South Australia

# Criminal Law Consolidation Act 1935

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

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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, unless the contrary intention appears—

***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);

***approved carer***, of a child, means an approved carer (within the meaning of the *Children and Young People (Safety) Act 2017*) in whose care the child has been placed under that Act;

***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;

***criminal organisation*** has the same meaning as in Part 3B Division 1;

***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*** has the same meaning as in the *Firearms Act 2015*;

***foster parent***, of a child, includes—

(a) an approved carer of the child; and

(b) a person in whose care the child is placed under section 77 of the *Children and Young People (Safety) Act 2017*;

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

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

***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;

***planning assessment panel*** means an assessment panel appointed or constituted under Part 6 Division 2 of the *Planning, Development and Infrastructure Act 2016*;

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

***serious and organised crime offence*** means—

(a) an offence against Part 3B; or

(b) an offence that—

(i) is punishable by life imprisonment; or

(ii) is an aggravated offence against a provision of this, or any other, Act,

if it is alleged that the offence was committed in the circumstances where—

(iii) the offender committed the offence for the benefit of a criminal organisation, or 2 or more members of a criminal organisation, or at the direction of, or in association with, a criminal organisation; or

(iv) in the course of, or in connection with, the offence the offender identified himself or herself in some way as belonging to, or otherwise being associated with, a criminal organisation (whether or not the offender did in fact belong to, or was in fact associated with, the organisation);

***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, employee in a training centre (within the meaning of the *Youth Justice Administration Act 2016*) 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;

(ca) the offender committed the offence against a community corrections officer (within the meaning of the *Correctional Services Act 1982*) or community youth justice officer (within the meaning of the *Youth Justice Administration Act 2016*) knowing the victim to be acting in the course of their official duties;

(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—

(i) in the case of an offence against section 63B(3)—believing that the victim of the offence was, at the time of the offence, under the age of 14 years; or

(ii) in the case of an offence against Part 3 Division 8A or section 63B(1)—knowing that the victim of the offence was, at the time of the offence, under the age of 14 years; or

(iii) in any other case—knowing that the victim of the offence was, at the time of the offence, 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 a person with whom the offender was, or was formerly, in a relationship;

(ga) —

(i) the offender committed the offence for the benefit of a criminal organisation, or 2 or more members of a criminal organisation, or at the direction of, or in association with, a criminal organisation; or

(ii) in the course of, or in connection with, the offence the offender identified himself or herself in some way as belonging to, or otherwise being associated with, a criminal organisation (whether or not the offender did in fact belong to, or was in fact associated with, the organisation);

(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 disability or cognitive impairment;

(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;

(ka) in the case of an offence against the person—the victim was, at the time of the offence, engaged in a prescribed occupation or employment (whether on a paid or volunteer basis) and the offender committed the offence knowing the victim to be acting in the course of the victim's official duties;

(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*.

(1ab) For the purposes of section 19ABA(1) or (2), 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 a motor vehicle knowing that they were 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 their licence was suspended by notice given under the *Road Traffic Act 1961*;

(b) the offender committed the offence while there was present in the offender's blood a concentration of .08 grams or more of alcohol in 100 millilitres of blood;

(c) the offender was, at the time of the offence, driving a motor vehicle in contravention of section 44C, 47 or 47BA of the *Road Traffic Act 1961*;

(d) the offender was, at the time of the offence, driving or using a motor vehicle knowing that it had a material defect and that material defect contributed to the commission of the offence.

(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.

(1d) For the purposes of section 19ADA, an aggravated offence is—

(a) an offence that caused harm to a person; or

(b) an offence committed by the driver of a motor vehicle in 1 or more of the following circumstances:

(i) the offender was, at the time of the offence, driving or using a motor vehicle that—

(A) was stolen; or

(B) 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;

(ii) the offender committed the offence in the course of attempting to escape pursuit by a police officer;

(iii) the offender committed the offence knowing that there were 1 or more passengers in or on the motor vehicle;

(iv) the offender committed the offence while the offender was the holder of—

(A) a provisional licence; or

(B) a probationary licence; or

(C) a learner's permit; or

(D) an interstate provisional licence; or

(E) an interstate learner's permit,

(as defined in the *Motor Vehicles Act 1959*) authorising the holder to drive a motor vehicle of the class driven by the offender at the time of the offence;

(v) the offender was not, at the time of the offence, the holder of—

(A) a driver's licence; or

(B) a learner's permit; or

(C) an interstate licence; or

(D) an interstate learner's permit; or

(E) a foreign licence,

(as defined in the *Motor Vehicles Act 1959*) authorising the holder to drive a motor vehicle of the class driven by the offender at the time of the offence;

(vi) the offender was, at the time of the offence, driving a motor vehicle knowing that they were 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 their licence was suspended by notice given under the *Road Traffic Act 1961*;

(vii) the offender committed the offence while there was present in the offender's blood a concentration of .08 grams or more of alcohol in 100 millilitres of blood;

(viii) 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*.

(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.

(2a) For the purposes of subsection (1)(ga)(ii), a person will be taken to have identified himself or herself as belonging to, or as being associated with, a criminal organisation if the person displayed (whether on an article of clothing, as a tattoo or otherwise) the insignia of the criminal organisation unless the person proves that he or she did not display the insignia knowingly or recklessly.

(2b) Subsection (2a) does not limit the ways in which a person may identify himself or herself as belonging to, or being associated with, a criminal organisation.

(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 (but a failure to comply with this subsection does not affect the validity of the jury's verdict).

(4a) Two people will be taken to be ***in a relationship*** for the purposes of subsection (1)(g) if—

(a) they are married to each other; or

(b) they are domestic partners; or

(c) they are in some other form of intimate personal relationship in which their lives are interrelated and the actions of 1 affects the other; or

(d) 1 is the child, stepchild or grandchild, or is under the guardianship, of the other (regardless of age); or

(e) 1 is a child, stepchild or grandchild, or is under the guardianship, of a person who is or was formerly in a relationship with the other under paragraph (a), (b) or (c) (regardless of age); or

(f) 1 is a child and the other is a person who acts in *loco parentis* in relation to the child; or

(g) 1 is a child who normally or regularly resides or stays with the other; or

(h) they are brothers or sisters or brother and sister; or

(i) they are otherwise related to each other by or through blood, marriage, a domestic partnership or adoption; or

(j) they are related according to Aboriginal or Torres Strait Islander kinship rules or are both members of some other culturally recognised family group; or

(k) 1 is in an ongoing care relationship (within the meaning of the *Carers Recognition Act 2005*) with the other.

(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;

***cognitive impairment*** includes—

(a) a developmental disability (including, for example, an intellectual disability, Down syndrome, cerebral palsy or an autistic spectrum disorder);

(b) an acquired disability as a result of illness or injury (including, for example, dementia, a traumatic brain injury or a neurological disorder);

(c) a mental illness;

***harm*** has the same meaning as in section 21;

***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;

***material defect***—a motor vehicle has a material defect if it has a defect that could affect the safe operation of the vehicle;

***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.

## 5AB—Mandatory penalty for certain child sex offences committed by serious child sex offenders

(1) Despite section 53 of the *Legislation Interpretation Act 2021*, the mandatory penalty for a triggering child sex offence committed by a serious child sex offender is a sentence of indeterminate duration.

(2) However, subsection (1) does not apply if the court sentencing a serious child sex offender for a triggering child sex offence—

(a) determines under section 48I(1)(a) of the *Sentencing Act 2017* that a sentence of imprisonment to be served in a correctional facility is not to be imposed in relation to the offence; or

(b) makes a declaration under section 48J of the *Sentencing Act 2017*,

(in which case the maximum penalty for the triggering child sex offence is the maximum penalty for the relevant offence had it not been committed by a serious child sex offender).

(3) For the purposes of this section, a reference to a sentence of indeterminate duration will be taken to be a reference to the detention of a person in custody until the sentence of imprisonment is extinguished by order of the Supreme Court under section 48M of the *Sentencing Act 2017*.

(4) In this section—

***serious child sex offender*** has the same meaning as in the *Sentencing Act 2017*;

***triggering child sex offence*** has the same meaning as in the *Sentencing Act 2017*.

## 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.[1]

**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—

(a) find the person not guilty of the offence—the court must record a finding of not guilty; or

(b) find that the conduct has been proved but the person is not criminally responsible due to mental incompetence—the court must record a finding of conduct proved but not criminally responsible due to mental incompetence.

(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 etc

## 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, and thus causes the death of another, is guilty of murder.

### 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.

(12) To avoid doubt, the death of a person by the administration of a voluntary assisted dying substance in accordance with the *Voluntary Assisted Dying Act 2021* does not constitute suicide.

**Note—**

See section 6 of the *Voluntary Assisted Dying Act 2021*.

## Division 1A—Criminal neglect etc

### 13B—Interpretation

(1) In this Division—

***act*** includes—

(a) an omission; and

(b) a course of conduct;

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

***cognitive impairment*** includes—

(a) a developmental disability (including, for example, an intellectual disability, Down syndrome, cerebral palsy or an autistic spectrum disorder);

(b) an acquired disability as a result of illness or injury (including, for example, dementia, a traumatic brain injury or a neurological disorder);

(c) a mental illness;

***vulnerable adult*** means a person aged 16 years or above who is significantly impaired through physical disability, cognitive impairment, illness or infirmity.

(2) Subject to subsection (3), in this Division the following terms and phrases have the same meaning as in Division 7A:

(a) ***cause***;

(b) ***harm***.

(3) For the purposes of this Division, a reference to ***harm*** will be taken to include detriment caused to the physical, mental or emotional wellbeing or development of a child or vulnerable adult (whether temporary or permanent).

(4) For the purposes of this Division, a defendant has a ***duty of care*** to a victim if the defendant is a parent or guardian of the victim or has assumed responsibility for the victim's care.

### 14—Criminal neglect

(1) A person (the ***defendant***) is guilty of the offence of criminal neglect if—

(a) a child or a vulnerable adult (the ***victim***) dies or suffers harm as a result of an act; and

(b) the defendant had, at the time of the act, a duty of care to the victim; and

(c) the defendant was, or ought to have been, aware that there was an appreciable risk that harm would be caused to the victim by the act; and

(d) 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:

(a) where the victim dies—imprisonment for life; or

(b) in any other case—imprisonment for 15 years.

(2) If a jury considering a charge of criminal neglect against a defendant finds that—

(a) there is reasonable doubt as to the identity of the person who committed the act that caused the victim's death or harm; but

(b) the act can only have been the act of the defendant or some other person who, on the evidence, may have committed the act,

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

(3) If a defendant is charged with an offence against this section in respect of a course of conduct—

(a) it is not necessary to prove that the defendant was, or ought to have been, aware that there was an appreciable risk that harm would be caused to the victim by each act making up the course of conduct; and

(b) the information 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 or any other Act; or

(ii) identify particular acts or the occasions on which, places at which or order in which acts occurred; or

(iii) identify particular acts as causing, wholly or partly, particular harm to the victim.

(4) A defendant may be charged with an offence against this section in respect of a course of conduct even if some of the acts making up the course of conduct occurred before the commencement of this section.

## 14A—Failing to provide food etc in certain circumstances

If—

(a) a person is liable to provide necessary food, clothing or accommodation to a child or vulnerable adult; and

(b) the person, without lawful excuse, fails to provide that food, clothing or accommodation,

that person is guilty of an offence.

Maximum penalty: Imprisonment for 3 years.

## Division 2—Defences

### 14B—Abolition of certain common law defences

(1) The following common law defences are abolished:

(a) provocation;

(b) necessity;

(c) duress;

(d) marital coercion.

(2) To avoid doubt, the common law defences abolished by subsection (1) remain available in respect of offences allegedly committed before the commencement of that subsection.

### 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[1].

(2) Subject to subsection (2a), 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.[2]

(2a) A defendant is not entitled to rely on a defence under subsection (2) in relation to a charge of murder if the prosecution proves beyond reasonable doubt that the genuine belief of the defendant, that the conduct to which the charge relates was necessary and reasonable for a defensive purpose, was substantially affected by the voluntary and non-therapeutic consumption of a drug.

**Note—**

It may be that the genuine belief of a defendant is not substantially affected by the consumption of a drug where there is evidence of other matters substantially informing or affecting the belief (for example, if the offence occurred in circumstances of family violence—see section 15B(2)).

(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.

(6) In this section—

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

***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—

(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.

**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[1].

(2) Subject to subsection (2a), 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.[2]

(2a) A defendant is not entitled to rely on a defence under subsection (2) in relation to a charge of murder if the prosecution proves beyond reasonable doubt that the genuine belief of the defendant, that the conduct to which the charge relates was necessary and reasonable for a purpose referred to in subsection (2)(a), was substantially affected by the voluntary and non-therapeutic consumption of a drug.

**Note—**

It may be that the genuine belief of a defendant is not substantially affected by the consumption of a drug where there is evidence of other matters substantially informing or affecting the belief (for example, if the offence occurred in circumstances of family violence—see section 15B(2)).

(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.

(5) In this section—

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

***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—

(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.

**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—Reasonableness etc where offence committed in circumstances of family violence

(1) 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.

(2) In a trial for an offence in which the defendant raises a defence under this Division, the question of whether—

(a) the defendant genuinely believed that particular conduct was necessary and reasonable (either for a defensive purpose or for the purposes referred to in section 15A(1)(a)); or

(b) particular conduct was reasonably proportionate to a particular threat; or

(c) the defendant reasonably believed that a particular threat would be carried out; or

(d) the defendant reasonably believed that particular conduct was the only reasonable way a particular threat could be avoided; or

(e) particular conduct was a reasonable response to a particular threat,

is, if the defendant asserts that the offence occurred in circumstances of family violence, to be determined having regard to any evidence of family violence admitted in the course of the trial.

(3) In this section—

***circumstances of family violence*** has the same meaning as in section 34V of the *Evidence Act 1929*;

***evidence of family violence*** has the same meaning as in section 34W of the *Evidence Act 1929*.

## 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).

## 15D—Duress

(1) It is a defence to a charge of an offence (other than a prescribed offence) if—

(a) at the time of carrying out the conduct constituting the offence, the defendant reasonably believed that—

(i) a threat had been made that would be carried out unless the person engaged in the conduct; and

(ii) carrying out the conduct was the only reasonable way that the threat could be avoided; and

(b) the conduct was a reasonable response to the threat.

(2) However, this section does not apply if the threat referred to in subsection (1)(a) was made by or on behalf of a person with whom the defendant was voluntarily associating for the purpose of carrying out conduct of the kind actually carried out.

(3) 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.

(4) In this section—

***prescribed offence*** means—

(a) murder; or

(b) attempted murder; or

(c) conspiring or soliciting to commit murder; or

(d) aiding, abetting, counselling or procuring the commission of murder; or

(e) any other offence prescribed by the regulations for the purposes of this definition.

## 15E—Sudden or extraordinary emergency

(1) It is a defence to a charge of an offence (other than a prescribed offence) if—

(a) the defendant carried out the conduct constituting the offence in response to circumstances of sudden or extraordinary emergency; and

(b) at the time of carrying out the conduct, the defendant reasonably believed that—

(i) circumstances of sudden or extraordinary emergency existed; and

(ii) carrying out the conduct constituting the offence charged was the only reasonable way to deal with the emergency; and

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

(2) To avoid doubt, an emergency need not involve a risk of death or serious harm.

(3) 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.

(4) In this section—

***prescribed offence*** means—

(a) murder; or

(b) attempted murder; or

(c) conspiring or soliciting to commit murder; or

(d) aiding, abetting, counselling or procuring the commission of murder; or

(e) any other offence prescribed by the regulations for the purposes of this definition.

## 15F—Review of Division

(1) The Minister must cause a review of the operation of this Division (as amended by the *Statutes Amendment (Abolition of Defence of Provocation and Related Matters) Act 2020*) to be conducted and a report on the review to be prepared and submitted to the Minister.

(2) The review and report must include—

(a) consideration of the effect (if any) of the abolition of the common law defences specified in section 14B; and

(b) consideration of the effect (if any) that section 15B(2) has had generally on the operation of sections 15 and 15A; and

(c) consideration of the operation of the defences set out in sections 15D and 15E; and

(d) a recommendation as to whether further modification to the Act is necessary or desirable for the purpose of recognising and addressing the role family violence plays in relation to certain offending,

and may include any other matter the Minister thinks fit.

(3) The review and the report must be completed after the fifth, but before the sixth, anniversary of the commencement of this section.

(4) A report under this section may be combined with a report under section 34Z of the *Evidence Act 1929*.

(5) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

## 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 (except one to which paragraph (c) applies)—imprisonment for 7 years;

(c) for an offence aggravated by the circumstances referred to in section 5AA(1)(c), (ca) or (ka)—imprisonment for 8 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 and harassment

## 19AA—Stalking and harassment

(1) A person is guilty of stalking and harassment of another person 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 in such a way that the offensive material will be found by, or brought to the attention of, the other person; or

(ivaa) publishes or transmits material that appears to have been prepared, published, transmitted or authorised by the other person in a manner that could reasonably be expected to arouse apprehension or fear in the other person; or

(ivb) communicates with the other person, or to others about the other person, in a manner that could reasonably be expected to arouse apprehension or fear in the other person; or

(v) monitors, tracks or surveils the other person, or the person's movements, activities or associations; or

**Examples—**

A person may monitor, track or surveil another person by—

- using a tracking device or drone to track the other person's movements

- accessing the other person's call history, internet browser history, messages or other history or communications
- accessing or monitoring the other person's social media account, email account or other online account.

(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 physical or mental harm to the other person or a third person; or

(ii) intends to cause serious apprehension or fear; or

(iii) ought reasonably to have known that—

(A) physical or mental harm would be caused to the other person or a third person; or

(B) serious apprehension or fear would be caused.

Maximum penalty:

(a) for a basic offence—imprisonment for 3 years;

(b) for an aggravated offence—imprisonment for 5 years.

(2) For the purposes of subsection (1), a reference to conduct set out in paragraph (a)(iv) to (vi) (inclusive) will be taken to include, without limitation, conduct that is engaged in or undertaken—

(a) by way of the internet or any other form of electronic communication or technology; or

(b) by way of a social media platform or any other online platform or network; or

(c) by way of telephone, email, fax or any other associated technology; or

(d) by way of mail or any other analogue manner of communication; or

(e) in person.

(2a) It is a defence to a charge of an offence against subsection (1) if the defendant proves that the conduct allegedly constituting the offence was engaged in with lawful authority.

(3) A person who is charged with stalking and harassment is (subject to any exclusion in the instrument of charge) to be taken to have been charged in the alternative with offensive behaviour[1] so that if the court is not satisfied that the charge of stalking and harassment 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 and harassment 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 and harassment may not be convicted of stalking and harassment if the charge of stalking and harassment 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;

***Registrar of Motor Vehicles*** has the same meaning as in the *Road Traffic Act 1961*.

### 19A—Causing death or harm by dangerous 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 any person; 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 any person; 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 or without reasonable consideration for any person; 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 or without reasonable consideration for any person; 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).

## 19ABA—Causing death or serious 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 or without reasonable consideration for any person; and

(b) by that 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 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 an aggravated 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;

(b) where neither a motor vehicle nor motor vessel was used in the commission of the offence—imprisonment for 3 years.

(2) A person who—

(a) drives a vehicle or operates a vessel without due care or attention or without reasonable consideration for any person; and

(b) by that conduct, causes serious 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—

(i) for 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 an aggravated 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;

(b) where neither a motor vehicle nor motor vessel was used in the commission of the offence—imprisonment for 2 years.

(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.

(4) 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 serious harm, in consequence of the same act or omission.

(5) It is a defence to a charge of an offence against this section for the defendant to prove that they were, at the time of the offence—

(a) carrying out duties as an emergency worker; and

(b) acting in accordance with the directions of their employing authority; and

(c) acting reasonably in the circumstances as they believed them to be.

(6) Sections 22, 53B(5), 79B(10) and 175 of the *Road Traffic Act 1961* apply in relation to an offence against this section as if a reference in any of those sections to an offence against that Act was a reference to the offence against this section.

(7) In this section—

***emergency worker*** has the same meaning as in section 19A;

***employing authority*** has the same meaning as in section 19A.

## 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 any person 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.

## 19ADA—Extreme speed

(1) A person who drives a motor vehicle at an extreme speed 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) For the purposes of subsection (1), a person drives a motor vehicle at an extreme speed if—

(a) the relevant speed limit is 60 kilometres an hour or less and the person drives the vehicle at a speed exceeding the relevant speed limit by 55 kilometres an hour or more; or

(b) the relevant speed limit is more than 60 kilometres an hour and the person drives the vehicle at a speed exceeding the relevant speed limit by 80 kilometres an hour or more.

(3) Subsection (1) does not apply to the driver of an emergency vehicle if—

(a) in the circumstances—

(i) the driver is taking reasonable care; and

(ii) it is reasonable that the provision should not apply; and

(b) if the vehicle is a motor vehicle that is moving—the vehicle is displaying a blue or red flashing light or sounding an alarm.

(4) Subsection (3)(b) does not apply to a vehicle used by a police officer if, in the circumstances, it is reasonable—

(a) not to display the light or sound the alarm; or

(b) for the vehicle not to be fitted or equipped with a blue or red flashing light or an alarm.

(5) If a court convicts a person of an offence against subsection (1), the following provisions apply:

(a) the court must order that the person is disqualified from holding or obtaining a driver's licence for the following period:

(i) for a first offence—

(A) if the offence is a basic offence—such period, being not less than 2 years, as the court thinks fit; or

(B) if the offence is an aggravated offence—such period, being not less than 5 years, as the court thinks fit;

(ii) for a subsequent offence—such period, being not less than 5 years, as the court thinks fit;

(b) the disqualification prescribed by paragraph (a) cannot be reduced or mitigated in any way or be substituted by any other penalty or sentence;

(c) if the person is the holder of a driver's licence—the disqualification operates to cancel the licence as from the commencement of the period of disqualification.

(6) 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.

(7) In determining whether an offence is a first or subsequent offence for the purposes of this section—

(a) a previous offence against section 45A or 46 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.

(8) This section is in addition to, and does not derogate from, any other provision relating to speed limits contained in the *Road Traffic Act 1961* or the *Motor Vehicles Act 1959* or any other Act or in any regulation, rule or by-law made under the *Road Traffic Act 1961* or the *Motor Vehicles Act 1959* or any other Act.

(9) Sections 22, 53B(5), 79B(10) and 175 of the *Road Traffic Act 1961* apply in relation to an offence against subsection (1) as if a reference in any of those sections to an offence against that Act was a reference to an offence against subsection (1).

(10) In this section—

***emergency vehicle*** means a motor vehicle used by a police officer or a person who is an emergency worker as defined by the regulations for the purposes of this section;

***relevant speed limit***, for a person who drives a motor vehicle, means a speed limit that applies to the driver under—

(a) the *Road Traffic Act 1961* (other than section 82 or 83); or

(b) the *Motor Vehicles Act 1959*.

## 19AE—Commissioner of Police to impose immediate licence disqualification or suspension following certain charges

(1) If a person is, after the commencement of this section, charged with an offence against section 19A, section 19AB or section 19ABA (in any case being an offence where a motor vehicle was used in the commission of the offence and where the offence caused the death of, or serious harm to, a person), the Commissioner of Police must, as soon as is reasonably practicable after the person is so charged and in accordance with any requirements set out in the regulations, give the person a notice of immediate licence disqualification or suspension.

(1a) A notice of immediate licence disqualification or suspension under this section must—

(a) contain the prescribed particulars; and

(b) comply with any requirements specified by the regulations.

(2) If a person is given a notice of immediate licence disqualification or suspension under this section—

(a) in the case of a person who does not hold a driver's licence—the person is disqualified from holding or obtaining a driver's licence for the prescribed period; or

(b) in the case of a person who holds a driver's licence—the person's driver's licence is suspended for the prescribed period.

(3) The Commissioner of Police must ensure that the prescribed particulars of a notice of immediate licence disqualification or suspension given to a person under this section are forwarded to the Registrar of Motor Vehicles.

(4) The Registrar of Motor Vehicles must, on receiving particulars of a notice of immediate licence disqualification or suspension from the Commissioner of Police, send, by post, a notice to the person of the name and address specified by the Commissioner containing the prescribed particulars of the notice of immediate licence disqualification or suspension.

(5) The operation of a notice of immediate licence disqualification or suspension is not affected by any failure to comply with subsection (4).

(6) A court may, on the application of a person to whom a notice of immediate licence disqualification or suspension is given under this section, if the court is satisfied on the basis of evidence given on oath by or on behalf of the person that—

(a) exceptional circumstances exist in relation to the person or the alleged offence such that it is, in all the circumstances, appropriate that an order be made under this subsection; and

(b) the person does not pose a substantial risk to other members of the public if an order is made under this subsection,

order that the disqualification of the person from holding or obtaining a driver's licence be removed, or the suspension of the person's driver's licence end, (as the case requires) on the date specified in the order.

(7) The Crown is entitled to be heard on an application under subsection (6).

(8) Without limiting the evidence that may be adduced by the Crown on the question of whether a person poses a substantial risk to members of the public, the Crown may, in relation to an application under subsection (6)—

(a) evidence of previous offences relating to the applicant's use of a motor vehicle for which the applicant has been found guilty or that the applicant has expiated; or

(b) adduce evidence of the alleged offence to which the notice of immediate licence disqualification or suspension under this section relates.

(9) A court must, as soon as is reasonably practicable after an order is made under subsection (6) and in a manner and form determined by the Registrar of Motor Vehicles, notify the Registrar of Motor Vehicles of the terms of the order.

(10) If—

(a) a period of licence disqualification or suspension has applied to a person as a result of the person having been given a notice of immediate licence disqualification or suspension under this section; and

(b) a court convicts the person of the offence to which the notice relates or another offence arising out of the same course of conduct; and

(c) a mandatory minimum period of disqualification would (apart from this subsection) be required to be imposed for the offence,

then—

(d) the court must order that the person be disqualified from holding or obtaining a driver's licence for a period determined by the court (and if the person is the holder of a driver's licence, the disqualification operates to cancel the licence from the commencement of that period); and

(e) despite any other provision of this or any other Act, the court must, in determining the period, take into account the period of licence disqualification or suspension that has applied to the person as a result of the notice and may for that purpose order that the period imposed be taken to have commenced on the day on which the licence disqualification or suspension commenced (provided that the period imposed is not less than the mandatory minimum period of disqualification), and if the person is the holder of a driver's licence, the licence will be taken to have been cancelled from the day on which the order of the court is made.

(10a) If the Commissioner of Police is satisfied that a notice of licence disqualification or suspension under this section should not have been given because—

(a) the notice has been given to a particular person in error; or

(b) the notice is defective; or

(c) there is other proper cause for which the notice should not have been given,

the Commissioner may withdraw the notice.

(10b) A withdrawal referred to in subsection (10a) is effected by giving notice of the withdrawal, in a manner and form determined by the Commissioner of Police, to the person to whom the notice of licence disqualification or suspension was given.

(10c) The notice of withdrawal must specify the reason for withdrawal.

(10d) If a notice of licence disqualification or suspension under this section is withdrawn, the Commissioner of Police may, if satisfied that there are proper grounds to give a fresh notice of licence disqualification or suspension to any person, give such a notice.

(11) No compensation is payable by the Crown or the Commissioner of Police in respect of the exercise, or purported exercise, of powers under this section (however, nothing in this subsection protects the Commissioner of Police from liability in respect of the exercise, or purported exercise, of powers otherwise than in good faith).

(12) This section is in addition to, and does not derogate from, the *Road Traffic Act 1961* or any other Act or law.

(13) For the purposes of this section, a reference to the charging of a person with an offence against section 19A, section 19AB or section 19ABA will be taken to include a reference to the laying of an information charging a person with such an offence (and the person will be taken to have been charged at the time the information is laid in court in accordance with the *Criminal Procedure Act 1921*).

(14) In this section—

***prescribed period*** means the period—

(a) commencing at the time that the person is given a notice of immediate licence disqualification or suspension under this section; and

(b) finishing—

(i) if a court makes an order under subsection (6)—on the date specified in that order; or

(ii) if the person is found guilty of the offence to which the disqualification or suspension relates—at the time that the person is sentenced in relation to the offence; or

(iii) if the person is acquitted of the offence, or the charge of the offence is withdrawn—at the time that person is so acquitted or the charge withdrawn (as the case requires).

## 19AF—Power of police to impose immediate licence disqualification or suspension for certain offences

(1) If a police officer reasonably believes that a person has, after the commencement of this section, committed—

(a) an offence against section 19A (being an offence where a motor vehicle was used in the commission of the offence); or

(ab) an offence against section 19AB (being an offence where a motor vehicle was used in the commission of the offence); or

(ac) an offence against section 19ABA (being an offence where a motor vehicle was used in the commission of the offence); or

(b) an offence against section 19ADA(1),

the police officer may give the person a notice of immediate licence disqualification or suspension.

(1a) A notice of immediate licence disqualification or suspension under this section must—

(a) contain the prescribed particulars; and

(b) comply with any requirements specified by the regulations.

(2) If a person is given a notice of immediate licence disqualification or suspension under this section—

(a) in the case of a person who does not hold a driver's licence—the person is disqualified from holding or obtaining a driver's licence for the prescribed period; or

(b) in the case of a person who holds a driver's licence—the person's driver's licence is suspended for the prescribed period.

(3) The Commissioner of Police must ensure that the prescribed particulars of a notice of immediate licence disqualification or suspension given to a person under this section are forwarded to the Registrar of Motor Vehicles.

(4) The Registrar of Motor Vehicles must, on receiving particulars of a notice of immediate licence disqualification or suspension from the Commissioner of Police, send, by post, a notice to the person of the name and address specified by the Commissioner containing the prescribed particulars of the notice of immediate licence disqualification or suspension.

(5) The operation of a notice of immediate licence disqualification or suspension is not affected by any failure to comply with subsection (4).

(6) A court may, on the application of a person to whom a notice of immediate licence disqualification or suspension is given under this section, if the court is satisfied on the basis of evidence given on oath by or on behalf of the person that—

(a) exceptional circumstances exist in relation to the person or the alleged offence such that it is, in all the circumstances, appropriate that an order be made under this subsection; and

(b) the person does not pose a substantial risk to other members of the public if an order is made under this subsection,

order that the disqualification of the person from holding or obtaining a driver's licence be removed, or the suspension of the person's driver's licence end, (as the case requires) on the date specified in the order.

