Counselling of next of kin and victims**

- (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.

### **269ZA—Exclusion of evidence**

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.

### **269ZB—Arrest of person who escapes from detention etc**

- (1) If a person who is committed to detention under this Part—
- (a) escapes from the detention; or
  - (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**

#### **270—Punishment for certain offences**

- (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**

#### **270A—Attempts**

- (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.

### **270AB—Attempted manslaughter**

- (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**

#### **270B—Assaults with intent**

- (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;
  - (c) an offence involving interference with, damage to, or destruction of property punishable by imprisonment for 3 years or more.

## Division 4—Preparatory conduct

### 270C—Going equipped for commission of offence of dishonesty or offence against property

- (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.

### 270D—Going equipped for commission of offence against the person

- (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

### 271—General power of arrest

- (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).

### **273—Judge's warrant for arrest of person charged**

- (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**

### **274—Interpretation**

- (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.

### **275—Information may be presented in the name of the Director of Public Prosecutions**

- (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.

**276—Director of Public Prosecutions may decline to prosecute**

- (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.

**277—General provisions as to informations**

- (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.

**278—Joinder of charges**

- (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.
- (2a) Despite subsection (2) and any rule of law to the contrary, if, in accordance with this Act, 2 or more counts charging sexual offences involving different alleged victims are joined in the same information, the following provisions apply:
  - (a) subject to paragraph (b), those counts are to be tried together;
  - (b) the judge may order a separate trial of a count relating to a particular alleged victim if (and only if) evidence relating to that count is not admissible in relation to each other count relating to a different alleged victim.
- (3) This section does not affect any other provision of this Act or any other Act permitting more than 1 charge to be joined in the same information.

(4) In this section—

*sexual offence* means—

- (a) an offence against section 48, 48A, 49, 50, 56, 58, 63B, 68 or 72; or
- (b) an attempt to commit, or an assault with intent to commit, any of those offences; or
- (c) a substantially similar offence against a corresponding previous enactment; or
- (d) an offence against the law of the Commonwealth, another State or a Territory corresponding to an offence referred to in a preceding paragraph.

### **279—Joint trial of accessories**

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.

### **280—Coin and bank notes may be described simply as money**

- (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.

### **281—Objections to informations, amendments and postponement of trial**

- (1) Every objection to any information for any formal defect apparent on the face of the information must be made by application 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**

### **282—Saving provisions**

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.

### **283—Rules of court**

- (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**

### **284—Plea of not guilty and refusal to plead**

- (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.

### **285—Form of plea of *autrefois convict* or *autrefois acquit***

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.

### **285A—Certain questions of law may be determined before jury empanelled**

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.

### **285B—Conviction on plea of guilty of offence other than that charged**

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.

### **285BA—Power to serve notice to admit facts**

- (1) A court before which a defendant is to be tried on information may, on application by the Director of Public Prosecutions, authorise the Director of Public Prosecutions to serve on the defence a notice to admit specified facts.
- (2) The court may, in granting such an authorisation, fix a time within which the notice is to be complied with.
- (3) The notice must contain a warning, in the prescribed form, to the effect that, if the defendant is convicted, the court is required to take an unreasonable failure to make an admission in response to the notice into account in fixing sentence.
- (4) This section does not abrogate the privilege against self-incrimination and a refusal to make an admission on the ground that the admission would tend to incriminate the defendant of an offence is not to be made the subject of comment to a jury.
- (5) An order under this section may only be made at a directions hearing at which the defendant is represented by a legal practitioner unless the court is satisfied that—
  - (a) the defendant has voluntarily chosen to be unrepresented; or



- (b) the defendant is unrepresented for reasons attributable to the defendant's own fault.
- (6) If a defendant unreasonably fails to make an admission in response to a notice under this section, and the defendant is convicted, the court should take the failure into account in fixing sentence.
- (7) Without limiting subsection (6), a defendant unreasonably fails to make an admission if the defendant—
  - (a) claims privilege against self-incrimination as a reason for not making the admission; and
  - (b) thus puts the prosecution to proof of facts that are not seriously contested at the trial.

### **285BB—Power to require notice of intention to adduce certain kinds of evidence**

- (1) A court before which a defendant is to be tried on information may, on application by the prosecutor, require the defence to give the Director of Public Prosecutions written notice of an intention to introduce evidence of any of the following kinds:
  - (a) evidence tending to establish that the defendant was mentally incompetent to commit the alleged offence or is mentally unfit to stand trial;
  - (b) evidence tending to establish that the defendant acted for a defensive purpose;
  - (c) evidence of provocation;
  - (d) evidence of automatism;
  - (e) evidence tending to establish that the circumstances of the alleged offence occurred by accident;
  - (f) evidence of necessity or duress;
  - (g) evidence tending to establish a claim of right;
  - (h) evidence of intoxication.
- (2) Before making an order under this section, the court must satisfy itself that—
  - (a) the prosecution has provided the defence with an outline of the prosecution case, so far as it has been developed on the basis of material currently available to the prosecution; and
  - (b) the prosecution has no existing, but unfulfilled, obligations of disclosure to the defence.
- (3) Non-compliance with a requirement under subsection (1) does not render evidence inadmissible but the prosecutor or the judge (or both) may comment on the non-compliance to the jury.
- (4) A court before which a defendant is to be tried on information may require the defence to notify the Director of Public Prosecutions in writing whether it consents to dispensing with the calling of prosecution witnesses proposed to be called to establish the admissibility of specified intended evidence of any of the following kinds:
  - (a) documentary, audio, visual, or audiovisual evidence of surveillance or interview;

- (b) other documentary, audio, visual or audiovisual evidence;
  - (c) exhibits.
- (5) If the defence fails to comply with a notice under subsection (4), the defendant's consent to the tender of the relevant evidence for purposes specified in the notice will be conclusively presumed.

### **285BC—Expert evidence**

- (1) If a defendant is to be tried or sentenced for an indictable offence, and expert evidence is to be introduced for the defence, written notice of intention to introduce the evidence must be given to the Director of Public Prosecutions—
- (a) in the case of trial, on or before the date of the first directions hearing, and, in the case of sentence, at least 28 days before the date appointed for submissions on sentence; or
  - (b) if the evidence does not become available to the defence until later—as soon as practicable after it becomes available to the defence.
- (2) The notice—
- (a) must set out the name and qualifications of the expert; and
  - (b) must describe the general nature of the evidence and what it tends to establish.
- (3) The court may, on application by a defendant, exempt the defendant from the obligation imposed by this section.
- (4) If the defence proposes to introduce expert psychiatric evidence or other expert medical evidence relevant to the defendant's mental state or medical condition at the time of an alleged offence, the court may, on application by the prosecutor, require the defendant to submit, at the prosecutor's expense, to an examination by an independent expert approved by the court.
- (5) If a defendant fails to comply with a requirement of or under this section—
- (a) the evidence will not be admitted without the court's permission (but the court cannot allow the admission of evidence if the defendant fails to submit to an examination by an independent expert under subsection (4)); and
  - (b) in the case of a trial by jury—the prosecutor or the judge (or both) may comment on the defendant's non-compliance to the jury.
- (6) If the Director of Public Prosecutions receives notice under this section of an intention to introduce expert evidence less than 28 days before the day appointed for the commencement of the trial or submissions on sentence, the court may, on application by the prosecutor, adjourn the case to allow the prosecution a reasonable opportunity to obtain expert advice on the proposed evidence and, if a jury has been empanelled and the adjournment would, in the court's opinion, adversely affect the course of the trial, the court may discharge the jury and order that the trial be re-commenced.
- (7) The court should grant an application for an adjournment under subsection (6) unless there are good reasons to the contrary.

- (8) If it appears to the judge, from evidence or submissions before the court, that a legal practitioner has advised the defendant not to comply, or has expressly agreed to the defendant's non-compliance, with a requirement of this section, the judge may report the matter to the appropriate professional disciplinary authority.
- (9) Before the judge makes a report under subsection (8), the judge will invite the legal practitioner to make submissions to the court showing why the matter should not be reported.

### **285C—Notice of certain evidence to be given**

- (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 with the permission of the court, evidence in rebuttal of an alibi shall not be adduced after the close of the case for the prosecution.
- (6) Permission 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 permission in any other case).
- (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.

### **286—Inspection and copies of depositions**

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.

### **288—Right to counsel**

A person charged with an offence may be represented by counsel.

### **288A—Defence to be invited to outline issues in dispute at conclusion of opening address for the prosecution**

- (1) On the trial of an offence on information, the judge is to invite the defendant, at the conclusion of the prosecutor's opening address, to address the court to outline the issues in contention between the prosecution and the defence.
- (2) The defendant may then address the court accordingly or decline the invitation.
- (3) If the trial is before a jury, the invitation to exercise a right under this section must be made in the absence of the jury and a defendant's failure to exercise a right that he or she has been invited to exercise under this section is not to be made the subject of comment by the judge or the prosecutor to the jury.

### **288AB—Right to call or give evidence**

- (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 2 or more defendants, an address on behalf of any 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.
- (4) A defendant may exercise a right to address the court under this section even though he or she has already addressed the court to outline issues in contention between the prosecution and the defence.

### **288B—Right of reply**

- (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.

**289—Postponement of trial**

- (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*.

**290—Verdict for attempt where full offence charged**

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****291—Proceedings against corporations**

- (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**

### **294—Defects cured by verdict**

No judgment after verdict for any indictable offence shall be stayed or reversed for want of a similiter, 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.

### **295—Forfeiture abolished**

- (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—Witness fees and expenses**

### **297—Witness fees**

Witness fees and expenses in respect of proceedings under this Act are payable in accordance with the regulations.

## **Division 12—Orders relating to firearms and other offensive weapons**

### **299A—Orders as to firearms and offensive weapons**

- (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;
  - (g) an order—
    - (i) that a specified person is subject to a firearms prohibition order under the *Firearms Act 1977* until further order; or
    - (ii) prohibiting a specified person from using or possessing an 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, magistrate or special justice entitled to preside over or constitute the court.

## **Division 13—Abolition of presumption of marital coercion**

### **328A—Abolition of presumption of marital coercion**

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**

### **329—Provision as to persons convicted of an offence**

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**

### **330—Overlapping offences**

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.





## Part 10—Limitations on rules relating to double jeopardy

### Division 1—Preliminary

#### 331—Interpretation

(1) In this Part—

*acquittal* of an offence includes—

- (a) acquittal in appellate proceedings relating to the offence; and
- (b) acquittal at the direction or discretion of the court,

(whether in this State or in another jurisdiction);

*administration of justice offence* means any of the following offences:

- (a) an offence of perjury or subornation of perjury;
- (b) an offence against section 243, 244, 245 or 248;
- (c) an offence against section 249 or 250 where the public officer is a judicial officer;
- (d) an offence against section 256;
- (e) a substantially similar offence against a previous enactment or the law of another jurisdiction corresponding to an offence referred to in a preceding paragraph;

*Category A offence* means any of the following offences:

- (a) an offence of murder;
- (b) manslaughter or attempted manslaughter;
- (c) an aggravated offence of rape;
- (d) an aggravated offence of robbery;
- (e) an offence of trafficking in a commercial quantity, or large commercial quantity, of a controlled drug contrary to section 32(1) or (2) of the *Controlled Substances Act 1984*;
- (f) an offence of manufacturing a commercial quantity, or large commercial quantity, of a controlled drug contrary to section 33(1) or (2) of the *Controlled Substances Act 1984*;
- (g) an offence of selling a commercial quantity, or large commercial quantity, of a controlled precursor contrary to section 33A(1) or (2) of the *Controlled Substances Act 1984*;
- (h) a substantially similar offence against a previous enactment or the law of another jurisdiction corresponding to an offence referred to in a preceding paragraph;

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

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

*relevant offence* means—

- (a) a Category A offence; and
  - (b) any other offence for which the offender is liable to be imprisoned for life or for at least 15 years.
- (2) For the purposes of this Part, a reference to an *offence of murder* includes—
- (a) an offence of conspiracy to murder; and
  - (b) an offence of aiding, abetting, counselling or procuring the commission of murder.

### **332—Meaning of fresh and compelling evidence**

- (1) For the purposes of this Part, evidence relating to an offence of which a person is acquitted is—
- (a) *fresh* if—
    - (i) it was not adduced at the trial of the offence; and
    - (ii) it could not, even with the exercise of reasonable diligence, have been adduced at the trial; and
  - (b) *compelling* if—
    - (i) it is reliable; and
    - (ii) it is substantial; and
    - (iii) it is highly probative in the context of the issues in dispute at the trial of the offence.
- (2) Evidence that would be admissible on a retrial under this Part is not precluded from being fresh or compelling just because it would not have been admissible in the earlier trial of the offence resulting in the relevant acquittal.

### **333—Meaning of tainted acquittal**

For the purposes of this Part, if at the trial of an offence a person is acquitted of the offence, the acquittal will be *tainted* if—

- (a) the person or another person has been convicted (whether in this State or in another jurisdiction) of an administration of justice offence in connection with the trial resulting in the acquittal; and
- (b) it is more likely than not that, had it not been for the commission of the administration of justice offence, the person would have been convicted of the offence at the trial.

### **334—Application of Part**

- (1) This Part applies whether the offence of which a person is acquitted is alleged to have occurred before or after the commencement of this Part.
- (2) This Part does not apply if a person is acquitted of the offence with which the person is charged but is convicted of a lesser offence arising out of the same set of circumstances that gave rise to the charge.

- (3) However, this Part does apply in the circumstances set out in subsection (2) if the acquittal was tainted.

## **Division 2—Circumstances in which police may investigate conduct relating to offence of which person previously acquitted**

### **335—Circumstances in which police may investigate conduct relating to offence of which person previously acquitted**

- (1) A police officer may not carry out an investigation to which this section applies, or authorise the carrying out of an investigation to which this section applies, without the written authorisation of the Director of Public Prosecutions.
- (2) However, a police officer may carry out, or authorise the carrying out of, such an investigation without the written authority of the Director of Public Prosecutions if the police officer reasonably believes that—
- (a) urgent action is required in order to prevent the investigation being substantially and irrevocably prejudiced; and
  - (b) it is not reasonably practicable in the circumstances to obtain the consent of the Director of Public Prosecutions before taking the action.
- (3) The Director of Public Prosecutions must be informed, as soon as practicable, of any action taken under subsection (2) and the investigation must not proceed further without the written authorisation of the Director of Public Prosecutions.
- (4) The Director of Public Prosecutions must not authorise an investigation to which this section applies unless—
- (a) the Director of Public Prosecutions is satisfied that—
    - (i) as a result of the investigation, the person under investigation is, or is likely, to be charged with—
      - (A) an offence of which the person has previously been acquitted; or
      - (B) an administration of justice offence that is related to the offence of which the person has previously been acquitted; and
    - (ii) it is in the public interest for the investigation to proceed; and
  - (b) in the opinion of the Director of Public Prosecutions, the previous acquittal would not be a bar to the trial of the person for an offence that may be charged as a result of the investigation.
- (5) This section applies to an investigation in respect of a person's conduct in relation to an offence of which the person has previously been acquitted and includes—
- (a) the questioning, search or arrest of the person;
  - (b) the issue of a warrant for the arrest of the person;
  - (c) a forensic procedure (within the meaning of the *Criminal Law (Forensic Procedures) Act 2007*) carried out on the person;

**Criminal Law Consolidation Act 1935—1.6.2012 to 16.6.2012**

Part 10—Limitations on rules relating to double jeopardy

Division 2—Circumstances in which police may investigate conduct relating to offence of which person previously acquitted

---

- (d) the search or seizure of property or premises owned or occupied by the person.
- (6) In subsection (5), a reference to *an offence of which the person has previously been acquitted* includes a reference—
  - (a) to any other offence with which the person was charged that was joined in the same information as that in which the offence of which the person was acquitted was charged; and
  - (b) to any other offence of which the person could have been convicted at the trial of the offence of which the person was acquitted.

**Division 3—Circumstances in which trial or retrial of offence will not offend against rules of double jeopardy**

**336—Retrial of relevant offence of which person previously acquitted where acquittal tainted**

- (1) The Full Court may, on application by the Director of Public Prosecutions, order a person who has been acquitted of a relevant offence to be retried for the offence if the Court is satisfied that—
  - (a) the acquittal was tainted; and
  - (b) in the circumstances, it is likely that the new trial would be fair having regard to—
    - (i) the length of time since the relevant offence is alleged to have occurred; and
    - (ii) whether there has been any failure on the part of the police or prosecution to act with reasonable diligence or expedition with respect to the making of the application; and
    - (iii) any other matter that the Court considers relevant.
- (2) An application under subsection (1) must be made within 28 days after—
  - (a) the person is charged with the relevant offence following the acquittal; or
  - (b) a warrant is issued for the person's arrest for the relevant offence following the acquittal.
- (3) If the Full Court orders a person to be retried for an offence of which the person has been acquitted, the Court—
  - (a) must—
    - (i) quash the acquittal; or
    - (ii) remove the acquittal as a bar to the person being retried for the offence,(as the case requires); and
  - (b) must make a suppression order under Part 8 of the *Evidence Act 1929* forbidding the publication of specified material or material of a specified class if satisfied that the order is necessary to prevent prejudice to the administration of justice; and

- 
- (c) may make any other order that the Court thinks fit in the circumstances.
- (4) The Director of Public Prosecutions may not, without the permission of the Full Court, present an information for the retrial of a person in respect of whom the Court has made an order under this section more than 2 months after the Court made the order.
- (5) The Full Court should not give permission for the late presentation of an information for a retrial unless the Court is satisfied that, despite the period of time that has passed since the Court made the order for the retrial—
- (a) the Director of Public Prosecutions has acted with reasonable expedition; and
  - (b) there is good and sufficient reason why the late presentation of the information should be allowed.
- (6) If, more than 2 months after an order for the retrial of a person for a relevant offence was made under this section, an information for the retrial of the person for the offence has not been presented or has been withdrawn or quashed, the person may apply to the Full Court to set aside the order for the retrial and—
- (a) to restore the acquittal that was quashed; or
  - (b) to restore the acquittal as a bar to the person being retried for the offence, (as the case requires).
- (7) In this section—
- acquitted person*** means a person who has been acquitted of a relevant offence (whether in this State or in another jurisdiction).

### **337—Retrial of Category A offence of which person previously acquitted where there is fresh and compelling evidence**

- (1) The Full Court may, on application by the Director of Public Prosecutions, order a person who has been acquitted of a Category A offence to be retried for the offence if the Court is satisfied that—
- (a) there is fresh and compelling evidence against the acquitted person in relation to the offence; and
  - (b) in the circumstances, it is likely that the new trial would be fair having regard to—
    - (i) the length of time since the offence is alleged to have occurred; and
    - (ii) whether there has been any failure on the part of the police or prosecution to act with reasonable diligence or expedition with respect to the making of the application.
- (2) An application under subsection (1)—
- (a) must be made within 28 days after—
    - (i) the person is charged with the Category A offence following the acquittal; or
    - (ii) a warrant is issued for the person's arrest for the Category A offence following the acquittal; and

**Criminal Law Consolidation Act 1935—1.6.2012 to 16.6.2012**

Part 10—Limitations on rules relating to double jeopardy

Division 3—Circumstances in which trial or retrial of offence will not offend against rules of double jeopardy

---

- (b) may only be made once in respect of the person's acquittal of the Category A offence.

**Note—**

An application cannot be made under this section for a further retrial if the person is acquitted of the Category A offence on being retried for the offence (but an application may be made under section 336 if the acquittal resulting from the retrial is tainted).

- (3) If the Full Court orders a person to be retried for an offence of which the person has been acquitted, the Court—
- (a) must—
- (i) quash the acquittal; or
- (ii) remove the acquittal as a bar to the person being retried for the offence,
- (as the case requires); and
- (b) must make a suppression order under Part 8 of the *Evidence Act 1929* forbidding the publication of specified material or material of a specified class if satisfied that the order is necessary to prevent prejudice to the administration of justice; and
- (c) may make any other order that the Court thinks fit in the circumstances.
- (4) The Director of Public Prosecutions may not, without the permission of the Full Court, present an information for the retrial of a person in respect of whom the Court has made an order under this section more than 2 months after the Court made the order.
- (5) The Full Court should not give permission for the late presentation of an information for a retrial unless the Court is satisfied that, despite the period of time that has passed since the Court made the order for the retrial—
- (a) the Director of Public Prosecutions has acted with reasonable expedition; and
- (b) there is good and sufficient reason why the late presentation of the information should be allowed.
- (6) If, more than 2 months after an order for the retrial of a person for a Category A offence was made under this section, an information for the retrial of the person for the offence has not been presented or has been withdrawn or quashed, the person may apply to the Full Court to set aside the order for the retrial and—
- (a) to restore the acquittal that was quashed; or
- (b) to restore the acquittal as a bar to the person being retried for the offence,
- (as the case requires).
- (7) In this section—
- acquitted person** means a person who has been acquitted of a Category A offence (whether in this State or in another jurisdiction).

---

**338—Circumstances in which person may be charged with administration of justice offence relating to previous acquittal**

- (1) The Full Court may, on application by the Director of Public Prosecutions, order a person who has been acquitted of an indictable offence to be tried for an administration of justice offence that is related to the offence of which the person has been acquitted if the Court is satisfied that—
  - (a) there is fresh evidence against the acquitted person in relation to the administration of justice offence; and
  - (b) in the circumstances, it is likely that a trial would be fair having regard to—
    - (i) the length of time since the administration of justice offence is alleged to have occurred; and
    - (ii) whether there has been any failure on the part of the police or prosecution to act with reasonable diligence or expedition with respect to the making of the application; and
    - (iii) any other matter that the Court considers relevant.
- (2) An application under subsection (1) must be made within 28 days after—
  - (a) the person is charged with the administration of justice offence; or
  - (b) a warrant is issued for the person's arrest for the administration of justice offence.
- (3) If the Full Court orders a person to be tried for an administration of justice offence that is related to an indictable offence of which the person has been acquitted, the Court—
  - (a) must remove the acquittal as a bar to the person being tried for the administration of justice offence; and
  - (b) may make any other order that the Court thinks fit in the circumstances.
- (4) The Director of Public Prosecutions may not, without the permission of the Full Court, present an information for the trial of a person in respect of whom the Court has made an order under this section more than 2 months after the Court made the order.
- (5) The Full Court should not give permission for the late presentation of an information for any such trial unless the Court is satisfied that, despite the period of time that has passed since the Court made the order for the trial—
  - (a) the Director of Public Prosecutions has acted with reasonable expedition; and
  - (b) there is good and sufficient reason why the late presentation of the information should be allowed.
- (6) If, more than 2 months after an order for the trial of a person for an administration of justice offence was made under this section, an information for the trial of the person for the offence has not been presented or has been withdrawn or quashed, the person may apply to the Full Court to set aside the order for the trial and to restore the acquittal as a bar to the person being tried for the offence.

**Criminal Law Consolidation Act 1935—1.6.2012 to 16.6.2012**

Part 10—Limitations on rules relating to double jeopardy

Division 3—Circumstances in which trial or retrial of offence will not offend against rules of double jeopardy

---

(7) In this section—

*acquitted person* means a person who has been acquitted of an indictable offence (whether in this State or in another jurisdiction).

**Division 4—Prohibition on making certain references in retrial**

**339—Prohibition on making certain references in retrial**

At the retrial of a person for an offence of which the person had previously been acquitted by order of the Full Court under Division 3, the prosecution must not refer to the fact that, before making the order for the retrial of the offence, the Court had to be satisfied that—

- (a) the acquittal was tainted; or
- (b) there is fresh and compelling evidence against the acquitted person in relation to the offence,

(as the case requires).



## **Part 10A—Appeal against sentence**

### **340—Appeal against sentence**

Despite any other rule of law, if on an appeal against sentence the court is satisfied that the sentence should be quashed and another sentence (whether more severe or otherwise) imposed, the court must—

- (a) impose the sentence that should have been imposed in the first instance; and
- (b) order that the sentence—
  - (i) will be taken to have come into effect on a date before the date of the order; or
  - (ii) will take effect on a date on or after the date of the order.



## Part 11—Appellate proceedings

### Division 1—Preliminary

#### 348—Interpretation

In this Part, unless inconsistent with the context or subject matter—

**ancillary order** means—

- (ba) an intervention order or 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;

**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.

#### 349—Court to decide according to opinion of majority

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

### 350—Reservation of relevant questions

- (1) In this section—

*relevant question* means a question of law and includes a question about how a judicial discretion should be exercised or whether a judicial discretion has been properly exercised.
- (2) 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.
- (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.
- (4) A court before which a person has been tried and acquitted of an offence must, on application by the Attorney-General or the Director of Public Prosecutions, reserve a question antecedent to the trial, or arising in the course of the trial, for consideration and determination by the Full Court.
- (5) The Full Court may, on application under subsection (6), require a court to refer a relevant question to it for consideration and determination.
- (6) An application for an order under subsection (5) may be made by—
  - (a) the Attorney-General or the Director of Public Prosecutions; or
  - (b) a person who—
    - (i) has applied unsuccessfully to the primary court to have the question referred for consideration and determination by the Full Court; and
    - (ii) has obtained the permission of the primary court or the Supreme Court to make the application.
- (7) 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 primary court or the Supreme Court may release the person on bail on conditions the court considers appropriate.

### 351—Case to be stated by trial judge

- (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.

### **351A—Powers of Full Court on reservation of question**

- (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.

### **351B—Costs**

- (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.

## **Division 3—Appeals**

### **352—Right of appeal in criminal cases**

- (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 permission 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 permission of the Full Court;
- (ab) if a person is tried on information and acquitted, the Director of Public Prosecutions may, with the permission of the Full Court, appeal against the acquittal on any ground—
  - (i) if the trial was by judge alone; or
  - (ii) if the trial was by jury and the judge directed the jury to acquit the person;
- (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 permission 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 permission of the court of trial (but permission 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.

### **353—Determination of appeals in ordinary cases**

- (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, quash the acquittal and order a new trial;
  - (c) it may make any consequential or ancillary orders that may be necessary or desirable in the circumstances.
- (3) If the Full Court orders a new trial under subsection (2a)(b), the Court—
  - (a) may make such other orders as the Court thinks fit for the safe custody of the person who is to be retried or for admitting the person to bail; but
  - (b) may not make any order directing the court that is to retry the person on the charge to convict or sentence the person.
- (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 must—
  - (a) if it thinks that a different sentence should have been passed—
    - (i) quash the sentence passed at the trial and substitute such other sentence as the Court thinks ought to have been passed (whether more or less severe); or
    - (ii) quash the sentence passed at the trial and remit the matter to the court of trial for resentencing; or
  - (b) in any other case—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.

### **354—Powers of Court in special cases**

- (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.

### **354A—Right of appeal against ancillary orders**

- (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.

### **355—Revesting and restitution of property on conviction**

- (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 permission 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.

- (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.

### **356—Jurisdiction of Full Court**

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.



**356A—Enforcement of orders**

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.

**357—Appeal to Full Court**

- (1) An appeal to the Full Court, or an application for permission 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.

**359—Supplemental powers of Court**

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.

### **361—Right of appellant to be present**

- (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 permission 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 permission 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.

### **362—Director of Public Prosecutions to be represented**

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.

### **363—Costs of appeal**

- (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.

### **364—Admission of appellant to bail and custody when attending Court**

- (1) An appellant who is not admitted to bail shall, pending the determination of his appeal, be treated in such manner as may be directed by or under the Acts regulating prisons.
- (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 question is reserved 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.

### **365—Duties of registrar with respect to notices of appeal etc**

- (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.

### **366—Notes of evidence on trial**

- (1) On any appeal, or application for permission 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.

### **367—Powers that may be exercised by a judge of the Court**

The powers of the Full Court under this Act to give permission to appeal, to extend the time within which notice of appeal, or of an application for permission 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 permission, 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**

### **369—References by Attorney-General**

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.

## **Part 12—Regulations**

### **370—Regulations**

- (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.



## 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 \_\_\_\_\_

## Schedule 3—Rules

### 1—Form of information etc

- (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.

### 2—Form of commencement of an information

The commencement of an information shall be in the following form:

SOUTH AUSTRALIA

The Queen v A.B.

COURT OF TRIAL

*[eg, Supreme Court, Adelaide, or Gladstone Circuit Court.]*

..... Sessions

*Information of the Director of Public Prosecutions*

A.B. is charged with the following offence (offences):

**3—Charges may be joined in one information**

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.

**4—Setting out of offences and counts in information**

- (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) A count 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.



### **5—Alternative offences may be stated in an information**

- (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.

### **6—Description of property in an information**

- (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.

### **7—Description of accused in an information**

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".

### **8—Description of document in an information**

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.

### **9—Description of sundry matters in an information**

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.

## 10—Not necessary to state intent in an information in certain circumstances

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.

## 11—Statement of previous convictions in an information

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.

## 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

### 1—Certain common law offences abolished

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.

## **2—Certain offences under Imperial law abolished**

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.

## **3—Special provisions relating to maintenance and champerty**

- (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.

## **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

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 Seignur le Roi ma dame sa compaigne ou de lour fitz primer & heir ou si homme violast la compaigne le Roi ou leisnesce fill le Roi nient marie ou la compaigne leisne fitz & heir du Roi & si homme leve de guerre contre nostre dit Seignur le Roi en son Roialme ou soit aherdant as enemys nostre Seignur 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 Seignur 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 Seignur le Roi & a sa roial majeste & de tiele manere de treson la forfeiture des eschetes appartient a nostre Seignur le Roi sibien des terres & tenemenz tenez 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 jugement de treson tanqe par devant nostre Seignur 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 discovert ou secrement od gentz armees contre ascun autre pur lui tuer ou derober 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 Seignur le Roi come forfaitz eient les chiefs Seignures de fee leurs eschetes des tenemenz de eux tenez le quel qe les tenemenz soient en la main nostre Seignur le Roi ou en la main des autres par donn ou en autre manere Sauvant totefoitz a nostre Seignur le Roi lan & le wast & autres forfeitures 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 Seignur 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.

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.

### **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 transcendant 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.

- 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.



## Legislative history

### Notes

- This version is comprised of the following:

Part 1	19.5.2012
Part 1A	16.1.2003 (Reprint No 39)
Part 2	16.1.2003 (Reprint No 39)
Part 3	1.1.2012
Part 3A	8.6.2008
Part 4	20.12.2009
Part 4A	30.5.2004
Part 5	19.5.2012
Part 5A	5.9.2004
Part 6	5.7.2003 (Reprint No 41)
Part 6A	18.1.2007
Part 6B	5.7.2003 (Reprint No 41)
Part 6C	5.7.2003 (Reprint No 41)
Part 7	4.9.2008
Part 7A	16.1.2003 (Reprint No 39)
Part 7B	16.1.2003 (Reprint No 39)
Part 8	27.11.2008
Part 8A	19.9.2010
Part 9	1.6.2012
Part 10	3.8.2008
Part 10A	3.8.2008
Part 11	9.12.2011
Part 12	16.1.2003 (Reprint No 39)
Schedules	16.1.2003 (Reprint No 39)
Appendix 1	16.1.2003 (Reprint No 39)
- Amendments of this version that are uncommenced are not incorporated into the text.
- 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.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

## Legislation repealed by principal Act

The *Criminal Law Consolidation Act 1935* repealed the following:

*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*

## Legislation amended by principal Act

The *Criminal Law Consolidation Act 1935* amended the following:

*The Children's Protection Act 1899*

*Justices Act 1921*

*Maintenance Act 1926*

*Bushfires Act 1933*

## Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1935	2252	<i>Criminal Law Consolidation Act 1935</i>	21.12.1935	2.1.1936 ( <i>Gazette 2.1.1936 p1</i> )
1940	54	<i>Criminal Law Consolidation Act Amendment Act 1940</i>	5.12.1940	5.12.1940