(7) The Crown is entitled to be heard on an application under subsection (6).

(8) Without limiting the evidence that may be adduced by the Crown on the question of whether a person poses a substantial risk to members of the public, the Crown may, in relation to an application under subsection (6)—

(a) adduce evidence of previous offences relating to the applicant's use of a motor vehicle for which the applicant has been found guilty or that the applicant has expiated; or

(b) adduce evidence of the alleged offence to which the notice of immediate licence disqualification or suspension under this section relates.

(9) The court must ensure that the prescribed particulars of an order under subsection (6) are forwarded to the Registrar of Motor Vehicles.

(10) If a person is given a notice of immediate licence disqualification or suspension under this section and a determination is later made that the person should not be charged with an offence against section 19A, section 19AB, section 19ABA or section 19ADA(1), the Commissioner of Police must ensure that the person is given, or sent by post, written notice of that determination containing the information required by the regulations.

(11) The Commissioner of Police must ensure that the prescribed particulars of a determination referred to in subsection (10) are forwarded to the Registrar of Motor Vehicles.

(12) The laying of charges against a person is not prevented by a failure to comply with subsection (10) in relation to the person or by the making of a determination referred to in that subsection or the notification of such a determination.

(13) If—

(a) a period of licence disqualification or suspension has applied to a person as a result of the person having been given a notice of immediate licence disqualification or suspension under this section; and

(b) a court convicts the person of the offence to which the notice relates or another offence arising out of the same course of conduct; and

(c) a mandatory minimum period of disqualification would (apart from this subsection) be required to be imposed for the offence,

then—

(d) the court must order that the person be disqualified from holding or obtaining a driver's licence for a period determined by the court (and if the person is the holder of a driver's licence, the disqualification operates to cancel the licence from the commencement of that period); and

(e) despite any other provision of this or any other Act, the court must, in determining the period, take into account the period of licence disqualification or suspension that has applied to the person as a result of the notice and may for that purpose order that the period imposed be taken to have commenced on the day on which the licence disqualification or suspension commenced (provided that the period imposed is not less than the mandatory minimum period of disqualification), and if the person is the holder of a driver's licence, the licence will be taken to have been cancelled from the day on which the order of the court is made.

(13a) If the Commissioner of Police is satisfied that a notice of licence disqualification or suspension under this section should not have been given because—

(a) the notice has been given to a particular person in error; or

(b) the notice is defective; or

(c) there is other proper cause for which the notice should not have been given,

the Commissioner may authorise the withdrawal of the notice.

(13b) A withdrawal referred to in subsection (13a) is effected by giving notice of the withdrawal, in a manner and form determined by the Commissioner of Police, to the person to whom the notice of licence disqualification or suspension was given.

(13c) The notice of withdrawal must specify the reason for withdrawal.

(13d) If a notice of licence disqualification or suspension under this section is withdrawn, the Commissioner of Police may, if satisfied that there are proper grounds to give a fresh notice of licence disqualification or suspension to any person, authorise the giving of such a notice (provided that in the case of a notice relating to an offence against section 19ADA(1), the relevant period for the fresh notice must, if it is given to the same person as was given the withdrawn notice, be reduced by the period for which the withdrawn notice was (or purported to be) in operation).

(14) No compensation is payable by the Crown or a police officer in respect of the exercise, or purported exercise, of powers under this section (however, nothing in this subsection protects a police officer from liability in respect of the exercise, or purported exercise, of powers otherwise than in good faith).

(15) This section is in addition to, and does not derogate from, the *Road Traffic Act 1961* or any other Act or law.

(16) For the purposes of this section, a reference to the charging of a person with an offence will be taken to include a reference to the laying of an information charging a person with such an offence (and the person will be taken to have been charged at the time the information is laid in court in accordance with the *Criminal Procedure Act 1921*).

(17) For the purposes of this section, the ***prescribed period*** is a period that—

(a) commences at the time the person is given a notice of immediate licence disqualification or suspension under this section; and

(b) ends—

(i) if the notice of immediate licence disqualification or suspension relates to an offence against section 19A, section 19AB or section 19ABA (in any case being an offence where a motor vehicle was used in the commission of the offence and where the offence caused the death of, or serious harm to, a person)—

(A) if a court makes an order under subsection (6)—on the date specified in that order; or

(B) if the person is charged with such an offence—at the time the person is issued a notice of immediate licence disqualification or suspension under section 19AE in relation to the charge; or

(C) if a determination is made that the person should not be charged with such an offence—at the time the determination is made; or

(ii) if the notice of immediate licence disqualification or suspension relates to any other offence against section 19A or section 19AB or an offence against section 19ADA(1)—

(A) if a court makes an order under subsection (6)—on the date specified in that order; or

(B) if a determination is made that the person should not be charged with an offence against section 19A, section 19AB or section 19ADA(1)—at the time the determination is made; or

(C) if proceedings for the offence to which the notice relates are determined by a court or are withdrawn or otherwise discontinued; or

(D) in any event—at the end of 12 months from the commencement of the prescribed period.

## 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) or section 19ABA(1) or (2), 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);

(baa) the offence constituted by section 19ABA(1);

(bab) the offence constituted by section 19ABA(2);

(ba) the offence constituted by section 19ADA(1);

(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), (b), (baa), (bab) or (ba)) 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) or (d) 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;

(d) for an offence aggravated by the circumstances referred to in section 5AA(1)(c), (ca) or (ka)—imprisonment for 5 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) or (d) 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;

(d) for an offence aggravated by the circumstances referred to in section 5AA(1)(c), (ca) or (ka)—imprisonment for 7 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.

## 20AA—Causing harm to, or assaulting, certain emergency workers etc

(1) A person who causes harm to a prescribed emergency worker acting in the course of official duties, intending to cause harm, is guilty of an offence.

Maximum penalty: Imprisonment for 15 years.

(2) A person who causes harm to a prescribed emergency worker acting in the course of official duties, and is reckless in doing so, is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

(3) A person who assaults a prescribed emergency worker acting in the course of official duties is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

(4) A person who hinders or resists a police officer acting in the course of official duties, and, in so doing, causes harm to the officer, is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

(5) In proceedings for an offence against this section, it is a defence for the defendant to prove that the defendant did not know, and could not reasonably have been expected to know, that the victim was a prescribed emergency worker, or police officer, (as the case requires) acting in the course of official duties.

(6) Without limiting the ways in which a person can cause harm to a prescribed emergency worker, harm can be caused (but will not be taken to be caused) by causing human biological material to come into contact with a prescribed emergency worker.

(7) For the purposes of this section, a person causes human biological material to come into contact with a victim if the person performs any act (including, without limiting the generality of this subsection, by spitting or throwing human biological material at the victim, or deliberately applying human biological material to their person knowing that the victim is likely to come into physical contact with the person in the course of their duties) intended or likely to cause human biological material to come into contact with the victim.

(8) This section does not apply to conduct occurring before the commencement of this section.

(9) In this section—

***assault*** means an assault within the meaning of section 20(1) and includes, to avoid doubt, an act consisting of intentionally causing human biological material to come into contact with a victim, or threatening to do so;

***harm*** has the same meaning as in Division 7A;

***human biological material*** means—

(a) blood, saliva, semen, faeces, urine or vomit; or

(b) any other material prescribed by the regulations;

***pharmacy*** has the same meaning as in Part 4 of the *Health Practitioner Regulation National Law (South Australia) Act 2010*;

***pharmacy services*** has the same meaning as in Part 4 of the *Health Practitioner Regulation National Law (South Australia) Act 2010*;

***prescribed emergency worker*** means—

(a) a police officer; or

(b) a prison officer; or

(c) a community corrections officer or community youth justice officer; or

(d) an employee in a training centre (within the meaning of the *Youth Justice Administration Act 2016*); or

(e) a person (whether a health practitioner, nurse, nurse practitioner, midwife, security officer or otherwise) performing duties in a hospital, or at any other place where medical treatment is provided or medical testing undertaken (however described, but including, without limiting this paragraph, a general practice, medical centre or other place at which people are vaccinated or screened for diseases); or

(f) a person (whether a medical practitioner, nurse, pilot or otherwise) performing duties in the course of retrieval medicine; or

(g) a medical practitioner or other health practitioner (both within the meaning of the *Health Practitioner Regulation National Law (South Australia)*) attending an out of hours or unscheduled callout, or assessing, stabilising or treating a person at the scene of an accident or other emergency, in a rural area; or

(ga) a person (whether a pharmacist, pharmacy assistant or otherwise) performing duties in a pharmacy; or

(gb) a person providing pharmacy services at a place other than a pharmacy, or a person assisting in the provision of such services; or

(h) a member of the SA Ambulance Service Inc; or

(i) a member of SAMFS, SACFS or SASES; or

(j) a law enforcement officer; or

(k) an inspector within the meaning of the *Animal Welfare Act 1985*; or

(ka) an authorised person within the meaning of the *Dog and Cat Management Act 1995*, or a person assisting an authorised person in the exercise of powers under that Act; or

(l) any other person engaged in an occupation or employment prescribed by the regulations for the purposes of section 5AA(1)(ka); or

(m) any other person prescribed by the regulations for the purposes of this paragraph,

whether acting in a paid or voluntary capacity, but does not include a person, or person of a class, declared by the regulations to be excluded from the ambit of this definition;

***recklessly***—a person is reckless in causing 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;

***retrieval medicine*** means the assessment, stabilisation and transportation to hospital of patients with severe injury or critical illness (other than by a member of SA Ambulance Service Inc);

***rural area*** means an area outside of Metropolitan Adelaide as defined by GRO Plan 639/93.

## 20AB—Further offence involving use of human biological material

(1) A person who commits a prohibited act involving human biological material against another person is guilty of an offence.

Maximum penalty:

(a) if harm is caused to the victim—imprisonment for 3 years;

(b) in any other case—imprisonment for 2 years.

(2) For the purposes of subsection (1), a person commits a ***prohibited act involving human biological material*** against another person (the ***victim***) if—

(a) the person intentionally causes human biological material to come into contact with the victim; or

(b) the person threatens (by words or conduct) to cause human biological material to come into contact with the victim.

(3) For the purposes of this section, a person causes human biological material to come into contact with a victim if the person performs any act (including, without limiting the generality of this subsection, by spitting or throwing human biological material at the victim) intended or likely to cause human biological material to come into contact with the victim.

(4) In this section—

***harm*** has the same meaning as in Division 7A;

***human biological material*** means—

(a) blood, saliva, semen, faeces, urine or vomit; or

(b) any other material prescribed by the regulations.

### 20AC—Alternative verdicts

If—

(a) a jury is not satisfied beyond reasonable doubt that a charge of an offence against section 20AA or 20AB 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 offence against this Act; and

(c) the jury is satisfied beyond reasonable doubt that the specified offence against this Act has been established,

the jury may return a verdict that the defendant is not guilty of the offence charged but is guilty of the specified offence against this Act.

## Division 7AA—Choking etc in a domestic setting

### 20A—Choking, suffocation or strangulation in a domestic setting

(a1) A person who—

(a) is, or has been, in a relationship with another person; and

(b) chokes, suffocates or strangles that other person, without that other person's consent; and

(c) causes harm to that other person such that the other person is rendered unconscious,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

(1) A person who—

(a) is, or has been, in a relationship with another person; and

(b) chokes, suffocates or strangles that other person, without that other person's consent,

is guilty of an offence.

Maximum penalty: Imprisonment for 7 years.

(2) However, conduct that is justified or excused by law cannot amount to an offence against this section.

(3) Two people will be taken to be ***in a relationship*** for the purposes of this section if—

(a) they are married to each other; or

(b) they are domestic partners; or

(c) they are in some other form of intimate personal relationship in which their lives are interrelated and the actions of 1 affects the other; or

(d) 1 is the child, stepchild or grandchild, or is under the guardianship, of the other (regardless of age); or

(e) 1 is a child, stepchild or grandchild, or is under the guardianship, of a person who is or was formerly in a relationship with the other under paragraph (a), (b) or (c) (regardless of age); or

(f) 1 is a child and the other is a person who acts in *loco parentis* in relation to the child; or

(g) 1 is a child who normally or regularly resides or stays with the other; or

(h) they are brothers or sisters or brother and sister; or

(i) they are otherwise related to each other by or through blood, marriage, a domestic partnership or adoption; or

(j) they are related according to Aboriginal or Torres Strait Islander kinship rules or are both members of some other culturally recognised family group; or

(k) 1 is in an ongoing care relationship (within the meaning of the *Carers Recognition Act 2005*) with the other.

(4) A reference in this section to—

(a) ***choking*** or ***strangling*** a person means the applying of pressure to the person's neck to an extent that is capable of affecting the breath or the flow of blood to the head of the person; and

(b) ***suffocating*** a person includes a reference to—

(i) obstructing, to any extent, any part of the person's respiratory system; or

(ii) interfering, to any extent, with the operation of the person's respiratory system; or

(iii) impeding, to any extent, the person's respiration.

(5) If—

(a) a jury is not satisfied beyond reasonable doubt that a charge of an offence against subsection (a1) has been established; but

(b) the court in which the defendant is being tried for an offence against subsection (a1) has instructed the jury that it is open to the jury on the evidence to find the defendant guilty of an offence against subsection (1); and

(c) the jury is satisfied beyond reasonable doubt that an offence against subsection (1) has been established,

the jury may return a verdict that the defendant is not guilty of the offence charged but is guilty of an offence against subsection (1).

(6) If—

(a) a jury is not satisfied beyond reasonable doubt that a charge of an offence against subsection (a1) or (1) has been established; but

(b) the court in which the defendant is being tried for an offence against subsection (a1) or (1) has instructed the jury that it is open to the jury on the evidence to find the defendant guilty of an offence of assault; and

(c) the jury is satisfied beyond reasonable doubt that the offence of assault has been established,

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

## Division 7A—Causing physical or mental harm

### 21—Interpretation

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 another offence against this Division, Division 7AB or section 32A, for which a lesser maximum penalty is prescribed;

(b) in any other case—another offence against this Division, Division 7AB 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 (except one to which paragraph (c) applies)—imprisonment for 7 years;

(c) for an offence aggravated by the circumstances referred to in section 5AA(1)(c), (ca) or (ka)—imprisonment for 8 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 (except one to which paragraph (c) applies)—imprisonment for 7 years;

(c) for an offence aggravated by the circumstances referred to in section 5AA(1)(c), (ca) or (ka)—imprisonment for 8 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.

## 29A—Shooting at police officers

(1) A person who—

(a) discharges a firearm—

(i) intending to hit a police officer with shot, or a bullet or other projectile, fired from the firearm; or

(ii) being reckless as to whether a police officer is hit with shot, or a bullet or other projectile, fired from the firearm; and

(b) by that conduct, causes serious harm to the police officer,

is guilty of an offence.

Maximum penalty: 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) In proceedings for an offence against subsection (1), it is not necessary for the prosecution to establish that the defendant intended to cause serious harm to a police officer.

(4) A person who discharges a firearm—

(a) intending to hit a police officer with shot, or a bullet or other projectile, fired from the firearm; or

(b) being reckless as to whether a police officer is hit with shot, or a bullet or other projectile, fired from the firearm,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

(5) If—

(a) a jury is not satisfied beyond reasonable doubt that a charge of an offence against this section 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.

(6) In this section—

***reckless***—a person is reckless as to whether a police officer is hit with shot, or a bullet or other projectile, fired from a firearm discharged by the person if the person—

(a) is aware of a substantial risk that a police officer could be hit with shot, or a bullet or other projectile, fired from the firearm; and

(b) discharges the firearm despite the risk and without adequate justification.

### 31—Possession of object with intent to kill or cause 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 20 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 10 years.

## Division 7AB—Special firearm offences

### 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.

Maximum penalty: Imprisonment for 10 years.

### 32AA—Discharge of firearms to injure etc

(1) A person who, without lawful excuse, discharges a firearm intending to injure, annoy or frighten any person is guilty of an offence.

Maximum penalty: Imprisonment for 8 years.

(2) A person who, without lawful excuse, discharges a firearm intending to damage any property is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

(3) A person who, without lawful excuse, discharges a firearm and who is reckless as to whether that act injures, annoys or frightens, or may injure, annoy or frighten, any person is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

(4) A person who, without lawful excuse, discharges a firearm and who is reckless as to whether that act damages, or may damage, any property is guilty of an offence.

Maximum penalty: Imprisonment for 3 years.

(5) In proceedings for an offence against this section, it is not necessary for the prosecution to establish that a person was, in fact, injured, annoyed or frightened or that property was, in fact, damaged (as the case requires) by the defendant's act.

(6) In this section—

***reckless***—a person is reckless as to whether an act injures, annoys or frightens, or may injure, annoy or frighten any person, or damages, or may damage, any property, if the person—

(a) is aware of a substantial risk that the act could injure, annoy or frighten any person or damage any property; and

(b) does the act despite the risk and without adequate justification.

## 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 and catering 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.

Maximum 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.

Maximum 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 8A—Child marriage

## 34—Interpretation and application of Division

(1) In this Division—

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

(2) Nothing in this Division is intended to limit the operation of the *Marriage Act 1961* of the Commonwealth.

## 34A—Bringing child into State for marriage

(1) A person must not bring a child into the State, or arrange for a child to be brought into the State, with the intention of causing the child to be married.

Maximum penalty:

(a) for a basic offence—imprisonment for 15 years;

(b) for an aggravated offence—imprisonment for 19 years.

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

(a) the defendant brought a child, or arranged for a child to be brought, into the State; and

(b) the child, while in the State, went through the form or ceremony of marriage,

it will be presumed, in the absence of proof to the contrary, that the defendant brought the child, or arranged for the child to be brought, into the State (as the case may be) with the intention of causing the child to be married.

## 34B—Removing child from State for marriage

(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 causing the child to be married.

Maximum penalty:

(a) for a basic offence—imprisonment for 15 years;

(b) for an aggravated offence—imprisonment for 19 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, while outside the State, went through the form or ceremony of marriage,

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 causing the child to be married.

### 34C—Consent no defence

This Division applies irrespective of whether the child concerned, or a parent or guardian of the child, consents to the marriage.

## 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

(ga) the person agrees to engage in the activity because of a misrepresentation (whether express or implied) as to the use of a condom during the activity; 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 15 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) It is a defence to a charge under subsection (5) if the accused was a person of a class described in subsection (9)(c) and proves 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 17 years; and

(b) the accused—

(i) was, on the date on which the offence is alleged to have been committed, under the age of 18 years; or

(ii) believed on reasonable grounds that the person with whom the accused is alleged to have had sexual intercourse was of or above the age of 18 years.

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

(9) For the purposes of this section, a person is in ***a position of authority*** in relation to a person under the age of 18 years (the ***child***) if—

(a) the person is a teacher and the child is a pupil of the teacher or of a school at which the teacher works; or

(b) the person is a parent, step-parent, guardian or foster parent of the child or the de facto partner or domestic partner of a parent, step-parent, guardian or foster parent of the child; or

(c) the person provides religious, sporting, musical or other instruction to the child; or

(d) the person is a religious official or spiritual leader (however described and including lay members and whether paid or unpaid) in a religious or spiritual group attended by the child; or

(e) the person is a health professional or social worker providing professional services to the child; or

(f) the person is responsible for the care of the child and the child has a cognitive impairment; or

(g) the person is 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 is a person engaged in the administration of those Acts, acting in the course of the person's duties in relation to the child; or

(ga) the person is employed or providing services in a licensed children's residential facility (within the meaning of the *Children and Young People (Safety) Act 2017*), or a residential care facility or other facility established under section 36 of the *Family and Community Services Act 1972*, or is a person engaged in the administration of those Acts, acting in the course of the person's duties in relation to the child; or

(h) the person is 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).

## 50—Sexual abuse of a child

(1) An adult who maintains an unlawful sexual relationship with a child is guilty of an offence.

Maximum penalty: Imprisonment for life.

(2) An ***unlawful sexual relationship*** is a relationship in which an adult engages in 2 or more unlawful sexual acts with or towards a child over any period.

(3) For an adult to be convicted of an unlawful sexual relationship offence, the trier of fact must be satisfied beyond reasonable doubt that the evidence establishes that an unlawful sexual relationship existed.

(4) However—

(a) the prosecution is not required to allege the particulars of any unlawful sexual act that would be necessary if the act were charged as a separate offence; and

(b) the trier of fact is not required to be satisfied of the particulars of any unlawful sexual act that it would have to be satisfied of if the act were charged as a separate offence, but must be satisfied as to the general nature or character of those acts; and

(c) if the trier of fact is a jury, the members of the jury are not required to agree on which unlawful sexual acts constitute the unlawful sexual relationship.

(5) The prosecution is required to allege the particulars of the period of time over which the unlawful sexual relationship existed.

(6) This section extends to a relationship that existed wholly or partly before the commencement of this section and to unlawful sexual acts that occurred before the commencement of this section.

(7) A person may be charged on a single indictment with, and convicted of and punished for, both—

(a) an offence of maintaining an unlawful sexual relationship with a child; and

(b) 1 or more sexual offences committed by the person against the same child during the alleged period of the unlawful sexual relationship.

(8) Except as provided by subsection (7)—

(a) a person who has been convicted or acquitted of an unlawful sexual relationship offence in relation to a child cannot be convicted of a sexual offence in relation to the same child if the occasion on which the sexual offence is alleged to have occurred is during the period over which the person was alleged to have committed the unlawful sexual relationship offence; and

(b) a person who has been convicted or acquitted of a sexual offence in relation to a child cannot be convicted of an unlawful sexual relationship offence in relation to the same child if the sexual offence of which the person has been convicted or acquitted is one of the unlawful sexual acts that are alleged to constitute the unlawful sexual relationship.

(9) A person who has been convicted or acquitted of a predecessor offence in relation to a child cannot be convicted of an unlawful sexual relationship offence in relation to the same child if the period of the alleged unlawful sexual relationship includes any part of the period during which the person was alleged to have committed the predecessor offence.

(10) For the purposes of this section, a person ceases to be regarded as having been convicted for an offence if the conviction is quashed or set aside.

(11) A court sentencing a person for an offence against this section is to sentence the person consistently with the verdict of the trier of fact but having regard to the general nature or character of the unlawful sexual acts determined by the sentencing court to have been proved beyond a reasonable doubt (and, for the avoidance of doubt, the sentencing court need not ask any question of the trier of fact directed to ascertaining the general nature or character of the unlawful sexual acts determined by the trier of fact found to be proved beyond a reasonable doubt).

(12) In this section—

***adult*** means a person of or over the age of 18 years;

***child*** means—

(a) a person who is under 17 years of age; or

(b) a person who is under 18 years of age if, during the period of the relationship that is the subject of the alleged unlawful sexual relationship offence, the adult in the relationship is in a position of authority in relation to the person who is under 18 years of age;

***predecessor offence*** means an offence of persistent sexual exploitation of a child, or of persistent sexual abuse of a child, as in force under a previous enactment;

***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;

***unlawful sexual act*** means any act that constitutes, or would constitute (if particulars of the time and place at which the act took place were sufficiently particularised), a sexual offence;

***unlawful sexual relationship offence*** means an offence against subsection (1).

(13) For the purposes of this section, a person is in ***a position of authority*** in relation to a child if—

(a) the person is a teacher and the child is a pupil of the teacher or of a school at which the teacher works; or

(b) the person is a parent, step-parent, guardian or foster parent of the child or the de facto partner or domestic partner of a parent, step-parent, guardian or foster parent of the child; or

(c) the person provides religious, sporting, musical or other instruction to the child; or

(d) the person is a religious official or spiritual leader (however described and including lay members and whether paid or unpaid) in a religious or spiritual group attended by the child; or

(e) the person is a health professional or social worker providing professional services to the child; or

(f) the person is responsible for the care of the child and the child has a cognitive impairment; or

(g) the person is 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 is a person engaged in the administration of those Acts, acting in the course of the person's duties in relation to the child; or

(ga) the person is employed or providing services in a licensed children's residential facility (within the meaning of the *Children and Young People (Safety) Act 2017*), or a residential care facility or other facility established under section 36 of the *Family and Community Services Act 1972*, or is a person engaged in the administration of those Acts, acting in the course of the person's duties in relation to the child; or

(h) the person is 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).

(14) The heading of this section—

(a) is not part of this section (despite section 19 of the *Legislation Interpretation Act 2021*); and

(b) is not intended to affect the interpretation or operation of this section.

**Note—**

Parliament, in amending the heading of this section by the *Criminal Law Consolidation (Child Sexual Abuse) Amendment Act 2023*, did not intend to change the nature or scope of this offence or the requirements for establishing an offence against this section.

## 51—Sexual exploitation of person with a cognitive impairment

(1) A person who provides a service (whether for remuneration or not) to a person with a cognitive impairment is guilty of an offence if he or she obtains or procures, by undue influence, sexual intercourse or indecent contact with that person.

Maximum penalty: Imprisonment for 10 years.

(2) A person who provides a service (whether for remuneration or not) to a person with a cognitive impairment is guilty of an offence if he or she behaves in an indecent manner in the presence of that person—

(a) without the person's consent; or

(b) with the person's consent where that consent was obtained by undue influence.

Maximum penalty:

(a) in the case of a first offence—imprisonment for 3 years;

(b) in the case of a subsequent offence—imprisonment for 5 years.

(3) This section does not apply in relation to a person who is legally married to the person with a cognitive impairment or is the domestic partner of that person.

(4) A defendant who was, at the time of an alleged offence against this section, in a position of power, trust or authority in relation to the victim of the offence, is presumed to have obtained the consent of the victim by undue influence unless the defendant proves the contrary on the balance of probabilities.

(5) In this section—

***close personal relationship*** means the relationship between 2 adult persons (whether or not related by family and irrespective of their gender) who live together as a couple on a genuine domestic basis, but does not include a relationship where 1 of the persons provides the other with domestic support or personal care (or both) for fee or reward, or on behalf of some other person or an organisation of whatever kind;

***cognitive impairment*** includes the following:

(a) an intellectual disability;

(b) a developmental disorder (including an autistic spectrum disorder);

(c) a neurological disorder;

(d) dementia;

(e) mental impairment;

(f) a brain injury;

***domestic partner***—a person is the domestic partner of another if he or she lives with the other in a close personal relationship;

***undue influence*** includes the abuse of a position of trust, power or authority.

## 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 (other than an offence of a kind described in paragraph (c) or (d))—imprisonment for 10 years;

(c) if the victim of the offence was at the time of the offence under the age of 17 years—imprisonment for 10 years;

(d) if the victim of the offence was at the time of the offence under the age of 14 years—imprisonment for 15 years.

## 57—Consent no defence in certain cases

(1) Subject to subsection (1a), 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.

(1a) Despite subsection (1), the alleged victim's consent will be a defence to a charge of indecent assault if the accused was a person of a class described in subsection (4)(c) in relation to the alleged victim and proves that—

(a) the alleged victim was, on the day on which the offence is alleged to have occurred, of or above the age of 17 years; and

(b) the accused—

(i) was, on that day, under the age of 18 years; or

(ii) believed on reasonable grounds that the alleged victim was, on that day, of or above the age of 18 years.

(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—

(a) the person is a teacher and the child is a pupil of the teacher or of a school at which the teacher works; or

(b) the person is a parent, step-parent, guardian or foster parent of the child or the de facto partner or domestic partner of a parent, step-parent, guardian or foster parent of the child; or

(c) the person provides religious, sporting, musical or other instruction to the child; or

(d) the person is a religious official or spiritual leader (however described and including lay members and whether paid or unpaid) in a religious or spiritual group attended by the child; or

(e) the person is a health professional or social worker providing professional services to the child; or

(f) the person is responsible for the care of the child and the child has a cognitive impairment; or

(g) the person is 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 is a person engaged in the administration of those Acts, acting in the course of the person's duties in relation to the child; or

(ga) the person is employed or providing services in a licensed children's residential facility (within the meaning of the *Children and Young People (Safety) Act 2017*), or a residential care facility or other facility established under section 36 of the *Family and Community Services Act 1972*, or is a person engaged in the administration of those Acts, acting in the course of the person's duties in relation to the child; or

(h) the person is 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.

Maximum penalty: Imprisonment for 15 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 exploitation material and related offences

## 62—Interpretation

In this Division—

***administering*** a website includes—

(a) building, developing or maintaining the website; and

(b) moderating contributions to, or content on, the website; and

(c) managing or regulating membership of, or access to, the website; and

(d) monitoring traffic through the website; and

(e) an activity or function of a prescribed kind,

but does not include an activity or function of a kind excluded by the regulations from the ambit of this definition;

***child exploitation material*** means material—

(a) —

(i) that—

(A) describes or depicts a child under, or apparently under, the age of 17 years engaging in sexual activity; or

(B) consists of, or contains, the image or representation of (or what appears to be the image or representation of) a child under, or apparently under, the age of 17 years, or the bodily parts of such a child, or in the production of which such a child has been or appears to have been involved; or

(C) (without limiting subsubparagraph (B)) consists of, or contains, the image or representation of (or what appears to be the image or representation of) a child-like sex doll, or part of a child-like sex doll; and

(ii) that is of a pornographic nature; or

(b) that is a child-like sex doll;

***child-like sex doll*** means an actual doll or other object that—

(a) resembles—

(i) a person who is, or appears to be, under 17 years of age; or

(ii) a part of the body of such a person; and

(b) a reasonable person would consider it likely that the doll or other object is intended to be used by a person to simulate sexual intercourse;

***deal with*** child exploitation material includes—

(a) view, upload, download or stream child exploitation material; and

(b) make child exploitation material available for viewing, uploading, downloading or streaming; and

(c) facilitate the viewing, uploading, downloading or streaming of child exploitation material;

***disseminate***—a person disseminates child exploitation material if the person—

(a) sends, supplies, sells, exhibits, distributes, 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;

***encourage*** includes suggest, request, urge, induce and demand;

***hosting*** a website means—

(a) providing storage space or other resources on a server for the website; or

(b) an activity or function of a prescribed kind,

but does not include an activity or function of a kind excluded by the regulations from the ambit of this definition;

***material*** includes—

(a) any written or printed material; or

(b) any picture, painting or drawing; or

(c) any carving, sculpture, doll, 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***—material is of a pornographic nature for the purposes of this Division if the material is intended or apparently intended—

(a) to excite or gratify sexual interest; or

(b) to excite or gratify a sadistic or other perverted interest in violence or cruelty;

**Note—**

See also section 63C(1).