1952	27	<i>Criminal Law Consolidation Act Amendment Act 1952</i>	27.11.1952	27.11.1952
1952	53	<i>Coroners Act Amendment Act 1952</i>	4.12.1952	4.12.1952
1956	54	<i>Criminal Law Consolidation Act Amendment Act 1956</i>	29.11.1956	29.11.1956
1957	42	<i>Statute Law Revision Act 1957</i>	14.11.1957	14.11.1957
1965	54	<i>Maintenance Act Amendment Act 1965</i>	23.12.1965	27.1.1966 ( <i>Gazette 27.1.1966 p145</i> )
1966	7	<i>Criminal Law Consolidation Act Amendment Act 1966</i>	24.2.1966	24.2.1966
1969	71	<i>Criminal Law Consolidation Act Amendment Act (No. 2) 1969</i>	11.12.1969	31.8.1970 ( <i>Gazette 20.8.1970 p701</i> )
1969	88	<i>Criminal Law Consolidation Act Amendment Act (No. 3) 1969</i>	11.12.1969	17.9.1970 ( <i>Gazette 17.9.1970 p1198</i> )
1969	109	<i>Criminal Law Consolidation Act Amendment Act 1969</i>	8.1.1970	8.1.1970
1971	15	<i>Age of Majority (Reduction) Act 1971</i>	8.4.1971	15.4.1971 ( <i>Gazette 15.4.1971 p1598</i> )
1971	29	<i>Fisheries Act 1971</i>	22.4.1971	1.12.1971 ( <i>Gazette 30.11.1971 p2261</i> )
1971	58	<i>Corporal Punishment Abolition Act 1971</i>	14.10.1971	18.11.1971 ( <i>Gazette 18.11.1971 p2070</i> )
1971	96	<i>Criminal Law Consolidation Act Amendment Act 1971</i>	3.12.1971	3.12.1971
1972	54	<i>Local and District Criminal Courts Act Amendment Act 1972</i>	27.4.1972	9.11.1972 ( <i>Gazette 9.11.1972 p2252</i> )
1972	74	<i>Criminal Law Consolidation Act Amendment Act 1972</i>	21.9.1972	2.11.1972 ( <i>Gazette 2.11.1972 p2132</i> )
1972	94	<i>Criminal Law Consolidation Act Amendment Act 1972</i>	9.11.1972	9.11.1972
1972	102	<i>Criminal Law Consolidation Act Amendment Act (No. 3) 1972</i>	16.11.1972	1.2.1973 ( <i>Gazette 1.2.1973 p377</i> )
1972	109	<i>Criminal Law Consolidation Act Amendment Act (No. 5) 1972</i>	23.11.1972	15.2.1973 ( <i>Gazette 15.2.1973 p497</i> )
1972	122	<i>Criminal Law Consolidation Act Amendment Act (No. 6) 1972</i>	30.11.1972	15.2.1973 ( <i>Gazette 15.2.1973 p496</i> )
1973	77	<i>Statute Law Revision Act 1973</i>	6.12.1973	6.12.1973
1974	13	<i>Criminal Law Consolidation Act Amendment Act 1974</i>	4.4.1974	4.4.1974
1975	66	<i>Criminal Law (Sexual Offences) Amendment Act 1975</i>	2.10.1975	2.10.1975
1975	88	<i>Statute Law Revision Act (No. 3) 1975</i>	20.11.1975	20.11.1975
1976	76	<i>South Australian Health Commission Act 1976</i>	2.12.1976	repealed by <i>Health Care Act 2008</i> on 1.7.2008 without coming into operation
1976	83	<i>Criminal Law Consolidation Act Amendment Act 1976</i>	9.12.1976	9.12.1976
1976	115	<i>Statutes Amendment (Capital Punishment Abolition) Act 1976</i>	23.12.1976	23.12.1976

**Criminal Law Consolidation Act 1935—1.6.2012 to 16.6.2012**

## Legislative history

---

1978	14	<i>Criminal Law Consolidation Act Amendment Act 1978</i>	16.3.1978	1.7.1979 ( <i>Gazette 14.6.1979 p1824</i> )
1978	92	<i>Criminal Law (Prohibition of Child Pornography) Act 1978</i>	7.12.1978	7.12.1978
1980	67	<i>Criminal Law Consolidation Act Amendment Act 1980</i>	13.11.1980	11.12.1980 ( <i>Gazette 11.12.1980 p2119</i> )
1981	107	<i>Criminal Law Consolidation Act Amendment Act 1981</i>	23.12.1981	11.2.1982 ( <i>Gazette 11.2.1982 p361</i> )
1981	108	<i>Criminal Law Consolidation Act Amendment Act (No. 2) 1981</i>	23.12.1981	23.12.1981
1981	109	<i>Statutes Amendment (Jurisdiction of Courts) Act 1981</i>	23.12.1981	1.2.1982 ( <i>Gazette 28.1.1982 p209</i> )
1983	45	<i>Criminal Law Consolidation Act Amendment Act 1983</i>	16.6.1983	16.6.1983
1983	51	<i>Criminal Law Consolidation Act Amendment Act (No. 2) 1983</i>	16.6.1983	16.6.1983
1983	84	<i>Criminal Law Consolidation Act Amendment Act (No. 3) 1983</i>	1.12.1983	1.12.1983
1983	114	<i>Statutes Amendment (Criminal Law Consolidation and Police Offences) Act 1983</i>	22.12.1983	22.12.1983 ( <i>Gazette 22.12.1983 p1718</i> )
1984	49	<i>Criminal Law Consolidation Act Amendment Act 1984</i>	24.5.1984	24.5.1984
1984	50	<i>Statute Law Revision Act 1984</i>	24.5.1984	Sch 1—1.1.1985 ( <i>Gazette 13.12.1984 p1811</i> )
1984	56	<i>Statutes Amendment (Oaths and Affirmations) Act 1984</i>	24.5.1984	1.7.1984 ( <i>Gazette 28.6.1984 p1897</i> )
1984	78	<i>Criminal Law Consolidation Act Amendment Act (No. 2) 1984</i>	15.11.1984	15.11.1984
1984	107	<i>Evidence Act Amendment Act (No. 3) 1984</i>	20.12.1984	20.12.1984
1985	46	<i>Police Offences Act Amendment Act 1985</i>	2.5.1985	s 37—10.5.1985 ( <i>Gazette 9.5.1985 p1398</i> )
1985	98	<i>Criminal Law Consolidation Act Amendment Act 1985</i>	1.11.1985	1.12.1985 ( <i>Gazette 14.11.1985 p1478</i> )
1986	16	<i>Statutes Amendment (Victims of Crime) Act 1986</i>	20.3.1986	1.10.1986 ( <i>Gazette 4.9.1986 p696</i> ) except s 26 which will not be brought into operation (the section it inserted was deleted by 51/1988)
1986	69	<i>Statutes Amendment (Parole) Act 1986</i>	20.11.1986	8.12.1986 ( <i>Gazette 27.11.1986 p1700</i> )
1986	90	<i>Criminal Law Consolidation Act Amendment Act 1986</i>	4.12.1986	1.2.1987 ( <i>Gazette 15.1.1987 p52</i> )
1986	91	<i>Criminal Law Consolidation Act Amendment Act (No. 2) 1986</i>	4.12.1986	18.12.1986 ( <i>Gazette 18.12.1986 p1877</i> )
1987	49	<i>Criminal Law (Enforcement of Fines) Act 1987</i>	30.4.1987	Sch 2—21.6.1987 ( <i>Gazette 4.6.1987 p1430</i> )



1988	51	<i>Statutes Amendment and Repeal (Sentencing) Act 1988</i>	5.5.1988	ss 28, 29 & 40—12.5.1988 ( <i>Gazette 12.5.1988 p1181</i> ); ss 26, 27 & 30—39—1.1.1989 ( <i>Gazette 15.12.1988 p2009</i> )
1988	78	<i>Criminal Law Consolidation Act Amendment Act 1988</i>	1.12.1988	1.12.1988
1988	103	<i>Statutes Amendment (Criminal Law Consolidation and Summary Offences) Act 1988</i>	15.12.1988	6.3.1989 ( <i>Gazette 23.2.1989 p539</i> )
1991	33	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1991</i>	24.4.1991	6.6.1991 ( <i>Gazette 6.6.1991 p1776</i> )
1991	40	<i>Criminal Law Consolidation (Abolition of Year-and-a-day Rule) Amendment Act 1991</i>	31.10.1991	31.10.1991
1991	49	<i>Director of Public Prosecutions Act 1991</i>	21.11.1991	6.7.1992 ( <i>Gazette 25.6.1992 p1869</i> )
1991	68	<i>Criminal Law Consolidation (Self-Defence) Amendment Act 1991</i>	12.12.1991	12.12.1991
1991	69	<i>Statutes Repeal and Amendment (Courts) Act 1991</i>	12.12.1991	6.7.1992 ( <i>Gazette 2.7.1992 p209</i> )
1991	75	<i>Statutes Amendment (Crimes Confiscation and Restitution) Act 1991</i>	12.12.1991	16.1.1992 ( <i>Gazette 16.1.1992 p126</i> )
1992	9	<i>Criminal Law Consolidation (Rape) Amendment Act 1992</i>	16.4.1992	16.4.1992
1992	22	<i>Criminal Law Consolidation (Detention of Insane Offenders) Amendment Act 1992</i>	14.5.1992	6.7.1992 ( <i>Gazette 25.6.1992 p1880</i> )
1992	26	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1992</i>	14.5.1992	6.7.1992 ( <i>Gazette 2.7.1992 p209</i> )
1992	35	<i>Statutes Amendment and Repeal (Public Offences) Act 1992</i>	21.5.1992	6.7.1992 ( <i>Gazette 2.7.1992 p209</i> )
1992	37	<i>Statutes Amendment (Illegal Use of Motor Vehicles) Act 1992</i>	21.5.1992	6.7.1992 ( <i>Gazette 2.7.1992 p209</i> ) except the part of s 4 which inserted new s 86B which will not be brought into operation (new s 86B was deleted by 62/1993)
1992	63	<i>Criminal Law Consolidation (Application of Criminal Law) Amendment Act 1992</i>	12.11.1992	12.11.1992
1992	76	<i>Statutes Amendment (Right of Reply) Act 1992</i>	26.11.1992	s 4—1.1.1993 ( <i>Gazette 10.12.1992 p1752</i> )
1993	37	<i>Evidence (Miscellaneous) Amendment Act 1993</i>	13.5.1993	15.7.1993 ( <i>Gazette 15.7.1993 p520</i> )
1993	62	<i>Statutes Amendment (Courts) Act 1993</i>	27.5.1993	ss 24—26—1.7.1993 ( <i>Gazette 24.6.1993 p2047</i> )
1994	7	<i>Criminal Law Consolidation (Stalking) Amendment Act 1994</i>	14.4.1994	1.6.1994 ( <i>Gazette 12.5.1994 p1187</i> )
1994	19	<i>Criminal Law Consolidation (Sexual Intercourse) Amendment Act 1994</i>	12.5.1994	26.5.1994 ( <i>Gazette 26.5.1994 p1262</i> )
1994	22	<i>Domestic Violence Act 1994</i>	26.5.1994	1.8.1994 ( <i>Gazette 14.7.1994 p68</i> )

## Criminal Law Consolidation Act 1935—1.6.2012 to 16.6.2012

### Legislative history

1994	23	<i>Criminal Law Consolidation (Child Sexual Abuse) Amendment Act 1994</i>	26.5.1994	28.7.1994 ( <i>Gazette</i> 28.7.1994 p170)
1994	43	<i>Statutes Amendment (Courts) Act 1994</i>	2.6.1994	9.6.1994 ( <i>Gazette</i> 9.6.1994 p1669)
1994	59	<i>Criminal Law Consolidation (Felonies and Misdemeanours) Amendment Act 1994</i>	27.10.1994	1.1.1995 ( <i>Gazette</i> 8.12.1994 p1942)
1995	24	<i>Statutes Amendment (Female Genital Mutilation and Child Protection) Act 1995</i>	27.4.1995	s 4—27.4.1997 (s 7(5) <i>Acts Interpretation Act 1915</i> )
1995	27	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1995</i>	27.4.1995	s 12—10.7.1995 ( <i>Gazette</i> 29.6.1995 p2973)
1995	90	<i>Criminal Law Consolidation (Appeals) Amendment Act 1995</i>	7.12.1995	4.1.1996 ( <i>Gazette</i> 4.1.1996 p2) except s 10—12.9.1996 ( <i>Gazette</i> 12.9.1996 p1124)
1995	91	<i>Criminal Law Consolidation (Mental Impairment) Amendment Act 1995</i>	7.12.1995	2.3.1996 ( <i>Gazette</i> 11.1.1996 p94)
1996	67	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1996</i>	15.8.1996	ss 8—12—17.10.1996 ( <i>Gazette</i> 17.10.1996 p1361)
1996	95	<i>Criminal Assets Confiscation Act 1996</i>	19.12.1996	7.7.1997 ( <i>Gazette</i> 12.6.1997 p2962)
1997	10	<i>Criminal Law Consolidation (Self Defence) Amendment Act 1997</i>	27.3.1997	27.3.1997
1997	30	<i>Statutes Amendment (References to Banks) Act 1997</i>	12.6.1997	Pt 4 (s 6)—3.7.1997 ( <i>Gazette</i> 3.7.1997 p4)
1998	59	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1998</i>	3.9.1998	Pt 3 (ss 5—7)—13.12.1998 ( <i>Gazette</i> 3.12.1998 p1676)
1999	2	<i>Criminal Law Consolidation (Contamination of Goods) Amendment Act 1999</i>	11.3.1999	11.3.1999
1999	13	<i>Statutes Amendment (Sentencing—Miscellaneous) Act 1999</i>	18.3.1999	Pt 2 (ss 4 & 5)—16.5.1999 ( <i>Gazette</i> 13.5.1999 p2502)
1999	15	<i>Criminal Law Consolidation (Intoxication) Amendment Act 1999</i>	1.4.1999	1.4.1999
1999	16	<i>Criminal Law Consolidation (Juries) Amendment Act 1999</i>	1.4.1999	16.5.1999 ( <i>Gazette</i> 13.5.1999 p2502)
1999	33	<i>Financial Sector Reform (South Australia) Act 1999</i>	17.6.1999	Sch (item 16)—1.7.1999 being the date specified under s 3(16) of the <i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i> of the Commonwealth as the transfer date for the purposes of that Act: s 2(2)
1999	80	<i>Criminal Law Consolidation (Serious Criminal Trespass) Amendment Act 1999</i>	2.12.1999	25.12.1999 ( <i>Gazette</i> 23.12.1999 p3668)
2000	20	<i>Criminal Law Consolidation (Sexual Servitude) Amendment Act 2000</i>	8.6.2000	8.6.2000
2000	31	<i>Criminal Law Consolidation (Appeals) Amendment Act 2000</i>	6.7.2000	6.7.2000

2000	39	<i>Criminal Law Consolidation (Mental Impairment) Amendment Act 2000</i>	13.7.2000	29.10.2000 ( <i>Gazette</i> 26.10.2000 p2786)
2000	57	<i>Statutes Amendment and Repeal (Attorney-General's Portfolio) Act 2000</i>	20.7.2000	Pt 6 (s 14)—14.8.2000 ( <i>Gazette</i> 10.8.2000 p444)
2001	10	<i>Legal Assistance (Restrained Property) Amendment Act 2001</i>	12.4.2001	s 6—12.4.2001 ( <i>Gazette</i> 12.4.2001 p1582)
2001	55	<i>Statutes Amendment (Stalking) Act 2001</i>	8.11.2001	Pt 2 (s 4)—13.1.2002 ( <i>Gazette</i> 10.1.2002 p4)
2001	69	<i>Statutes Amendment (Courts and Judicial Administration) Act 2001</i>	6.12.2001	Pt 4 (ss 7 & 8)—3.2.2002 ( <i>Gazette</i> 24.1.2002 p346)
2002	24	<i>Statutes Amendment (Bushfires) Act 2002</i>	31.10.2002	Pt 2 (s 4)—31.10.2002 ( <i>Gazette</i> 31.10.2002 p3979)
2002	26	<i>Criminal Law Consolidation (Offences of Dishonesty) Amendment Act 2002</i>	31.10.2002	16.1.2003 ( <i>Gazette</i> 16.1.2003 p180) except ss 4—8, 12—16—5.7.2003 ( <i>Gazette</i> 15.5.2003 p1979) and except s 10—29.10.2000 (commencement amended by 23/2004 s 30)
2002	28	<i>Criminal Law Consolidation (Territorial Application of the Criminal Law) Amendment Act 2002</i>	7.11.2002	1.12.2002 ( <i>Gazette</i> 28.11.2002 p4292)
2003	14	<i>Criminal Law Consolidation (Abolition of Time Limit for Prosecution of Certain Sexual Offences) Amendment Act 2003</i>	17.6.2003	17.6.2003
2003	28	<i>Criminal Law Consolidation (Self Defence) Amendment Act 2003</i>	24.7.2003	27.7.2003 ( <i>Gazette</i> 24.7.2003 p3103)
2003	36	<i>Statutes Amendment (Honesty and Accountability in Government) Act 2003</i>	31.7.2003	Pt 2 (ss 4 & 5)—29.4.2004 ( <i>Gazette</i> 29.4.2004 p1173)
2003	60	<i>Criminal Law Consolidation (Identity Theft) Amendment Act 2003</i>	11.12.2003	Pt 2 (s 4)—5.9.2004 ( <i>Gazette</i> 2.9.2004 p3544)
2004	2	<i>Statutes Amendment (Computer Offences) Act 2004</i>	4.3.2004	Pt 2 (s 4)—30.5.2004 ( <i>Gazette</i> 22.4.2004 p1086)
2004	23	<i>Statutes Amendment (Courts) Act 2004</i>	8.7.2004	Pt 3 (ss 5 & 6) and Pt 12 (s 30)—1.9.2004 ( <i>Gazette</i> 26.8.2004 p3402)
2004	40	<i>Criminal Law Consolidation (Intoxication) Amendment Act 2004</i>	4.11.2004	25.11.2004 ( <i>Gazette</i> 25.11.2004 p4406)
2004	52	<i>Criminal Law Consolidation (Child Pornography) Amendment Act 2004</i>	16.12.2004	Pt 2 (ss 4—7)—30.1.2005 ( <i>Gazette</i> 13.1.2005 p67)
2005	4	<i>Criminal Law Consolidation (Criminal Neglect) Amendment Act 2005</i>	7.4.2005	14.4.2005 ( <i>Gazette</i> 14.4.2005 p874)
2005	19	<i>Criminal Assets Confiscation Act 2005</i>	9.6.2005	Sch 1 (cl 5)—2.4.2006 ( <i>Gazette</i> 16.2.2006 p578)
2005	31	<i>Statutes Amendment (Sentencing of Sex Offenders) Act 2005</i>	14.7.2005	Pt 3 (ss 10—18)—15.5.2006 ( <i>Gazette</i> 20.4.2006 p1128) immediately after <i>Statutes Amendment and Repeal (Aggravated Offences) Act 2005</i> comes into operation
2005	50	<i>Defamation Act 2005</i>	27.10.2005	Sch 1 (cl 4)—1.1.2006: s 2