***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;

***relevant industry regulatory authority*** means a person or body prescribed as a relevant industry regulatory authority for the purposes of section 63AB(3)(d);

***website*** includes an online forum, group or social media platform.

## 63—Production or dissemination of child exploitation material

A person who—

(a) produces, or takes any step in the production of, child exploitation material, other than a child-like sex doll, knowing of its pornographic nature; or

(b) disseminates, or takes any step in the dissemination of, child exploitation material, other than a child-like sex doll, knowing of its pornographic nature,

is guilty of an offence.

Maximum penalty: Imprisonment for 15 years.

## 63AA—Production or dissemination of child-like sex dolls

A person who—

(a) produces, or takes any step in the production of, a child-like sex doll; or

(b) disseminates, or takes any step in the dissemination of, a child-like sex doll,

is guilty of an offence.

Maximum penalty: Imprisonment for 15 years.

## 63A—Possession of child exploitation material

(1) A person who—

(a) is in possession of child exploitation material, other than a child-like sex doll, knowing of its pornographic nature; or

(b) intending to obtain access to child exploitation material, other than a child-like sex doll, obtains access, or takes a step towards obtaining access, to child exploitation material (other than a child-like sex doll),

is guilty of an offence.

Maximum penalty: Imprisonment for 12 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.

## 63AAB—Possession of child-like sex dolls

A person who is in possession of a child-like sex doll is guilty of an offence.

Maximum penalty: Imprisonment for 15 years.

## 63AB—Offences relating to websites

(1) A person commits an offence if—

(a) the person hosts or administers, or assists in the hosting or administration of, a website; and

(b) the website is used by another person to deal with child exploitation material; and

(c) the person—

(i) intends that the website be used by another person to deal with child exploitation material; or

(ii) is aware that the website is being used by another person to deal with child exploitation material.

Maximum penalty: Imprisonment for 10 years.

(2) It is a defence to a charge of an offence against subsection (1) to prove that the person, on becoming aware that the website was being used, or had been used, by another person to deal with child exploitation material, took all reasonable steps, in the circumstances, to prevent any person from being able to use the website to deal with child exploitation material.

(3) In determining whether a person has taken all reasonable steps, in the circumstances, for the purposes of subsection (2), regard must be had as to whether the person, as soon as it was reasonably practicable, did any of the following:

(a) shut the website down;

(b) modified the operation of the website so that it could not be used to deal with child exploitation material;

(c) notified a police officer that the website was being, or had been, used to deal with child exploitation material, and complied with any reasonable directions given by a police officer as to action to be taken by the person in relation to that use of the website;

(d) notified a relevant industry regulatory authority that the website was being, or had been, used to deal with child exploitation material, and complied with any reasonable directions given by the authority as to action to be taken by the person in relation to that use of the website.

(4) In proceedings for an offence against subsection (1), it is not necessary to prove the identity of the person that was using the website to deal with child exploitation material.

(5) A person commits an offence if—

(a) the person encourages another person to use a website; and

(b) the person intends that the other person use the website to deal with child exploitation material.

Maximum penalty: Imprisonment for 10 years.

(6) In proceedings for an offence against subsection (5), it is not necessary to prove—

(a) the identity of the person encouraged to use the website to deal with child exploitation material; or

(b) that another person in fact used the website to deal with child exploitation material; or

(c) if another person did in fact use the website, that it was the person's encouragement that caused the other person to do so.

(7) A person commits an offence if—

(a) the person provides information to another person; and

(b) the person intends the other person to use the information for the purpose of avoiding or reducing the likelihood of apprehension for an offence committed by that other person against this Division.

Maximum penalty: Imprisonment for 10 years.

(8) In proceedings for an offence against subsection (7), it is not necessary to prove—

(a) the identity of the person to whom the information was provided; or

(b) that the information was actually used by the other person.

## 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 12 years;

(b) for an aggravated offence—imprisonment for 15 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 12 years;

(b) for an aggravated offence—imprisonment for 15 years.

(3a) For the purposes of subsection (3), it does not matter if the victim is a fictitious person represented to the defendant as a real person.

(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.

(4a) It is a defence to a charge under subsection (1)(a), (1)(b)(i) or (3) if the defendant was a person of a class described in subsection (6)(c) in relation to the child and 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 17 years; and

(b) the defendant—

(i) was, on the date on which the offence is alleged to have been committed, under the age of 18 years; or

(ii) believed on reasonable grounds that the child was of or above the age of 18 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—

(a) the person is a teacher and the child is a pupil of the teacher or of a school at which the teacher works; or

(b) the person is a parent, step-parent, guardian or foster parent of the child or the de facto partner or domestic partner of a parent, step-parent, guardian or foster parent of the child; or

(c) the person provides religious, sporting, musical or other instruction to the child; or

(d) the person is a religious official or spiritual leader (however described and including lay members and whether paid or unpaid) in a religious or spiritual group attended by the child; or

(e) the person is a health professional or social worker providing professional services to the child; or

(f) the person is responsible for the care of the child and the child has a cognitive impairment; or

(g) the person is 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 is a person engaged in the administration of those Acts, acting in the course of the person's duties in relation to the child; or

(ga) the person is employed or providing services in a licensed children's residential facility (within the meaning of the *Children and Young People (Safety) Act 2017*), or a residential care facility or other facility established under section 36 of the *Family and Community Services Act 1972*, or is a person engaged in the administration of those Acts, acting in the course of the person's duties in relation to the child; or

(h) the person is 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—Material to which Division relates

(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 (other than an offence against section 63AB(7)) by reason of the production, dissemination or possession of, or dealing with, material in good faith and for the advancement or dissemination of legal, medical or scientific knowledge.

(2a) No offence is committed against this Division (other than an offence against section 63AB(7)) by reason of the production, dissemination or possession of, or dealing with, material in good faith by—

(a) a police officer or other law enforcement officer acting in the course of his or her duties; or

(b) any other person acting in the course of his or her duties in the administration of the criminal justice system.

(2b) No offence is committed against this Division (other than an offence against section 63AB(7)) by reason of the production, dissemination or possession of, or dealing with, material in good faith by a person acting reasonably for the purpose of providing genuine child protection or legal advice.

(3) No offence is committed against this Division (other than an offence against section 63AB(7)) by reason of the production, dissemination or possession of, or dealing with, 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 to be of a pornographic nature.

(4) No offence is committed against this Division (other than an offence against section 63AB(7)) by reason of—

(a) the possession or dissemination of, or dealing with, 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.

### 63D—Forfeiture

(1) If a court finds a person guilty of an offence against this Division, the court may order forfeiture of any material, equipment, device or other item that was used for, or in connection with, the commission of the offence.

(2) A court making an order for forfeiture of any equipment, device or other item under subsection (1) may, if it thinks fit, allow the offender or any other person an opportunity to retrieve (in accordance with any directions of the court) specified records, or other material not involved in the commission of the offence from the equipment, device or item before it is so forfeited.

## Division 11B—Institutional and out of home care child sexual abuse

### 64—Interpretation

In this Division—

***adult*** means a person who is not a child;

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

***institution*** means—

(a) an entity (whether private or public) that operates facilities or provides services to children who are in the care, or under the supervision or control, of the institution and includes (without limitation) medical and religious institutions and any services or functions provided by persons as part of the duties of a medical practitioner or of a religious or spiritual vocation; or

(b) an entity of a class prescribed by the regulations;

***out of home care*** means—

(a) care provided to a child where—

(i) the child is under the guardianship or custody of the Chief Executive under the *Children and Young People (Safety) Act 2017*; and

(ii) the care is provided by a person with whom the child is placed pursuant to section 84 of that Act; and

(iii) the care is provided on a residential basis in premises other than the child's home; and

(iv) the provider of the care receives, or may receive, payment, or financial or other assistance, in relation to the care provided; or

(b) any other care of a kind declared by the regulations to be included in the ambit of this definition;

***prescribed person*** means an adult who—

(a) is an employee of an institution, including a person who—

(i) is a self-employed person who constitutes, or who carries out work for, an institution; or

(ii) carries out work for an institution under a contract for services; or

(iii) carries out work as a minister of religion or as part of the duties of a religious or spiritual vocation; or

(iv) undertakes practical training with an institution as part of an educational or vocational course; or

(v) carries out work as a volunteer for an institution; or

(vi) is of a class prescribed by the regulations; or

(b) provides out of home care;

***sexual abuse*** of a child includes any unlawful conduct of a sexual nature committed to, or in relation to, a child.

## 64A—Failure to report suspected child sexual abuse

(1) A prescribed person is guilty of an offence if the person knows, suspects or should have suspected that another person (the ***abuser***)—

(a) has previously engaged in the sexual abuse of a child while an employee of the institution or, if the prescribed person provides out of home care, while also providing out of home care, and—

(i) the child is still under the age of 18 years; or

(ii) the abuser is still an employee of the institution or another institution or still provides out of home care; or

(iii) the sexual abuse occurred during the preceding 10 year period; or

(b) is an employee of the institution or, if the prescribed person provides out of home care, is providing out of home care, and is engaging, or is likely to engage, in the sexual abuse of a child,

and the prescribed person refuses or fails to report that to the police.

Maximum penalty: Imprisonment for 3 years.

(2) For the purposes of subsection (1), a defendant should have suspected that another person has engaged, is engaging or is likely to engage in sexual abuse of a child if a reasonable person in the defendant's circumstances would have held the relevant suspicion and the defendant's failure to hold that suspicion, if judged by the standard appropriate to a reasonable person in the defendant's position, amounts to criminal negligence.

(3) A prescribed person may be guilty of an offence under this section in respect of any knowledge, suspicion, or circumstances in which they should have held a suspicion, occurring before the commencement of this section, but in such a case the person will not be guilty of the offence unless—

(a) the relevant child is still under the age of 18 years and is still in the care, or under the supervision or control, of the institution or is still in out of home care; or

(b) the abuser is still an employee of the institution or another institution or still provides out of home care.

(4) It is a defence to a charge of an offence under this section if the defendant had a reasonable excuse for the refusal or failure to report.

(5) Without limiting the circumstances in which a person might be found to have had a reasonable excuse for a refusal or failure to report, a person will be taken to have had a reasonable excuse if the person refused or failed to report the matter to the police because the person believed on reasonable grounds that the matter had already been reported to the police or had been reported under Chapter 5 Part 1 of the *Children and Young People (Safety) Act 2017*.

(6) If a prescribed person reports a matter to the police, in good faith, believing that the report was required under this section—

(a) no civil or criminal liability lies against the person for making the report; and

(b) the person cannot be held to have breached any code of professional etiquette or ethics, or to have departed from any acceptable form of professional conduct, for making the report.

(7) Sections 163 (other than section 163(1)(ab)) and 165 of the *Children and Young People (Safety) Act 2017* apply in relation to a prescribed person who reports a matter to the police under this section as if they had provided the information under Chapter 5 Part 1 of that Act.

## 65—Failure to protect child from sexual abuse

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

(a) the prescribed person knows that there is a substantial risk that another person (the ***abuser***) who is also an employee of the institution or, if the prescribed person provides out of home care, who is also a provider of out of home care, will engage in the sexual abuse of a child—

(i) who is under 17 years of age; or

(ii) in relation to whom the abuser is in a position of authority; and

(b) the prescribed person has the power or responsibility to reduce or remove that risk but negligently fails to do so.

Maximum penalty: Imprisonment for 15 years.

(2) For the avoidance of doubt, it is not necessary for the prosecution to prove that sexual abuse of a child occurred to make out an offence against this section.

(3) For the purposes of this section, a person is in ***a position of authority*** in relation to a person under the age of 18 years (the ***child***) if—

(a) the person is a teacher and the child is a pupil of the teacher or of a school at which the teacher works; or

(b) the person is a parent, step-parent, guardian or foster parent of the child or the de facto partner or domestic partner of a parent, step-parent, guardian or foster parent of the child; or

(c) the person provides religious, sporting, musical or other instruction to the child; or

(d) the person is a religious official or spiritual leader (however described and including lay members and whether paid or unpaid) in a religious or spiritual group attended by the child; or

(e) the person is a health professional or social worker providing professional services to the child; or

(f) the person is responsible for the care of the child and the child has a cognitive impairment; or

(g) the person is 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 is a person engaged in the administration of those Acts, acting in the course of the person's duties in relation to the child; or

(h) the person is employed or providing services in a licensed children's residential facility (within the meaning of the *Children and Young People (Safety) Act 2017*), or a residential care facility or other facility established under section 36 of the *Family and Community Services Act 1972*, or is a person engaged in the administration of those Acts, acting in the course of the person's duties in relation to the child; or

(i) the person is 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).

## Division 12—Sexual servitude and related offences

### 65A—Definitions

(1) For the purposes of this Division—

***ask*** connotes a request made with serious intendment (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 acts*** means acts performed by a person for payment (whether made to the person or to another) involving the use or display of the body of that person 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 performs commercial sexual acts 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 perform or to continue to perform commercial sexual acts 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 perform, or to continue to perform, commercial sexual acts 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 acts

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 perform commercial sexual acts; 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 perform commercial sexual acts; 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 acts

(1) A person must not employ, engage, cause or permit a child to perform, or to continue to perform, commercial sexual acts.

Maximum penalty:

(a) if the child is under the age of 14 years—imprisonment for life;

(b) in any other case—imprisonment for 15 years.

(2) A person must not ask a child to perform commercial sexual acts.

Maximum penalty:

(a) if the child is under the age of 14 years—imprisonment for 15 years;

(b) in any other case—imprisonment for 12 years.

(3) A person must not—

(a) have an arrangement with a child who performs commercial sexual acts under which the person receives, on a regular or systematic basis, the proceeds, or a share in the proceeds, of commercial sexual acts performed by the child; or

(b) exploit a child by obtaining money knowing it to be the proceeds of commercial sexual acts performed by the child.

Maximum penalty:

(a) if the child is under the age of 14 years—imprisonment for 10 years;

(b) in any other case—imprisonment for 4 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[1] 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.

(2a) Subsection (2) applies to proceedings for an offence regardless of whether the offence was allegedly committed before or after the commencement of that subsection.

(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 the person's spouse is 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 spouse 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 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.

## 83CA—Information for terrorist acts

(1) A person who, without reasonable excuse—

(a) collects or makes a record of information of a kind likely to be of practical use to a person committing or preparing a terrorist act; or

(b) has possession of a document or record containing information of that kind,

is guilty of an offence.

Maximum penalty: Imprisonment for 7 years.

(2) If a court finds a person guilty of an offence against this section, the court may order the forfeiture of anything that has been seized and consists of, or contains, material to which the offence relates or consists of equipment used for the commission of the offence.

(3) A court making an order for forfeiture of any equipment or item under subsection (2) may, if it thinks fit, allow the offender or any other person an opportunity to retrieve (in accordance with any directions of the court) specified records, or other material, not involved in the commission of the offence from the equipment or item before it is so forfeited.

(4) In this section—

***Commonwealth Criminal Code*** means the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth, or a law of the Commonwealth that replaces that Code;

***terrorist act*** has the same meaning as in Part 5.3 of the Commonwealth Criminal Code.

# Part 3B—Offences relating to criminal organisations

## Division 1—Participation in criminal organisation

### 83D—Interpretation

(1) In this Division—

***criminal group***—a group consisting of 2 or more persons is a criminal group if—

(a) an aim or activity of the group includes engaging in conduct, or facilitating engagement in conduct, constituting a serious offence of violence (or conduct that would, if engaged in within this State, constitute such an offence); or

(b) an aim or activity of the group includes engaging in conduct, or facilitating engagement in conduct, constituting a serious offence (or conduct that would, if engaged in within this State, constitute such an offence) that is intended to benefit the group, persons who participate in the group or their associates;

***criminal organisation*** means—

(a) a criminal group; or

(b) a declared organisation;

***declared organisation*** has the same meaning as in the *Serious and Organised Crime (Control) Act 2008*;

***harm*** has the same meaning as in Part 3 Division 7A;

***participating*** in a criminal organisation includes (without limitation)—

(a) recruiting others to participate in the organisation; and

(b) supporting the organisation; and

(c) committing an offence for the benefit of, or at the direction of, the organisation; and

(d) occupying a leadership or management position in the organisation or otherwise directing any acts of the organisation;

***perverting the course of justice*** means obstructing, preventing, perverting or defeating the course of justice or the administration of the law;

***public officer*** means—

(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 police officer; 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 juror in any proceedings; or

(j) 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;

***serious harm*** has the same meaning as in Part 3 Division 7A;

***serious offence*** means an indictable offence that is punishable by imprisonment for life or for a term of 5 years or more;

***serious offence of violence*** means a serious offence where the conduct constituting the offence involves—

(a) the death of, or serious harm to, a person or a risk of the death of, or serious harm to, a person; or

(b) serious damage to property in circumstances involving a risk of the death of, or harm to, a person; or

(c) perverting the course of justice in relation to any conduct that, if proved, would constitute a serious offence of violence as referred to in paragraph (a) or (b).

(2) A group of people is capable of being a criminal group for the purposes of this Division whether or not—

(a) any of them are subordinates or employees of others; or

(b) only some of the people involved in the group are involved in planning, organising or carrying out any particular activity; or

(c) membership of the group changes from time to time.

## 83E—Participation in criminal organisation

(1) A person who participates in a criminal organisation—

(a) knowing that, or being reckless as to whether, it is a criminal organisation; and

(b) knowing that, or being reckless as to whether, his or her participation in that organisation contributes to the occurrence of any criminal activity,

is guilty of an offence.

Maximum penalty: Imprisonment for 15 years.

(2) A person who assaults another person, knowing that, or being reckless as to whether, he or she is, by that act, participating in a criminal activity of a criminal organisation, is guilty of an offence.

Maximum penalty: Imprisonment for 20 years.

(3) A person who destroys or damages property belonging to another person, or threatens to destroy or damage property belonging to another person, knowing that, or being reckless as to whether, he or she is, by that act, participating in a criminal activity of a criminal organisation, is guilty of an offence.

Maximum penalty: Imprisonment for 20 years.

(4) A person who assaults a public officer while in the execution of the officer's duty, knowing that, or being reckless as to whether, he or she is, by that act, participating in a criminal activity of a criminal organisation, is guilty of an offence.

Maximum penalty: Imprisonment for 25 years.

(5) A term of imprisonment to which a person is sentenced for an offence against this section is cumulative on any other term of imprisonment or detention in a training centre that the person is liable to serve in respect of another offence (not being another offence against this section).

(6) For the purposes of this section, an action is taken to be carried out in relation to a public officer while in the execution of the officer's duty, even though the public officer is not on duty at the time, if it is carried out—

(a) as a consequence of, in retaliation for or otherwise in connection with actions undertaken by that public officer in the execution of the officer's duty; or

(b) because the officer is a public officer.

(7) For the purposes of this section, a person is presumed, in the absence of proof to the contrary, to be knowingly participating in an organisation at a particular time if the person is, at that time, displaying (whether on an article of clothing, as a tattoo or otherwise) the insignia of that organisation.

(8) For the purposes of this section, a legal practitioner acting in the course of legal practice will be taken not to be participating in a criminal organisation or in an activity of a criminal organisation.

## 83F—Alternative verdicts

If, on the trial of a person for an offence under section 83E(2), (3) or (4), the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of an offence under section 83E(1), it may find the accused not guilty of the offence charged but guilty of an offence under section 83E(1), and the accused is liable to punishment accordingly.

## 83G—Evidentiary

(1) If, in any criminal proceedings, the court is satisfied beyond reasonable doubt that a particular group was, at a particular time, a criminal group within the meaning of this Division, the court may, on the application of the Director of Public Prosecutions, make a declaration to that effect.

(2) If a declaration is made in relation to a group under this section, that group will, for the purposes of any subsequent criminal proceedings, be taken to be a criminal group in the absence of proof to the contrary.

# Division 2—Public places, prescribed places and prescribed events

## 83GA—Preliminary

(1) In this Division, unless the contrary intention appears—

***Committee*** means the Crime and Public Integrity Policy Committee of the Parliament;

***conviction*** means a finding of guilt by a court, or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded;

***criminal organisation*** means—

(a) an organisation of 3 or more persons—

(i) who have as their purpose, or 1 of their purposes, engaging in, organising, planning, facilitating, supporting, or otherwise conspiring to engage in, serious criminal activity; and

(ii) who, by their association, represent an unacceptable risk to the safety, welfare or order of the community; or

(b) a declared organisation within the meaning of the *Serious and Organised Crime (Control) Act 2008*; or

(c) an entity declared by regulation to be a criminal organisation;

***member***, of an organisation, includes an associate member, or prospective member, however described;

***participant***, in a criminal organisation, means—

(a) if the organisation is a body corporate—a director or officer of the body corporate; or

(b) a person who (whether by words or conduct, or in any other way) asserts, declares or advertises his or her membership of, or association with, the organisation; or

(c) a person who (whether by words or conduct, or in any other way) seeks to be a member of, or to be associated with, the organisation; or

(d) a person who attends more than 1 meeting or gathering of persons who participate in the affairs of the organisation in any way; or

(e) a person who takes part in the affairs of the organisation in any other way,

but does not include a lawyer acting in a professional capacity;

***prescribed event*** means an event declared by regulation to be a prescribed event;

***prescribed place*** means a place declared by regulation to be a prescribed place;

***public place*** means—

(a) a place, or part of a place, that the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or

(b) a place, or part of a place, the occupier of which allows, whether or not on payment of money, members of the public to enter;

***recruit***, a person, to become a participant in a criminal organisation, includes counsel, procure, solicit, incite and induce the person, including by promoting the organisation, to become a participant in the organisation;

***serious criminal activity*** has the same meaning as in the *Serious and Organised Crime (Control) Act 2008*.

(2) Each regulation made under subsection (1) for the purposes of the definitions of ***criminal organisation***, ***prescribed event*** or ***prescribed place*** and required to be laid before each House of Parliament in accordance with the *Legislative Instruments Act 1978* may only relate to 1 entity, 1 event or 1 place (as the case may require).

(3) The Governor may only make a regulation declaring an entity to be a criminal organisation for the purposes of paragraph (c) of the definition of ***criminal organisation*** in subsection (1) on the recommendation of the Minister.

(4) A recommendation of the Minister in relation to an entity for the purposes of subsection (3) may only be made—

(a) after the receipt of a report of the Committee in relation to the entity under section 83GB (and, in such a case, the recommendation must include a statement as to the opinion of the Committee on whether or not the entity should be declared a criminal organisation for the purposes of this Division); or

(b) after the passage of 10 days after a referral in relation to the entity was made to the Committee by the Minister under section 83GB(1).

(5) The Minister may, in deciding whether to make a recommendation for the purposes of subsection (3), have regard to the following matters:

(a) if the Minister has received a report of the Committee in relation to the entity—the report of the Committee;

(b) any information suggesting a link exists between the entity and serious criminal activity;

(c) any convictions recorded in relation to—

(i) current or former participants in the entity; or

(ii) persons who associate, or have associated, with participants in the entity;

(d) any information suggesting current or former participants in the entity have been, or are, involved in serious criminal activity (whether directly or indirectly and whether or not the involvement has resulted in any convictions);

(e) any information suggesting participants in an interstate or overseas chapter or branch (however described) of the entity have as their purpose, or 1 of their purposes, organising, planning, facilitating, supporting or engaging in serious criminal activity;

(f) any other matter the Minister considers relevant.

(5a) No obligation to provide procedural fairness exists in relation to the making of a declaration by regulation that—

(a) an entity is a criminal organisation for the purposes of paragraph (c) of the definition of ***criminal organisation*** in subsection (1); or

(b) an event is a prescribed event for the purposes of the definition of ***prescribed event*** in subsection (1); or

(c) a place is a prescribed place for the purposes of the definition of ***prescribed place*** in subsection (1).

(6) Section 10A of the *Legislative Instruments Act 1978* does not apply in relation to a regulation made under paragraph (c) of the definition of ***criminal organisation*** in subsection (1).

(7) For the avoidance of doubt, nothing prevents the regulations declaring as a criminal organisation an entity that is, at the time of the declaration, based interstate or overseas and not operating in this State.

(8) A change in the name or membership of a criminal organisation does not affect its status as a criminal organisation.

(9) If the members of a criminal organisation (the ***original organisation***) substantially re-form themselves into another organisation, that organisation is taken to form a part of the original organisation (whether or not the original organisation is dissolved).

## 83GB—Report of Crime and Public Integrity Policy Committee

(1) The Minister may, by notice in writing, refer a proposal to declare an entity to be a criminal organisation by regulation under paragraph (c) of the definition of ***criminal organisation*** to the Committee.

(2) On receipt of a referral under subsection (1), the Committee must request the Commissioner of Police (the ***Commissioner***) to provide to the Committee any information that the Commissioner thinks fit that may support the referral.

(3) The Committee must inquire into and consider a referral under subsection (1) along with any supporting information provided by the Commissioner under subsection (2) and must report to the Minister on whether or not the Committee is of the opinion that the entity should be declared a criminal organisation for the purposes of this Division.

(4) The Committee may include grounds for its opinion in a report under subsection (3).

## 83GC—Participants in criminal organisation being knowingly present in public places

(1) Any person who is a participant in a criminal organisation and is knowingly present in a public place with 2 or more other persons who are participants in a criminal organisation commits an offence.

Maximum penalty: Imprisonment for 3 years.

## 83GD—Participants in criminal organisation entering prescribed places and attending prescribed events

(1) Any person who is a participant in a criminal organisation and enters, or attempts to enter, a prescribed place commits an offence.

Maximum penalty: Imprisonment for 3 years.

(2) Any person who is a participant in a criminal organisation and attends, or attempts to attend, a prescribed event commits an offence.

Maximum penalty: Imprisonment for 3 years.

## 83GE—Participants in criminal organisation recruiting persons to become participants in the organisation

(1) Any person who is a participant in a criminal organisation and recruits, or attempts to recruit, anyone to become a participant in a criminal organisation commits an offence.

Maximum penalty: Imprisonment for 3 years.

(3) This section does not apply in relation to a declared organisation within the meaning of the *Serious and Organised Crime (Control) Act 2008*.

## 83GF—Sentencing

(1) Subject to subsection (2), but despite any other Act or law, the following provisions apply to the sentencing of a person for an offence under this Division:

(a) a sentence of imprisonment must be imposed on the person;

(b) the sentence of imprisonment cannot be suspended;

(c) section 25 of the *Sentencing Act 2017* does not apply;

(d) section 26 of the *Sentencing Act 2017* does not apply (but nothing in this subsection affects the operation of that section in respect of other offences for which the person is being sentenced).

(2) A court sentencing a person for an offence under this Division may declare that subsection (1), in whole or part, does not apply to the person if he or she satisfies the court, by evidence given on oath, that exceptional circumstances exist in the particular case.

(3) If a court finds that exceptional circumstances exist for the purposes of subsection (2), the court must give written reasons for so finding.

(4) If a court is required to fix a non-parole period in relation to the sentencing of a person for an offence under this Division—

(a) the standard non-parole period must be taken into account by the court in determining the appropriate sentence (without limiting the matters that are otherwise required or permitted to be taken into account in determining the appropriate sentence); and

(b) if the court fixes a non-parole period that is longer or shorter than the standard non-parole period, the court must make a record of its reasons for so doing and must identify in the record of its reasons each factor that it took into account.

(5) A requirement under subsection (4)(b) for a court to make a record of reasons for fixing a non-parole period that is longer or shorter than a standard non-parole period does not require the court to identify the extent to which the seriousness of the offence for which the non-parole period is set differs from that of an offence to which the standard non-parole period is referable.

(6) A failure of a court to comply with subsection (4) does not invalidate a sentence.

(7) In this section, ***standard non-parole period***—

(a) is 9 months; and

(b) represents the non-parole period for an offence, being a first offence, in the middle of the range of objective seriousness for offences in this Division.

## 83GG—Evidentiary

(1) If, in any criminal proceedings, the court is satisfied beyond reasonable doubt that a particular organisation was, at a particular time, a criminal organisation within the meaning of paragraph (a) of the definition of ***criminal organisation*** in section 83GA(1), the court may, on the application of the Director of Public Prosecutions, make a declaration to that effect.

(2) If a declaration is made in relation to an organisation under subsection (1), then that organisation will, for the purposes of any subsequent criminal proceedings, be taken to be a criminal organisation (within the meaning of paragraph (a) of the definition of ***criminal organisation*** in section 83GA(1)) in the absence of proof to the contrary.

# Part 3BA—Street gangs

## Division 1—Preliminary

### 83GH—Interpretation

(1) In this Part—

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

***close personal relationship*** has the same meaning as in Part 3 of the *Family Relationships Act 1975*;

***Commissioner*** means the Commissioner of Police;

***conviction*** means a finding of guilt by a court, or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded;

***Court*** means—

(a) the Supreme Court; or

(b) in proceedings under Division 3, the Youth Court if—

(i) the respondent is a child at the time the application initiating the proceedings is made; or

(ii) the proceedings relate to the variation or revocation of a street gang control order made by the Youth Court;

***criminal intelligence*** means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or to endanger a person's life or physical safety;

***declared street gang*** means a group subject to a declaration under Division 2;

***interim street gang control order*** means an order under section 83GU;

***participant***, in a street gang or other group, means a person who—

(a) asserts, declares or advertises their membership of, or association with, the group (whether by words or conduct, or in any other way); or

(b) seeks to be a member of, or to be associated with, the group (whether by words or conduct, or in any other way); or

(c) with the intention of engaging in, organising, planning, facilitating, supporting, or otherwise conspiring to engage in, criminal activity—

(i) attends more than 1 meeting or gathering of persons who participate in the affairs of the group in any way; or

(ii) takes part in the affairs of the group in any other way,

but does not include a lawyer acting in a professional capacity;

***recruit*** a person, to become a participant in a street gang, includes counsel, procure, solicit, incite and induce the person, including by promoting the street gang, to become a participant in the street gang;

***respondent*** means, according to the context—

(a) a person in relation to whom an application for a street gang control order has been made (see section 83GT); or

(b) a person who is subject to a street gang control order;

***serious criminal activity*** means the commission of serious offences;

***serious offence*** means an indictable offence that is punishable by imprisonment for life or for a term of 5 years or more;

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

***street gang*** means—

(a) a group consisting of 3 or more persons—

(i) who have as their purpose, or 1 of their purposes, engaging in, organising, planning, facilitating, supporting, or otherwise conspiring to engage in, serious criminal activity; and

(ii) who, by their association, represent an unacceptable risk to the safety, welfare or order of the community; or

(b) a declared street gang;

***street gang control order*** means an order under section 83GT.

(2) A change in the name of, or the persons who are participants in, a street gang does not affect its status as a street gang under this Part.

(3) If the participants in a street gang (the ***original group***) substantially re-form themselves into another group, that organisation is taken to form a part of the original group (whether or not the original group is dissolved).

(4) For the purposes of this Part—

(a) a person may ***associate*** with another person by any means including communicating with that person by letter, telephone or facsimile or by email or other electronic means; and

(b) a person is a ***close family member*** of another person if—

(i) 1 is a spouse or former spouse of the other or is, or has been, in a close personal relationship with the other; or

(ii) 1 is a parent or grandparent of the other (whether by blood or by marriage); or

(iii) 1 is a brother or sister of the other (whether by blood or by marriage); or

(iv) 1 is a guardian or carer of the other.

## Division 2—Declared street gangs

### 83GI—Commissioner may apply for declaration

(1) The Commissioner may apply to the Court for a declaration under this Division in relation to a group.

(2) The application must—

(a) be in writing; and

(b) identify the particular group in respect of which the declaration is sought; and

(c) describe the nature of the group and any of its distinguishing characteristics; and

(d) set out the grounds on which the declaration is sought; and

(e) set out the information supporting the grounds on which the declaration is sought; and

(f) set out details of any previous application for a declaration in respect of the group and the outcome of that application; and

(g) be supported by at least 1 affidavit from a police officer, verifying the contents of the application.

(3) The application may identify the group by specifying the name of the group or the name by which the group is commonly known or by providing other particulars identifying the group.

(4) Subject to subsection (5), the Commissioner must make a copy of an application under this section, and any affidavit supporting the application, available for inspection by—

(a) any person who satisfies the Commissioner that they are representative of the group; and

(b) any person who is alleged in an affidavit supporting the application to be a participant or former participant in the group; and

(c) any person who satisfies the Commissioner that they are a participant or former participant in the group or other person who may be directly affected (whether or not adversely) by the outcome of the application; and

(d) any other person whom the Court considers should be provided with an opportunity to inspect the application and supporting affidavits.

(5) Nothing in subsection (4) authorises or requires the disclosure of information properly classified by the Commissioner as criminal intelligence.

### 83GJ—Publication of notice of application

(1) If the Commissioner makes an application under section 83GI in relation to a group, the Commissioner must as soon as practicable publish a notice in the Gazette and a newspaper circulating generally throughout the State—

(a) specifying that an application has been made for a declaration under this Division in respect of the group; and

(b) specifying that there may be serious consequences for participants in the group and other persons if the declaration is made; and

(c) advising interested parties of their rights in relation to making or providing submissions to the Court at the hearing of the application; and

(d) specifying the manner in which interested parties may inspect or apply to inspect a copy of the application; and

(e) specifying the date, time and place of the hearing.

(2) In this section—

***interested party***, in relation to an application, means an organisation, group or person who would, under section 83GO, be entitled to make an oral submission or provide a written submission to the Court at the hearing of the application.

## 83GK—Court may make declaration

(1) The Court may make a declaration on an application made under this Division in relation to a group if satisfied that—

(a) participants in the group associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity; and

(b) participants in the group, by their association, represent an unacceptable risk to the safety, welfare or order of the community.

(2) In considering whether or not to make a declaration, the Court may have regard to the following:

(a) information suggesting that a link exists between the group and serious criminal activity;

(b) any convictions recorded against—

(i) current or former participants in the group; or

(ii) persons who associate, or have associated, with participants in the group;

(c) information suggesting that—

(i) current or former participants in the group; or

(ii) persons who associate, or have associated, with participants in the group,

have been, or are, involved in serious criminal activity, whether directly or indirectly and whether or not the involvement resulted in convictions;

(d) information suggesting that participants in an interstate or overseas chapter or branch of the group (however described) associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity;

(e) anything else the Court considers relevant.

(3) A declaration may be made whether or not any of the persons who are entitled to make or provide submissions in relation to the application take advantage of that opportunity.

(4) Participants in a group may ***associate*** for the purposes of this section in any manner including merely by being participants in the group.

(5) The Court may, for the purposes of making the declaration, be satisfied that participants in the group associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity—

(a) whether all the participants associate for that purpose or only some of the participants; and

(b) whether participants associate for that purpose in relation to the same serious criminal activity or different serious criminal activity; and

(c) whether or not the participants also associate for other purposes.

## 83GL—Notice of declaration

(1) As soon as practicable after the making of a declaration under this Division, the Commissioner must publish notice of the declaration—

(a) in the Gazette; and

(b) in a newspaper circulating generally throughout the State; and

(c) on a website maintained by the Commissioner.

(2) Unless the Court otherwise directs, the declaration is of no effect until notice of it is published under subsection (1)(a) and (b).

## 83GM—Duration of declaration

A declaration made under this Division remains in force unless and until it is revoked in accordance with this Division.

## 83GN—Revocation of declaration

(1) The Court may, at any time, revoke a declaration made under this Division in relation to a group on application—

(a) by the Commissioner; or

(b) by—

(i) the group; or

(ii) a person who made or provided submissions in relation to the application for the declaration; or

(iii) with the permission of the Court—

(A) any other participant or former participant in the group or person directly affected (whether or not adversely) by the declaration; or

(B) any other person whom the Court considers should, in the interests of justice, be entitled to make the application.

(2) An application may not be made under subsection (1)(b) except with the permission of the Court if—

(a) an application has been made in relation to the group under that paragraph (whether by the same or a different applicant) within the preceding period of 12 months; or

(b) an application has been made in relation to the group under that paragraph (whether by the same or a different applicant) and that application has not been finally determined.

(3) An application under subsection (1) must—

(a) be in writing; and

(b) set out the grounds on which revocation is sought; and

(c) set out the information supporting the grounds on which revocation is sought; and

(d) be supported by at least 1 affidavit from the applicant verifying the contents of the application.

(4) If an application is made under subsection (1)(b), the applicant must, as soon as practicable, serve on the Commissioner a copy of the application and any supporting affidavit.

(5) If an application is made under subsection (1), the Commissioner must, as soon as practicable, publish a notice in the Gazette and a newspaper circulating generally throughout the State—

(a) specifying that an application has been made for revocation of a declaration under this Division in respect of the group; and

(b) advising interested parties of their rights in relation to making or providing submissions to the Court at the hearing of the application; and

(c) specifying the manner in which interested parties may inspect or apply to inspect a copy of the application; and

(d) specifying the date, time and place of the hearing.

(6) A declaration may be revoked on an application under subsection (1) if the Court is satisfied that, as at the time at which the application for revocation is made and heard, there would not be grounds for the making of a declaration in relation to the group.

(7) The Commissioner must, as soon as practicable after a declaration is revoked—

(a) make reasonable efforts to give notice of the revocation to any person who made or provided a submission in relation to the making of the declaration; and

(b) publish notice of the revocation in the Gazette and in a newspaper circulating generally throughout the State.

(8) In this section—

***interested party***, in relation to an application, means an organisation or person who would, under section 83GO, be entitled to make an oral submission or provide a written submission to the Court at the hearing of the application.

## 83GO—Procedure at hearings

(1) At the hearing of an application under this Division, the following are entitled to make oral submissions, personally or through a legal representative, to the Court and, with the permission of the Court, to provide, in accordance with any requirements of the Court, written submissions:

(a) the Commissioner;

(b) the group to which the application relates;

(c) any person who is alleged in an affidavit supporting the application to be a participant or former participant in the group;

(d) any person who is a participant or former participant in the group or other person who may be directly affected (whether or not adversely) by the outcome of the application;

(e) any other person whom the Court considers should, in the interests of justice, be entitled to make submissions.

(2) A person referred to in subsection (1) who is not the applicant (an ***interested party***) may, in accordance with any requirements of the Court, file with the Court 1 or more affidavits in response to the application.

(3) The applicant may, with the permission of the Court, file with the Court 1 or more affidavits in response to any affidavit filed by an interested party.

(4) At the hearing of an application under this Division, the applicant or an interested party may adduce oral evidence, or cross-examine a person who has given oral evidence or provided an affidavit, if the Court considers, on application, or on its own initiative, that it is in the interests of justice to permit the evidence or the cross-examination.

(5) If the applicant or an interested party applies to adduce oral evidence or cross-examine a person who has given oral evidence or provided an affidavit, the Court may, before deciding whether to allow the evidence or to allow the cross-examination, require the applicant or interested party to file a notice of contention specifying fully and in detail the grounds on which the application is made.

## 83GP—Making of subsequent declaration

For the avoidance of doubt, nothing prevents the making of a declaration in relation to a group that has been the subject of a previous declaration which has been revoked.

## 83GQ—Practice and procedure

In proceedings under this Division, the Court—

(a) is not bound by the rules of evidence but may inform itself on any matter as it thinks fit; and

(b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

### 83GR—Appeal

The commencement of an appeal under the *Supreme Court Act 1935* against a declaration made under this Division does not, of itself, affect the operation of the declaration to which the appeal relates.

### 83GS—Evidentiary

In any proceedings before a court, an apparently genuine document purporting to be signed by the Commissioner and to certify that a specified group was, on a specified date, a declared street gang constitutes, in the absence of proof to the contrary, proof of the matter so certified.

## Division 3—Street gang control orders

### 83GT—Court may make street gang control order

(1) The Commissioner may apply to the Court for the making of a street gang control order relating to a person (the ***respondent***).

(2) The Court may, on application by the Commissioner, make a street gang control order relating to the respondent if the Court is satisfied that—

(a) the respondent is a participant in a street gang; or

(b) the respondent—

(i) has been a participant in a group that is, at the time of the application, a declared street gang; and

(ii) associates with 1 or more participants in a street gang; or

(c) the respondent has engaged in serious criminal activity with 1 or more participants in a street gang,

and that the making of the order is appropriate in the circumstances.

(3) In proceedings under this section—

(a) the Commissioner and the respondent are parties to the proceedings; but

(b) the Court may, if satisfied that the application has been served on the respondent, hear and determine the proceedings whether or not the respondent chooses to participate in the hearing.

(4) If the Commissioner requests the making of an interim street gang control order without notice to the respondent under section 83GU, the Court may order that service of the application (and any material to be served with the application) on the respondent under this section be delayed until the Court has determined that request.

(5) A street gang control order may prohibit the respondent from any 1 or more of the following:

(a) subject to subsection (7), associating with a specified person or persons of a specified class;

(b) holding an authorisation to carry on a prescribed activity while the street gang control order remains in force;

(c) subject to subsection (7), being present at, or being within a specified distance of, a specified place or premises or a place or premises of a specified class;

(d) possessing a specified article or weapon, or articles or weapons of a specified class;

(e) carrying on their person more than a specified amount of cash;

(f) using for communication purposes, or being in possession of, a telephone, mobile phone, computer or other communication device except as may be specified;

(g) engaging in other conduct of a specified kind that the Court considers could be relevant to the commission of serious offences.

(6) In determining an application for a street gang control order, the Court may have regard to the following:

(a) the likelihood that the respondent will engage in serious criminal activity if they are not subject to an order;

(b) if the application relates to a declared street gang, any evidence before the Court as to the reasons given by the court for the making of the declaration under section 83GK;

(c) the extent to which the order might assist in preventing the respondent from participating or further participating in a street gang;

(d) the prior criminal record (if any) of the respondent and any person specified in the application as a person with whom the respondent associates or has associated;

(e) any legitimate reason the respondent may have for associating with any person specified in the application;

(f) any other matter that, in the circumstances of the case, the Court considers relevant.

(7) In determining whether to make a street gang control order prohibiting conduct of a kind referred to in subsection (5)(a) or (c), the Court—

(a) must have regard to the extent to which such an order may affect the respondent's connection with their family and culture; and

(b) must not prohibit the respondent from associating with a close family member unless the Court considers it necessary to prevent the respondent from engaging in serious criminal activity.

(8) If the Court prohibits a respondent from holding an authorisation to carry on a prescribed activity—

(a) any such authorisation held by the respondent is revoked from the date on which the street gang control order takes effect or a later date specified by the Court; and

(b) if the revocation is to take effect on a later date—the Court may impose any further prohibition it thinks fit on the respondent in relation to the conduct of the activity to which the authorisation relates until the revocation takes effect; and

(c) the revocation is effected despite any other Act or any law, award or industrial or other agreement affecting the employment of the respondent, and neither the Crown nor the authority that issues an authorisation incurs any liability because of the revocation.

(9) In this section—

***authorisation*** includes the licensing, registration, approval, certification or any other form of authorisation required by or under legislation for the carrying on of an occupation or activity;

***occupation*** means an occupation, trade, profession or calling of any kind that may only be carried on by a person holding an authorisation;

***prescribed activity*** means an occupation or activity of a kind prescribed by regulation for the purposes of this definition.

## 83GU—Interim street gang control orders

(1) The Court may, on an application under section 83GT, make an interim street gang control order if the Court is satisfied that it is appropriate to do so in all of the circumstances.

(2) An interim street gang control order—

(a) may be made without notice to the respondent; and

(b) may include any prohibition that may be included in a street gang control order.

(3) Section 83GT(8) applies in relation to an interim street gang control order as if it were a street gang control order.

## 83GV—Duration of street gang control order or interim street gang control order

(1) A street gang control order or interim street gang control order takes effect—

(a) if the respondent or a legal representative of the respondent is present when the order is made—on the making of the order; or

(b) otherwise—when the Commissioner serves the order on the respondent.

(2) Service under subsection (1)(b) must be by personal service.

(3) Subject to section 83GZ, a street gang control order remains in force—

(a) for a period of 2 years or for such lesser period as may be specified in the order; or

(b) until the order is revoked in accordance with section 83GW,

(whichever occurs first).

(4) Subject to sections 83GX and 83GZ, an interim street gang control order remains in force for a period of 6 months or for such lesser period as may be specified in the order.

(5) Nothing prevents the Commissioner from applying for a further street gang control order or interim street gang control order in respect of a respondent.

## 83GW—Variation or revocation

(1) The Court may make an order varying a street gang control order (a ***variation order***) or revoking a street gang control order (a ***revocation order***) on application—

(a) by the Commissioner; or

(b) by the respondent.

(2) An application may only be made under subsection (1)(b) with the permission of the Court.

(3) Subject to this section, in proceedings for the variation or revocation of a street gang control order—

(a) the Commissioner and the respondent are parties to the proceedings; but

(b) in the case of an application under subsection (1)(a), the Court may, if satisfied that the application has been served on the respondent, hear and determine the proceedings whether or not the respondent chooses to participate in the hearing.

(4) The Court may make an interim variation order if the Court is satisfied that it is appropriate to do so in all of the circumstances.

(5) An interim variation order—

(a) may be made without notice to the respondent; and

(b) remains in force until further order of the Court.

(6) In determining an application under this section the Court—

(a) may have regard to the same matters that the Court may have regard to in determining an application for a street gang control order; and

(b) must, before prohibiting conduct of a kind referred to in section 83GT(5)(a) or (c), comply with section 83GT(7) in the same way as the Court must in determining an application for a street gang control order.

(7) If a revocation order is made, or a variation order is made on application under subsection (1)(b), the revocation or variation order has effect immediately on the making of the order or at such later time as may be specified by the Court in making the order.

(8) If a variation order or interim variation order is made on application under subsection (1)(a), the order has effect—

(a) if the respondent or a legal representative of the respondent is present when the variation order or interim variation order is made—on the making of the order; or

(b) otherwise—when the Commissioner serves the order on the respondent.

(9) Service under subsection (8)(b) must be by personal service.

## 83GX—Right to object if interim order made ex parte

(1) This section only applies if an interim street gang control order or interim variation order has been made without notice to the respondent.

(2) The respondent may, within 14 days of service of the interim street gang control order or interim variation order or such longer period as the Court may allow, lodge a notice of objection with the Court.

(3) A copy of the notice of objection must be served by the respondent on the Commissioner by registered post.

(4) The Court may, on hearing a notice of objection, confirm, vary or revoke the interim street gang control order or interim variation order.

## 83GY—Consequential and ancillary orders

(1) The Court may, on making a street gang control order or variation order or an interim street gang control order or variation order, make any consequential or ancillary orders it thinks fit, including, in a case where the order prohibits the possession of an article or weapon or an article or weapon of a specified class, orders—

(a) providing for the surrender or confiscation of the article or weapon or such an article or weapon; and

(b) if the circumstances of the case so require, authorising a police officer—

(i) to enter and search and, if necessary, use reasonable force to break into or open—

(A) premises or a vehicle in which the article or weapon, or such an article or weapon, is suspected to be; or

(B) part of, or anything in or on, premises or a vehicle in which the article or weapon, or such an article or weapon, is suspected to be; and

(ii) to take possession of the article or weapon, or such an article or weapon.

(2) An article or weapon surrendered or confiscated under subsection (1) is forfeited to the Crown and may be sold or disposed of as the Minister thinks fit unless the Court orders that the article or weapon is to be returned to the respondent when the street gang control order or interim street gang control order lapses or is revoked.

## 83GZ—Automatic revocation of order

Without derogating from any power of the Court under this Part, if a street gang control order or interim street gang control order is made in relation to a person in reliance on the person's participation in a particular declared street gang or the person's association with a participant in a particular declared street gang, the order is revoked if the declaration that declares the street gang ceases to be in force.

## 83GZA—Application of Division to children

(1) Subject to this section, this Division applies in relation to a child in the same way as it applies to an adult.

(2) A street gang control order may not be made in relation to a child who is under 14 years of age.

(3) If a street gang control order relating to a child is made, varied or revoked, the Commissioner must, as soon as reasonably practicable, give written notice of the making of the order or of the variation or revocation (as the case may be) to—

(a) a parent or guardian of the child, if the Commissioner is able to find a parent or guardian of the child after making reasonable attempts; and

(b) any other prescribed person or person of a prescribed class.

(4) The following provisions apply in relation to proceedings under this Division for the making, variation or revocation of a street gang control order relating to a child:

(a) section 13 of the *Young Offenders Act 1993* applies to the proceedings as if they were an action or proceedings taken against a youth by a police officer or a family conference under Part 2 of that Act;

(b) the Court must satisfy itself that the child understands the nature of the proceedings;

(c) if the child is not represented by counsel or solicitor, the Court—

(i) must explain to the child in simple language any allegations being made against the child in the proceedings, the nature of the proceedings and the legal implications of the order being sought in the proceedings; and

(ii) must provide the child with a written statement in a form approved by the Attorney-General of the child's rights in respect of legal representation and of the way to proceed in order to obtain legal advice, representation or assistance.

## Division 4—Offences

### 83GZB—Offence to contravene or fail to comply with street gang control order

(1) A person who contravenes or fails to comply with a street gang control order or interim street gang control order is guilty of an offence.

Maximum penalty: imprisonment for 5 years.

(2) A person does not commit an offence against this section in respect of an act or omission unless the person knew that the act or omission constituted a contravention of, or failure to comply with, the order or was reckless as to that fact.

### 83GZC—Offence to recruit persons to become participants in street gang

A person who is aged 18 years or more who—

(a) is a participant in a street gang; and

(b) recruits, or attempts to recruit, another person to become a participant in a street gang,

is guilty of an offence.

Maximum penalty:

(a) if the person recruited, or attempted to have been recruited, was under the age of 18 years at the time of the offence—imprisonment for 5 years;

(b) in any other case—imprisonment for 3 years.

## 83GZD—Participants in street gang entering prescribed places and attending prescribed events

(1) A person who—

(a) is a participant in a street gang or is subject to a street gang control order; and

(b) enters, or attempts to enter, a prescribed place,

commits an offence.

Maximum penalty: imprisonment for 3 years.

(2) A person who—

(a) is a participant in a street gang or is subject to a street gang control order; and

(b) attends, or attempts to attend, a prescribed event,

commits an offence.

Maximum penalty: imprisonment for 3 years.

(3) In this section—

***prescribed event*** means an event that is a prescribed event under Part 3B Division 2;

***prescribed place*** means a place that is a prescribed place under Part 3B Division 2.

## 83GZE—Criminal associations

(1) A person to whom this section applies who associates, on not less than 6 occasions during a period of 12 months, with another person to whom this section applies is guilty of an offence.

Maximum penalty: imprisonment for 2 years.

(2) This section applies in relation to the following persons:

(a) a person who is a participant in a street gang;

(b) a person subject to a street gang control order;

(c) a person who is a participant (within the meaning of Part 3B Division 2) in a criminal organisation;

(d) a member (within the meaning of the *Serious and Organised Crime (Control) Act 2008*) of a declared organisation;

(e) a person subject to a control order under the *Serious and Organised Crime (Control) Act 2008*.

(3) A person does not commit an offence against subsection (1) unless, on each occasion on which it is alleged that the person associated with another, the person knew that the other person was a person of a kind referred to in subsection (2) or was reckless as to that fact.

(4) A person may be guilty of an offence against subsection (1) in respect of associations with the same person or with different people.

(5) The following forms of associations will be disregarded for the purposes of this section unless the prosecution proves that the association was not reasonable in the circumstances:

(a) associations between close family members;

(b) associations occurring in the course of a lawful occupation, business or profession;

(c) associations occurring at a course of training or education of a prescribed kind between persons enrolled in the course;

(d) associations occurring at a rehabilitation, counselling or therapy session of a prescribed kind;

(e) associations occurring in lawful custody or in the course of complying with a court order;

(f) associations of a prescribed kind.

(6) For the avoidance of doubt, in proceedings for an offence against this section, it is not necessary for the prosecution to prove that the defendant associated with another person for any particular purpose or that the association would have led to the commission of any offence.

(7) If a police officer has reasonable cause to suspect that 2 people are or have been associating with each other and that at least 1 of those people is a person of a kind referred to in subsection (2), the police officer may require 1 or both of those people to state all or any of their personal details.

(8) In this section—

***criminal organisation*** has the same meaning as in Part 3B Division 2;

***declared organisation*** has the same meaning as in the *Serious and Organised Crime (Control) Act 2008*.

## Division 5—Miscellaneous

### 83GZF—Appeal

The commencement of an appeal under the *Supreme Court Act 1935* against an order made under this Part does not, of itself, affect the operation of the order to which the appeal relates.

### 83GZG—Evidentiary

(1) Subject to this section, in any proceedings under this Part—

(a) transcripts of evidence or documents tendered in evidence, or material otherwise relied on by a court, in proceedings in which a person has been convicted of an offence; and

(b) evidence or documents relating to the factual basis on which a person was convicted and sentenced for an offence,

will be admissible, and the court may draw any conclusions of fact that it considers proper from the evidence, document or other material.

(2) Section 58 of the *Young Offenders Act 1993* applies in relation to proceedings under this Part for the making, variation or revocation of a street gang control order as if they were proceedings for an offence.

(3) Subject to this section, in any proceedings under this Part, an apparently genuine document purporting to be a police record of a person's antecedents (including any records of admissions of guilt on the basis of which a youth was dealt with by a police officer or family conference under the *Young Offenders Act 1993* that are admissible under subsection (2)) or criminal history will be admissible without further proof as evidence of the facts referred to in the document, or to be inferred from the document.

(4) An affidavit of a police officer of or above the rank of superintendent will be admissible in evidence for the purpose of proving that evidence, a document or other material is of a kind referred to in subsection (1) or (3)).

(5) Evidence, a document or other material will not be admitted in evidence under subsection (1) or (3) if the court is of the opinion—

(a) that the person by whom, or at whose direction, the evidence, document or material was prepared can and should be called by the party tendering the evidence, document or material to give evidence of the matters contained in the evidence, document or material; or

(b) that the evidentiary weight of the evidence, document or material is slight and is outweighed by the prejudice that might result to any of the parties from the admission of the evidence, document or material in evidence; or

(c) that it would be otherwise contrary to the interests of justice to admit the evidence, document or material in evidence.

(6) In any proceedings under this Part, an apparently genuine document purporting to be remarks made by a court in—

(a) sentencing a person for an offence; or

(b) giving reasons for upholding or dismissing an appeal—

(i) against a sentence for an offence; or

(ii) against a conviction for an offence where the conviction is upheld,

as to the facts which the court accepts or finds to have been established in the proceedings for the offence will be admissible without further proof, if relevant to an issue in the proceedings, as evidence of those facts.

(7) In determining whether to admit any material in evidence under this section, the court may receive evidence by affidavit of any matter pertaining to the admission of that material.

(8) For the purpose of determining the evidentiary weight, if any, of material admitted in evidence under this section, consideration may be given to the source from which the material was produced, the safeguards (if any) that have been taken to ensure its accuracy, and any other relevant matters.

(9) Nothing in this section limits the material that might be admissible in proceedings under this Part.

## 83GZH—Standard of proof

(1) Any question of fact to be decided by a court in proceedings under this Part is to be decided on the balance of probabilities.

(2) This section does not apply in relation to proceedings for an offence against this Part.

## 83GZI—Evidence in other proceedings

(1) If, in any criminal proceedings, the court is satisfied beyond reasonable doubt that a particular group was, at a particular time, a street gang within the meaning of paragraph (a) of the definition of ***street gang*** in section 83GH(1), the court may, on the application of the Director of Public Prosecutions, make a declaration to that effect.

(2) If a declaration is made in relation to a group under subsection (1), then that group will, for the purposes of any subsequent criminal proceedings, be taken to be a street gang (within the meaning of paragraph (a) of the definition of ***street gang*** in section 83GH(1)) in the absence of proof to the contrary.

## 83GZJ—Service

(1) If a police officer has reasonable cause to suspect that a person is someone on whom an application, order or other document is required to be served by personal service under this Part, the officer may—

(a) require the person to state all or any of the person's personal details; and

(b) require the person to remain at a particular place for—

(i) so long as may be necessary for the order to be served on the person; or

(ii) 2 hours,

whichever is the lesser; and

(c) if the person refuses or fails to comply with a requirement under a preceding paragraph, or the officer has reasonable cause to suspect that the requirement will not be complied with, arrest and detain the person in custody (without warrant) for the period referred to in paragraph (b).

(2) If a person has been required to remain at a particular place in accordance with subsection (1)(b), personal service of a photocopy, faxed copy or printed electronic copy of the application, order or other document will be taken to be personal service of the application, order or other document on the person.

(3) If the person serving an application, order or other document which is required, under this Part, to be served on a person by personal service—

(a) has reasonable cause to believe that the person is present at any premises; but

(b) is unable to gain access to the person at the premises for the purpose of effecting personal service,

the application, order or other document may be served on the person by—

(c) leaving it for the person at the premises with someone apparently over the age of 16 years; or

(d) if the person serving the order is unable to gain access to such a person at the premises—affixing it to the premises at a prominent place at or near to the entrance to the premises.

(4) A court dealing with any proceedings under this Part may make such orders as to service of an application, order or other document relating to the proceedings as it thinks fit.

## 83GZK—Representation of unincorporated group

(1) A group that is an unincorporated group may, in proceedings under this Part, be represented in the proceedings by a person who satisfies the court dealing with the proceedings that they are an appropriate representative of the group or a part of the group.

(2) A person referred to in subsection (1) may be represented by legal counsel in the proceedings.

## 83GZL—Costs

(1) Each party to proceedings on an application under this Part must bear the party's own costs for the proceedings.

(2) However, the Court may award costs against a party who has—

(a) made an application the court considers frivolous or vexatious; or

(b) by an unreasonable act or omission, caused another party to incur costs in connection with the proceedings.

(3) If proceedings are delayed through the neglect or incompetence of a representative, the Court may, at the conclusion of those proceedings—

(a) disallow the whole or part of the costs as between the representative and his or her client (and, where appropriate, order the representative to repay costs already paid); or

(b) order the representative to indemnify his or her client or any other party to the proceedings for costs resulting from the delay; or

(c) order the representative to pay to the registrar of the Court for the credit of the Consolidated Account an amount fixed by the Court as compensation for time wasted.

(4) This section does not apply in relation to proceedings for an offence against this Part.

## 83GZM—Presumption as to participation

For the purposes of any proceedings under this Part, a person is presumed, in the absence of proof to the contrary, to be a participant in a street gang at a particular time if the person is, at that time, displaying (whether on an article of clothing, as a tattoo or otherwise) a logo, sign, identifier, mark or symbol that identifies and is distinctive to the group.

**Note—**

It is intended that a flag referred to in or appointed under the *Flags Act 1953* of the Commonwealth, the national flag of another country or the flag of a State or Territory of the Commonwealth, is not to be distinctive to a street gang or other group for the purposes of this section unless it is displayed with modification, or in a particular manner or context, so as to be distinctive to the group.

## 83GZN—Criminal intelligence

(1) In any proceedings under this Part before a court, the court—

(a) must, on the application of the Commissioner, take steps to maintain the confidentiality of information properly classified by the Commissioner as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and

(b) may take evidence consisting of or relating to information so classified by the Commissioner by way of affidavit of a police officer of or above the rank of superintendent.

(2) The duties imposed on a court by subsection (1) in relation to proceedings under this Part apply to any court dealing (whether on an appeal under this, or another, Act or otherwise) with information properly classified under this Part as criminal intelligence or with the question of whether information has been properly classified under this Part by the Commissioner as criminal intelligence.

## 83GZO—Use of evidence or information for purposes of Act

(1) Despite any other Act or law, evidence or information obtained by the lawful exercise of powers under an Act or law (whether before or after the commencement of this section) and evidence or information obtained incidentally to such an exercise of powers—

(a) may be used by law enforcement and prosecution authorities for the purposes of this Part; and

(b) is not inadmissible in proceedings under this Part merely because the evidence or information was not obtained for the purposes of this Part.