**Criminal Law Consolidation Act 1935—1.6.2012 to 16.6.2012**

## Legislative history

---

2005	56	<i>Justices of the Peace Act 2005</i>	17.11.2005	Sch 2 (cl 16)—1.7.2006 ( <i>Gazette</i> 22.6.2006 p2012)
2005	62	<i>Statutes Amendment and Repeal (Aggravated Offences) Act 2005</i> as amended by 44/2006	1.12.2005	Pt 2 (ss 4—17, 19—21 & 24)—15.5.2006 ( <i>Gazette</i> 20.4.2006 p1127); ss 18, 22 & 23—18.1.2007 ( <i>Gazette</i> 18.1.2007 p234) immediately after <i>Statutes Amendment (Justice Portfolio) Act 2006</i> comes into operation
2005	63	<i>Criminal Law Consolidation (Instruments of Crime) Amendment Act 2005</i>	1.12.2005	6.3.2006 ( <i>Gazette</i> 16.2.2006 p578)
2005	74	<i>Statutes Amendment (Criminal Procedure) Act 2005</i>	8.12.2005	Pt 2 (ss 4 & 5)—1.3.2007 ( <i>Gazette</i> 1.3.2007 p672)
2005	80	<i>Controlled Substances (Serious Drug Offences) Amendment Act 2005</i>	8.12.2005	Sch 1 (cill 3 & 6)—3.12.2007 ( <i>Gazette</i> 22.11.2007 p4294)
2005	81	<i>Statutes Amendment (Vehicle and Vessel Offences) Act 2005</i>	8.12.2005	Pt 2 (ss 4—12)—30.7.2006 ( <i>Gazette</i> 27.7.2006 p2400)
2006	9	<i>Criminal Law Consolidation (Throwing Objects at Vehicles) Amendment Act 2006</i>	29.6.2006	10.9.2006 ( <i>Gazette</i> 7.9.2006 p3165)
2006	14	<i>Criminal Law Consolidation (Dangerous Driving) Amendment Act 2006</i>	29.6.2006	13.8.2006 ( <i>Gazette</i> 10.8.2006 p2642)
2006	15	<i>Development (Panels) Amendment Act 2006</i>	29.6.2006	Sch 1 (cl 1)—23.11.2006 ( <i>Gazette</i> 23.11.2006 p4078)
2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 22 (ss 89—101)—4.9.2006 ( <i>Gazette</i> 17.8.2006 p2831)
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 22 (ss 66—68)—1.6.2007 ( <i>Gazette</i> 26.4.2007 p1352)
2006	44	<i>Statutes Amendment (Justice Portfolio) Act 2006</i>	14.12.2006	Pt 10 (ss 15 & 16) & Pt 28 (s 60)—18.1.2007 ( <i>Gazette</i> 18.1.2007 p234)
2007	1	<i>Criminal Law Consolidation (Drink Spiking) Amendment Act 2007</i>	15.2.2007	1.4.2007 ( <i>Gazette</i> 29.3.2007 p929) except new s 32C(2), (3) and (4) definitions of controlled drug, licensed premises, prescribed label and prescription drug (as inserted by s 4)—16.12.2007 ( <i>Gazette</i> 13.12.2007 p4811)
2007	2	<i>Summary Offences (Gatecrashers at Parties) Amendment Act 2007</i>	15.2.2007	Sch 1 (cl 1)—1.4.2007 ( <i>Gazette</i> 29.3.2007 p930)
2007	57	<i>Statutes Amendment (Young Offenders) Act 2007</i>	29.11.2007	Pt 2 (s 4)—3.2.2008 ( <i>Gazette</i> 31.1.2008 p349)
2008	8	<i>Statutes Amendment (Public Order Offences) Act 2008</i>	17.4.2008	Pt 2 (ss 4 & 5)—8.6.2008 ( <i>Gazette</i> 5.6.2008 p1871)
2008	10	<i>Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act 2008</i>	17.4.2008	Pt 2 (ss 4—16) & Sch 1 (cl 7)—23.11.2008 ( <i>Gazette</i> 20.11.2008 p5171)
2008	13	<i>Serious and Organised Crime (Control) Act 2008</i>	15.5.2008	Sch 1 (cill 3 & 4)—4.9.2008 ( <i>Gazette</i> 4.9.2008 p4227)
2008	15	<i>Firearms (Firearms Prohibition Orders) Amendment Act 2008</i>	12.6.2008	Sch 1 (cl 1)—27.11.2008 ( <i>Gazette</i> 27.11.2008 p5277)

2008	28	<i>Criminal Law Consolidation (Double Jeopardy) Amendment Act 2008</i>	10.7.2008	3.8.2008 ( <i>Gazette 31.7.2008 p3519</i> )
2009	40	<i>Statutes Amendment (Property Offences) Act 2009</i>	17.9.2009	Pt 2 (ss 4—6)—20.12.2009 ( <i>Gazette 17.12.2009 p6351</i> )
2009	52	<i>Statutes Amendment (Recidivist Young Offenders and Youth Parole Board) Act 2009</i>	5.11.2009	Pt 2 (s 4)—27.6.2010 ( <i>Gazette 17.6.2010 p3077</i> )
2009	79	<i>Statutes Amendment (Victims of Crime) Act 2009</i>	10.12.2009	Pt 3 (s 16)—19.9.2010 ( <i>Gazette 16.9.2010 p4868</i> )
2009	85	<i>Intervention Orders (Prevention of Abuse) Act 2009</i>	10.12.2009	Sch 1 (cl 5)—9.12.2011 ( <i>Gazette 20.10.2011 p4269</i> )
2010	5	<i>Health Practitioner Regulation National Law (South Australia) Act 2010</i>	1.7.2010	Sch 1 (cl 9)—1.7.2010 ( <i>Gazette 1.7.2010 p3338</i> )
2010	18	<i>Statutes Amendment (Driving Offences) Act 2010</i>	14.10.2010	Pt 2 (ss 4—7)—21.8.2011 ( <i>Gazette 18.8.2011 p3490</i> )
<b>2011</b>	<b>34</b>	<b><i>Evidence (Discreditable Conduct) Amendment Act 2011</i></b>	<b>22.9.2011</b>	<b>Pt 3 (s 5)—1.6.2012 (<i>Gazette 31.5.2012 p2637</i>)</b>
2011	37	<i>Summary Offences (Tattooing, Body Piercing and Body Modification) Amendment Act 2011</i>	6.10.2011	Sch 1 (cl 1)—uncommenced
2011	43	<i>Criminal Law Consolidation (Child Pornography) Amendment Act 2011</i>	17.11.2011	17.11.2011
2011	46	<i>Education and Early Childhood Services (Registration and Standards) Act 2011</i>	8.12.2011	Sch 3 (c11 15—17)—1.1.2012 ( <i>Gazette 15.12.2011 p4986</i> )
2012	10	<i>Criminal Law Consolidation (Looting) Amendment Act 2012</i>	19.4.2012	19.5.2012: s 2
2012	12	<i>Statutes Amendment (Serious and Organised Crime) Act 2012</i>	10.5.2012	Pt 6 (ss 28—38)—17.6.2012 ( <i>Gazette 14.6.2012 p2756</i> )
2012	17	<i>Statutes Amendment (Attorney-General's Portfolio) Act 2012</i>	24.5.2012	Pt 2 (s 4)—uncommenced

## Provisions amended since 3 February 1976

- 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.

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		

**Criminal Law Consolidation Act 1935—1.6.2012 to 16.6.2012**

Legislative history

s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	5.7.2003
s 3	<i>amended by 83/1976 s 2</i>	9.12.1976
	<i>amended by 115/1976 s 3</i>	23.12.1976
	<i>amended by 107/1981 s 3</i>	11.2.1982
	<i>amended by 49/1984 s 2</i>	24.5.1984
	<i>deleted in pursuance of the Acts Republication Act 1967</i>	1.1.1985
s 4	<i>deleted by 50/1984 s 3(1) (Sch 1)</i>	1.1.1985
s 5		
s 5(1)	s 5(1) redesignated as s 5 in pursuance of the <i>Acts Republication Act 1967</i>	1.1.1985
	s 5 redesignated as s 5(1) by 90/1986 s 3(b)	1.2.1987
aggravated offence	inserted by 62/2005 s 4	15.5.2006
basic offence	inserted by 62/2005 s 4	15.5.2006
bestiality	inserted by 10/2008 s 4(1)	23.11.2008
<i>carnal knowledge</i>	<i>deleted by 83/1976 s 3(a)</i>	9.12.1976
<i>cattle</i>	<i>deleted by 62/2005 s 4</i>	15.5.2006
court	inserted by 69/1986 s 17	8.12.1986
	amended by 43/1994 s 4	9.6.1994
criminal organisation	inserted by 12/2012 s 28(1)	uncommenced—not incorporated
domestic partner	inserted by 43/2006 s 66(1)	1.6.2007
drive	inserted by 81/2005 s 4(1)	30.7.2006
driver's licence	inserted by 81/2005 s 4(1)	30.7.2006
dwelling-house	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
firearm	inserted by 103/1988 s 3(a)	6.3.1989
Full Court	inserted by 28/2008 s 4	3.8.2008
local government body	inserted by 26/2002 s 3	16.1.2003
	substituted by 15/2006 Sch 1 cl 1	23.11.2006
motor vehicle	inserted by 81/2005 s 4(2)	30.7.2006
motor vessel	inserted by 81/2005 s 4(2)	30.7.2006
offensive weapon	inserted by 80/1999 s 3	25.12.1999
the Parole Board	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
property	substituted by 90/1986 s 3(a)	1.2.1987
serious and organised crime offence	inserted by 12/2012 s 28(2)	uncommenced—not incorporated
<i>rape</i>	<i>deleted by 83/1976 s 3(b)</i>	9.12.1976
sexual intercourse	inserted by 83/1976 s 3(b)	9.12.1976
	substituted by 98/1985 s 3	1.12.1985
	amended by 19/1994 s 3	26.5.1994
	amended by 10/2008 s 4(2), (3)	23.11.2008

spouse	inserted by 43/2006 s 66(2)	1.6.2007
vehicle	inserted by 81/2005 s 4(3)	30.7.2006
vessel	inserted by 81/2005 s 4(3)	30.7.2006
s 5(2)	deleted by 50/1984 s 3(1) (Sch 1)	1.1.1985
	inserted by 90/1986 s 3(b)	1.2.1987
	substituted by 59/1994 s 3	1.1.1995
s 5(3)	inserted by 10/2008 s 4(4)	23.11.2008
s 5AA	inserted by 62/2005 s 5	15.5.2006
s 5AA(1)	amended by 31/2005 s 10	15.5.2006
	amended by 81/2005 s 5(1)	30.7.2006
	amended by 14/2006 s 4(1)	13.8.2006
	amended by 43/2006 s 67(1)	1.6.2007
	amended by 57/2007 s 4(1), (2)	3.2.2008
	amended by 8/2008 s 4	8.6.2008
	amended by 18/2010 s 4(1)	21.8.2011
	amended by 12/2012 s 29(1)	uncommenced—not incorporated
	amended by 10/2012 s 4(1)	19.5.2012
s 5AA(1a)	inserted by 81/2005 s 5(2)	30.7.2006
	amended by 14/2006 s 4(2), (3)	13.8.2006
	amended by 18/2010 s 4(2), (3)	21.8.2011
s 5AA(1b)	inserted by 14/2006 s 4(4)	13.8.2006
	amended by 18/2010 s 4(4)	21.8.2011
s 5AA(1c)	inserted by 18/2010 s 4(5)	21.8.2011
s 5AA(2a) and (2b)	inserted by 12/2012 s 29(2)	uncommenced—not incorporated
s 5AA(4)	amended by 12/2012 s 29(3)	uncommenced—not incorporated
s 5AA(5)		
CFS	inserted by 10/2012 s 4(2)	19.5.2012
circumstances of heightened risk	inserted by 18/2010 s 4(6)	21.8.2011
major defect	inserted by 18/2010 s 4(6)	21.8.2011
<i>spouse</i>	<i>deleted by 43/2006 s 67(2)</i>	<i>1.6.2007</i>
street race	inserted by 18/2010 s 4(6)	21.8.2011
s 5A	inserted by 115/1976 s 4	23.12.1976
s 5B	inserted by 35/1992 s 4	6.7.1992
s 5C	<i>inserted by 63/1992 s 2</i>	<i>12.11.1992</i>
	<i>deleted by 28/2002 s 3</i>	<i>1.12.2002</i>
s 5D	inserted by 59/1994 s 4	1.1.1995
Pt 1A	inserted by 28/2002 s 4	1.12.2002
Pt 2	heading amended by 59/1994 Sch 1	1.1.1995
s 6	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
s 7	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985