(2) Despite any other Act or law, information (whether obtained before or after the commencement of this section) properly classified by the Commissioner as criminal intelligence—

(a) may be used by law enforcement and prosecution authorities for the purposes of this Part; and

(b) may be admitted in evidence or otherwise used in proceedings under this Part.

(3) No civil or criminal liability lies against a person in respect of any use of evidence or information permitted by this section.

## 83GZP—Delegation

The Commissioner—

(a) may not delegate the function of classifying information as criminal intelligence for the purposes of this Part except to a Deputy Commissioner or Assistant Commissioner of Police; and

(b) may not delegate any other function or power of the Commissioner under this Part except to a senior police officer.

# Part 3C—Protection for working animals

## 83H—Interpretation

(1) In this Part—

***accredited assistance dog*** means—

(a) a dog accredited as an assistance dog under section 21 of the *Dog and Cat Management Act 1995*; or

(b) a dog accredited as an assistance dog (however described) under a law of a State or Territory that provides for the accreditation of animals trained to assist a person with a disability to alleviate the effect of the disability;

***correctional services dog*** has the same meaning as in the *Correctional Services Act 1982*;

***harm*** means physical harm (whether temporary or permanent) but does not include mental harm;

***police dog*** means a dog (including a drug detection dog within the meaning of the *Controlled Substances Act 1984*) that—

(a) has completed training of a kind approved by the Commissioner of Police; and

(b) is used by, or to assist, police officers in the performance of their official duties and functions;

***police horse*** means a horse that—

(a) has completed training of a kind approved by the Commissioner of Police; and

(b) is used by, or to assist, police officers in the performance of their official duties and functions;

***serious harm***, in relation to a working animal, means—

(a) harm that endangers the animal's life; or

(b) harm that results in the animal being so severely injured, so diseased or in such physical condition that it would be cruel not to destroy the animal; or

(c) harm that consists of, or results in, serious and protracted impairment of a physical or mental function of the animal; or

(d) harm that results in the animal being unable to satisfactorily perform its working function;

***working animal*** means—

(a) a police dog; or

(b) a police horse; or

(c) a correctional services dog; or

(d) an accredited assistance dog;

***working function***, of a working animal, means the function or functions for which the animal has been trained and is ordinarily used (whether or not the working animal also performs other functions).

(2) Without limiting section 370, regulations made for the purposes of this Part may—

(a) make provision for or relating to facilitation of proof of the commission of offences against the Part;

(b) be of general application or vary in their application according to prescribed factors;

(c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or a specified person or body.

## 83I—Causing death or serious harm etc to working animals

(1) A person who, by an intentional act, causes the death of, or serious harm to, a working animal is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

(2) Subsection (1) does not apply to the death of a working animal, or the causing of serious harm to a working animal, that occurs in the following circumstances:

(a) where the death or serious harm is caused in the course of the provision of veterinary treatment to the working animal;

(b) where the death or serious harm is caused by, or with the consent of, the owner of the working animal or a person assisting the owner;

(c) where the death or serious harm occurs in the course of training the animal to perform its working function;

(d) where the death occurs under section 34B of the *Animal Welfare Act 1985*;

(e) where the death or serious harm occurs pursuant to an order under section 50 of the *Dog and Cat Management Act 1995*;

(f) where the death occurs under section 63 of the *Dog and Cat Management Act 1995*;

(g) any other circumstances prescribed by the regulations.

(3) In proceedings for an offence against subsection (1), it is a defence for the defendant to prove that he or she did not know, and could not reasonably have been expected to have known, that an animal the subject of the charge was a working animal.

(4) In proceedings for an offence against subsection (1), a defence that would, but for this subsection, be available to the defendant under Part 3 Division 2 will be taken not to be available to a defendant if—

(a) the working animal the subject of the charge is a police dog, police horse or a correctional services dog; and

(b) the death or serious harm occurs in the course of, or is related to—

(i) the commission of an offence by the defendant or a person in the company of the defendant; or

(ii) the defendant taking steps to avoid being taken into, or escape from, lawful custody; or

(iii) the defendant resisting another who is exercising a power in the course of his or her official duties or functions.

(5) In proceedings for an offence against subsection (1), the prosecution need not prove that the defendant knew that his or her act would cause death or serious harm to the working animal, or to a particular working animal.

(6) This section is in addition to, and does not derogate from, the *Animal Welfare Act 1985*.

## 83J—Court may order compensation and other costs

(1) A court may, on application by the prosecutor or on the court's own initiative, make an order requiring a person found guilty of an offence against section 83I to pay 1 or more of the following amounts:

(a) an amount by way of compensation for veterinary and other expenses reasonably incurred in treating the working animal to which the offence relates;

(b) an amount for reasonable rehabilitation or retraining of the working animal to which the offence relates, having regard to the primary function of the working animal;

(c) if the working animal to which the offence relates is permanently unable to perform its primary function as a result of the offence—an amount equal to the actual or expected costs of replacing the working animal with one of similar abilities and training;

(d) if the working animal to which the offence relates is permanently unable to perform its primary function as a result of the offence—an amount equal to the actual or expected costs of retiring the working animal (including, but not limited to, the costs of relocating and rehousing the animal, and retraining the animal to ensure it is adapted to life other than as a working animal);

(e) any other amount the court thinks appropriate in the circumstances.

(2) A court must, if it does not make an order under this section, give its reasons for not doing so.

(3) Compensation under this section will be of such amount as the court considers appropriate having regard to any evidence before the court and to any representations made by or on behalf of the prosecutor or the person against whom the order is made.

(4) Compensation may be ordered under this section in relation to an offence despite the fact that compensation may be ordered under some other statutory provision that relates more specifically to the offence or proceedings in respect of the offence.

(5) The amount paid to a person pursuant to an order under this section must be taken into consideration by a court or any other body in awarding compensation for the relevant loss or damage under any other Act or law.

## 83K—Enforcement of order for compensation etc

An order under section 83J—

(a) will, for the purposes of the *Sentencing Act 2017*, be taken to be a pecuniary sum (within the meaning of that Act); and

(b) may be enforced as if it were a compensation order made under section 124 of that Act.

## 83L—Evidentiary

(1) In any proceedings for an offence against this Part, an apparently genuine document purporting to be signed by the Commissioner of Police and to certify that an animal specified in the certificate had completed the training specified in the certificate will, in the absence of proof to the contrary, be proof of the matters so certified.

(2) In any proceedings for an offence against this Part, an apparently genuine document purporting to be signed by the Dog and Cat Management Board and to certify that a dog specified in the certificate was accredited as an assistance dog under the *Dog and Cat Management Act 1995* will, in the absence of proof to the contrary, be proof of the matters so certified.

(3) In any proceedings for an offence against this Part, an apparently genuine document purporting to be signed by a person or body that accredits animals as contemplated by section 9(2) of the *Disability Discrimination Act 1992* of the Commonwealth and to certify that an animal specified in the certificate was the subject of a specified accreditation will, in the absence of proof to the contrary, be proof of the matters so certified.

# Part 3D—Explosives offences

## 83M—Interpretation

(1) In this Part—

***explosive device*** means (subject to subsection (2)(a)) any apparatus, machine, implement or materials used or apparently intended to be used or adapted for causing or aiding in causing any explosion in, or with, any explosive substance (and includes any part of any such apparatus, machine or implement);

***explosive substance*** means (subject to subsection (2)(b))—

(a) any substance used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect; and

(b) a substance, or substance of a kind, prescribed by the regulations;

***public place*** has the same meaning as in the *Summary Offences Act 1953*.

(2) The Attorney-General may, by notice in the Gazette—

(a) declare that—

(i) any specified apparatus, machine, implement or materials or kind of apparatus, machine, implement or materials; or

(ii) any apparatus, machine, implement or materials used, possessed, supplied or manufactured in specified circumstances,

is exempted from the definition of ***explosive device*** in subsection (1) (and may, by subsequent notice in the Gazette, vary or revoke any such declaration); or

(b) declare that—

(i) a specified substance or kind of substance; or

(ii) a substance used, possessed, supplied or manufactured in specified circumstances,

is exempted from the definition of ***explosive substance*** in subsection (1) (and may, by subsequent notice in the Gazette, vary or revoke any such declaration).

## 83N—Explosive devices

(1) A person who uses an explosive device without lawful excuse is guilty of an offence.

Maximum penalty: Imprisonment for 20 years.

(2) A person who has possession of an explosive device in a public place without lawful excuse is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

(3) A person who has possession of, supplies or takes a step in the process of manufacture of an explosive device without lawful excuse is guilty of an offence.

Maximum penalty: Imprisonment for 7 years.

(4) For the purposes of subsection (3)—

(a) ***a step in the process of manufacture*** of an explosive device includes, without limitation, any of the following when done for the purpose of manufacture of the device:

(i) acquiring equipment, substances or materials;

(ii) storing equipment, substances or materials;

(iii) carrying, transporting, loading or unloading equipment, substances or materials;

(iv) guarding or concealing equipment, substances or materials;

(v) providing or arranging finance (including finance for the acquisition of equipment, substances or materials);

(vi) providing or allowing the use of premises or jointly occupying premises; and

(b) ***supply*** includes offer to supply.

## 83O—Explosive substances, prescribed equipment or instructions

(1) A person who, in suspicious circumstances and without lawful excuse, uses, has possession of or supplies—

(a) an explosive substance; or

(b) equipment of a kind prescribed by the regulations; or

(c) instructions on how to make an explosive device,

is guilty of an offence.

Maximum penalty: Imprisonment for 7 years.

(2) A person will be taken to use, have possession of or supply a thing in ***suspicious circumstances*** for the purposes of this section if the person uses, has possession of or supplies the thing in circumstances that give rise to a reasonable suspicion that the person is intending to cause harm to another person or to cause damage to property (or to assist another person to cause such harm or damage).

## 83P—Bomb hoaxes

(1) A person who—

(a) places an article or substance in any place; or

(b) sends an article or substance by any means of transportation,

with the intention of inducing in another person a false belief that the article or substance is likely to explode or ignite or discharge a dangerous or deleterious matter is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

(2) A person who, whether within or outside South Australia, makes a statement or conveys information to another person, knowing or believing the statement or information to be false, with the intention of inducing in that other person, or any other person, a belief that an article or substance that is liable to explode, ignite or discharge dangerous or harmful matter is present in a place in South Australia is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

(3) For a defendant to be guilty of an offence against subsection (1) or (2) it is not necessary for the defendant to have any particular person in mind as the person in whom the defendant intends to induce the belief referred to in that subsection.

# 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 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 life.

(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) —

(i) the bushfire is caused in the course of carrying out a fire prevention, fire suppression or other land management activity; and

(ii) at the time the activity was carried out—

(A) there was in force a provision made by or under an Act or by a code of practice approved under an Act, that regulated or otherwise applied to the carrying out of the activity and the person in carrying out that activity acted in accordance with the provision; and

(B) the person believed that their conduct in carrying out the activity was justified having regard to all of the circumstances.

(4) A court that finds a defendant guilty of an offence against this section must make an order under section 124 of the *Sentencing Act 2017* requiring the defendant to pay compensation for injury, loss or damage resulting from the offence unless—

(a) the defendant is aged under 16 years of age; or

(b) the court is satisfied that the defendant has no means of paying compensation; or

(c) the court is otherwise satisfied that special circumstances exist.

## 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 *Young Offenders Act 1993* where the Youth 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; and

knows 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 5A—Dishonest communication with children

### 139A—Dishonest communication with children

(1) A person of or over the age of 18 years who—

(a) knowingly communicates with a person under the age of 17 years or a person they believe is under the age of 17 years (the ***victim***); and

(b) makes a false representation in such communication that—

(i) the person is younger than they are; or

(ii) the person is someone other than who they are; and

(c) meets or arranges to meet with the victim,

is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

(2) A person of or over the age of 18 years who—

(a) knowingly communicates with a person under the age of 17 years or a person they believe is under the age of 17 years (the ***victim***); and

(b) makes a false representation in such communication that—

(i) the person is younger than they are; or

(ii) the person is someone other than who they are,

with intent to commit an offence against the victim is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

(3) For the purposes of this section, it does not matter that the victim is a fictitious person represented to the defendant as a real person.

## 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[1];

(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[2].

(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[1].

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—

***close relative***—a person is a close relative of another if—

(a) they are spouses or domestic partners; or

(b) one is (whether by blood or marriage) a grandparent, grandchild, parent, child, brother or sister of the other;

***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 or other contact details, 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) each of the following:

(A) the person's credit or debit card (whether in physical or digital form);

(B) the number and card verification code on such a card;

(C) any data stored or encrypted on such a card;

(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 (including, to avoid doubt, a personal identification number (PIN) or other password or passcode);

(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;

***public identification information*** means a person's name, address or other contact details, date or place of birth, marital status and relatives;

***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 criminal offence is guilty of an offence and liable to the penalty appropriate to an attempt to commit the 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 criminal offence, is guilty of an offence and liable to the penalty appropriate to an attempt to commit the 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 5 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 5 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 5 years.

## 144DA—Possession of personal identification information

(1) A person who, without reasonable excuse, has possession of personal identification information of another person (the ***victim***) is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

(2) Subsection (1) does not apply if—

(a) the victim is a body corporate; or

(b) the personal identification information consists only of public identification information.

(3) If, in proceedings for an offence against subsection (1), the defendant establishes that—

(a) in the ordinary course of a lawful occupation or activity undertaken by the defendant, the defendant has possession of personal information of other people generally or of a class of people to which the victim belongs; or

(b) the defendant and the victim are close relatives; or

(c) the defendant holds a power of attorney for the victim or is appointed under the *Guardianship and Administration Act 1993* as a guardian or administrator in relation to the victim; or

(d) the personal identification information only related to 1 person and was readily publicly available,

then, despite section 5B, the prosecution will be required to prove that the defendant had possession of the relevant material without reasonable excuse.

## 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 or service 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 5B—Cheating at gambling

## 144G—Interpretation

(1) In this Part—

***agreement*** includes an arrangement;

***bet*** includes—

(a) place, accept or withdraw a bet;

(b) cause a bet to be placed, accepted or withdrawn;

***conduct*** means an act or omission to perform an act;

***encourage*** includes command, request, propose, advise, incite, induce, persuade, authorise, urge, pressure or threaten;

***engage in conduct*** means—

(a) do an act; or

(b) omit to do an act;

***event*** means an event (whether it takes place in this State or elsewhere) on which it is lawful to bet under a law of this State, another State, a Territory, or the Commonwealth;

***event contingency*** means a contingency connected to an event, being a contingency on which it is lawful to bet under a law of this State, another State, a Territory, or the Commonwealth.

(2) In this Part, a reference to betting on an event includes a reference to betting on an event contingency.

(3) For the purposes of this Part, conduct will be taken to be conduct that corrupts a betting outcome if the conduct—

(a) affects or, if engaged in, would or would be likely to affect the outcome of any type of betting on the event; and

(b) is contrary to the standards of integrity that a reasonable person would expect of persons in a position to affect the outcome of any type of betting on an event.

(4) For the purposes of this Part, an agreement in respect of conduct that corrupts a betting outcome of an event is an agreement between 2 or more persons under which 1 or more persons agree to engage in conduct that corrupts a betting outcome of an event.

(5) For the purposes of this Part, obtaining a financial advantage includes—

(a) obtaining a financial advantage for oneself or for another person;

(b) inducing a third person to do something that results in obtaining a financial advantage for oneself or for another person;

(c) retaining a financial advantage that one has,

whether the financial advantage is permanent or temporary.

(6) For the purposes of this Part, causing a financial disadvantage includes—

(a) causing a financial disadvantage to another person;

(b) inducing a third person to do something that results in another person suffering a financial disadvantage,

whether the financial disadvantage is permanent or temporary.

(7) In proceedings for an offence against this Part, the defendant will be taken to have intended to obtain a financial advantage, or cause a financial disadvantage, if, and only if, it is proved that the defendant—

(a) intended to obtain a financial advantage or to cause a financial disadvantage in connection with betting on an event; or

(b) was aware that another person intended to obtain a financial advantage or to cause a financial disadvantage, in connection with betting on an event, as a result of the conduct the subject of the charge.

(8) In proceedings under this Part, it is not necessary to prove that a financial advantage was actually obtained or a financial disadvantage was actually caused.

(9) In this section, the ***conduct the subject of the charge*** means—

(a) in the case of an offence against section 144H—the conduct that the defendant engaged in; or

(b) in the case of an offence against section 144I(1)—the conduct the defendant offered to engage in; or

(c) in the case of an offence against section 144I(2)—the conduct the defendant encouraged another person to engage in; or

(d) in the case of an offence against section 144I(3)—the conduct the subject of the agreement; or

(e) in the case of an offence against section 144J—the conduct, or the conduct the subject of the agreement, that the defendant encouraged another person to conceal.

## 144H—Engaging in conduct that corrupts betting outcome of event

A person who engages in conduct that corrupts a betting outcome of an event—

(a) knowing that, or being reckless as to whether, the conduct corrupts a betting outcome of the event; and

(b) intending to obtain a financial advantage, or cause a financial disadvantage, in connection with any betting on the event,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

## 144I—Facilitating conduct that corrupts betting outcome of event

(1) A person who offers to engage in conduct that corrupts a betting outcome of an event—

(a) knowing that, or being reckless as to whether, the conduct corrupts a betting outcome of the event; and

(b) intending to obtain a financial advantage, or cause a financial disadvantage, in connection with any betting on the event,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

(2) A person who encourages another person to engage in conduct that corrupts a betting outcome of an event—

(a) knowing that, or being reckless as to whether, the conduct corrupts a betting outcome of the event; and

(b) intending to obtain a financial advantage, or cause a financial disadvantage, in connection with any betting on the event,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

(3) A person who enters into an agreement in respect of conduct that corrupts a betting outcome of an event—

(a) knowing that, or being reckless as to whether, the conduct the subject of the agreement corrupts a betting outcome of the event; and

(b) intending to obtain a financial advantage, or cause a financial disadvantage, in connection with any betting on the event,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

## 144J—Concealing conduct or agreement

(1) A person who encourages another person to conceal from a relevant authority conduct that corrupts a betting outcome of an event—

(a) knowing that, or being reckless as to whether, the conduct corrupts a betting outcome of the event; and

(b) intending to obtain a financial advantage, or cause a financial disadvantage, in connection with any betting on the event,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

(2) A person who encourages another person to conceal from a relevant authority an agreement in respect of conduct that corrupts a betting outcome of an event—

(a) knowing that, or being reckless as to whether, that conduct corrupts a betting outcome of the event; and

(b) intending to obtain a financial advantage, or cause a financial disadvantage, in connection with any betting on the event,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

(3) In this section—

***relevant authority*** means—

(a) a police officer or law enforcement authority; or

(b) a body that has the official function of controlling, regulating or supervising an event or betting on an event; or

(c) any other authority of a kind prescribed by regulation.

## 144K—Use of corrupt conduct information or inside information for betting purposes

(1) A person who possesses information in connection with an event that is corrupt conduct information, and who knows or is reckless as to whether the information is corrupt conduct information, is guilty of an offence if the person—

(a) bets on the event; or

(b) encourages another person to bet on the event in a particular way; or

(c) communicates the information to another person who the first person knows or ought reasonably to know would or would be likely to bet on the event,

and the corrupt conduct information is relevant to the bet.

Maximum penalty: Imprisonment for 10 years.

(2) A person who possesses information in connection with an event that is inside information, and who knows or is reckless as to whether the information is inside information, is guilty of an offence if the person—

(a) bets on the event; or

(b) encourages another person to bet on the event in a particular way; or

(c) communicates the information to another person who the first person knows or ought reasonably to know would or would be likely to bet on the event,

and the inside information is relevant to the bet.

Maximum penalty: Imprisonment for 2 years.

(3) For the purposes of this section—

(a) information in connection with an event is ***corrupt conduct information*** if the information is about conduct, or proposed conduct, that corrupts a betting outcome of the event; and

(b) information in connection with an event will be taken to be ***inside information*** if the information—

(i) is not generally available; and

(ii) if it were generally available, would, or would be likely to, influence persons who commonly bet on the event in deciding whether or not to bet on the event or make any other betting decision; and

(c) information will be taken to be ***generally available*** if—

(i) it consists of matter that is readily observable by the public; or

(ii) it has been made known in a manner that would, or would be likely to, bring it to the attention of the public; or

(iii) it consists of deductions, conclusions or inferences made or drawn from information referred to in subparagraph (i) or (ii).

(4) In proceedings for an offence against subsection (1)(b) or (c) or subsection (2)(b) or (c), it is not necessary to prove that the person encouraged to bet, or to whom the information was communicated, actually bet on the event concerned.

(5) A reference in this section to communicating information includes a reference to causing information to be communicated.

(6) If, on the trial of a person for an offence under subsection (1), the jury is not satisfied that the defendant is guilty of the offence charged, but is satisfied that the defendant is guilty of an offence under subsection (2), it may find the defendant not guilty of the offence charged but guilty of an offence under subsection (2), and the defendant is liable to punishment accordingly.

# 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; or

(g) a planning assessment panel;

***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—Sacrilege

A person who—

(a) breaks and enters a place of divine worship and commits an offence to which this section applies[1] in that place; or

(b) breaks out of a place of divine worship after committing an offence to which this section applies[1] 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[1].

(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;[1] 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:

(a) for a basic offence—imprisonment for 15 years;

(b) for an aggravated offence—imprisonment for 20 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 6D—Offences relating to human remains

## 175—Interpretation

In this Part—

***cremated*** means the reduction of the whole or any part of a human body involving the use of fire or heat, whether authorised under the *Burial and Cremation Act 2013* or otherwise;

***human remains*** means the whole or any part of a human body (whatever its physical state may be) and includes the whole or any part of a human body that has been cremated;

***interred***, in relation to human remains, means—

(a) the placement of human remains in a mausoleum, vault, columbarium or other structure designed for the placement of such remains; or

(b) the burial in the earth of human remains (directly in the earth or in a container).

## 176—Application of Part

(1) This Part does not apply to, or in relation to, an act or omission relating to human remains that is required or authorised by or under this Act or any other Act or law.

(2) This Part is in addition to, and does not derogate from, the *Burial and Cremation Act 2013*, the *Coroners Act 2003* or any other Act or law relating to human remains.

(3) This Part applies to human remains whether or not the human remains are interred.

## 177—Offence to destroy etc human remains to pervert course of justice

(1) A person who knowingly—

(a) destroys, removes, conceals or alters human remains; or

(b) performs any other act or omission intended or likely to result in human remains being less likely to be found (whether by a police officer or otherwise),

for the purposes of—

(c) concealing the commission of an offence relating to the human remains; or

(d) concealing or destroying evidence consisting of the human remains; or

(e) impeding an investigation of an offence relating to the human remains; or

(f) influencing a decision by a person whether or not to charge a person with an offence relating to the human remains; or

(g) influencing the outcome of legal proceedings relating to the human remains (whether the proceedings are in progress or proceedings that are to be or may be instituted at a later time),

is guilty of an offence.

Maximum penalty: Imprisonment for 15 years.

(2) Despite section 26 or any other provision of the *Sentencing Act 2017*, a court sentencing a person for an offence against this section where the person is also found guilty of causing the death of the decedent must direct that the sentence be cumulative on any sentence of imprisonment or detention in a training centre being served, or to be served, by the defendant (other than a sentence of life imprisonment) in relation to that causing of death.

(3) In proceedings for an offence against this section, it is not necessary for the prosecution to prove that the defendant was aware of the identity of the person who allegedly committed the relevant offence.

(4) A person may be found guilty of an offence against this section whether or not a person has been found guilty of the murder of, or otherwise causing the death of, the decedent.

(5) A person 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.

## 178—Offence to defile etc human remains

A person who—

(a) knowingly destroys, removes, conceals or alters human remains; or

(b) knowingly mutilates or defiles human remains; or

(c) removes any organ or body part from human remains; or

(d) engages in sexual activity with human remains,

is guilty of an offence.

Maximum penalty: Imprisonment for 15 years.

## 179—Offence to fail to report find of or conceal human remains

(1) A person who finds human remains, or a thing that the person reasonably suspects may be human remains, must, as soon as is reasonably practicable after the discovery—

(a) report that fact to a police officer; and

(b) inform the police officer of the location of the remains.

Maximum penalty: Imprisonment for 5 years.

(2) However, a person need not make a report under subsection (1)—

(a) if the person believes on reasonable grounds that another person has reported the existence and location of the human remains or thing to a police officer, or that SA Police were otherwise aware of the existence and location of the remains or thing; or

(b) if the State Coroner or a police officer has been notified of the relevant death in accordance with the *Coroners Act 2003*; or

(c) if the person believes on reasonable grounds that the human remains are Aboriginal remains (within the meaning of the *Aboriginal Heritage Act 1988*) and the discovery of the human remains has been reported in accordance with that Act; or

(d) in any other circumstances prescribed by the regulations for the purposes of this subsection.

(3) A police officer must, on being notified of the finding of human remains under subsection (1), immediately notify the State Coroner of that fact and of any information relating to the matter of which the police officer is aware.

(4) A person who, having found human remains, or a thing that the person reasonably suspects may be human remains, conceals the human remains or thing is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

## 180—Alternative verdicts

If—

(a) a jury is not satisfied beyond reasonable doubt that a charge of an offence against section 177 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 offence against section 178 or 179; and

(c) the jury is satisfied beyond reasonable doubt that the specified offence against section 178 or 179 has been established,

the jury may return a verdict that the defendant is not guilty of the offence charged but is guilty of the specified offence against section 178 or 179.

# 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*** means a public officer specified in Schedule 1 of the *Independent Commission Against Corruption Act 2012* (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 2A—Offences relating to providing false or misleading information to a court

### 241A—False or misleading information entered into electronic court management system

(1) A person who enters information into an ECMS knowing that the information is false or misleading is guilty of an offence.

Maximum penalty: $10 000.

(2) A person who provides information to another person knowing that the information—

(a) is false or misleading; and

(b) will be, or is likely to be, provided to a court (whether by use of an ECMS or otherwise),

is guilty of an offence.

Maximum penalty: $10 000.

(3) In this section—

***court*** includes a body prescribed by the regulations;

***ECMS*** means an electronic court management system prescribed by the regulations;

***enters information into an ECMS*** includes—

(a) uploads information or documents; or

(b) takes any other action prescribed by the regulations;

***information*** means information, or information of a kind, prescribed by the regulations.

# 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.

Maximum 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.

Maximum 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.

Maximum 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.

Maximum penalty: Imprisonment for 10 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.

Maximum penalty: Imprisonment for 10 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.

Maximum penalty: Imprisonment for 10 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.

Maximum penalty: Imprisonment for 10 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.

Maximum penalty: Imprisonment for 10 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.

Maximum penalty: Imprisonment for 10 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.

Maximum penalty: Imprisonment for 10 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.

Maximum penalty:

(a) if the person acted with the intention of influencing the outcome of the proceedings—imprisonment for 10 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.

Maximum 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.

Maximum 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.

Maximum 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

(ba) to the Independent Commission Against Corruption under the *Independent Commission Against Corruption Act 2012*; 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

(ba) by the Independent Commission Against Corruption under the *Independent Commission Against Corruption Act 2012*; 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.

Maximum 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.

Maximum penalty: Imprisonment for 10 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.

Maximum penalty: Imprisonment for 10 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 a law enforcement body with its 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.

Maximum penalty: Imprisonment for 10 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.

Maximum penalty: Imprisonment for 10 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.

Maximum penalty: Imprisonment for 10 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.

Maximum penalty: Imprisonment for 10 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.

Maximum penalty:

(a) for a basic offence—imprisonment for 7 years;

(b) for an aggravated offence—imprisonment for 10 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.

Maximum penalty:

(a) for a basic offence—imprisonment for 7 years;

(b) for an aggravated offence—imprisonment for 10 years.

(3) This section does not apply in relation to the use of information by a member of Parliament in the course of, or for the purposes of, the proper exercise of the functions of a member of Parliament (which include, without limitation, receiving information from constituents and making enquiries on behalf of constituents).

## 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.

Maximum 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.

Maximum 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.

Maximum 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.

Maximum 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.

Maximum 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.

Maximum 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.

Maximum 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.

Maximum 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 7C—Derivative liability for certain offences

## 267AA—Offence where unlawfully supplied firearm used in subsequent offence

(1) A person (the ***accused***) commits an offence against this section if—

(a) he or she is found guilty of a prescribed firearm offence in which he or she supplied a firearm to another person; and

(b) that firearm is used in the commission of—

(i) an offence against this Act; or

(ii) an offence under the law of another jurisdiction consisting of conduct that would, if engaged in this State, be an offence against this Act,

(the ***subsequent offence***); and

(c) a person (the ***subsequent offender***) has been found guilty of the subsequent offence.

Maximum penalty: Imprisonment for a term not exceeding the maximum term that may be imposed for the subsequent offence.

(2) For the purposes of subsection (1)—

(a) the subsequent offence may be committed before or after the accused is found guilty of the prescribed firearm offence; and

(b) the subsequent offender need not be the person to whom the accused supplied the firearm in respect of the prescribed firearm offence.

(3) For the purposes of subsection (1)(c), a reference to a person being found guilty of a subsequent offence will be taken to include a reference to a finding of a court under Part 8A that the objective elements of the offence are established (whether or not the person was found not criminally responsible due to mental incompetence, or was found to be mentally unfit to stand trial, pursuant to Division 2 or 3 of that Part).

(4) At the trial of an accused for an offence against this section, the prosecution need not prove the accused knew or suspected, or ought to have known or suspected, that—

(a) the firearm referred to in subsection (1)(a) would be, or was, used in the commission of an offence against this Act; or

(b) the subsequent offender would commit, or be found guilty of, an offence against this Act.

(5) A person may be charged with an offence against this section and the prescribed firearm offence in the same instrument of charge.

(6) In this section—

***prescribed firearm offence*** means an offence against section 10C(10) or 14(1)(b) of the *Firearms Act 1977* or section 22(2)(a) or 45(9) of the *Firearms Act 2015*.

# Part 7D—Recruiting etc children to engage in certain criminal activities

## 267AB—Recruiting etc child for criminal activity

(1) A prescribed adult who takes any step to require, recruit or encourage a child—

(a) to commit a major indictable offence; or

(b) to engage in conduct that would, if undertaken by the prescribed adult, constitute a major indictable offence; or

(c) to engage in conduct that would, if undertaken by the prescribed adult, constitute aiding, abetting, counselling or procuring the commission of a major indictable offence,

is guilty of an offence.

Maximum penalty:

(a) in the case where the relevant major indictable offence has a maximum penalty of imprisonment for more than 15 years—that maximum penalty; or

(b) in the case where the relevant major indictable offence has a maximum penalty of imprisonment for not more than 15 years—imprisonment for 15 years.

(2) A prescribed adult may be found guilty of an offence against this section—

(a) whether or not the child does, in fact, engage in conduct, or agrees to engage in conduct, that would constitute the relevant major indictable offence; or

(b) whether or not the child has been charged with, or found guilty of, the relevant major indictable offence; or

(c) whether the relevant major indictable offence is, or is to be, committed within or outside this State.

(3) In this section—

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

***criminal organisation*** has the same meaning as in Part 3B Division 2;

***prescribed adult*** means—

(a) a member of a criminal organisation or street gang who is 18 years of age or more; or

(b) a person who is 21 years of age or more;

***street gang*** has the same meaning as in Part 3BA.

# 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;

***intoxication*** means a temporary disorder, abnormality or impairment of the mind that results from the consumption or administration of a drug;

***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;

***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;

***continuing supervision order***—see section 269UB;

***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;

***Division 3A order***—see section 269NB;

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

***intoxication*** means a temporary disorder, abnormality or impairment of the mind that results from the consumption or administration of a drug;

***judge*** includes magistrate;

***limiting term*** for a supervision order—see section 269O;

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

***mental illness*** means a pathological infirmity of the mind (including a temporary one of short duration)[1];

***mental impairment*** includes—

(a) a mental illness; or

(b) an intellectual disability; or

(c) a disability or impairment of the mind resulting from senility;

***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;

***prescribed authority*** means—

(a) the person for the time being performing the duties, or holding or acting in the position, of the Clinical Director, Forensic Mental Health Service South Australia; or

(b) if no such position exists—the person declared by the regulations to be the prescribed authority for the purposes of this Part;

***psychiatrist*** means a person registered under the *Health Practitioner Regulation National Law* as a specialist in psychiatry;

***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 (2a) and (2b);

***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;

***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;

***training centre*** means a training centre established for the detention of youths;

***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;

***youth*** has the same meaning as in the *Young Offenders Act 1993*.

(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.

(2a) Intoxication resulting from the recreational use of a drug is to be regarded as self-induced.

(2b) 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.

(3) In applying a provision of this Part to a youth who is being or has been dealt with as a youth (and not as an adult)—

(a) a reference to custody in a prison is to be read as detention in a training centre; and

(b) a reference to the ***Parole Board*** is to be read as a reference to the ***Training Centre Review Board***.

**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).

## 269AB—Reference to finding of not guilty to include finding of mental incompetence

A reference to a person being found not guilty of an offence in any Act, legislative instrument or other law will, unless the contrary intention appears, be taken to include a reference to a finding of a court under this Part that the objective elements of the offence are established but the person is not criminally responsible due to mental incompetence.

## 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.[1]

**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

(1) 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; that is, the person could not reason about whether the conduct, as perceived by reasonable people, is wrong; or

**Note—**

Paragraph (b) adopts the test as stated and excludes from consideration whether the defendant could reason with a moderate degree of sense and composure as set out in *R v Porter* (1936) 55 CLR 182.

(c) is totally unable to control the conduct.

(2) If, on an investigation under this Division, a person is found to be mentally incompetent to commit an offence and the trial judge is satisfied, on the balance of probabilities, that the mental impairment at the time of the conduct alleged to give rise to the offence was substantially caused by self-induced intoxication (whether the intoxication occurred at the time of the relevant conduct or at any other time before the relevant conduct), the person may not be dealt with under this Part but may (if appropriate) be dealt with under Part 8.

(3) However, despite the fact that the judge is satisfied that the person's mental impairment at the time of the conduct alleged to give rise to the offence was substantially caused by self-induced intoxication, the judge may nevertheless make an order that the person be dealt with under this Part after taking into account—

(a) the time and circumstances of when and how the intoxication caused the mental impairment; and

(b) the interests of justice; and

(c) whether the making of such an order would affect public confidence in the administration of justice.

### 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 committal proceedings for 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 record a finding of conduct proved but not criminally responsible due to mental incompetence, and (subject to Division 3A) declare the defendant to be liable to supervision under Division 4 Subdivision 2; 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, record a finding of conduct proved but not criminally responsible due to mental incompetence, and (subject to Division 3A) declare the defendant to be liable to supervision under Division 4 Subdivision 2;

(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, record a finding of conduct proved but not criminally responsible due to mental incompetence, and (subject to Division 3A) declare the defendant to be liable to supervision under Division 4 Subdivision 2.

## Division 3—Mental unfitness to stand trial

### 269H—Mental unfitness 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 committal proceedings for an indictable offence are conducted is of the opinion that the defendant may be mentally unfit to stand trial, the committal proceedings 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 (subject to Division 3A) declare the defendant to be liable to supervision under Division 4 Subdivision 2; 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 (subject to Division 3A) declare the defendant to be liable to supervision under Division 4 Subdivision 2.

(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 3A—Disposition of persons with mental impairment charged with summary and minor indictable offences

## Subdivision 1—Principle on which court is to act

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

(1) The paramount consideration of the court in determining whether to release a defendant under this Division, or the conditions of a licence, must be to protect the safety of the community (whether as individuals or in general).

(2) The paramount consideration of the safety of the community outweighs the principle that restrictions on the defendant's freedom and personal autonomy should be kept to a minimum.

## Subdivision 2—Making, variation and revocation of Division 3A orders

### 269NB—Division 3A orders

(1) This section applies in respect of a defendant who has been charged with a summary offence or a minor indictable offence in relation to which the court has found—

(a) on an investigation under Division 2—that the objective elements of the offence are established but the defendant is not criminally responsible because the defendant was mentally incompetent to commit the offence; or

(b) on an investigation under Division 3—that the objective elements of the offence are established but the defendant is mentally unfit to stand trial for the offence.

(2) The court may—

(a) dismiss the charge and release the defendant unconditionally; or

(b) declare the defendant to be liable to supervision under Division 4 Subdivision 2; or

(c) make an order (a ***Division 3A order***) releasing the defendant on licence for the period (which must not exceed 5 years) specified by the court in the licence; or

(d) adjourn the proceedings; or

(e) remand the defendant on bail; or

(f) make any other order that the court thinks fit.

(3) If a Division 3A order is made releasing the defendant on licence, the licence is subject to the following conditions:

(a) the conditions imposed by subsection (4);

(b) any other condition decided by the court and specified in the licence.

(4) Subject to this Act, every licence under subsection (2)(c) is subject to the following conditions:

(a) a condition prohibiting the defendant from possessing a firearm or ammunition (both within the meaning of the *Firearms Act 2015*) or any part of a firearm;

(b) a condition requiring the defendant to submit to such tests (including testing without notice) for gunshot residue as may be reasonably required by a person or body specified by the court.

(5) A court may only vary or revoke the conditions imposed by subsection (4) if the defendant satisfies the court, by evidence given on oath, that—

(a) there are cogent reasons to do so; and

(b) the possession of a firearm, ammunition or part of a firearm by the defendant does not represent an undue risk to the safety of the public.

(6) Without limiting the generality of subsection (3)(b), release on licence under a Division 3A order may, for example, be subject to—

(a) a condition that the defendant reside at specified premises; or

(b) a condition that the defendant be under the care of a responsible person (who must be specified in the licence); or

(c) a condition that the defendant undergo assessment or treatment (or both) relating to the defendant's mental condition; or

(d) a condition that the defendant be monitored by use of an electronic device approved under section 4 of the *Correctional Services Act 1982*; or

(e) any other condition that the court thinks fit.

(7) For the purpose of assisting a court to determine proceedings under this Division, the court may require the Crown to 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.

## 269NC—Court may direct defendant to surrender firearm etc

(1) The court by which a defendant is declared to be liable to a Division 3A order may, in relation to the condition imposed by section 269NB(4)(a), direct the defendant to immediately surrender at a police station specified by the court any firearm, ammunition or part of a firearm owned or possessed by the defendant.

(2) No criminal liability attaches to a person to the extent that the person is complying with a direction under this section.

(3) The Commissioner of Police must deal with any surrendered firearm, ammunition or part of a firearm in accordance with the scheme set out in the regulations.

(4) No compensation is payable by the Crown or any other person in respect of the exercise of a function or power under this section.

(5) The regulations may provide for the payment, recovery or waiver of fees in respect of this section.

## 269ND—Variation or revocation of condition of Division 3A order

At any time during the period that a defendant is subject to a Division 3A order, the court may, on the application of the Crown, the defendant, the Parole Board, the Public Advocate or another person with a proper interest in the matter (including a person who has been specified in the licence as a responsible person), vary or revoke the 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.

## 269NDA—Revision of Division 3A orders

(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 Division 3A order was made may, on application by the Crown (which may be made, in a case of urgency, by telephone), review the order.

(2) On an application for a review being made, the court may make an interim order in such terms as the court thinks appropriate in the circumstances, including an order that the person be detained in a specified place for a specified period pending the determination of the review.

(3) 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 do 1 or more of the following:

(a) confirm the present terms of the Division 3A order;

(b) amend the order by varying the conditions of the licence;

(c) revoke the order and declare the defendant to be liable to supervision under Division 4 Subdivision 2;

(d) make any further order or direction that may be appropriate in the circumstances.

## Subdivision 3—Administrative detention for defendant released on licence under this Division

## 269NE—Administrative detention for defendant released on licence under this Division

(1) If a defendant who has been released on licence under a Division 3A order contravenes or is likely to contravene a condition of the licence, the prescribed authority may issue an order (an ***administrative detention order***) that the defendant be detained in a specified place for a specified period (which must not exceed 14 days).

(2) An administrative detention order must—

(a) be directed to the Commissioner of Police and police officers generally; and

(b) be in writing in the form approved by the Minister.

(3) A person in respect of whom an administrative detention order has been issued who is taken into the care and control of a police officer under this Subdivision must be given a copy of the order as soon as practicable.

(4) The progress and circumstances of a person detained under an administrative detention order must be reviewed as soon as reasonably practicable after the person is so detained—

(a) to determine whether an application should be made to the court for a review of the Division 3A order to which the person is subject; and

(b) for any other purpose as the prescribed authority thinks fit in the circumstances.

(5) Despite subsection (1), a person who has been detained under an administrative detention order cannot be detained under another such order unless a period of at least 14 days has elapsed since the expiry of the previous administrative detention order.

## 269NF—Powers of police officers relating to persons in respect of whom an administrative detention order has been issued

(1) This section applies to a person in respect of whom an administrative detention order has been issued under section 269NE.

(2) A police officer may, subject to this section, exercise the following powers in relation to a person to whom this section applies:

(a) the police officer may take the person into the officer's care and control;

(b) the police officer may transport the person from place to place;

(c) the police officer may restrain the person and otherwise use force in relation to the person as reasonably required in the circumstances;

(d) the police officer may enter and remain in a place where the officer reasonably suspects the person may be found;

(e) the police officer may use reasonable force to break into a place when that is reasonably required in order to take the person into the officer's care and control;

(f) the police officer may search the person's clothing or possessions and take possession of anything in the person's possession that the person may use to cause harm to the person's self or others or property.

(3) A police officer who takes the person into the officer's care and control must, as soon as practicable, transport the person, or arrange for the person to be transported by some other police officer, in accordance with the administrative detention order.

(4) The powers conferred by this section continue to be exercisable as reasonably required for the purpose of enabling or facilitating the medical examination or treatment of the person.

(5) A search of a person must be carried out expeditiously and in a manner that avoids, as far as reasonably practicable, causing the person any humiliation or offence.

(6) Anything taken into the possession of a police officer under this section may be held for as long as is necessary for reasons of safety, but must otherwise be returned to the person from whom it was taken or dealt with according to law.

## Subdivision 4—Custody, supervision and care

## 269NG—Custody, supervision and care

(1) If a defendant is committed to detention under this Division, 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.

### Subdivision 5—Effect of supervening imprisonment on Division 3A order

### 269NH—Effect of supervening imprisonment on Division 3A order

(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 Division 3A order is suspended for the period the person is in prison serving the term of imprisonment.

(2) In determining when the term of a Division 3A order comes to an end, the period of a suspension under subsection (1) is not to be taken into account.

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

### Subdivision 1—Principle on which court is to act

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

(1) The paramount consideration of the court in determining whether to release a defendant under this Division, or the conditions of a licence, must be to protect the safety of the community (whether as individuals or in general).

(2) The paramount consideration of the safety of the community outweighs the principle that restrictions on the defendant's freedom and personal autonomy should be kept to a minimum.

### Subdivision 2—Making, variation and revocation of supervision orders

### 269O—Supervision orders

(1) The court by which a defendant is declared to be liable to supervision under this Subdivision may—

(a) release the defendant unconditionally; or

(b) make an order (a ***supervision order***)—

(i) committing the defendant to detention under this Subdivision; or

(ii) releasing the defendant on licence on the following conditions:

(A) the conditions imposed by subsection (1a);

(B) any other condition decided by the court and specified in the licence.

(1aa) Without limiting the generality of subsection (1)(b)(ii)(B), release on licence under a supervision order may, for example, be subject to—

(a) a condition that the defendant reside at specified premises; or

(b) a condition that the defendant undergo assessment or treatment (or both) relating to the defendant's mental condition; or

(c) a condition that the defendant be monitored by use of an electronic device approved under section 4 of the *Correctional Services Act 1982*; or

(d) any other condition that the court thinks fit.

(1a) Subject to this Act, every licence under subsection (1)(b)(ii) is subject to the following conditions:

(a) a condition prohibiting the defendant from possessing a firearm or ammunition (both within the meaning of the *Firearms Act 2015*) or any part of a firearm;

(b) a condition requiring the defendant to submit to such tests (including testing without notice) for gunshot residue as may be reasonably required by a person or body specified by the court.

(1b) A court may only vary or revoke the conditions imposed by subsection (1a) if the defendant satisfies the court, by evidence given on oath, that—

(a) there are cogent reasons to do so; and

(b) the possession of a firearm, ammunition or part of a firearm by the defendant does not represent an undue risk to the safety of the public.

(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[1].

(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.

## 269OA—Court may direct defendant to surrender firearm etc

(1) The court by which a defendant is declared to be liable to supervision under this Subdivision may, in relation to a supervision order that is subject to the condition imposed by section 269O(1a)(a), direct the defendant to immediately surrender at a police station specified by the court any firearm, ammunition or part of a firearm owned or possessed by the defendant.

(2) No criminal liability attaches to a person to the extent that he or she is complying with a direction under this section.

(3) The Commissioner of Police must deal with any surrendered firearm, ammunition or part of a firearm in accordance with the scheme set out in the regulations.

(4) No compensation is payable by the Crown or any other person in respect of the exercise of a function or power under this section.

(5) The regulations may provide for the payment, recovery or waiver of fees in respect of this section.

## 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, the Commissioner for Victims' Rights or another person with a proper interest in the matter, vary or revoke a supervision order.

(1a) On an application under subsection (1), the court may do 1 or more of the following:

(a) confirm the present terms of the supervision order;

(b) vary the terms of the order;

(c) revoke the order and make in substitution for the order any other order that the court might have made under this Subdivision in the first instance;

(d) make any further order or direction that may be appropriate in the circumstances.

(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 defendant

(1) If a defendant is declared to be liable to supervision under this Subdivision, 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 Subdivision, 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 Subdivision 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 14 of the *Sentencing Act 2017* (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 14(4) and (5) of the *Sentencing Act 2017* 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 Subdivision, the Crown or the Commissioner for Victim's Rights may furnish the court with a statement of a kind referred to in section 15 of the *Sentencing Act 2017* (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 14 of the *Sentencing Act 2017*.

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

(1) In deciding proceedings under this Subdivision, 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 Subdivision, or significantly reduce the degree of supervision to which a defendant is subject unless the court—

(a) has considered a report (an ***expert report***) prepared by a 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 Subdivision; and

(ba) is satisfied, on the balance of probabilities, that the safety of the person or any member of the public will not be seriously endangered by the person's release; and

(c) has considered the report on the attitudes of victims and next of kin prepared under this Subdivision; 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) The court may, if it considers it necessary for the purpose of assisting the court to decide proceedings under this Subdivision, require further additional expert reports to be provided to the court.

(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 orders

(1) If a person who has been released on licence under this Subdivision 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.

(1a) On an application for a review being made, the court may make an interim order in such terms as the court thinks appropriate in the circumstances, including an order that the person be detained in a specified place for a specified period pending the determination of the review.

(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 do 1 or more of the following:

(a) confirm the present terms of the supervision order;

(b) amend the order so that it ceases to provide for release on licence and provides instead for detention;

(c) amend the order by varying the conditions of the licence;

(d) 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.

## Subdivision 3—Continuing supervision orders

## 269UA—Application for continuing supervision

(1) If a defendant is declared to be liable to supervision under Subdivision 2, whether before or after the commencement of this section, the Crown may, while the defendant remains liable to supervision, apply to the Supreme Court to have the defendant declared to be liable to supervision under a continuing supervision order.

(2) An application cannot be made under subsection (1) more than 12 months before the end of the limiting term fixed in respect of the relevant supervision order (and the limiting term will be taken to continue until the application is determined by the Court).

(3) The Court must give the defendant at least 14 days written notice of the date on which it intends to conduct the proceedings to determine the application.

(4) The Court must, before determining an application under this section, direct that 1 or more legally qualified medical practitioners (to be nominated by a prescribed authority for the purpose) inquire into the mental condition of the defendant and report to the Court on the mental condition of the defendant, including—

(a) a diagnosis and prognosis of the condition; and

(b) a suggested treatment plan for managing the defendant's condition.

(5) Each of the following persons is entitled to appear and be heard in proceedings under this section and must be afforded a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Court:

(a) the defendant (personally or by counsel);

(b) the Director of Public Prosecutions;

(c) the Commissioner for Victims' Rights;

(d) with the permission of the Court—any other person with a proper interest in the matter.

(6) The Court may also take the following matters into consideration when determining an application under this section:

(a) any relevant remarks made by the court by which the defendant was declared to be liable to supervision under Subdivision 2;

(b) the behaviour of the defendant while under supervision;

(c) any treatment, care and rehabilitation of the defendant while under supervision;

(d) any reports tendered, and submissions made, to the Court under this section;

(e) the likelihood of the defendant committing an offence of a violent nature should the defendant no longer be liable to supervision;

(f) the character, antecedents, age, means and physical and mental condition of the defendant;

(g) the probable circumstances of the defendant should the defendant no longer be liable to supervision;

(h) any other matters that the Court thinks are relevant.

(7) If the Court is satisfied, on the balance of probabilities, that the defendant to whom the application relates could, if unsupervised, pose a serious risk to the safety of the community or a member of the community, the Court must declare that, on the expiry of the supervision order under Subdivision 2, the defendant is liable to continuing supervision under this Subdivision.

## 269UB—Continuing supervision orders

(1) If, under section 269UA, the Supreme Court declares a defendant to be liable to continuing supervision, the Court may make an order (a ***continuing supervision order***)—

(a) committing the defendant to detention under this Subdivision; or

(b) releasing the defendant on licence.

(2) If a continuing supervision order is made releasing the defendant on licence, the licence is subject to the following conditions:

(a) the conditions imposed by subsection (3);

(b) any other condition decided by the Court and specified in the licence.

(3) Subject to this Act, every licence under this Subdivision is subject to the following conditions:

(a) a condition prohibiting the defendant from possessing a firearm or ammunition (both within the meaning of the *Firearms Act 2015*) or any part of a firearm;

(b) a condition requiring the defendant to submit to such tests (including testing without notice) for gunshot residue as may be reasonably required by a person or body specified by the Court.

(4) Without limiting the generality of subsection (2)(b), release on licence under a continuing supervision order may, for example, be subject to—

(a) a condition that the defendant reside at specified premises; or

(b) a condition that the defendant undergo assessment or treatment (or both) relating to the defendant's mental condition; or

(c) a condition that the defendant be monitored by use of an electronic device approved under section 4 of the *Correctional Services Act 1982*; or

(d) any other condition that the Court thinks fit.

(5) The Court may only vary or revoke the conditions imposed by subsection (3) if the defendant satisfies the Court, by evidence given on oath, that—

(a) there are cogent reasons to do so; and

(b) the possession of a firearm, ammunition or part of a firearm by the defendant does not represent an undue risk to the safety of the public.

(6) A continuing supervision order remains in force against the defendant until the order is revoked by the Court.

## 269UC—Variation or revocation of continuing supervision order

(1) At any time after a continuing supervision order has been made in respect of a defendant, the Supreme Court may, on the application of the Crown, the defendant, the Parole Board, the Public Advocate or another person with a proper interest in the matter, vary or revoke the order.

(2) If the Court refuses an application by or on behalf of a defendant for variation or revocation of a continuing supervision order, a later application for variation or revocation of the order cannot be made by or on behalf of the defendant for 12 months or such greater or lesser period as the Court may direct on refusing the application.

## 269UD—Appeal

(1) An appeal lies to the Full Court against a decision by the Supreme Court—

(a) to make a declaration and order under this Subdivision; or

(b) not to make a declaration and order under this Subdivision.

(2) An appeal under this section may be instituted by the Crown or by the defendant.

(3) Subject to a contrary order of the Full Court, an appeal cannot be commenced after 10 days from the date of the decision against which the appeal lies.

(4) On an appeal, the Full Court—

(a) may—

(i) confirm or annul the decision subject to appeal; or

(ii) remit the decision subject to appeal to the Supreme Court for further consideration or reconsideration; and

(b) may make consequential or ancillary orders.

# Subdivision 4—Administrative detention for defendant released on licence under this Division

## 269UE—Administrative detention for defendant released on licence under this Division

(1) If a defendant who has been released on licence under a supervision order or a continuing supervision order contravenes or is likely to contravene a condition of the licence, the prescribed authority may issue an order (an ***administrative detention order***) that the defendant be detained in a specified place for a specified period (which must not exceed 14 days).

(2) An administrative detention order must—

(a) be directed to the Commissioner of Police and police officers generally; and

(b) be in writing in the form approved by the Minister.

(3) A person in respect of whom an administrative detention order has been issued who is taken into the care and control of a police officer under this Subdivision must be given a copy of the order as soon as practicable.

(4) The progress and circumstances of a person detained under an administrative detention order must be reviewed as soon as reasonably practicable after the person is so detained—

(a) to determine whether an application should be made to the court for a review of the supervision order or continuing supervision order to which the person is subject; and

(b) for any other purpose as the prescribed authority thinks fit in the circumstances.

(5) Despite subsection (1), a person who has been detained under an administrative detention order cannot be detained under another such order unless a period of at least 14 days has elapsed since the expiry of the previous administrative detention order.

## 269UF—Powers of police officers relating to persons in respect of whom an administrative detention order has been issued

(1) This section applies to a person in respect of whom an administrative detention order has been issued under section 269UE.

(2) A police officer may, subject to this section, exercise the following powers in relation to a person to whom this section applies:

(a) the police officer may take the person into the officer's care and control;

(b) the police officer may transport the person from place to place;

(c) the police officer may restrain the person and otherwise use force in relation to the person as reasonably required in the circumstances;

(d) the police officer may enter and remain in a place where the officer reasonably suspects the person may be found;

(e) the police officer may use reasonable force to break into a place when that is reasonably required in order to take the person into the officer's care and control;

(f) the police officer may search the person's clothing or possessions and take possession of anything in the person's possession that the person may use to cause harm to the person's self or others or property.

(3) A police officer who takes the person into the officer's care and control must, as soon as practicable, transport the person, or arrange for the person to be transported by some other police officer, in accordance with the administrative detention order.

(4) The powers conferred by this section continue to be exercisable as reasonably required for the purpose of enabling or facilitating the medical examination or treatment of the person.

(5) A search of a person must be carried out expeditiously and in a manner that avoids, as far as reasonably practicable, causing the person any humiliation or offence.

(6) Anything taken into the possession of a police officer under this section may be held for as long as is necessary for reasons of safety, but must otherwise be returned to the person from whom it was taken or dealt with according to law.

## Subdivision 5—Custody, supervision and care

### 269V—Custody, supervision and care

(1) If a defendant is committed to detention under this Division, 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.

## Subdivision 6—Effect of supervening imprisonment on an order under Division 4

### 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 4A—Interstate transfer of persons subject to supervision order

## 269VB—Interpretation

In this Division—

***Chief Psychiatrist*** means the person appointed to the position of Chief Psychiatrist under the *Mental Health Act 2009*;

***corresponding law*** means a law, or a part of a law, of another State or a Territory of the Commonwealth declared by the regulations to be a corresponding law for the purposes of this Part;

***corresponding Minister***, in relation to a participating jurisdiction, means the Minister or Ministers of that jurisdiction who is or are responsible for the administration of the corresponding law of that jurisdiction;

***guardian***—a person is the guardian of another if the person is acting or appointed under any Act or law as the guardian of the other;

***interstate supervision order*** means an order made under a corresponding law that corresponds or substantially corresponds to a supervision order;

***participating jurisdiction*** means another State or a Territory of the Commonwealth in which a corresponding law is in force;

***South Australian Minister*** means the Minister administering this Part or, if there is more than 1 Minister administering this Part, those Ministers acting jointly;

***supervision order*** means—

(a) a Division 3A order; or

(b) a supervision order or a continuing supervision order made under Division 4.

## 269VC—Informed consent

For the purposes of this Division, a person is to be taken to have given informed consent to a transfer or interim disposition only if the person gives written consent to the transfer or disposition (as the case requires) after—

(a) the person has been given a clear explanation of the process involved in the transfer or disposition and the reasons for the transfer or disposition, containing sufficient information to enable the person to make a balanced judgment; and

(b) any relevant questions asked by the person have been answered and the person has understood the answers.

## 269VD—Transfer of persons from South Australia to another participating jurisdiction

(1) A person who is subject to a supervision order may be transferred to a participating jurisdiction if—

(a) the transfer is permitted under a corresponding law in that participating jurisdiction; and

(b) the South Australian Minister makes an order under this section authorising the transfer.

(2) The South Australian Minister may make an order under this section authorising a transfer if—

(a) the Chief Psychiatrist has certified in writing that the transfer is for the benefit of the person subject to the supervision order; and

(b) the South Australian Minister is satisfied that the transfer is permitted under a corresponding law in the participating jurisdiction; and

(c) the South Australian Minister is satisfied that—

(i) the person subject to the order has given informed consent to the transfer; or

(ii) if the person is incapable of giving informed consent—his or her guardian has given informed consent to the transfer.

(3) On the transfer of a person from South Australia in accordance with an order under this section, the supervision order to which the person is subject is in force only if the person returns to South Australia and while the person is in South Australia.

## 269VE—Transfer of persons from participating jurisdiction to South Australia

(1) A person who is subject to an interstate supervision order may be transferred to South Australia if—

(a) the transfer is permitted by or under a corresponding law in the participating jurisdiction in which the supervision order was made; and

(b) the South Australian Minister has agreed to the transfer and determined an interim disposition for the person.

(2) The South Australian Minister may agree to a transfer of a person to South Australia and determine an interim disposition if—

(a) the Chief Psychiatrist has certified in writing that the transfer is for the benefit of the person and there are facilities or services available for the custody, care or treatment of the person (as the case requires); and

(b) the South Australian Minister is satisfied that the transfer is necessary for the maintenance or re-establishment of family relationships or relationships with people who can assist in supporting the person; and

(c) the South Australian Minister is satisfied that—

(i) the person subject to the order has given informed consent to the transfer and interim disposition; or

(ii) if the person is incapable of giving informed consent—his or her guardian has given informed consent to the transfer and interim disposition.

(3) The interim dispositions that the South Australian Minister may determine under this section are—

(a) that the person be released on licence as if the person were subject to a Division 3A order releasing the person on licence subject to the conditions imposed by section 269NB(4) and any other conditions imposed by the Minister; or

(b) that the person be detained as if the person were subject to a supervision order under Division 4 committing the person to detention; or

(c) that the person be released on licence as if the person were subject to a supervision order under Division 4 releasing the person on licence subject to the conditions imposed by section 269O(1a) and any other conditions imposed by the Minister.

(4) On the transfer of a person to South Australia under this section—

(a) if the interim disposition is that the person be detained—the person is to be so detained; and

(b) if the interim disposition is that the person be released on licence—the person is taken to have been so released on licence under a Division 3A order or a supervision order made under Division 4.

(5) Nothing in this section is to be taken as requiring the South Australian Minister to agree to a transfer of a person to South Australia.

## 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 committal proceedings 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 custody (in which case the defendant will, subject to subsections (4) and (5), be detained as if the defendant had been remanded in custody awaiting trial or sentence) 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 custody (being an appropriate form of custody determined, from time to time, by the Minister) until some subsequent date when the defendant is to be brought again before the court.

(3) A defendant committed to custody under subsection (1)(b) is in the custody of the CE (regardless of where the defendant is detained or the form of custody in which the defendant is detained) and, subject to subsections (4) and (5), the CE may give such directions as to the custody, supervision and care of the defendant as the CE considers appropriate.

(4) If, at the time at which a defendant is committed to custody under subsection (1)(b), the defendant is an involuntary inpatient at a treatment centre in accordance with the *Mental Health Act 2009* (because the defendant is subject to an inpatient treatment order under that Act)—

(a) the defendant must continue to be confined at the treatment centre for the duration of the inpatient treatment order and each subsequent inpatient treatment order that follows on from that order (if any); and

(b) at the conclusion of the confinement referred to in paragraph (a), the defendant will (subject to subsection (5)) be detained as if the defendant had been remanded in custody awaiting trial or sentence.

(5) If, at any time during the detention of a defendant under subsection (1)(b), the designated officer is satisfied that the defendant is not being detained in an appropriate form of custody, the designated officer may determine an appropriate form of custody and that determination is sufficient authorisation for the detention of the defendant in that alternative form of custody.