**Criminal Law Consolidation Act 1935—1.6.2012 to 16.6.2012**

Legislative history

---

	amended by 59/1994 Sch 1	1.1.1995
s 8		
s 8(1)	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
s 9		
s 9(1)	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
s 9(2)	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
	amended by 59/1994 Sch 1	1.1.1995
s 10	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
s 10A	inserted by 115/1976 s 5	23.12.1976
Pt 3		
Pt 3 Div 1		
heading	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
s 11	amended by 115/1976 s 6	23.12.1976
	amended by 59/1994 Sch 1	1.1.1995
s 12	amended by 59/1994 Sch 1	1.1.1995
s 12A	inserted by 59/1994 s 5	1.1.1995
s 13		
s 13(1)	s 13 redesignated as s 13(1) by 81/2005 s 6	30.7.2006
s 13(2) and (3)	inserted by 81/2005 s 6	30.7.2006
s 13A	inserted by 45/1983 s 2	16.6.1983
s 14	<i>amended by 51/1983 s 2</i>	<i>16.6.1983</i>
	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>deleted by 91/1986 s 3</i>	<i>18.12.1986</i>
s 14A	<i>substituted by 51/1983 s 3</i>	<i>16.6.1983</i>
	<i>deleted by 91/1986 s 3</i>	<i>18.12.1986</i>
Pt 3 Div 1A	inserted by 4/2005 s 4	14.4.2005
Pt 3 Div 2		
heading	inserted by 26/2002 s 19(1) (Sch 2)	16.1.2003
s 15	substituted by 68/1991 s 2	12.12.1991
	substituted by 10/1997 s 2	27.3.1997
s 15(1)	amended by 28/2003 s 4(1)	27.7.2003
s 15(2)	amended by 28/2003 s 4(2)	27.7.2003
s 15A	inserted by 10/1997 s 2	27.3.1997
s 15A(1)	amended by 28/2003 s 5(1)	27.7.2003
s 15A(2)	amended by 28/2003 s 5(2)	27.7.2003
s 15A(3)	amended by 2/2007 Sch 1 cl 1	1.4.2007
ss 15B and 15C	inserted by 28/2003 s 6	27.7.2003
Pt 3 Div 3		
heading	inserted by 26/2002 s 19(1) (Sch 2)	16.1.2003
s 16	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
s 17	<i>deleted by 63/1992 s 3</i>	<i>12.11.1992</i>
<i>heading preceding</i>	<i>deleted by 107/1981 s 4</i>	<i>11.2.1982</i>
s 18		



s 18	deleted by 107/1981 s 4	11.2.1982
	inserted by 40/1991 s 2	31.10.1991
Pt 3 Div 4		
heading preceding s 19	substituted by 90/1986 s 4	1.2.1987
heading s 19	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
	substituted by 90/1986 s 4	1.2.1987
s 19(1)	substituted by 62/2005 s 6(1)	15.5.2006
s 19(2)	substituted by 62/2005 s 6(1)	15.5.2006
	amended by 40/2009 s 4	20.12.2009
s 19(4)	inserted by 62/2005 s 6(2)	15.5.2006
Pt 3 Div 5		
heading preceding s 19AA	inserted by 7/1994 s 3	1.6.1994
heading s 19AA	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
	inserted by 7/1994 s 3	1.6.1994
s 19AA(1)	amended by 55/2001 s 4(a), (b)	13.1.2002
s 19AA(2)	amended by 62/2005 s 7	15.5.2006
s 19AA(6)	inserted by 55/2001 s 4(c)	13.1.2002
Pt 3 Div 6		
heading preceding s 19A	inserted by 91/1986 s 4	18.12.1986
heading s 19AAB	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
	substituted by 81/2005 s 7	30.7.2006
s 19A	inserted by 81/2005 s 8	30.7.2006
s 19A(1)	inserted by 91/1986 s 4	18.12.1986
s 19A(1)	amended by 81/2005 s 9(1), (2)	30.7.2006
s 19A(2)	<i>deleted by 81/2005 s 9(3)</i>	30.7.2006
s 19A(3)	amended by 81/2005 s 9(4)—(6)	30.7.2006
s 19A(4)	<i>amended by 62/2005 s 8(1)—(5)</i>	15.5.2006
	<i>deleted by 81/2005 s 9(7)</i>	30.7.2006
s 19A(5)	amended by 62/2005 s 8(6)	15.5.2006
	amended by 81/2005 s 9(8), (9)	30.7.2006
	substituted by 18/2010 s 5(1)	21.8.2011
s 19A(6)	amended by 51/1988 s 27	1.1.1989
s 19A(7)	amended by 62/2005 s 8(7)	15.5.2006
	amended by 81/2005 s 9(10)	30.7.2006
<i>s 19A(10) before deletion by 81/2005</i>		
<i>harm and serious harm</i>	<i>inserted by 62/2005 s 8(8)</i>	15.5.2006
s 19A(10)	<i>deleted by 81/2005 s 9(11)</i>	30.7.2006

**Criminal Law Consolidation Act 1935—1.6.2012 to 16.6.2012**

Legislative history

---

s 19A(10) and (11)	inserted by 18/2010 s 5(2)	21.8.2011
s 19AB	inserted by 81/2005 s 10	30.7.2006
s 19AC	inserted by 14/2006 s 5	13.8.2006
s 19AD	inserted by 18/2010 s 6	21.8.2011
s 19B	inserted by 91/1986 s 4	18.12.1986
s 19B(2)	amended by 81/2005 s 11(1), (2)	30.7.2006
s 19B(4)	inserted by 14/2006 s 6	13.8.2006
s 19B(4a)	inserted by 18/2010 s 7	21.8.2011
s 19B(5)	inserted by 14/2006 s 6	13.8.2006
Pt 3 Div 7		
heading	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
	substituted by 62/2005 s 9	15.5.2006
s 20	amended by 59/1994 Sch 1	1.1.1995
	substituted by 62/2005 s 10	15.5.2006
Pt 3 Div 7A		
heading	inserted by 62/2005 s 10	15.5.2006
s 21	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
	amended by 59/1994 Sch 1	1.1.1995
	substituted by 62/2005 s 10	15.5.2006
lesser offence	amended by 9/2006 s 4	10.9.2006
s 22	deleted by 50/1984 s 3(1) (Sch 1)	1.1.1985
	inserted by 62/2005 s 10	15.5.2006
s 23	amended by 107/1981 s 5	11.2.1982
	amended by 59/1994 Sch 1	1.1.1995
	substituted by 62/2005 s 10	15.5.2006
s 24	amended by 51/1983 s 4	16.6.1983
	amended by 59/1994 Sch 1	1.1.1995
	substituted by 62/2005 s 10	15.5.2006
s 25	amended by 59/1994 Sch 1	1.1.1995
	substituted by 62/2005 s 10	15.5.2006
s 26	<i>deleted by 59/1994 Sch 1</i>	<i>1.1.1995</i>
s 27	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 62/2005 s 10</i>	<i>15.5.2006</i>
s 28	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>deleted by 59/1994 Sch 1</i>	<i>1.1.1995</i>
s 29	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
	substituted by 90/1986 s 5	1.2.1987
s 29(1)	amended by 62/2005 s 11(1)	15.5.2006
s 29(2)	amended by 62/2005 s 11(2), (3)	15.5.2006
s 29(3)	amended by 62/2005 s 11(4), (5)	15.5.2006
s 29(4) and (5)	inserted by 81/2005 s 12	30.7.2006
s 30	substituted by 90/1986 s 5	1.2.1987

s 31	substituted by 90/1986 s 5	1.2.1987
s 31(1)	amended by 62/2005 s 12(1)	15.5.2006
s 31(2)	amended by 62/2005 s 12(2)	15.5.2006
s 32	deleted by 90/1986 s 5	1.2.1987
	inserted by 103/1988 s 3(b)	6.3.1989
	amended by 26/1992 s 4	6.7.1992
Pt 3 Div 7B	inserted by 9/2006 s 5	10.9.2006
Pt 3 Div 7C	inserted by 1/2007 s 4	1.4.2007 except s 32C(2), (3) and (4) definitions of controlled drug, licensed premises, prescribed label and prescription drug—16.12.2007
Pt 3 Div 8		
heading preceding s 33	inserted by 24/1995 s 4	27.4.1997
heading	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
s 33	deleted by 90/1986 s 5	1.2.1987
	inserted by 24/1995 s 4	27.4.1997
s 33(1)	amended by 26/2002 s 19(1) (Sch 2)	16.1.2003
ss 33A and 33B	inserted by 24/1995 s 4	27.4.1997
<i>ss 34 and 35</i>	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>deleted by 90/1986 s 5</i>	<i>1.2.1987</i>
<i>ss 36 and 37</i>	<i>deleted by 90/1986 s 5</i>	<i>1.2.1987</i>
s 38	<i>amended by 51/1983 s 5</i>	<i>16.6.1983</i>
	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>deleted by 91/1986 s 5</i>	<i>18.12.1986</i>
s 38A	<i>substituted by 51/1983 s 6</i>	<i>16.6.1983</i>
	<i>deleted by 91/1986 s 5</i>	<i>18.12.1986</i>
<i>Pt 3 Div 9 before substitution by 62/2005</i>		
<i>heading preceding     s 39</i>	<i>substituted by 26/2002 s 19(1) (Sch 2)</i>	<i>16.1.2003</i>
s 39	<i>amended by 107/1981 s 6</i>	<i>11.2.1982</i>
	<i>amended by 69/1991 s 15(a)</i>	<i>6.7.1992</i>
	<i>substituted by 22/1994 Sch cl 1(a)</i>	<i>1.8.1994</i>
s 40	<i>amended by 107/1981 s 7</i>	<i>11.2.1982</i>
s 41	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
s 42	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
s 43	<i>(a) deleted by 107/1981 s 8(a)</i>	<i>11.2.1982</i>
	<i>amended by 107/1981 s 8(b)</i>	<i>11.2.1982</i>
	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
s 45	<i>deleted by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
s 46	<i>amended by 16/1986 s 14</i>	<i>1.10.1986</i>

**Criminal Law Consolidation Act 1935—1.6.2012 to 16.6.2012**

Legislative history

---

	<i>deleted by 62/1993 s 24</i>	1.7.1993
s 47	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	1.1.1985
	<i>amended by 90/1986 s 6</i>	1.2.1987
	<i>deleted by 62/1993 s 24</i>	1.7.1993
Pt 3 Div 9	substituted by 62/2005 s 13	15.5.2006
<i>Pt 3 Div 10 before deletion by 62/2005</i>		
<i>heading preceding s 47A</i>	<i>inserted by 103/1988 s 3(c)</i>	6.3.1989
	<i>substituted by 26/2002 s 19(1) (Sch 2)</i>	16.1.2003
s 47A	<i>inserted by 103/1988 s 3(c)</i>	6.3.1989
Pt 3 Div 10	<i>deleted by 62/2005 s 14</i>	15.5.2006
Pt 3 Div 11		
heading	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
ss 46 and 47	inserted by 10/2008 s 5	23.11.2008
<i>s 48 before substitution by 10/2008</i>	<i>substituted by 83/1976 s 4</i>	9.12.1976
	<i>s 48(1) redesignated as s 48 in pursuance of the Acts Replication Act 1967</i>	1.1.1985
	<i>amended by 98/1985 s 4</i>	1.12.1985
	<i>amended by 59/1994 Sch 1</i>	1.1.1995
s 48(2)	<i>deleted by 107/1981 s 9</i>	11.2.1982
s 48	substituted by 10/2008 s 5	23.11.2008
s 48A	inserted by 10/2008 s 5	23.11.2008
s 49	substituted by 83/1976 s 4	9.12.1976
s 49(1)	amended by 59/1994 Sch 1	1.1.1995
	amended by 31/2005 s 11(1)	15.5.2006
s 49(2)	<i>deleted by 107/1981 s 10(a)</i>	11.2.1982
s 49(3)	amended by 107/1981 s 10(b)	11.2.1982
	amended by 59/1994 Sch 1	1.1.1995
	amended by 62/2005 s 15(1)	15.5.2006
	amended by 31/2005 s 11(2)	15.5.2006
	amended by 44/2006 s 15	18.1.2007
s 49(4)	amended by 107/1981 s 10(c)	11.2.1982
s 49(5)	amended by 107/1981 s 10(d)	11.2.1982
	amended by 59/1994 Sch 1	1.1.1995
	amended by 62/2005 s 15(2)	15.5.2006
	substituted by 10/2008 s 6	23.11.2008
s 49(5a)	inserted by 10/2008 s 6	23.11.2008
	amended by 46/2011 Sch 3 cl 15	1.1.2012
s 49(6)	amended by 107/1981 s 10(e)	11.2.1982
	substituted by 33/1991 s 7	6.6.1991
	amended by 62/2005 s 15(3), (4)	15.5.2006

s 50	deleted by 83/1976 s 4	9.12.1976
	inserted by 10/2008 s 7	23.11.2008
s 50(8)	amended by 46/2011 Sch 3 cl 16	1.1.2012
ss 51—55	<i>deleted by 83/1976 s 4</i>	9.12.1976
s 56	substituted by 107/1981 s 11	11.2.1982
	amended by 59/1994 Sch 1	1.1.1995
	substituted by 62/2005 s 16	15.5.2006
s 56(2)	amended by 31/2005 s 12	15.5.2006
s 57		
s 57(1)	substituted by 10/2008 s 8(1)	23.11.2008
s 57(4)	inserted by 10/2008 s 8(2)	23.11.2008
	amended by 46/2011 Sch 3 cl 17	1.1.2012
s 57A	substituted by 83/1976 s 5	9.12.1976
s 57A(2) and (3)	amended by 49/1991 Sch 2	6.7.1992
s 57B	<i>deleted by 83/1976 s 6</i>	9.12.1976
s 58		
s 58(1)	amended by 92/1978 s 2(a)	7.12.1978
	amended by 107/1981 s 12	11.2.1982
	amended by 59/1994 Sch 1	1.1.1995
s 58(3)—(6)	<i>inserted by 92/1978 s 2(b)</i>	7.12.1978
	<i>deleted by 114/1983 s 3</i>	22.12.1983
s 58A	<i>inserted by 84/1983 s 2</i>	1.12.1983
	<i>deleted by 52/2004 s 4</i>	30.1.2005
s 59	substituted by 83/1976 s 7	9.12.1976
	amended by 59/1994 Sch 1	1.1.1995
	amended by 62/2005 s 17	15.5.2006
ss 60—62	<i>deleted by 83/1976 s 7</i>	9.12.1976
s 60	s 64 amended by 83/1976 s 8(a), (b)	9.12.1976
	s 64(c) deleted by 83/1976 s 8(c)	9.12.1976
	s 64 amended by 107/1981 s 14	11.2.1982
	s 64 amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
	s 64 amended by 59/1994 Sch 1	1.1.1995
	s 64 amended by 20/2000 s 3	8.6.2000
	s 64 redesignated as s 60 by 52/2004 s 5	30.1.2005
	amended by 62/2005 s 18 as amended by 44/2006 s 60	18.1.2007
s 61	s 65 amended by 83/1976 s 9	9.12.1976
	s 65 amended by 59/1994 Sch 1	1.1.1995
	s 65 redesignated as s 61 by 52/2004 s 6	30.1.2005
s 62		
child	<i>deleted by 43/2011 s 3(1)</i>	17.11.2011
child pornography	amended by 43/2011 s 3(2), (3)	17.11.2011
s 63	<i>amended by 107/1981 s 13</i>	11.2.1982

**Criminal Law Consolidation Act 1935—1.6.2012 to 16.6.2012**

Legislative history

---

	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 20/2000 s 2</i>	<i>8.6.2000</i>
s 64—see s 60		
s 65—see s 61		
Pt 3 Div 11A	inserted by 52/2004 s 7	30.1.2005
s 63	amended by 31/2005 s 13	15.5.2006
s 63A		
s 63A(1)	amended by 31/2005 s 14	15.5.2006
s 63B		
s 63B(1)	amended by 31/2005 s 15(1)	15.5.2006
	amended by 43/2011 s 4(1)—(3)	17.11.2011
s 63B(3)	amended by 31/2005 s 15(2)	15.5.2006
	amended by 43/2011 s 4(4), (5)	17.11.2011
s 63B(4)—(7)	inserted by 43/2011 s 4(6)	17.11.2011
Pt 3 Div 12		
heading preceding s 65A	inserted by 20/2000 s 4	8.6.2000
heading	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
s 65A	inserted by 20/2000 s 4	8.6.2000
s 65A(1)	amended by 26/2002 s 19(1) (Sch 2)	16.1.2003
s 66	deleted by 83/1976 s 10	9.12.1976
	inserted by 20/2000 s 4	8.6.2000
s 66(1)	amended by 31/2005 s 16(1), (2)	15.5.2006
	amended by 44/2006 s 16(1)	18.1.2007
s 66(2)	amended by 31/2005 s 16(3), (4)	15.5.2006
	amended by 44/2006 s 16(2)	18.1.2007
s 67	deleted by 83/1976 s 10	9.12.1976
	inserted by 20/2000 s 4	8.6.2000
s 68	deleted by 83/1976 s 10	9.12.1976
	inserted by 20/2000 s 4	8.6.2000
s 68(1)	amended by 31/2005 s 17(1)	15.5.2006
s 68(2)	amended by 31/2005 s 17(2)	15.5.2006
s 68(3)	amended by 31/2005 s 17(3)	15.5.2006
Pt 3 Div 13		
heading	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
<i>s 69 before substitution by 10/2008</i>	<i>s 69(1) redesignated as s 69 in pursuance of the Acts Replication Act 1967</i>	<i>1.1.1985</i>
	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
s 69(2)	<i>deleted by 107/1981 s 15</i>	<i>11.2.1982</i>
s 69	substituted by 10/2008 s 9	23.11.2008
s 72	substituted by 83/1976 s 11	9.12.1976
	amended by 59/1994 Sch 1	1.1.1995
	substituted by 10/2008 s 10	23.11.2008

---

Pt 3 Div 14		
heading	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
s 72A	inserted by 14/2003 s 3	17.6.2003
s 73	substituted by 83/1976 s 12	9.12.1976
s 73(5)	<i>substituted by 9/1992 s 2</i>	<i>16.4.1992</i>
	<i>deleted by 10/2008 s 11</i>	<i>23.11.2008</i>
s 74 before deletion by 10/2008	<i>deleted by 107/1984 s 9</i>	<i>20.12.1984</i>
	<i>inserted by 23/1994 s 3</i>	<i>28.7.1994</i>
s 74(11)		
sexual offence	<i>amended by 20/2000 s 5</i>	<i>8.6.2000</i>
	<i>amended by 31/2005 s 18</i>	<i>15.5.2006</i>
s 74	<i>deleted by 10/2008 s 12</i>	<i>23.11.2008</i>
s 75	amended by 83/1976 s 13	9.12.1976
	amended by 51/1983 s 7	16.6.1983
	substituted by 59/1994 s 6	1.1.1995
	amended by 10/2008 s 13	23.11.2008
s 76	amended by 83/1976 s 14	9.12.1976
	amended by 20/2000 s 6	8.6.2000
	amended by 10/2008 s 14	23.11.2008
s 76A	<i>amended by 83/1976 s 15</i>	<i>9.12.1976</i>
	<i>deleted by 98/1985 s 5</i>	<i>1.12.1985</i>
s 77	<i>amended by 83/1976 s 16</i>	<i>9.12.1976</i>
	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>deleted by 51/1988 s 28</i>	<i>12.5.1988</i>
s 77A	<i>amended by 83/1976 s 17</i>	<i>9.12.1976</i>
	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>deleted by 51/1988 s 29</i>	<i>12.5.1988</i>
Pt 3 Div 15		
heading	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
s 78	amended by 59/1994 Sch 1	1.1.1995
s 79	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
heading preceding s 80	substituted by 83/1976 s 18	9.12.1976
	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
Pt 3 Div 16		
s 80		
s 80(1)	amended by 83/1976 s 19(a)	9.12.1976
	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
	amended by 59/1994 Sch 1	1.1.1995
s 80(1a)	inserted by 83/1976 s 19(b)	9.12.1976
	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
	amended by 59/1994 Sch 1	1.1.1995

---

**Criminal Law Consolidation Act 1935—1.6.2012 to 16.6.2012**

Legislative history

s 80(2)	amended by 83/1976 s 19(c)	9.12.1976
	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
Pt 3 Div 17		
heading	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
s 81		
s 81(1) and (2)	amended by 59/1994 Sch 1	1.1.1995
s 82	amended by 59/1994 Sch 1	1.1.1995
s 82A		
s 82A(1)	amended by 59/1994 Sch 1	1.1.1995
s 82A(4)	amended by 14/1978 s 3	1.7.1979
s 82A(5) and (9)	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
heading preceding s 83	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
Pt 3 Div 18		
s 83		
s 83(1)	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
	amended by 59/1994 Sch 1	1.1.1995
Pt 3A	inserted by 8/2008 s 5	8.6.2008
Pt 3B	inserted by 12/2012 s 30	uncommenced—not incorporated
<i>Pt 4 before substitution 90/1986</i>	<i>amended by 107/1981 ss 16—19</i>	<i>11.2.1982</i>
	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>amended by 16/1986 ss 15—18</i>	<i>1.10.1986</i>
Pt 4	substituted by 90/1986 s 7	1.2.1987
s 84		
s 84(1)		
building	inserted by 40/2009 s 5	20.12.2009
<i>s 85 before substitution by 40/2009</i>		
s 85(1)	<i>amended by 69/1991 s 15(b)</i>	<i>6.7.1992</i>
	<i>amended by 69/2001 s 7(a)—(f)</i>	<i>3.2.2002</i>
s 85(3)	<i>amended by 69/1991 s 15(c)</i>	<i>6.7.1992</i>
	<i>amended by 69/2001 s 7(g)—(l)</i>	<i>3.2.2002</i>
s 85	substituted by 40/2009 s 6	20.12.2009
s 85A	inserted by 35/1992 s 5	6.7.1992
s 85B	inserted by 24/2002 s 4	31.10.2002
s 86		
s 86(1)	amended by 69/1991 s 15(d)	6.7.1992
	substituted by 35/1992 s 6	6.7.1992
s 86A	inserted by 37/1992 s 4	6.7.1992
s 87	<i>deleted by 69/1991 s 15(e)</i>	<i>6.7.1992</i>
Pt 4A	inserted by 2/2004 s 4	30.5.2004



*Pt 5 before deletion by  
26/2002*

<i>s 130</i>	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>amended by 33/1999 Sch (item 16(a))</i>	<i>1.7.1999</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>s 131</i>	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>s 132</i>	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>s 133</i>	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>ss 134 and 135</i>	<i>deleted by 59/1994 s 7</i>	<i>1.1.1995</i>
<i>heading preceding s 136</i>	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>ss 136 and 137</i>	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>s 138</i>	<i>amended by 107/1981 s 20</i>	<i>11.2.1982</i>
	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>s 139</i>	<i>amended by 16/1986 s 19</i>	<i>1.10.1986</i>
	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>s 140</i>	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 4</i>	<i>15.5.2003</i>
<i>s 141</i>	<i>amended by 16/1986 s 20</i>	<i>1.10.1986</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>s 142</i>	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>amended by 16/1986 s 21</i>	<i>1.10.1986</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>s 143</i>	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>heading preceding s 144</i>	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>s 144</i>	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>s 145</i>	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>s 146</i>	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>heading preceding s 147</i>	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>ss 147 and 148</i>	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>

<i>s 149</i>	<i>amended by 16/1986 s 22</i>	<i>1.10.1986</i>
	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>s 150</i>	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>s 151</i>	<i>amended by 16/1986 s 23</i>	<i>1.10.1986</i>
	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>heading preceding s 152</i>	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>s 152</i>	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>ss 152A and 153</i>	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>s 153A</i>	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>heading preceding s 154</i>	<i>inserted by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>s 154</i>	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>heading preceding s 155</i>	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>s 155</i>	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>s 156</i>	<i>deleted by 107/1981 s 21</i>	<i>11.2.1982</i>
<i>s 157</i>	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>s 158</i>	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>s 159</i>	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>s 160</i>	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>ss 161 and 162</i>	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>s 163</i>	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>ss 164 and 165</i>	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 4</i>	<i>5.7.2003</i>
<i>s 166</i>	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>

	<i>deleted by 26/2002 s 4</i>	5.7.2003
Pt 5	inserted by 26/2002 s 4	5.7.2003
Pt 5 Div 2		
s 134		
s 134(1)	amended by 10/2012 s 5	19.5.2012
Pt 5 Div 3		
s 137		
s 137(1)	amended by 62/2005 s 19(1)	15.5.2006
s 137(2)	<i>deleted by 62/2005 s 19(2)</i>	15.5.2006
s 137(3)	amended by 62/2005 s 19(3)	15.5.2006
Pt 5 Div 4		
heading	amended by 63/2005 s 4	6.3.2006
s 138A	inserted by 63/2005 s 5	6.3.2006
s 138A(3)		
crime	amended by 80/2005 Sch 1 cl 3(1)	3.12.2007
<i>serious drug offence</i>	<i>deleted by 80/2005 Sch 1 cl 3(2)</i>	3.12.2007
Pt 5 Div 5		
s 139	amended by 62/2005 s 20	15.5.2006
Pt 5 Div 6		
s 140		
s 140(4)	amended by 62/2005 s 21	15.5.2006
Pt 5A	inserted by 60/2003 s 4	5.9.2004
s 144F	amended by 37/2011 Sch 1 cl 1	uncommenced—not incorporated
Pt 6	inserted by 26/2002 s 4	5.7.2003
heading preceding s 167	substituted by 80/1999 s 4	25.12.1999
	<i>deleted by 26/2002 s 5</i>	5.7.2003
Pt 6A	heading inserted by 26/2002 s 5	5.7.2003
s 167	substituted by 59/1994 s 8	1.1.1995
s 167 note	amended by 26/2002 s 6	5.7.2003
s 168	substituted by 59/1994 s 8	1.1.1995
	substituted by 80/1999 s 5	25.12.1999
s 168 note	amended by 26/2002 s 7	5.7.2003
s 169	substituted by 59/1994 s 8	1.1.1995
	substituted by 80/1999 s 5	25.12.1999
s 169(1)	amended by 62/2005 s 22(1)	18.1.2007
s 169(2)	<i>deleted by 62/2005 s 22(2)</i>	18.1.2007
s 170	substituted by 59/1994 s 8	1.1.1995
	substituted by 80/1999 s 5	25.12.1999
s 170(1)	amended by 62/2005 s 23(1)	18.1.2007
s 170(2)	substituted by 62/2005 s 23(2)	18.1.2007
s 170A	inserted by 80/1999 s 5	25.12.1999

s 170A(1)	amended by 62/2005 s 24	15.5.2006
s 171	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
	substituted by 59/1994 s 8	1.1.1995
	deleted by 26/2002 s 8	5.7.2003
s 172	deleted by 59/1994 s 8	1.1.1995
s 173	amended by 59/1994 Sch 1	1.1.1995
	deleted by 80/1999 s 6	25.12.1999
heading preceding s 174	inserted by 50/1984 s 3(1)(Sch 1)	1.1.1985
	deleted by 26/2002 s 8	5.7.2003
s 174	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
	amended by 59/1994 Sch 1	1.1.1995
	deleted by 26/2002 s 8	5.7.2003
heading preceding s 175	deleted by 26/2002 s 8	5.7.2003
s 175	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
	amended by 59/1994 Sch 1	1.1.1995
	deleted by 26/2002 s 8	5.7.2003
heading preceding s 176	deleted by 26/2002 s 8	5.7.2003
s 176	amended by 59/1994 Sch 1	1.1.1995
	deleted by 26/2002 s 8	5.7.2003
s 177	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
	amended by 59/1994 Sch 1	1.1.1995
	deleted by 26/2002 s 8	5.7.2003
s 178	amended by 59/1994 Sch 1	1.1.1995
	deleted by 26/2002 s 8	5.7.2003
s 179	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
	deleted by 26/2002 s 8	5.7.2003
s 180	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
	deleted by 26/2002 s 8	5.7.2003
ss 181 and 182	deleted by 26/2002 s 8	5.7.2003
heading preceding s 183	deleted by 26/2002 s 8	5.7.2003
s 183	amended by 59/1994 Sch 1	1.1.1995
	deleted by 26/2002 s 8	5.7.2003
heading preceding s 184	deleted by 26/2002 s 8	5.7.2003
s 184	amended by 59/1994 Sch 1	1.1.1995
	deleted by 26/2002 s 8	5.7.2003
s 185	amended by 59/1994 Sch 1	1.1.1995
	deleted by 26/2002 s 8	5.7.2003
s 186	amended by 59/1994 Sch 1	1.1.1995
	deleted by 26/2002 s 8	5.7.2003

<i>s 187</i>	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 8</i>	<i>5.7.2003</i>
<i>ss 188—192</i>	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 8</i>	<i>5.7.2003</i>
<i>s 193</i>	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 8</i>	<i>5.7.2003</i>
<i>s 194</i>	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>deleted by 26/2002 s 8</i>	<i>5.7.2003</i>
<i>heading preceding s 195</i>	<i>deleted by 26/2002 s 8</i>	<i>5.7.2003</i>
<i>s 195</i>	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 8</i>	<i>5.7.2003</i>
<i>heading preceding s 196</i>	<i>deleted by 26/2002 s 8</i>	<i>5.7.2003</i>
<i>s 196</i>	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 8</i>	<i>5.7.2003</i>
<i>s 197</i>	<i>deleted by 59/1994 Sch 1</i>	<i>1.1.1995</i>
<i>s 197A</i>	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 8</i>	<i>5.7.2003</i>
<i>s 198</i>	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 8</i>	<i>5.7.2003</i>
<i>s 199</i>	<i>deleted by 26/2002 s 8</i>	<i>5.7.2003</i>
<i>s 200</i>	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>deleted by 26/2002 s 8</i>	<i>5.7.2003</i>
<i>heading preceding s 201</i>	<i>amended by 51/1988 s 30</i>	<i>1.1.1989</i>
	<i>deleted by 26/2002 s 8</i>	<i>5.7.2003</i>
<i>s 201</i>	<i>amended by 16/1986 s 24</i>	<i>1.10.1986</i>
	<i>deleted by 51/1988 s 31</i>	<i>1.1.1989</i>
<i>s 202</i>	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 8</i>	<i>5.7.2003</i>
<i>s 203</i>	<i>deleted by 26/2002 s 8</i>	<i>5.7.2003</i>
<i>heading preceding s 204</i>	<i>deleted by 26/2002 s 8</i>	<i>5.7.2003</i>
<i>s 204</i>	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 8</i>	<i>5.7.2003</i>
<i>s 205</i>	<i>amended by 107/1981 s 22</i>	<i>11.2.1982</i>
	<i>amended by 59/1994 Sch 1</i>	<i>1.1.1995</i>
	<i>deleted by 26/2002 s 8</i>	<i>5.7.2003</i>
<i>heading preceding s 206</i>	<i>deleted by 26/2002 s 8</i>	<i>5.7.2003</i>

s 206	<i>amended by 59/1994 Sch 1</i>	1.1.1995
	<i>deleted by 26/2002 s 8</i>	5.7.2003
s 207	<i>amended by 115/1976 s 7</i>	23.12.1976
	<i>amended by 59/1994 Sch 1</i>	1.1.1995
	<i>deleted by 26/2002 s 8</i>	5.7.2003
ss 208 and 209	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	1.1.1985
	<i>amended by 59/1994 Sch 1</i>	1.1.1995
	<i>deleted by 26/2002 s 8</i>	5.7.2003
s 210	<i>amended by 59/1994 Sch 1</i>	1.1.1995
	<i>deleted by 26/2002 s 8</i>	5.7.2003
s 211	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	1.1.1985
	<i>amended by 59/1994 Sch 1</i>	1.1.1995
	<i>deleted by 26/2002 s 8</i>	5.7.2003
<i>heading preceding s 211A</i>	<i>inserted by 95/1996 Sch 2, cl 1</i>	7.7.1997
	<i>deleted by 26/2002 s 8</i>	5.7.2003
s 211A	<i>inserted by 95/1996 Sch 2, cl 1</i>	7.7.1997
	<i>deleted by 26/2002 s 8</i>	5.7.2003
Pt 6	<i>heading deleted by 26/2002 s 8</i>	5.7.2003
s 212	<i>amended by 30/1997 s 6</i>	3.7.1997
	<i>amended by 33/1999 Sch (item 16(b))</i>	1.7.1999
	<i>deleted by 26/2002 s 8</i>	5.7.2003
ss 213—216	<i>amended by 59/1994 Sch 1</i>	1.1.1995
	<i>deleted by 26/2002 s 8</i>	5.7.2003
<i>heading preceding s 217</i>	<i>deleted by 26/2002 s 8</i>	5.7.2003
ss 217 and 218	<i>amended by 59/1994 Sch 1</i>	1.1.1995
	<i>deleted by 26/2002 s 8</i>	5.7.2003
<i>heading preceding s 219</i>	<i>deleted by 26/2002 s 8</i>	5.7.2003
ss 219—221	<i>amended by 59/1994 Sch 1</i>	1.1.1995
	<i>deleted by 26/2002 s 8</i>	5.7.2003
s 222	<i>amended by 59/1994 Sch 1</i>	1.1.1995
	<i>amended by 33/1999 Sch (item 16(c))</i>	1.7.1999
	<i>deleted by 26/2002 s 8</i>	5.7.2003
s 223	<i>amended by 59/1994 Sch 1</i>	1.1.1995
	<i>deleted by 26/2002 s 8</i>	5.7.2003
<i>heading preceding s 224</i>	<i>deleted by 26/2002 s 8</i>	5.7.2003
s 224—227	<i>amended by 59/1994 Sch 1</i>	1.1.1995
	<i>deleted by 26/2002 s 8</i>	5.7.2003
s 228	<i>amended by 59/1994 Sch 1</i>	1.1.1995
	<i>deleted by 26/2002 s 8</i>	5.7.2003
s 229	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	1.1.1985