(6) The regulations may make provision in relation to the manner in which the designated officer is to determine an appropriate form of custody for the purposes of subsection (5).

(7) In this section—

***CE*** has the same meaning as in the *Correctional Services Act 1982*;

***designated officer*** means the person, or holder of the office, prescribed by the regulations for the purposes of this section.

## 269Y—Appeals

(1) An appeal lies to the appropriate appellate court against a declaration that a defendant is liable to supervision under Division 3A or Division 4 Subdivision 2 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 police officer 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 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.

# 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 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; and

(30) abortion.

## 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,*

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 Chanceller 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 lours places en fesantz lours 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 tenuz des autres come de lui meismes… Et pur ceo qe plusurs autres cases de semblable treson purront escheer en temps a venir queux homme ne purra penser ne declarer en present Assentu est qe si autre cas supposee treson qe nest especifie paramount aviegne de novel devant ascunes Justices demoerge la Justices saunz aler au juggement de treson tanqe par devant nostre Seignur le

*That if any other Case, supposed Treason, which is not above specified, doth happen before any Justices, the Justices shall tarry without any going to Judgment of the Treason till the Cause be shewed and declared before the King and his Parliament, whether it ought to be judged Treason or other Felony*. And, if percase any Man of this Realm, ride armed covertly or secretly, with Men of Arms against any other, to slay him, or rob him, or take him, or retain him till he hath made Fine or Ransom for to have his Deliverance, it is not the Mind of the King nor his Council, that in such Case it shall be judged Treason, but shall be judged Felony or Trespass, according to the Laws of the Land of old Time used, and according as the Case requireth. And if in such Case, or other like, before this Time any Justices have judged Treason, and for this Cause the Lands and Tenements have come into the King's Hands as Forfeit, the chief Lords of the Fee shall have the Escheats of the Tenements holden of them, whether that the same Tenements be in the King's Hands, or in others, by Gift or in other Manner; saving always to our Lord the King the year, and the Waste, and the Forfeitures of Chattles, which pertain to him in the Cases above named; and that the Writs of *Scire facias* be granted in such Case against the Land-Tenants without other original, and without allowing the Protection of our Lord the King, in the said Suit; and that of the Lands which be in the King's Hands, Writs be granted to the Sherrif of the Counties where the Lands be, to deliver them out of the King's Hands without Delay.

Roi en son parlement soit le cas monstree & desclarre le que ceo doit estre ajugge treson ou autre felonie. Et si par cas ascun homme de cest roialme chivache arme descovert ou secrement od gentz armees contre ascun autre pur lui tuer ou 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 devenuz en la main nostre Seignur le Roi come forfaitz eient les chiefs Seignures de fee lours eschetes des tenemenz de eux tenuz 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 forfaitures des chateux qe a lui attenent en les cases suisnomes & qe briefs de Scire facias vers les terres tenantz soient grantez en tieu cas saunz autre originale & saunz allower la protection nostre 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 delaie.

## 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 | 1.7.2026 |
| Part 1A | 14.7.2025 |
| Part 2 | 16.1.2003 (Reprint No 39) |
| Part 3 | 1.7.2026 |
| Part 3A | 23.1.2018 |
| Part 3B | 15.9.2023 |
| Part 3BA | 16.2.2026 |
| Part 3C | 1.5.2018 |
| Part 3D | 1.5.2018 |
| Part 4 | 12.3.2025 |
| Part 4A | 30.5.2004 |
| Part 5 | 1.10.2022 |
| Part 5A | 1.4.2025 |
| Part 5B | 12.5.2013 |
| Part 6 | 1.7.2019 |
| Part 6A | 18.1.2007 |
| Part 6B | 17.6.2012 |
| Part 6C | 5.7.2003 (Reprint No 41) |
| Part 6D | 16.12.2022 |
| Part 7 | 7.10.2021 |
| Part 7A | 16.1.2003 (Reprint No 39) |
| Part 7B | 16.1.2003 (Reprint No 39) |
| Part 7C | 14.7.2025 |
| Part 7D | 16.2.2026 |
| Part 8 | 27.11.2017 |
| Part 8A | 14.7.2025 |
| Part 9 | 1.2.2021 |
| Part 12 | 16.1.2003 (Reprint No 39) |
| Schedules | 7.7.2022 |
| Appendix 1 | 5.3.2018 |

- 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.

## 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 | *Criminal Law Consolidation Act 1935* | 21.12.1935 | 2.1.1936 (*Gazette 2.1.1936 p1*) |

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|---|---|---|---|---|
| 1940 | 54 | *Criminal Law Consolidation Act Amendment Act 1940* | 5.12.1940 | 5.12.1940 |
| 1952 | 27 | *Criminal Law Consolidation Act Amendment Act 1952* | 27.11.1952 | 27.11.1952 |
| 1952 | 53 | *Coroners Act Amendment Act 1952* | 4.12.1952 | 4.12.1952 |
| 1956 | 54 | *Criminal Law Consolidation Act Amendment Act 1956* | 29.11.1956 | 29.11.1956 |
| 1957 | 42 | *Statute Law Revision Act 1957* | 14.11.1957 | 14.11.1957 |
| 1965 | 54 | *Maintenance Act Amendment Act 1965* | 23.12.1965 | 27.1.1966 (*Gazette 27.1.1966 p145*) |
| 1966 | 7 | *Criminal Law Consolidation Act Amendment Act 1966* | 24.2.1966 | 24.2.1966 |
| 1969 | 71 | *Criminal Law Consolidation Act Amendment Act (No. 2) 1969* | 11.12.1969 | 31.8.1970 (*Gazette 20.8.1970 p701*) |
| 1969 | 88 | *Criminal Law Consolidation Act Amendment Act (No. 3) 1969* | 11.12.1969 | 17.9.1970 (*Gazette 17.9.1970 p1198*) |
| 1969 | 109 | *Criminal Law Consolidation Act Amendment Act 1969* | 8.1.1970 | 8.1.1970 |
| 1971 | 15 | *Age of Majority (Reduction) Act 1971* | 8.4.1971 | 15.4.1971 (*Gazette 15.4.1971 p1598*) |
| 1971 | 29 | *Fisheries Act 1971* | 22.4.1971 | 1.12.1971 (*Gazette 30.11.1971 p2261*) |
| 1971 | 58 | *Corporal Punishment Abolition Act 1971* | 14.10.1971 | 18.11.1971 (*Gazette 18.11.1971 p2070*) |
| 1971 | 96 | *Criminal Law Consolidation Act Amendment Act 1971* | 3.12.1971 | 3.12.1971 |
| 1972 | 54 | *Local and District Criminal Courts Act Amendment Act 1972* | 27.4.1972 | 9.11.1972 (*Gazette 9.11.1972 p2252*) |
| 1972 | 74 | *Criminal Law Consolidation Act Amendment Act 1972* | 21.9.1972 | 2.11.1972 (*Gazette 2.11.1972 p2132*) |
| 1972 | 94 | *Criminal Law Consolidation Act Amendment Act 1972* | 9.11.1972 | 9.11.1972 |
| 1972 | 102 | *Criminal Law Consolidation Act Amendment Act (No. 3) 1972* | 16.11.1972 | 1.2.1973 (*Gazette 1.2.1973 p377*) |
| 1972 | 109 | *Criminal Law Consolidation Act Amendment Act (No. 5) 1972* | 23.11.1972 | 15.2.1973 (*Gazette 15.2.1973 p497*) |
| 1972 | 122 | *Criminal Law Consolidation Act Amendment Act (No. 6) 1972* | 30.11.1972 | 15.2.1973 (*Gazette 15.2.1973 p496*) |
| 1973 | 77 | *Statute Law Revision Act 1973* | 6.12.1973 | 6.12.1973 |
| 1974 | 13 | *Criminal Law Consolidation Act Amendment Act 1974* | 4.4.1974 | 4.4.1974 |
| 1975 | 66 | *Criminal Law (Sexual Offences) Amendment Act 1975* | 2.10.1975 | 2.10.1975 |
| 1975 | 88 | *Statute Law Revision Act (No. 3) 1975* | 20.11.1975 | 20.11.1975 |
| 1976 | 76 | *South Australian Health Commission Act 1976* | 2.12.1976 | repealed by *Health Care Act 2008* on 1.7.2008 without coming into operation |
| 1976 | 83 | *Criminal Law Consolidation Act Amendment Act 1976* | 9.12.1976 | 9.12.1976 |

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|---|---|---|---|---|
| 1976 | 115 | *Statutes Amendment (Capital Punishment Abolition) Act 1976* | 23.12.1976 | 23.12.1976 |
| 1978 | 14 | *Criminal Law Consolidation Act Amendment Act 1978* | 16.3.1978 | 1.7.1979 (*Gazette 14.6.1979 p1824*) |
| 1978 | 92 | *Criminal Law (Prohibition of Child Pornography) Act 1978* | 7.12.1978 | 7.12.1978 |
| 1980 | 67 | *Criminal Law Consolidation Act Amendment Act 1980* | 13.11.1980 | 11.12.1980 (*Gazette 11.12.1980 p2119*) |
| 1981 | 107 | *Criminal Law Consolidation Act Amendment Act 1981* | 23.12.1981 | 11.2.1982 (*Gazette 11.2.1982 p361*) |
| 1981 | 108 | *Criminal Law Consolidation Act Amendment Act (No. 2) 1981* | 23.12.1981 | 23.12.1981 |
| 1981 | 109 | *Statutes Amendment (Jurisdiction of Courts) Act 1981* | 23.12.1981 | 1.2.1982 (*Gazette 28.1.1982 p209*) |
| 1983 | 45 | *Criminal Law Consolidation Act Amendment Act 1983* | 16.6.1983 | 16.6.1983 |
| 1983 | 51 | *Criminal Law Consolidation Act Amendment Act (No. 2) 1983* | 16.6.1983 | 16.6.1983 |
| 1983 | 84 | *Criminal Law Consolidation Act Amendment Act (No. 3) 1983* | 1.12.1983 | 1.12.1983 |
| 1983 | 114 | *Statutes Amendment (Criminal Law Consolidation and Police Offences) Act 1983* | 22.12.1983 | 22.12.1983 (*Gazette 22.12.1983 p1718*) |
| 1984 | 49 | *Criminal Law Consolidation Act Amendment Act 1984* | 24.5.1984 | 24.5.1984 |
| 1984 | 50 | *Statute Law Revision Act 1984* | 24.5.1984 | Sch 1—1.1.1985 (*Gazette 13.12.1984 p1811*) |
| 1984 | 56 | *Statutes Amendment (Oaths and Affirmations) Act 1984* | 24.5.1984 | 1.7.1984 (*Gazette 28.6.1984 p1897*) |
| 1984 | 78 | *Criminal Law Consolidation Act Amendment Act (No. 2) 1984* | 15.11.1984 | 15.11.1984 |
| 1984 | 107 | *Evidence Act Amendment Act (No. 3) 1984* | 20.12.1984 | 20.12.1984 |
| 1985 | 46 | *Police Offences Act Amendment Act 1985* | 2.5.1985 | s 37—10.5.1985 (*Gazette 9.5.1985 p1398*) |
| 1985 | 98 | *Criminal Law Consolidation Act Amendment Act 1985* | 1.11.1985 | 1.12.1985 (*Gazette 14.11.1985 p1478*) |
| 1986 | 16 | *Statutes Amendment (Victims of Crime) Act 1986* | 20.3.1986 | 1.10.1986 (*Gazette 4.9.1986 p696*) except s 26 which will not be brought into operation (the section it inserted was deleted by 51/1988) |
| 1986 | 69 | *Statutes Amendment (Parole) Act 1986* | 20.11.1986 | 8.12.1986 (*Gazette 27.11.1986 p1700*) |
| 1986 | 90 | *Criminal Law Consolidation Act Amendment Act 1986* | 4.12.1986 | 1.2.1987 (*Gazette 15.1.1987 p52*) |
| 1986 | 91 | *Criminal Law Consolidation Act Amendment Act (No. 2) 1986* | 4.12.1986 | 18.12.1986 (*Gazette 18.12.1986 p1877*) |
| 1987 | 49 | *Criminal Law (Enforcement of Fines) Act 1987* | 30.4.1987 | Sch 2—21.6.1987 (*Gazette 4.6.1987 p1430*) |

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|---|---|---|---|---|
| 1988 | 51 | *Statutes Amendment and Repeal (Sentencing) Act 1988* | 5.5.1988 | ss 28, 29 & 40—12.5.1988 (*Gazette 12.5.1988 p1181*); ss 26, 27 & 30—39—1.1.1989 (*Gazette 15.12.1988 p2009*) |
| 1988 | 78 | *Criminal Law Consolidation Act Amendment Act 1988* | 1.12.1988 | 1.12.1988 |
| 1988 | 103 | *Statutes Amendment (Criminal Law Consolidation and Summary Offences) Act 1988* | 15.12.1988 | 6.3.1989 (*Gazette 23.2.1989 p539*) |
| 1991 | 33 | *Statutes Amendment (Attorney-General's Portfolio) Act 1991* | 24.4.1991 | 6.6.1991 (*Gazette 6.6.1991 p1776*) |
| 1991 | 40 | *Criminal Law Consolidation (Abolition of Year-and-a-day Rule) Amendment Act 1991* | 31.10.1991 | 31.10.1991 |
| 1991 | 49 | *Director of Public Prosecutions Act 1991* | 21.11.1991 | 6.7.1992 (*Gazette 25.6.1992 p1869*) |
| 1991 | 68 | *Criminal Law Consolidation (Self-Defence) Amendment Act 1991* | 12.12.1991 | 12.12.1991 |
| 1991 | 69 | *Statutes Repeal and Amendment (Courts) Act 1991* | 12.12.1991 | 6.7.1992 (*Gazette 2.7.1992 p209*) |
| 1991 | 75 | *Statutes Amendment (Crimes Confiscation and Restitution) Act 1991* | 12.12.1991 | 16.1.1992 (*Gazette 16.1.1992 p126*) |
| 1992 | 9 | *Criminal Law Consolidation (Rape) Amendment Act 1992* | 16.4.1992 | 16.4.1992 |
| 1992 | 22 | *Criminal Law Consolidation (Detention of Insane Offenders) Amendment Act 1992* | 14.5.1992 | 6.7.1992 (*Gazette 25.6.1992 p1880*) |
| 1992 | 26 | *Statutes Amendment (Attorney-General's Portfolio) Act 1992* | 14.5.1992 | 6.7.1992 (*Gazette 2.7.1992 p209*) |
| 1992 | 35 | *Statutes Amendment and Repeal (Public Offences) Act 1992* | 21.5.1992 | 6.7.1992 (*Gazette 2.7.1992 p209*) |
| 1992 | 37 | *Statutes Amendment (Illegal Use of Motor Vehicles) Act 1992* | 21.5.1992 | 6.7.1992 (*Gazette 2.7.1992 p209*) 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 | *Criminal Law Consolidation (Application of Criminal Law) Amendment Act 1992* | 12.11.1992 | 12.11.1992 |
| 1992 | 76 | *Statutes Amendment (Right of Reply) Act 1992* | 26.11.1992 | s 4—1.1.1993 (*Gazette 10.12.1992 p1752*) |
| 1993 | 37 | *Evidence (Miscellaneous) Amendment Act 1993* | 13.5.1993 | 15.7.1993 (*Gazette 15.7.1993 p520*) |
| 1993 | 62 | *Statutes Amendment (Courts) Act 1993* | 27.5.1993 | ss 24—26—1.7.1993 (*Gazette 24.6.1993 p2047*) |
| 1994 | 7 | *Criminal Law Consolidation (Stalking) Amendment Act 1994* | 14.4.1994 | 1.6.1994 (*Gazette 12.5.1994 p1187*) |

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|---|---|---|---|---|
| 1994 | 19 | *Criminal Law Consolidation (Sexual Intercourse) Amendment Act 1994* | 12.5.1994 | 26.5.1994 (*Gazette 26.5.1994 p1262*) |
| 1994 | 22 | *Domestic Violence Act 1994* | 26.5.1994 | 1.8.1994 (*Gazette 14.7.1994 p68*) |
| 1994 | 23 | *Criminal Law Consolidation (Child Sexual Abuse) Amendment Act 1994* | 26.5.1994 | 28.7.1994 (*Gazette 28.7.1994 p170*) |
| 1994 | 43 | *Statutes Amendment (Courts) Act 1994* | 2.6.1994 | 9.6.1994 (*Gazette 9.6.1994 p1669*) |
| 1994 | 59 | *Criminal Law Consolidation (Felonies and Misdemeanours) Amendment Act 1994* | 27.10.1994 | 1.1.1995 (*Gazette 8.12.1994 p1942*) |
| 1995 | 24 | *Statutes Amendment (Female Genital Mutilation and Child Protection) Act 1995* | 27.4.1995 | s 4—27.4.1997 (s 7(5) *Acts Interpretation Act 1915*) |
| 1995 | 27 | *Statutes Amendment (Attorney-General's Portfolio) Act 1995* | 27.4.1995 | s 12—10.7.1995 (*Gazette 29.6.1995 p2973*) |
| 1995 | 90 | *Criminal Law Consolidation (Appeals) Amendment Act 1995* | 7.12.1995 | 4.1.1996 (*Gazette 4.1.1996 p2*) except s 10—12.9.1996 (*Gazette 12.9.1996 p1124*) |
| 1995 | 91 | *Criminal Law Consolidation (Mental Impairment) Amendment Act 1995* | 7.12.1995 | 2.3.1996 (*Gazette 11.1.1996 p94*) |
| 1996 | 67 | *Statutes Amendment (Attorney-General's Portfolio) Act 1996* | 15.8.1996 | ss 8—12—17.10.1996 (*Gazette 17.10.1996 p1361*) |
| 1996 | 95 | *Criminal Assets Confiscation Act 1996* | 19.12.1996 | 7.7.1997 (*Gazette 12.6.1997 p2962*) |
| 1997 | 10 | *Criminal Law Consolidation (Self Defence) Amendment Act 1997* | 27.3.1997 | 27.3.1997 |
| 1997 | 30 | *Statutes Amendment (References to Banks) Act 1997* | 12.6.1997 | Pt 4 (s 6)—3.7.1997 (*Gazette 3.7.1997 p4*) |
| 1998 | 59 | *Statutes Amendment (Attorney-General's Portfolio) Act 1998* | 3.9.1998 | Pt 3 (ss 5—7)—13.12.1998 (*Gazette 3.12.1998 p1676*) |
| 1999 | 2 | *Criminal Law Consolidation (Contamination of Goods) Amendment Act 1999* | 11.3.1999 | 11.3.1999 |
| 1999 | 13 | *Statutes Amendment (Sentencing—Miscellaneous) Act 1999* | 18.3.1999 | Pt 2 (ss 4 & 5)—16.5.1999 (*Gazette 13.5.1999 p2502*) |
| 1999 | 15 | *Criminal Law Consolidation (Intoxication) Amendment Act 1999* | 1.4.1999 | 1.4.1999 |
| 1999 | 16 | *Criminal Law Consolidation (Juries) Amendment Act 1999* | 1.4.1999 | 16.5.1999 (*Gazette 13.5.1999 p2502*) |

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| 1999 | 33 | *Financial Sector Reform (South Australia) Act 1999* | 17.6.1999 | Sch (item 16)—1.7.1999 being the date specified under s 3(16) of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth as the transfer date for the purposes of that Act: s 2(2) |
| 1999 | 80 | *Criminal Law Consolidation (Serious Criminal Trespass) Amendment Act 1999* | 2.12.1999 | 25.12.1999 (*Gazette 23.12.1999 p3668*) |
| 2000 | 20 | *Criminal Law Consolidation (Sexual Servitude) Amendment Act 2000* | 8.6.2000 | 8.6.2000 |
| 2000 | 31 | *Criminal Law Consolidation (Appeals) Amendment Act 2000* | 6.7.2000 | 6.7.2000 |
| 2000 | 39 | *Criminal Law Consolidation (Mental Impairment) Amendment Act 2000* | 13.7.2000 | 29.10.2000 (*Gazette 26.10.2000 p2786*) |
| 2000 | 57 | *Statutes Amendment and Repeal (Attorney-General's Portfolio) Act 2000* | 20.7.2000 | Pt 6 (s 14)—14.8.2000 (*Gazette 10.8.2000 p444*) |
| 2001 | 10 | *Legal Assistance (Restrained Property) Amendment Act 2001* | 12.4.2001 | s 6—12.4.2001 (*Gazette 12.4.2001 p1582*) |
| 2001 | 55 | *Statutes Amendment (Stalking) Act 2001* | 8.11.2001 | Pt 2 (s 4)—13.1.2002 (*Gazette 10.1.2002 p4*) |
| 2001 | 69 | *Statutes Amendment (Courts and Judicial Administration) Act 2001* | 6.12.2001 | Pt 4 (ss 7 & 8)—3.2.2002 (*Gazette 24.1.2002 p346*) |
| 2002 | 24 | *Statutes Amendment (Bushfires) Act 2002* | 31.10.2002 | Pt 2 (s 4)—31.10.2002 (*Gazette 31.10.2002 p3979*) |
| 2002 | 26 | *Criminal Law Consolidation (Offences of Dishonesty) Amendment Act 2002* | 31.10.2002 | 16.1.2003 (*Gazette 16.1.2003 p180*) except ss 4—8, 12—16—5.7.2003 (*Gazette 15.5.2003 p1979*) and except s 10—29.10.2000 (commencement amended by 23/2004 s 30) |
| 2002 | 28 | *Criminal Law Consolidation (Territorial Application of the Criminal Law) Amendment Act 2002* | 7.11.2002 | 1.12.2002 (*Gazette 28.11.2002 p4292*) |
| 2003 | 14 | *Criminal Law Consolidation (Abolition of Time Limit for Prosecution of Certain Sexual Offences) Amendment Act 2003* | 17.6.2003 | 17.6.2003 |
| 2003 | 28 | *Criminal Law Consolidation (Self Defence) Amendment Act 2003* | 24.7.2003 | 27.7.2003 (*Gazette 24.7.2003 p3103*) |
| 2003 | 36 | *Statutes Amendment (Honesty and Accountability in Government) Act 2003* | 31.7.2003 | Pt 2 (ss 4 & 5)—29.4.2004 (*Gazette 29.4.2004 p1173*) |
| 2003 | 60 | *Criminal Law Consolidation (Identity Theft) Amendment Act 2003* | 11.12.2003 | Pt 2 (s 4)—5.9.2004 (*Gazette 2.9.2004 p3544*) |
| 2004 | 2 | *Statutes Amendment (Computer Offences) Act 2004* | 4.3.2004 | Pt 2 (s 4)—30.5.2004 (*Gazette 22.4.2004 p1086*) |

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| 2004 | 23 | *Statutes Amendment (Courts) Act 2004* | 8.7.2004 | Pt 3 (ss 5 & 6) and Pt 12 (s 30)—1.9.2004 (*Gazette 26.8.2004 p3402*) |
| 2004 | 40 | *Criminal Law Consolidation (Intoxication) Amendment Act 2004* | 4.11.2004 | 25.11.2004 (*Gazette 25.11.2004 p4406*) |
| 2004 | 52 | *Criminal Law Consolidation (Child Pornography) Amendment Act 2004* | 16.12.2004 | Pt 2 (ss 4—7)—30.1.2005 (*Gazette 13.1.2005 p67*) |
| 2005 | 4 | *Criminal Law Consolidation (Criminal Neglect) Amendment Act 2005* | 7.4.2005 | 14.4.2005 (*Gazette 14.4.2005 p874*) |
| 2005 | 19 | *Criminal Assets Confiscation Act 2005* | 9.6.2005 | Sch 1 (cl 5)—2.4.2006 (*Gazette 16.2.2006 p578*) |
| 2005 | 31 | *Statutes Amendment (Sentencing of Sex Offenders) Act 2005* | 14.7.2005 | Pt 3 (ss 10—18)—15.5.2006 (*Gazette 20.4.2006 p1128*) immediately after *Statutes Amendment and Repeal (Aggravated Offences) Act 2005* comes into operation |
| 2005 | 50 | *Defamation Act 2005* | 27.10.2005 | Sch 1 (cl 4)—1.1.2006: s 2 |
| 2005 | 56 | *Justices of the Peace Act 2005* | 17.11.2005 | Sch 2 (cl 16)—1.7.2006 (*Gazette 22.6.2006 p2012*) |
| 2005 | 62 | *Statutes Amendment and Repeal (Aggravated Offences) Act 2005* as amended by 44/2006 | 1.12.2005 | Pt 2 (ss 4—17, 19—21 & 24)—15.5.2006 (*Gazette 20.4.2006 p1127*); ss 18, 22 & 23—18.1.2007 (*Gazette 18.1.2007 p234*) immediately after *Statutes Amendment (Justice Portfolio) Act 2006* comes into operation |
| 2005 | 63 | *Criminal Law Consolidation (Instruments of Crime) Amendment Act 2005* | 1.12.2005 | 6.3.2006 (*Gazette 16.2.2006 p578*) |
| 2005 | 74 | *Statutes Amendment (Criminal Procedure) Act 2005* | 8.12.2005 | Pt 2 (ss 4 & 5)—1.3.2007 (*Gazette 1.3.2007 p672*) |
| 2005 | 80 | *Controlled Substances (Serious Drug Offences) Amendment Act 2005* | 8.12.2005 | Sch 1 (cll 3 & 6)—3.12.2007 (*Gazette 22.11.2007 p4294*) |
| 2005 | 81 | *Statutes Amendment (Vehicle and Vessel Offences) Act 2005* | 8.12.2005 | Pt 2 (ss 4—12)—30.7.2006 (*Gazette 27.7.2006 p2400*) |
| 2006 | 9 | *Criminal Law Consolidation (Throwing Objects at Vehicles) Amendment Act 2006* | 29.6.2006 | 10.9.2006 (*Gazette 7.9.2006 p3165*) |
| 2006 | 14 | *Criminal Law Consolidation (Dangerous Driving) Amendment Act 2006* | 29.6.2006 | 13.8.2006 (*Gazette 10.8.2006 p2642*) |
| 2006 | 15 | *Development (Panels) Amendment Act 2006* | 29.6.2006 | Sch 1 (cl 1)—23.11.2006 (*Gazette 23.11.2006 p4078*) |
| 2006 | 17 | *Statutes Amendment (New Rules of Civil Procedure) Act 2006* | 6.7.2006 | Pt 22 (ss 89—101)—4.9.2006 (*Gazette 17.8.2006 p2831*) |
| 2006 | 43 | *Statutes Amendment (Domestic Partners) Act 2006* | 14.12.2006 | Pt 22 (ss 66—68)—1.6.2007 (*Gazette 26.4.2007 p1352*) |

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| 2006 | 44 | *Statutes Amendment (Justice Portfolio) Act 2006* | 14.12.2006 | Pt 10 (ss 15 & 16) & Pt 28 (s 60)—18.1.2007 (*Gazette 18.1.2007 p234*) |
| 2007 | 1 | *Criminal Law Consolidation (Drink Spiking) Amendment Act 2007* | 15.2.2007 | 1.4.2007 (*Gazette 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 (*Gazette 13.12.2007 p4811*) |
| 2007 | 2 | *Summary Offences (Gatecrashers at Parties) Amendment Act 2007* | 15.2.2007 | Sch 1 (cl 1)—1.4.2007 (*Gazette 29.3.2007 p930*) |
| 2007 | 57 | *Statutes Amendment (Young Offenders) Act 2007* | 29.11.2007 | Pt 2 (s 4)—3.2.2008 (*Gazette 31.1.2008 p349*) |
| 2008 | 8 | *Statutes Amendment (Public Order Offences) Act 2008* | 17.4.2008 | Pt 2 (ss 4 & 5)—8.6.2008 (*Gazette 5.6.2008 p1871*) |
| 2008 | 10 | *Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act 2008* | 17.4.2008 | Pt 2 (ss 4—16) & Sch 1 (cl 7)—23.11.2008 (*Gazette 20.11.2008 p5171*) |
| 2008 | 13 | *Serious and Organised Crime (Control) Act 2008* | 15.5.2008 | Sch 1 (cll 3 & 4)—4.9.2008 (*Gazette 4.9.2008 p4227*) |
| 2008 | 15 | *Firearms (Firearms Prohibition Orders) Amendment Act 2008* | 12.6.2008 | Sch 1 (cl 1)—27.11.2008 (*Gazette 27.11.2008 p5277*) |
| 2008 | 28 | *Criminal Law Consolidation (Double Jeopardy) Amendment Act 2008* | 10.7.2008 | 3.8.2008 (*Gazette 31.7.2008 p3519*) |
| 2009 | 40 | *Statutes Amendment (Property Offences) Act 2009* | 17.9.2009 | Pt 2 (ss 4—6)—20.12.2009 (*Gazette 17.12.2009 p6351*) |
| 2009 | 52 | *Statutes Amendment (Recidivist Young Offenders and Youth Parole Board) Act 2009* | 5.11.2009 | Pt 2 (s 4)—27.6.2010 (*Gazette 17.6.2010 p3077*) |
| 2009 | 79 | *Statutes Amendment (Victims of Crime) Act 2009* | 10.12.2009 | Pt 3 (s 16)—19.9.2010 (*Gazette 16.9.2010 p4868*) |
| 2009 | 85 | *Intervention Orders (Prevention of Abuse) Act 2009* | 10.12.2009 | Sch 1 (cl 5)—9.12.2011 (*Gazette 20.10.2011 p4269*) |
| 2010 | 5 | *Health Practitioner Regulation National Law (South Australia) Act 2010* | 1.7.2010 | Sch 1 (cl 9)—1.7.2010 (*Gazette 1.7.2010 p3338*) |
| 2010 | 18 | *Statutes Amendment (Driving Offences) Act 2010* | 14.10.2010 | Pt 2 (ss 4—7)—21.8.2011 (*Gazette 18.8.2011 p3490*) |
| 2011 | 34 | *Evidence (Discreditable Conduct) Amendment Act 2011* | 22.9.2011 | Pt 3 (s 5)—1.6.2012 (*Gazette 31.5.2012 p2637*) |
| 2011 | 37 | *Summary Offences (Tattooing, Body Piercing and Body Modification) Amendment Act 2011* | 6.10.2011 | Sch 1 (cl 1)—15.12.2012 (*Gazette 15.11.2012 p5008*) |
| 2011 | 43 | *Criminal Law Consolidation (Child Pornography) Amendment Act 2011* | 17.11.2011 | 17.11.2011 |
| 2011 | 46 | *Education and Early Childhood Services (Registration and Standards) Act 2011* | 8.12.2011 | Sch 3 (cll 15—17)—1.1.2012 (*Gazette 15.12.2011 p4986*) |