	<i>amended by 59/1994 Sch 1</i>	1.1.1995
	<i>deleted by 26/2002 s 8</i>	5.7.2003
s 230	<i>amended by 59/1994 Sch 1</i>	1.1.1995
	<i>deleted by 26/2002 s 8</i>	5.7.2003
s 231	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	1.1.1985
	<i>deleted by 26/2002 s 8</i>	5.7.2003
s 232	<i>amended by 59/1994 Sch 1</i>	1.1.1995
	<i>deleted by 26/2002 s 8</i>	5.7.2003
<i>heading preceding s 233</i>	<i>deleted by 26/2002 s 8</i>	5.7.2003
<i>ss 233 and 234</i>	<i>amended by 59/1994 Sch 1</i>	1.1.1995
	<i>deleted by 26/2002 s 8</i>	5.7.2003
s 235	<i>deleted by 26/2002 s 8</i>	5.7.2003
s 236	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	1.1.1985
	<i>deleted by 26/2002 s 8</i>	5.7.2003
Pt 6B	inserted by 26/2002 s 8	5.7.2003
s 172		
s 172(1)	amended by 12/2012 s 31	uncommenced—not incorporated
Pt 6C	inserted by 26/2002 s 8	5.7.2003
<i>Pt 7 before substitution by 35/1992</i>	<i>amended by 115/1976 s 8</i>	23.12.1976
	<i>amended by 107/1981 s 23</i>	11.2.1982
	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	1.1.1985
	<i>amended by 56/1984 s 4</i>	1.7.1984
	<i>amended by 46/1985 s 37</i>	10.5.1985
Pt 7	substituted by 35/1992 s 7	6.7.1992
s 237		
<i>local government body</i>	<i>deleted by 26/2002 s 9</i>	16.1.2003
public officer	amended by 36/2003 s 4	29.4.2004
s 244		
s 244(1)—(3) and (5)	amended by 12/2012 s 32	uncommenced—not incorporated
s 245		
s 245(1)—(3) and (5)	amended by 12/2012 s 33	uncommenced—not incorporated
s 246	substituted by 16/1999 s 3	16.5.1999
s 246(8)	amended by 17/2006 s 89	4.9.2006
s 247		
s 247(1)	amended by 16/1999 s 4(a)	16.5.1999
s 247(2)	<i>deleted by 16/1999 s 4(b)</i>	16.5.1999
s 248	substituted by 13/2008 Sch 1 cl 3	4.9.2008
s 248(1) and (2)	amended by 12/2012 s 34	uncommenced—not incorporated

**Criminal Law Consolidation Act 1935—1.6.2012 to 16.6.2012**

## Legislative history

---

s 249		
s 249(1) and (2)	amended by 12/2012 s 35	uncommenced—not incorporated
s 250	substituted by 13/2008 Sch 1 cl 4	4.9.2008
s 250(1) and (2)	amended by 12/2012 s 36	uncommenced—not incorporated
s 251		
s 251(1)	s 251 redesignated as s 251(1) by 36/2003 s 5 amended by 12/2012 s 37(1)	29.4.2004 uncommenced—not incorporated
s 251(2)	inserted by 36/2003 s 5 amended by 12/2012 s 37(2)	29.4.2004 uncommenced—not incorporated
s 254		
s 254(2)	amended by 57/2000 s 14(a)	14.8.2000
s 254(2a)	inserted by 57/2000 s 14(b)	14.8.2000
s 257		
s 257(2)	amended by 50/2005 Sch 1 cl 4	1.1.2006
Pt 7A	inserted by 2/1999 s 2	11.3.1999
Pt 7B	Pt 8 renumbered Pt 7A by 15/1999 s 2	1.4.1999
	Pt 7A renumbered Pt 7B pursuant to the <i>Acts Republication Act 1967</i>	1.4.1999
s 267	substituted by 59/1994 s 9	1.1.1995
s 268	<i>amended by 107/1981 s 24</i> <i>deleted by 35/1992 s 8</i>	<i>11.2.1982</i> <i>6.7.1992</i>
s 269	<i>deleted by 59/1994 s 9</i>	<i>1.1.1995</i>
Pt 8	inserted by 15/1999 s 3	1.4.1999
s 267A		
s 267A(1)	s 267A redesignated as s 267A(1) by 40/2004 s 4(5)	25.11.2004
alleged offence	inserted by 40/2004 s 4(1)	25.11.2004
consumption	inserted by 40/2004 s 4(2)	25.11.2004
drug	inserted by 40/2004 s 4(2)	25.11.2004
medical practitioner	inserted by 40/2004 s 4(2)	25.11.2004
recreational use	inserted by 40/2004 s 4(3)	25.11.2004
self-induced	inserted by 40/2004 s 4(3)	25.11.2004
serious harm	inserted by 40/2004 s 4(3)	25.11.2004
therapeutic	inserted by 40/2004 s 4(4)	25.11.2004
s 267A(2) and (3)	inserted by 40/2004 s 4(5)	25.11.2004
s 268		
s 268(2)	substituted by 40/2004 s 5	25.11.2004
s 268(3)	inserted by 40/2004 s 5 substituted by 10/2008 s 15	25.11.2004 23.11.2008
s 268(4)—(6)	inserted by 40/2004 s 5	25.11.2004



s 269		
s 269(1)	amended by 40/2004 s 6	25.11.2004
Pt 8A	inserted by 91/1995 s 3	2.3.1996
s 269A		
s 269A(1)		
authorised person	amended by 39/2000 s 3(a)	29.10.2000
defence	inserted by 39/2000 s 3(b)	29.10.2000
defensible	inserted by 39/2000 s 3(b)	29.10.2000
intoxication	inserted by 39/2000 s 3(b)	29.10.2000
mental impairment	amended by 39/2000 s 3(c)	29.10.2000
Minister	inserted by 39/2000 s 3(d)	29.10.2000
next of kin	amended by 43/2006 s 68	1.6.2007
psychiatrist	amended by 5/2010 Sch 1 cl 9	1.7.2010
s 269B		
s 269B(4)	inserted by 39/2000 s 4	29.10.2000
s 269BA	inserted by 39/2000 s 5	29.10.2000
s 269F		
s 269F A.(3)	substituted by 39/2000 s 6(a)	29.10.2000
s 269F A.(4)	<i>deleted by 39/2000 s 6(a)</i>	29.10.2000
s 269F B.(4)	inserted by 39/2000 s 6(b)	29.10.2000
s 269G		
s 269G A.(2)	amended by 26/2002 s 10(a) (commencement amended by 23/2004 s 30)	29.10.2000
s 269G A.(3)	inserted by 39/2000 s 7(a)	29.10.2000
s 269G B.(3)	substituted by 39/2000 s 7(b)	29.10.2000
	amended by 26/2002 s 10(b) (commencement amended by 23/2004 s 30)	29.10.2000
s 269G B.(4)	substituted by 39/2000 s 7(b)	29.10.2000
s 269G B.(5)	amended by 26/2002 s 10(c) (commencement amended by 23/2004 s 30)	29.10.2000
s 269M		
s 269M A.(3)	substituted by 39/2000 s 8(a)	29.10.2000
s 269M A.(4)	<i>deleted by 39/2000 s 8(a)</i>	29.10.2000
s 269M B.(2)	substituted by 39/2000 s 8(b)	29.10.2000
s 269M B.(3)	inserted by 39/2000 s 8(b)	29.10.2000
s 269N		
s 269N A.(2)	substituted by 39/2000 s 9	29.10.2000
s 269N A.(3)	inserted by 39/2000 s 9	29.10.2000
s 269Q		
s 269Q(1) and (2)	amended by 39/2000 s 10	29.10.2000
s 269R		
s 269R(2)	amended by 79/2009 s 16(1)	19.9.2010
s 269R(3)—(6)	inserted by 79/2009 s 16(2)	19.9.2010
s 269T		

**Criminal Law Consolidation Act 1935—1.6.2012 to 16.6.2012**

## Legislative history

---

s 269T(2)	amended by 39/2000 s 11(a), (b)	29.10.2000
s 269T(2a)	inserted by 39/2000 s 11(c)	29.10.2000
s 269U	substituted by 39/2000 s 12	29.10.2000
s 269V		
s 269V(1)—(3)	amended by 39/2000 s 13	29.10.2000
s 269V(4) and (5)	inserted by 52/2009 s 4	27.6.2010
s 269VA	inserted by 39/2000 s 14	29.10.2000
s 269W		
s 269W(1)	s 269W redesignated as s 269W(1) by 39/2000 s 15	29.10.2000
s 269W(2)	inserted by 39/2000 s 15	29.10.2000
s 269WA	inserted by 39/2000 s 16	29.10.2000
s 269Y		
s 269Y(3)	substituted by 39/2000 s 17	29.10.2000
	amended by 17/2006 s 90	4.9.2006
s 269Y(4)	inserted by 39/2000 s 17	29.10.2000
s 269Y(5)	inserted by 26/2002 s 11	16.1.2003
s 269Z		
s 269Z(1)	amended by 39/2000 s 18	29.10.2000
Pt 9		
Pt 9 Div 1		
heading preceding s 270	amended by 59/1994 Sch 1	1.1.1995
	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
s 270		
s 270(1)	(a) deleted by 107/1981 s 25	11.2.1982
	amended by 35/1992 s 9(a)	6.7.1992
	(d) and (e) deleted by 35/1992 s 9(b)	6.7.1992
	amended by 59/1994 Sch 1	1.1.1995
s 270(2)	amended by 59/1994 Sch 1	1.1.1995
Pt 9 Div 2		
heading preceding s 270A	inserted by 107/1981 s 26	11.2.1982
	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
s 270A	inserted by 107/1981 s 26	11.2.1982
s 270AB	inserted by 45/1983 s 3	16.6.1983
s 270AB(1)	amended by 59/1994 Sch 1	1.1.1995
Pt 9 Div 3		
heading preceding s 270B	inserted by 107/1981 s 26	11.2.1982
	substituted by 59/1994 Sch 1	1.1.1995
	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
s 270B	inserted by 107/1981 s 26	11.2.1982
s 270B(1)	substituted by 59/1994 Sch 1	1.1.1995

s 270B(2)	amended by 59/1994 Sch 1	1.1.1995
s 270B(4)	inserted by 26/2002 s 12(a)	5.7.2003
<i>s 270B note</i>	<i>deleted by 26/2002 s 12(b)</i>	5.7.2003
Pt 9 Div 4	inserted by 26/2002 s 13	5.7.2003
Pt 9 Div 5		
heading preceding s 271	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
s 271	substituted by 59/1994 s 10	1.1.1995
s 271(3)	amended by 26/2002 s 14	5.7.2003
s 272	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	1.1.1985
	<i>deleted by 59/1994 s 10</i>	1.1.1995
s 273	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
Pt 9 Div 6		
s 274	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
s 274(2)	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
	amended by 43/1994 s 5	9.6.1994
s 275		
s 275(1)	amended by 49/1991 Sch 2	6.7.1992
	amended by 26/1992 s 5	6.7.1992
s 275(3)—(5)	inserted by 12/2012 s 38	uncommenced—not incorporated
s 276		
s 276(1)	amended by 49/1991 Sch 2	6.7.1992
s 276(2)	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
	amended by 49/1991 Sch 2	6.7.1992
	amended by 26/1992 s 6	6.7.1992
s 278		
s 278(1)	amended by 62/1993 s 26	1.7.1993
	amended by 59/1994 Sch 1	1.1.1995
s 278(2a)	inserted by 10/2008 s 16(1)	23.11.2008
	<b>(c) deleted by 34/2011 s 5(1)</b>	<b>1.6.2012</b>
<b>s 278(3)</b>	<b>substituted by 34/2011 s 5(2)</b>	<b>1.6.2012</b>
s 278(4)	inserted by 10/2008 s 16(2)	23.11.2008
<b>sexual offence</b>	<b>amended by 34/2011 s 5(3), (4)</b>	<b>1.6.2012</b>
s 279	amended by 59/1994 Sch 1	1.1.1995
s 280		
s 280(2)	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
s 281		
s 281(1)	amended by 17/2006 s 91	4.9.2006
heading preceding s 281A	<i>inserted by 109/1981 s 59</i>	1.2.1982
	<i>deleted by 26/2002 s 19(1) (Sch 2)</i>	16.1.2003
s 281A	<i>inserted by 109/1981 s 59</i>	1.2.1982
	<i>amended by 49/1991 Sch 2</i>	6.7.1992

**Criminal Law Consolidation Act 1935—1.6.2012 to 16.6.2012**  
Legislative history

	<i>deleted by 69/1991 s 15(f)</i>	6.7.1992
heading preceding s 282	inserted by 109/1981 s 60	1.2.1982
	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
s 282	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
s 283		
s 283(2)	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
Pt 9 Div 8		
heading preceding s 284	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
s 285A	inserted by 108/1981 s 2	23.12.1981
s 285B	inserted by 45/1983 s 4	16.6.1983
ss 285BA	inserted by 74/2005 s 4	1.3.2007
s 285BA(1)—(3)	substituted by 17/2012 s 4(1)	uncommenced—not incorporated
s 285BA(5)	deleted by 17/2012 s 4(2)	uncommenced—not incorporated
ss 285BB and 285BC	inserted by 74/2005 s 4	1.3.2007
s 285C	inserted by 78/1984 s 2	15.11.1984
s 285C(1)	amended by 43/1994 s 6	9.6.1994
s 285C(3)	amended by 49/1991 Sch 2	6.7.1992
s 285C(5)	amended by 17/2006 s 92(1)	4.9.2006
s 285C(6)	amended by 17/2006 s 92(2), (3)	4.9.2006
s 285C(7)	amended by 49/1991 Sch 2	6.7.1992
s 285C(8)		
<i>evidence</i>	<i>deleted by 90/1986 s 8</i>	1.2.1987
s 287	<i>deleted by 10/2001 s 6(a)</i>	12.4.2001
s 288	substituted by 76/1992 s 4	1.1.1993
s 288A	inserted by 76/1992 s 4	1.1.1993
	substituted by 74/2005 s 5	1.3.2007
s 288AB	inserted by 74/2005 s 5	1.3.2007
s 288B	inserted by 76/1992 s 4	1.1.1993
s 290	amended by 59/1994 Sch 1	1.1.1995
Pt 9 Div 9		
heading preceding s 291	inserted by 27/1995 s 12	10.7.1995
	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
s 291	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
	deleted by 59/1994 Sch 1	1.1.1995
	inserted by 27/1995 s 12	10.7.1995
heading preceding s 292	<i>deleted by 91/1995 Sch cl 1</i>	2.3.1996
s 292	<i>amended by 22/1992 s 3</i>	6.7.1992
	<i>deleted by 91/1995 Sch cl 1</i>	2.3.1996

s 293	<i>amended by 22/1992 s 4</i>	6.7.1992
	<i>deleted by 91/1995 Sch cl 1</i>	2.3.1996
s 293A	<i>amended by 78/1988 s 2</i>	1.12.1988
	<i>substituted by 22/1992 s 5</i>	6.7.1992
	<i>deleted by 91/1995 Sch cl 1</i>	2.3.1996
Pt 9 Div 10		
heading preceding s 294	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
s 295		
s 295(1)	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	1.1.1985
	<i>amended by 59/1994 Sch 1</i>	1.1.1995
s 295(2)	<i>amended by 59/1994 Sch 1</i>	1.1.1995
s 295(3)	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	1.1.1985
s 296	<i>amended by 115/1976 s 9</i>	23.12.1976
	<i>deleted by 49/1984 s 3</i>	24.5.1984
<i>Pt 9 Div 11 before substitution by 23/2004</i>		
heading preceding s 297	<i>substituted by 26/2002 s 19(1) (Sch 2)</i>	16.1.2003
s 297		
s 297	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	1.1.1985
s 297(4)	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	1.1.1985
	<i>amended by 59/1994 Sch 1</i>	1.1.1995
s 297(5)	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	1.1.1985
	<i>deleted by 51/1988 s 32</i>	1.1.1989
s 297(6)	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	1.1.1985
s 297(7) and (8)	<i>amended by 59/1994 Sch 1</i>	1.1.1995
s 298	<i>deleted by 51/1988 s 33</i>	1.1.1989
s 299	<i>substituted by 16/1986 s 25</i>	1.10.1986
	<i>deleted by 51/1988 s 33</i>	1.1.1989
Pt 9 Div 11	substituted by 23/2004 s 5	1.9.2004
Pt 9 Div 12		
heading preceding s 299A	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
s 299A		
s 299A(1)	<i>amended by 15/2008 Sch 1 cl 1</i>	27.11.2008
s 299A(6)		
court	<i>amended by 43/1994 s 7</i>	9.6.1994
	<i>amended by 56/2005 Sch 2 cl 16</i>	1.7.2006
heading preceding s 300	<i>deleted by 51/1988 s 34</i>	1.1.1989
s 300	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	1.1.1985
	<i>deleted by 51/1988 s 34</i>	1.1.1989
s 300A	<i>amended by 49/1987 Sch 2</i>	21.6.1987

	<i>deleted by 51/1988 s 34</i>	<i>1.1.1989</i>
<i>ss 300B—300D</i>	<i>deleted by 51/1988 s 34</i>	<i>1.1.1989</i>
<i>s 300E</i>	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>deleted by 51/1988 s 34</i>	<i>1.1.1989</i>
<i>ss 300F and 300G</i>	<i>deleted by 51/1988 s 34</i>	<i>1.1.1989</i>
<i>s 300H</i>	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>deleted by 51/1988 s 34</i>	<i>1.1.1989</i>
<i>heading preceding s 301</i>	<i>amended by 115/1976 s 10(1)</i>	<i>23.12.1976</i>
	<i>deleted by 51/1988 s 35</i>	<i>1.1.1989</i>
<i>s 301</i>	<i>deleted by 115/1976 s 10(2)</i>	<i>23.12.1976</i>
	<i>inserted by 16/1986 s 26</i>	<i>1.10.1986</i>
	<i>deleted by 51/1988 s 35</i>	<i>1.1.1989</i>
<i>s 301A</i>	<i>deleted by 115/1976 s 10(2)</i>	<i>23.12.1976</i>
<i>s 302</i>	<i>deleted by 115/1976 s 10(2)</i>	<i>23.12.1976</i>
	<i>inserted by 69/1986 s 18</i>	<i>8.12.1986</i>
	<i>deleted by 51/1988 s 35</i>	<i>1.1.1989</i>
<i>ss 303—306</i>	<i>deleted by 115/1976 s 10(2)</i>	<i>23.12.1976</i>
<i>s 309</i>	<i>deleted by 51/1988 s 35</i>	<i>1.1.1989</i>
<i>s 310</i>	<i>substituted by 67/1980 s 3</i>	<i>11.12.1980</i>
	<i>amended by 69/1986 s 19</i>	<i>8.12.1986</i>
	<i>deleted by 51/1988 s 35</i>	<i>1.1.1989</i>
<i>s 311</i>	<i>deleted by 51/1988 s 35</i>	<i>1.1.1989</i>
<i>ss 313 and 313A</i>	<i>deleted by 51/1988 s 35</i>	<i>1.1.1989</i>
<i>s 314</i>	<i>amended by 115/1976 s 11</i>	<i>23.12.1976</i>
	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>deleted by 51/1988 s 35</i>	<i>1.1.1989</i>
<i>heading preceding s 315</i>	<i>amended by 51/1988 s 36</i>	<i>1.1.1989</i>
	<i>deleted by 26/2002 s 19(1) (Sch 2)</i>	<i>16.1.2003</i>
<i>ss 315 and 316</i>	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>deleted by 51/1988 s 37</i>	<i>1.1.1989</i>
<i>s 317</i>	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>amended by 51/1988 s 38</i>	<i>1.1.1989</i>
	<i>deleted by 26/2002 s 15</i>	<i>5.7.2003</i>
<i>s 318</i>	<i>amended by 51/1988 s 39</i>	<i>1.1.1989</i>
	<i>deleted by 26/2002 s 15</i>	<i>5.7.2003</i>
<i>heading preceding s 319</i>	<i>deleted by 51/1988 s 40</i>	<i>12.5.1988</i>
<i>s 319</i>	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>amended by 90/1986 s 9</i>	<i>1.2.1987</i>
	<i>deleted by 51/1988 s 40</i>	<i>12.5.1988</i>
<i>s 320</i>	<i>deleted by 51/1988 s 40</i>	<i>12.5.1988</i>
<i>s 321</i>	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>

	<i>deleted by 51/1988 s 40</i>	12.5.1988
s 323	<i>deleted by 51/1988 s 40</i>	12.5.1988
s 328	<i>deleted by 51/1988 s 40</i>	12.5.1988
Pt 9 Div 13		
heading preceding s 328A	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
Pt 9 Div 14		
heading preceding s 329	inserted by 26/2002 s 19(1) (Sch 2)	16.1.2003
s 329	inserted by 49/1984 s 4	24.5.1984
	amended by 59/1994 Sch 1	1.1.1995
Pt 9 Div 15	inserted by 26/2002 s 16	5.7.2003
<i>Pt 10</i>	<i>deleted by 49/1984 s 5</i>	24.5.1984
Pt 10	inserted by 28/2008 s 5	3.8.2008
Pt 10A	inserted by 28/2008 s 5	3.8.2008
Pt 11		
heading	inserted by 26/2002 s 19(1) (Sch 2)	16.1.2003
	substituted by 17/2006 s 93	4.9.2006
s 347	<i>deleted by 67/1980 s 4</i>	11.12.1980
s 348		
ancillary order	inserted by 75/1991 s 9	16.1.1992
	amended by 43/1994 s 8(a)	9.6.1994
	amended by 22/1994 Sch cl 1(b)	1.8.1994
	amended by 59/1998 s 5	13.12.1998
	(a) and (b) deleted by 19/2005 Sch 1 cl 5	2.4.2006
	amended by 85/2009 Sch 1 cl 5	9.12.2011
conviction	inserted by 90/1995 s 3(a)	4.1.1996
court	inserted by 90/1995 s 3(a)	4.1.1996
<i>District Criminal Court</i>	<i>deleted by 43/1994 s 8(b)</i>	9.6.1994
<i>Full Court</i>	<i>deleted by 28/2008 s 6</i>	3.8.2008
information	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
	amended by 43/1994 s 8(c)	9.6.1994
issue antecedent to trial	inserted by 90/1995 s 3(b)	4.1.1996
judge	amended by 43/1994 s 8(d)	9.6.1994
<i>Master</i>	<i>deleted 50/1984 s 3(1) (Sch 1)</i>	1.1.1985
<i>question of law</i>	<i>inserted by 90/1995 s 3(c)</i>	4.1.1996
	<i>deleted by 67/1996 s 8</i>	17.10.1996
sentence	amended by 13/1999 s 4	16.5.1999
s 348A	<i>inserted by 67/1980 s 5</i>	11.12.1980
	<i>deleted by 49/1991 Sch 2</i>	6.7.1992
s 349	s 349(1) redesignated as s 349 in pursuance of the <i>Acts Republication Act 1967</i>	1.1.1985

**Criminal Law Consolidation Act 1935—1.6.2012 to 16.6.2012**  
Legislative history

---

heading preceding s 350	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
<i>s 350 before substitution by 90/1995</i>	<i>amended by 67/1980 s 6</i>	<i>11.12.1980</i>
	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>amended by 49/1991 Sch 2</i>	<i>6.7.1992</i>
<i>s 350 before substitution by 17/2006</i>	<i>substituted by 90/1995 s 4</i>	<i>4.1.1996</i>
<i>s 350(a1)</i>	<i>inserted by 67/1996 s 9(a)</i>	<i>17.10.1996</i>
<i>s 350(1)</i>	<i>amended by 67/1996 s 9(b)</i>	<i>17.10.1996</i>
<i>s 350(2)</i>	<i>amended by 67/1996 s 9(c)</i>	<i>17.10.1996</i>
<i>s 350(3)</i>	<i>amended by 67/1996 s 9(d)</i>	<i>17.10.1996</i>
<i>s 350(4)</i>	<i>amended by 67/1996 s 9(e)</i>	<i>17.10.1996</i>
s 350	substituted by 17/2006 s 94	4.9.2006
s 351	amended by 67/1980 s 7	11.12.1980
	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
	amended by 49/1991 Sch 2	6.7.1992
	substituted by 90/1995 s 5	4.1.1996
s 351(1)	amended by 67/1996 s 10	17.10.1996
s 351A	inserted by 67/1980 s 8	11.12.1980
	deleted by 37/1993 Sch	15.7.1993
	inserted by 90/1995 s 5	4.1.1996
s 351A(1)	amended by 67/1996 s 11	17.10.1996
s 351B	inserted by 90/1995 s 5	4.1.1996
s 351B(1)	amended by 67/1996 s 12	17.10.1996
heading preceding s 352	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
s 352	amended by 67/1980 s 9	11.12.1980
	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
	amended by 49/1991 Sch 2	6.7.1992
	amended by 43/1994 s 9	9.6.1994
	substituted by 90/1995 s 6	4.1.1996
s 352(1)	amended by 13/1999 s 5	16.5.1999
	amended by 31/2000 s 2	6.7.2000
	amended by 17/2006 s 95(1)	4.9.2006
	amended by 28/2008 s 7	3.8.2008
s 352(2)	<i>deleted by 17/2006 s 95(2)</i>	<i>4.9.2006</i>
s 353		
s 353(1) and (2)	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
s 353(2a)	inserted by 31/2000 s 3	6.7.2000
	amended by 28/2008 s 8(1)	3.8.2008
s 353(3)	substituted by 28/2008 s 8(2)	3.8.2008



---

s 353(3a)	inserted by 90/1995 s 7	4.1.1996
s 353(4)	amended by 67/1980 s 10(a)	11.12.1980
	substituted by 23/2004 s 6	1.9.2004
s 353(5)	inserted by 67/1980 s 10(b)	11.12.1980
	amended by 49/1991 Sch 2	6.7.1992
	substituted by 59/1998 s 6	13.12.1998
s 354		
s 354(4)	<i>deleted by 26/2002 s 17</i>	<i>16.1.2003</i>
s 354A	inserted by 75/1991 s 10	16.1.1992
s 354A(3)	substituted by 59/1998 s 7	13.12.1998
s 354A(4)	inserted by 59/1998 s 7	13.12.1998
s 355		
s 355(1)	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
	amended by 17/2006 s 96	4.9.2006
s 356A	inserted by 43/1994 s 10	9.6.1994
<i>heading preceding s 357</i>	<i>deleted by 26/2002 s 19(1) (Sch 2)</i>	<i>16.1.2003</i>
s 357		
	amended by 115/1976 s 12	23.12.1976
	amended by 33/1991 s 8	6.6.1991
	substituted by 90/1995 s 8	4.1.1996
s 357(1)	amended by 17/2006 s 97	4.9.2006
s 358		
	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>amended by 43/1994 s 11</i>	<i>9.6.1994</i>
	<i>deleted by 90/1995 s 9</i>	<i>4.1.1996</i>
s 360	<i>deleted by 10/2001 s 6(b)</i>	<i>12.4.2001</i>
s 361		
s 361(1)	amended by 17/2006 s 98	4.9.2006
s 362	amended by 49/1991 Sch 2	6.7.1992
s 363		
s 363(2)	<i>deleted by 10/2001 s 6(c)</i>	<i>12.4.2001</i>
s 364		
s 364(1)	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
s 364(3)	amended by 33/1991 s 9	6.6.1991
s 364(4)	amended by 17/2006 s 99	4.9.2006
s 364(5)	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
s 365		
s 365(1), (2) and (4)	amended by 50/1984 s 3(1)(Sch 1)	1.1.1985
s 366		
s 366(1)	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
	amended by 17/2006 s 100	4.9.2006
s 366(2)	amended by 49/1991 Sch 2	6.7.1992
s 366(3)	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985

	amended by 49/1991 Sch 2	6.7.1992
s 367	amended by 67/1980 s 11	11.12.1980
	amended by 17/2006 s 101	4.9.2006
s 368	<i>amended by 50/1984 s 3(1) (Sch 1)</i>	<i>1.1.1985</i>
	<i>amended by 43/1994 s 12</i>	<i>9.6.1994</i>
	<i>deleted by 90/1995 s 10</i>	<i>12.9.1996</i>
heading preceding s 369	substituted by 26/2002 s 19(1) (Sch 2)	16.1.2003
s 369	amended by 115/1976 s 13	23.12.1976
	amended by 49/1991 Sch 2	6.7.1992
Pt 12	inserted by 26/2002 s 18	16.1.2003
Schs 1 and 2	amended by 49/1991 Sch 2	6.7.1992
Sch 3	amended by 50/1984 s 3(1) (Sch 1)	1.1.1985
	amended by 49/1991 Sch 2	6.7.1992
	amended by 59/1994 Sch 1	1.1.1995
<i>Appendix to Rules</i>	<i>deleted by 26/2002 s 19(1) (Sch 2)</i>	<i>16.1.2003</i>
<i>Schs 8 and 9</i>	<i>deleted by 115/1976 s 14</i>	<i>23.12.1976</i>
Sch 11	inserted by 35/1992 s 10 (Sch)	6.7.1992

## **Transitional etc provisions associated with Act or amendments**

### ***Statutes Amendment (Crimes Confiscation and Restitution) Act 1991***

#### **11—Transitional provision**

The amendments made by this Part apply in respect of proceedings commenced either before or after the commencement of this Part.

### ***Statutes Repeal and Amendment (Courts) Act 1991***

#### **22—Transitional provisions—general**

- (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.

---

***Criminal Law Consolidation (Detention of Insane Offenders) Amendment Act 1992*****6—Transitional provisions**

- (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.

***Criminal Law Consolidation (Appeals) Amendment Act 1995*****11—Transitional provision**

- (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.

***Criminal Law Consolidation (Mental Impairment) Amendment Act 1995, Sch*****2—Transitional provision**

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).

***Criminal Law Consolidation (Appeals) Amendment Act 2000*****4—Transitional provision**

The amendments effected by this Act only apply in relation to proceedings for offences alleged to have been committed after its commencement.

***Statutes Amendment (Courts and Judicial Administration) Act 2001*****8—Transitional provision**

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.

***Criminal Law Consolidation (Offences of Dishonesty) Amendment Act 2002, Sch 1*****2—Transitional provision**

- (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.

***Controlled Substances (Serious Drug Offences) Amendment Act 2005, Sch 1***

**6—Transitional provision**

An amendment to the principal Act effected by a provision of this Act only applies in relation to an offence if the offence is committed on or after the commencement of the provision.

***Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act 2008, Sch 1***

**7—Transitional provision—Persistent sexual abuse of a child**

For the avoidance of doubt, the repeal of section 74 of the *Criminal Law Consolidation Act 1935* does not affect any proceedings for an offence against that section commenced prior to the repeal of that section.

**Historical versions**

Retrospective amendment not included in Reprints 33—38 (see s 10 of 26/2002)

Reprint—1.1.1985

Reprint No 1—6.6.1991

Reprint No 2—31.10.1991

Reprint No 3—12.12.1991

Reprint No 4—16.1.1992

Reprint No 5—16.4.1992

Reprint No 6—6.7.1992

Reprint No 7—12.11.1992

Reprint No 8—1.1.1993

Reprint No 9—1.7.1993

Reprint No 10—15.7.1993

Reprint No 11—1.6.1994

Reprint No 12—9.6.1994

Reprint No 13—1.8.1994

Reprint No 14—1.1.1995

Reprint No 15—10.7.1995

Reprint No 16—4.1.1996

Reprint No 17—2.3.1996

Reprint No 18—12.9.1996

Reprint No 19—17.10.1996

Reprint No 20—27.3.1997

Reprint No 21—27.4.1997

Reprint No 22—7.7.1997

does not contain 30/1997

Reprint No 23—7.7.1997  
Reprint No 24—13.12.1998  
Reprint No 25—11.3.1999  
Reprint No 26—1.4.1999  
Reprint No 27—16.5.1999  
Reprint No 28—1.7.1999  
Reprint No 29—25.12.1999  
Reprint No 30—8.6.2000  
Reprint No 31—6.7.2000  
Reprint No 32—14.8.2000  
Reprint No 33—29.10.2000  
Reprint No 34—12.4.2001  
Reprint No 35—13.1.2002  
Reprint No 36—3.2.2002  
Reprint No 37—31.10.2002  
Reprint No 38—1.12.2002  
Reprint No 39—16.1.2003  
Reprint No 40—17.6.2003  
Reprint No 41—5.7.2003  
Reprint No 42—27.7.2003  
29.4.2004  
30.5.2004  
1.9.2004 (electronic only)  
5.9.2004  
25.11.2004  
30.1.2005  
14.4.2005  
1.1.2006  
6.3.2006  
2.4.2006  
15.5.2006  
1.7.2006  
30.7.2006  
13.8.2006  
4.9.2006 (electronic only)  
10.9.2006  
23.11.2006  
18.1.2007  
1.3.2007  
1.4.2007  
1.6.2007  
3.12.2007  
16.12.2007

3.2.2008

8.6.2008

3.8.2008

4.9.2008

23.11.2008 (electronic only)

27.11.2008

20.12.2009

27.6.2010

1.7.2010

19.9.2010

21.8.2011

17.11.2011

9.12.2011

1.1.2012

19.5.2012