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| 2012 | 10 | *Criminal Law Consolidation (Looting) Amendment Act 2012* | 19.4.2012 | 19.5.2012: s 2 |
| 2012 | 12 | *Statutes Amendment (Serious and Organised Crime) Act 2012* | 10.5.2012 | Pt 6 (ss 28—38)—17.6.2012 (*Gazette 14.6.2012 p2756*) |
| 2012 | 17 | *Statutes Amendment (Attorney-General's Portfolio) Act 2012* | 24.5.2012 | Pt 2 (s 4)—5.8.2012 (*Gazette 2.8.2012 p3302*) |
| 2012 | 33 | *Statutes Amendment (Serious Firearm Offences) Act 2012* | 27.9.2012 | Pt 5 (ss 24—28)—15.10.2012 (*Gazette 15.10.2012 p4652*); ss 29 & 30—4.3.2013 (*Gazette 21.2.2013 p485*) |
| 2012 | 43 | *Statutes Amendment (Courts Efficiency Reforms) Act 2012* | 22.11.2012 | Pt 4 (ss 10—12)—11.3.2013 (*Gazette 7.3.2013 p760*) |
| 2012 | 52 | *Independent Commissioner Against Corruption Act 2012* | 6.12.2012 | Sch 3 (cll 12 & 13)—1.9.2013 (*Gazette 23.5.2013 p2006*) |
| — | — | *Supreme Court Criminal Rules 2013* | — | 1.1.2013: see s 283(2) (repealed) |
| 2013 | 7 | *Criminal Law Consolidation (Cheating at Gambling) Amendment Act 2013* | 28.3.2013 | 12.5.2013 (*Gazette 9.5.2013 p1424*) |
| 2013 | 9 | *Statutes Amendment (Appeals) Act 2013* | 28.3.2013 | Pt 2 (ss 4—10) & Sch 1—5.5.2013 (*Gazette 26.4.2013 p1185*) |
| 2013 | 11 | *Statutes Amendment (Attorney-General's Portfolio) Act 2013* | 18.4.2013 | Pt 3 (s 5)—9.6.2013 (*Gazette 6.6.2013 p2498*) |
| 2013 | 47 | *Statutes Amendment (Attorney-General's Portfolio No 2) Act 2013* | 24.10.2013 | Pt 2 (s 4)—17.5.2014 (*Gazette 8.5.2014 p1630*) |
| 2013 | 78 | *Statutes Amendment (Electronic Monitoring) Act 2013* | 5.12.2013 | Pt 3 (s 8)—5.12.2015 (s 7(5) *Acts Interpretation Act 1915*) |
| 2013 | 83 | *Criminal Law Consolidation (Protection for Working Animals) Amendment Act 2013* | 5.12.2013 | 31.12.2013 (*Gazette 19.12.2013 p4925*) |
| 2013 | 90 | *Statutes Amendment (Dangerous Driving) Act 2013* | 5.12.2013 | Pt 2 (ss 4 & 5)—26.1.2014 (*Gazette 23.1.2014 p344*) |
| 2014 | 23 | *Criminal Law Consolidation (Sexual Offences—Cognitive Impairment) Amendment Act 2014* | 11.12.2014 | 30.3.2015 (*Gazette 15.1.2015 p308*) |
| 2014 | 25 | *Statutes Amendment (Attorney-General's Portfolio) Act 2014* | 11.12.2014 | Pt 4 (ss 6—10)—1.4.2015 (*Gazette 19.2.2015 p793*) |
| 2015 | 19 | *Statutes Amendment (Serious and Organised Crime) Act 2015* | 6.8.2015 | Pt 2 (ss 4—8)—6.8.2015 (*Gazette 6.8.2015 p3752*) |
| 2015 | 40 | *Statutes Amendment (Firearms Offences) Act 2015* | 26.11.2015 | Pt 2 (s 4)—7.2.2016 (*Gazette 4.2.2016 p368*) |
| 2015 | 46 | *Firearms Act 2015* | 17.12.2015 | Sch 1 (cll 5—8)—1.7.2017 (*Gazette 27.6.2017 p2619*) |
| 2016 | 6 | *Youth Justice Administration Act 2016* | 17.3.2016 | Sch 1 (cl 3)—1.12.2016 (*Gazette 8.9.2016 p3677*) |
| 2016 | 28 | *Statutes Amendment (Attorney-General's Portfolio) Act 2016* | 16.6.2016 | Pt 4 (ss 6—9)—16.6.2016: s 2(1) |

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| 2016 | 33 | *Dog and Cat Management (Miscellaneous) Amendment Act 2016* | 14.7.2016 | Sch 1 (cll 1 & 2)—1.7.2017 (*Gazette 19.4.2017 p1101*) |
| 2016 | 54 | *Independent Commissioner Against Corruption (Miscellaneous) Amendment Act 2016* | 24.11.2016 | Sch 1 (cl 1)—16.12.2016 (*Gazette 15.12.2016 p4988*) |
| 2016 | 62 | *Statutes Amendment (Courts and Justice Measures) Act 2016* | 8.12.2016 | Pt 3 (s 6)—8.12.2016: s 2(1) |
| 2017 | 5 | *Statutes Amendment (Planning, Development and Infrastructure) Act 2017* | 28.2.2017 | Pt 9 (ss 27 to 29)—1.7.2019 (*Gazette 27.6.2019 p2322*) (s 29 is of no effect because of other amendments) |
| 2017 | 18 | *Summary Procedure (Indictable Offences) Amendment Act 2017* | 14.6.2017 | Sch 2 (cll 5—12 & 41)—5.3.2018 (*Gazette 12.12.2017 p4961*) |
| 2017 | 19 | *Criminal Law Consolidation (Mental Impairment) Amendment Act 2017* | 14.6.2017 | 23.10.2017 except s 4, ***consumption*** (as inserted by s 5(1)), s 5(2) to (5), (7) to (9), new s 269C(2) (as inserted by s 6(3)), ss 7(1), 8(1), (3), 9(1), 10(1), new Division 3A of Part 8A (except Subdivision 3) (as inserted by s 11), ss 22(2) and 28—27.11.2017 (*Gazette 17.10.2017 p4336*) and except new s 269C(3) (as inserted by s 6(3))—6.9.2018 (*Gazette 6.9.2018 p3412*) and except ***continuing supervision order*** (as inserted by s 5(1)), s 5(6), Subdivision 3 of new Division 3A of Part 8A (as inserted by s 11), ss 23 and 27—14.6.2019 (s 7(5) *Acts Interpretation Act 1915*) (Section 15(4) is of no effect because it purports to delete a reference that had already been removed.) |
| 2017 | 25 | *Children and Young People (Safety) Act 2017* | 18.7.2017 | Sch 1 (cll 3 & 4)—22.10.2018 (*Gazette 19.12.2017 p5118*) |
| 2017 | 41 | *Statutes Amendment (Attorney-General's Portfolio) (No 2) Act 2017* | 24.10.2017 | Pt 4 (ss 5 to 9)—24.10.2017 |
| 2017 | 47 | *Criminal Law Consolidation (Criminal Organisations) Amendment Act 2017* | 14.11.2017 | 14.11.2017 |
| 2017 | 49 | *Liquor Licensing (Liquor Review) Amendment Act 2017* | 28.11.2017 | Sch 1 (cl 2)—18.11.2019 (*Gazette 7.11.2019 p3759*) |
| 2017 | 53 | *Statutes Amendment (Sentencing) Act 2017* | 28.11.2017 | Pt 8 (ss 14 to 16)—30.4.2018 (*Gazette 6.2.2018 p612*) |
| 2017 | 61 | *Statutes Amendment (Extremist Material) Act 2017* | 12.12.2017 | Pt 2 (s 4)—23.1.2018 (*Gazette 23.1.2018 p282*) |
| 2017 | 62 | *Statutes Amendment (Explosives) Act 2017* | 12.12.2017 | Pt 2 (ss 4 to 6)—1.5.2018 (*Gazette 6.2.2018 p611*) |
| 2017 | 64 | *Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017* | 12.12.2017 | Pt 12 (ss 62 to 66)—22.10.2018 (*Gazette 19.12.2017 p5119*) (ss 63 to 66 are of no effect because of other amendments) |

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| 2018 | 4 | *Criminal Law Consolidation (Dishonest Communication with Children) Amendment Act 2018* | 12.7.2018 | 13.8.2018 (*Gazette 9.8.2018 p3047*) |
| 2018 | 6 | *Criminal Law Consolidation (Children and Vulnerable Adults) Amendment Act 2018* | 2.8.2018 | 6.9.2018 (*Gazette 30.8.2018 p3253*) |
| 2018 | 38 | *Statutes Amendment (Domestic Violence) Act 2018* | 6.12.2018 | Pt 3 (ss 5 & 6)—31.1.2019 (*Gazette 24.1.2019 p272*) |
| 2019 | 6 | *Criminal Law Consolidation (Foster Parents and Other Positions of Authority) Amendment Act 2019* | 9.5.2019 | 22.10.2018 except ss 5 to 8—9.5.2019: s 2 |
| 2019 | 13 | *Statutes Amendment (Child Exploitation and Encrypted Material) Act 2019* | 11.7.2019 | Pt 3 (ss 5 to 8)—24.10.2019 (*Gazette 24.10.2019 p3572*) |
| 2019 | 17 | *Criminal Law Consolidation (Assaults on Prescribed Emergency Workers) Amendment Act 2019* | 1.8.2019 | Pt 2 (ss 4 to 9)—3.10.2019 (*Gazette 3.10.2019 p3398*) |
| 2019 | 21 | *Statutes Amendment (Attorney-General's Portfolio) (No 2) Act 2019* | 19.9.2019 | Pt 3 (ss 5, 6, 8 & 9)—3.10.2019 immediately after s 4 of 17/2019 came into operation: s 2(2); s 7 immediately after s 7 of 17/2019 came into operation: s 2(3) |
| 2019 | 26 | *Criminal Law Consolidation (Child-Like Sex Dolls Prohibition) Amendment Act 2019* | 3.10.2019 | Pt 2 (ss 4 to 8)—3.1.2020: s 2(1) |
| 2019 | 36 | *Criminal Law Consolidation (False or Misleading Information) Amendment Act 2019* | 5.12.2019 | 18.6.2020 (*Gazette 11.6.2020 p3304*) |
| 2019 | 46 | *Statutes Amendment (Legalisation of Same Sex Marriage Consequential Amendments) Act 2019* | 19.12.2019 | Pt 3 (ss 6 & 7)—1.5.2020 (*Gazette 30.4.2020 p838*) |
| 2020 | 34 | *Statutes Amendment (Attorney-General's Portfolio) Act 2020* | 1.10.2020 | Pt 3 (ss 5 to 7)—1.10.2020: s 2(1); ss 8 & 9—1.4.2021 (*Gazette 25.3.2021 p1050*) |
| 2020 | 43 | *Statutes Amendment (Abolition of Defence of Provocation and Related Matters) Act 2020* | 10.12.2020 | Pt 3 (ss 5, 6, 8 & 9)—1.2.2021; s 7 & Sch 1 (cl 1)—29.3.2021 (*Gazette 27.1.2021 p163*) |
| 2021 | 7 | *Termination of Pregnancy Act 2021* | 11.3.2021 | Sch 1 (cll 2 to 4)—7.7.2022 (*Gazette 23.6.2022 p1919*) |
| 2021 | 11 | *Criminal Law Consolidation (Causing Death by Use of Motor Vehicle) Amendment Act 2021* | 8.4.2021 | 29.8.2022 (*Gazette 25.8.2022 p2609*) |
| 2021 | 25 | *Statutes Amendment (COVID-19 Permanent Measures) Act 2021* | 17.6.2021 | Pt 4 (s 6)—9.9.2021 (*Gazette 18.8.2021 p3099*) |
| 2021 | 28 | *Criminal Law Consolidation (Driving at Extreme Speed) Amendment Act 2021* | 1.7.2021 | 16.12.2021 (*Gazette 16.12.2021 p4401*) except ss 7 & 8—29.8.2022 immediately after 11/2021 (*Gazette 25.8.2022 p2609*) |
| 2021 | 29 | *Voluntary Assisted Dying Act 2021* | 1.7.2021 | Sch 1 (cl 7)—31.1.2023 (*Gazette 11.8.2022 p2489*) |
| 2021 | 33 | *Criminal Law Consolidation (Bushfires) Amendment Act 2021* | 16.9.2021 | 16.9.2021 |

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| 2021 | 38 | *Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act 2021* | 7.10.2021 | Sch 1 (cll 12 to 14 & 76)—7.10.2021: s 2 |
| 2021 | 57 | *Statutes Amendment (Child Sexual Abuse) Act 2021* | 9.12.2021 | Pt 2 (ss 4 to 8)—1.6.2022 (*Gazette 17.2.2022 p490*) |
| 2022 | 9 | *Statutes Amendment (Child Sex Offences) Act 2022* | 14.7.2022 | Pt 3 (ss 8 to 18)—1.10.2022 (*Gazette 23.9.2022 p6135*) |
| 2022 | 13 | *Criminal Law Consolidation (Human Remains) Amendment Act 2022* | 6.10.2022 | 16.12.2022 (*Gazette 15.12.2022 p6904*) |
| 2022 | 25 | *Statutes Amendment (Stealthing and Consent) Act 2022* | 8.12.2022 | Pt 2 (s 3)—8.3.2023 (*Gazette 2.3.2023 p464*) |
| 2022 | 29 | *Statutes Amendment (Attorney-General's Portfolio) (No 3) Act 2022* | 8.12.2022 | Pt 3 (s 5)—8.12.2022: s 2(1) |
| 2023 | 17 | *Criminal Law Consolidation (Child Sexual Abuse) Amendment Act 2023* | 8.6.2023 | Pt 2 (s 3)—22.6.2023: s 2 |
| 2023 | 21 | *Statutes Amendment (Sexual Offences) Act 2023* | 21.6.2023 | Pt 4 (ss 6 to 10)—1.10.2023 (*Gazette 14.9.2023 p3237*) |
| 2023 | 24 | *Statutes Amendment (Serious Vehicle and Vessel Offences) Act 2023* | 13.7.2023 | Pt 2 (ss 3 to 9)—1.1.2024 (*Gazette 25.10.2023 p3602*) |
| 2023 | 25 | *Criminal Law Consolidation (Criminal Organisations—Prescribed Places) Amendment Act 2023* | 15.9.2023 | Pt 2 (s 2)—15.9.2023 |
| 2024 | 29 | *Statutes Amendment (Identity Theft) Act 2024* | 19.9.2024 | Pt 2 (ss 3 to 7)—1.4.2025 (*Gazette 13.2.2025 p138*) |
| 2024 | 35 | *Criminal Law Consolidation (Recruiting Children to Commit Crime) Amendment Act 2024* | 19.9.2024 | 16.12.2024 (*Gazette 5.12.2024 p4544*) |
| 2024 | 37 | *Sentencing (Serious Child Sex Offenders) Amendment Act 2024* | 19.9.2024 | Sch 1 (cl 2)—28.4.2025 (*Gazette 12.3.2025 p289*) |
| 2024 | 54 | *Criminal Law Consolidation (Section 20A) Amendment Act 2024* | 21.11.2024 | 1.5.2025 (*Gazette 6.3.2025 p256*) |
| 2025 | 1 | *Criminal Law Consolidation (Stalking and Harassment) Amendment Act 2025* | 13.2.2025 | Pt 2 (ss 3 & 4)—8.6.2025 (*Gazette 15.5.2025 p1171*) |
| 2025 | 8 | *Animal Welfare Act 2025* | 27.2.2025 | Sch 1 (cll 1 & 2)—uncommenced |
| 2025 | 9 | *Statutes Amendment (Attorney-General's Portfolio and Other Justice Measures) Act 2025* | 12.3.2025 | Pt 4 (s 9)—12.3.2025: s 2(1) |
| 2025 | 12 | *Criminal Law Consolidation (Mental Competence) Amendment Act 2025* | 27.3.2025 | Pt 2 (ss 3 to 8)—14.7.2025 (*Gazette 5.6.2025 p1385*) |
| 2025 | 25 | *Children and Young People (Safety and Support) Act 2025* | 12.6.2025 | Sch 2 (cl 14)—uncommenced |
| 2025 | 28 | *Dog and Cat Management (Breeder Reforms) Amendment Act 2025* | 26.6.2025 | Sch 1 (cl 1)—17.11.2025 (*Gazette 30.10.2025 p4240*) |

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| 2025 | 31 | *Criminal Law Consolidation (Defences—Intoxication) Amendment Act 2025* | 3.7.2025 | 1.9.2025 (*Gazette 28.8.2025 p3609*) |
| 2025 | 35 | *Criminal Law Consolidation (Coercive Control) Amendment Act 2025* | 11.9.2025 | Pt 2 (ss 3 to 5)—uncommenced |
| 2025 | 45 | *Criminal Law Consolidation (Street Gangs) Amendment Act 2025* | 5.11.2025 | Pt 2 (ss 3 & 4)—16.2.2026 (*Gazette 12.2.2026 p241*) |
| **2025** | **73** | ***Carers Recognition (Miscellaneous) Amendment Act 2025*** | **4.12.2025** | **Sch 1 (cll 1 & 2)—1.7.2026 (*Gazette 19.2.2026 p361*)** |

## 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 | | |
| *s 2* | *omitted under Legislation Revision and Publication Act 2002* | *5.7.2003* |
| *s 3* | *amended by 83/1976 s 2* | *9.12.1976* |
| | *amended by 115/1976 s 3* | *23.12.1976* |
| | *amended by 107/1981 s 3* | *11.2.1982* |
| | *amended by 49/1984 s 2* | *24.5.1984* |
| | *deleted in pursuance of the Acts Republication Act 1967* | *1.1.1985* |
| *s 4* | *deleted by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| s 5 | | |
| s 5(1) | s 5(1) redesignated as s 5 in pursuance of the *Acts Republication Act 1967* | 1.1.1985 |
| | s 5 redesignated as s 5(1) by 90/1986 s 3(b) | 1.2.1987 |
| | amended by 19/2015 s 4(1) | 6.8.2015 |
| aggravated offence | inserted by 62/2005 s 4 | 15.5.2006 |
| approved carer | inserted by 64/2017 s 62 | 22.10.2018 |
| basic offence | inserted by 62/2005 s 4 | 15.5.2006 |
| bestiality | inserted by 10/2008 s 4(1) | 23.11.2008 |
| *carnal knowledge* | *deleted by 83/1976 s 3(a)* | *9.12.1976* |
| *cattle* | *deleted by 62/2005 s 4* | *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) | 17.6.2012 |
| | amended by 19/2015 s 4(2) | 6.8.2015 |
| 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 |
| | substituted by 46/2015 Sch 1 cl 5 | 1.7.2017 |
| foster parent | inserted by 6/2019 s 4 | 22.10.2018 |
| *Full Court* | *inserted by 28/2008 s 4* | *3.8.2008* |
| | *substituted by 9/2013 s 4* | *5.5.2013* |
| | *deleted by 18/2017 Sch 2 cl 5* | *5.3.2018* |
| local government body | inserted by 26/2002 s 3 | 16.1.2003 |
| | substituted by 15/2006 Sch 1 cl 1 | 23.11.2006 |
| | substituted by 5/2017 s 27(1) | 1.7.2019 |
| 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 |
| planning assessment panel | inserted by 5/2017 s 27(2) | 1.7.2019 |
| property | substituted by 90/1986 s 3(a) | 1.2.1987 |
| *rape* | *deleted by 83/1976 s 3(b)* | *9.12.1976* |
| serious and organised crime offence | inserted by 12/2012 s 28(2) | 17.6.2012 |
| 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 |

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|---|---|---|
| | 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 10/2012 s 4(1) | 19.5.2012 |
| | amended by 12/2012 s 29(1) | 17.6.2012 |
| | amended by 28/2016 s 6(1) | 16.6.2016 |
| | amended by 25/2017 Sch 1 cl 3 | 22.10.2018 |
| | amended by 38/2018 s 5(1) | 31.1.2019 |
| | amended by 17/2019 s 4(1), (2), (4) | 3.10.2019 |
| | (k)(ii) deleted by 17/2019 s 4(3) | 3.10.2019 |
| | amended by 9/2022 s 8 | 1.10.2022 |
| | amended by 25/2025 Sch 2 cl 14 | uncommenced—not incorporated |
| 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(1ab) | inserted by 24/2023 s 3(1) | 1.1.2024 |
| 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(1d) | inserted by 28/2021 s 4 | 16.12.2021 |
| | amended by 24/2023 s 3(2) | 1.1.2024 |
| s 5AA(2a) and (2b) | inserted by 12/2012 s 29(2) | 17.6.2012 |
| s 5AA(4) | amended by 12/2012 s 29(3) | 17.6.2012 |
| s 5AA(4a) | inserted by 38/2018 s 5(2) | 31.1.2019 |
| | **amended by 73/2025 Sch 1 cl 1** | **1.7.2026** |
| | amended by 35/2025 s 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 |
| cognitive impairment | inserted by 28/2016 s 6(2) | 16.6.2016 |
| harm | inserted by 24/2023 s 3(3) | 1.1.2024 |
| major defect | inserted by 18/2010 s 4(6) | 21.8.2011 |
| material defect | inserted by 24/2023 s 3(4) | 1.1.2024 |
| *spouse* | *deleted by 43/2006 s 67(2)* | *1.6.2007* |
| street race | inserted by 18/2010 s 4(6) | 21.8.2011 |
| s 5AB | inserted by 37/2024 Sch 1 cl 2 | 28.4.2025 |
| s 5A | inserted by 115/1976 s 4 | 23.12.1976 |

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|---|---|---|
| s 5B | inserted by 35/1992 s 4 | 6.7.1992 |
| *s 5C* | *inserted by 63/1992 s 2* | *12.11.1992* |
| | *deleted by 28/2002 s 3* | *1.12.2002* |
| s 5D | inserted by 59/1994 s 4 | 1.1.1995 |
| Pt 1A | inserted by 28/2002 s 4 | 1.12.2002 |
| s 5H | | |
| s 5H(3) | substituted by 12/2025 s 3 | 14.7.2025 |
| 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 |
| | 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 | | |
| heading | amended by 33/2012 s 24 | 15.10.2012 |
| 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 |
| | amended by 7/2021 Sch 1 cl 2 | 7.7.2022 |
| *s 12A Note* | *omitted under Legislation Revision and Publication Act 2002* | *7.7.2022* |
| 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 13A(12) | inserted by 29/2021 Sch 1 cl 7 | 31.1.2023 |
| *s 14* | *amended by 51/1983 s 2* | *16.6.1983* |
| | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *deleted by 91/1986 s 3* | *18.12.1986* |
| *s 14A* | *substituted by 51/1983 s 3* | *16.6.1983* |
| | *deleted by 91/1986 s 3* | *18.12.1986* |
| Pt 3 Div 1A | inserted by 4/2005 s 4 | 14.4.2005 |
| heading | substituted by 6/2018 s 4 | 6.9.2018 |
| s 13B | inserted by 6/2018 s 5 | 6.9.2018 |

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|---|---|---|
| s 14 | | |
| s 14(1) | amended by 6/2018 s 6(1)—(3) | 6.9.2018 |
| s 14(2) | amended by 6/2018 s 6(1), (2) | 6.9.2018 |
| s 14(3) | substituted by 6/2018 s 6(4) | 6.9.2018 |
| *s 14(4) before substitution by 6/2018* | | |
| *cognitive impairment* | *inserted by 28/2016 s 7(1)* | *16.6.2016* |
| *vulnerable adult* | *amended by 28/2016 s 7(2)* | *16.6.2016* |
| s 14(4) | substituted by 6/2018 s 6(4) | 6.9.2018 |
| s 14A | inserted by 6/2018 s 7 | 6.9.2018 |
| Pt 3 Div 2 | | |
| heading | inserted by 26/2002 s 19(1) (Sch 2) | 16.1.2003 |
| | substituted by 43/2020 s 5 | 1.2.2021 |
| s 14B | inserted by 43/2020 s 6 | 1.2.2021 |
| 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 |
| | amended by 31/2025 s 3(1) | 1.9.2025 |
| s 15(2a) | inserted by 31/2025 s 3(2) | 1.9.2025 |
| s 15(6) | inserted by 31/2025 s 3(3) | 1.9.2025 |
| 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 |
| | amended by 31/2025 s 4(1) | 1.9.2025 |
| s 15A(2a) | inserted by 31/2025 s 4(2) | 1.9.2025 |
| s 15A(3) | amended by 2/2007 Sch 1 cl 1 | 1.4.2007 |
| s 15A(5) | inserted by 31/2025 s 4(3) | 1.9.2025 |
| s 15B | inserted by 28/2003 s 6 | 27.7.2003 |
| s 15B(1) | s 15B redesignated as s 15B(1) by 43/2020 s 7 | 29.3.2021 |
| s 15B(2) and (3) | inserted by 43/2020 s 7 | 29.3.2021 |
| s 15C | inserted by 28/2003 s 6 | 27.7.2003 |
| ss 15D—15F | inserted by 43/2020 s 8 | 1.2.2021 |
| 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* | *deleted by 63/1992 s 3* | *12.11.1992* |
| *heading preceding s 18* | *deleted by 107/1981 s 4* | *11.2.1982* |
| s 18 | deleted by 107/1981 s 4 | 11.2.1982 |
| | inserted by 40/1991 s 2 | 31.10.1991 |
| Pt 3 Div 4 | | |

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|---|---|---|
| heading preceding s 19 | substituted by 90/1986 s 4 | 1.2.1987 |
| heading | substituted by 26/2002 s 19(1) (Sch 2) | 16.1.2003 |
| s 19 | 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 |
| | amended by 17/2019 s 5 | 3.10.2019 |
| | amended by 21/2019 s 5 | 3.10.2019 |
| 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 | substituted by 26/2002 s 19(1) (Sch 2) | 16.1.2003 |
| | amended by 1/2025 s 3 | 8.6.2025 |
| s 19AA | inserted by 7/1994 s 3 | 1.6.1994 |
| heading | amended by 1/2025 s 4(1) | 8.6.2025 |
| s 19AA(1) | amended by 55/2001 s 4(a), (b) | 13.1.2002 |
| | amended by 1/2025 s 4(2)—(9) | 8.6.2025 |
| s 19AA(2) | amended by 62/2005 s 7 | 15.5.2006 |
| | substituted by 1/2025 s 4(10) | 8.6.2025 |
| s 19AA(2a) | inserted by 1/2025 s 4(10) | 8.6.2025 |
| s 19AA(3) | amended by 1/2025 s 4(11) | 8.6.2025 |
| s 19AA(4) | amended by 1/2025 s 4(12) | 8.6.2025 |
| s 19AA(5) | amended by 1/2025 s 4(13) | 8.6.2025 |
| 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 | substituted by 26/2002 s 19(1) (Sch 2) | 16.1.2003 |
| | substituted by 81/2005 s 7 | 30.7.2006 |
| s 19AAB | inserted by 81/2005 s 8 | 30.7.2006 |
| Registrar of Motor Vehicles | inserted by 28/2021 s 5 | 16.12.2021 |
| s 19A | inserted by 91/1986 s 4 | 18.12.1986 |
| | heading amended by 24/2023 s 4 | 1.1.2024 |
| s 19A(1) | amended by 81/2005 s 9(1), (2) | 30.7.2006 |
| | amended by 90/2013 s 4(1) | 26.1.2014 |
| *s 19A(2)* | *deleted by 81/2005 s 9(3)* | *30.7.2006* |
| s 19A(3) | amended by 81/2005 s 9(4)—(6) | 30.7.2006 |
| | amended by 90/2013 s 4(2) | 26.1.2014 |
| *s 19A(4)* | *amended by 62/2005 s 8(1)—(5)* | *15.5.2006* |
| | *deleted by 81/2005 s 9(7)* | *30.7.2006* |

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|---|---|---|
| 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 |
| *s 19A(10) before deletion by 81/2005* | | |
| *harm and serious harm* | *inserted by 62/2005 s 8(8)* | *15.5.2006* |
| *s 19A(10)* | *deleted by 81/2005 s 9(11)* | *30.7.2006* |
| 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 19AB(1) | amended by 24/2023 s 5(1) | 1.1.2024 |
| s 19AB(2) | amended by 24/2023 s 5(2) | 1.1.2024 |
| s 19ABA | inserted by 24/2023 s 6 | 1.1.2024 |
| s 19AC | inserted by 14/2006 s 5 | 13.8.2006 |
| s 19AC(1) | amended by 90/2013 s 5 | 26.1.2014 |
| s 19AD | inserted by 18/2010 s 6 | 21.8.2011 |
| s 19ADA | inserted by 28/2021 s 6 | 16.12.2021 |
| s 19AE | inserted by 11/2021 s 4 | 29.8.2022 |
| | heading amended by 24/2023 s 7(1) | 1.1.2024 |
| s 19AE(1) | amended by 28/2021 s 7(1) | 29.8.2022 |
| | amended by 24/2023 s 7(2) | 1.1.2024 |
| s 19AE(1a) | inserted by 28/2021 s 7(2) | 29.8.2022 |
| s 19AE(10a)—(10d) | inserted by 28/2021 s 7(3) | 29.8.2022 |
| s 19AE(13) | amended by 24/2023 s 7(3) | 1.1.2024 |
| s 19AE(14) | | |
| Registrar of Motor Vehicles | deleted by 28/2021 s 7(4) | 29.8.2022 |
| s 19AF | inserted by 11/2021 s 4 | 29.8.2022 |
| | heading amended by 24/2023 s 8(1) | 1.1.2024 |
| s 19AF(1) | substituted by 28/2021 s 8(1) | 29.8.2022 |
| | amended by 24/2023 s 8(2), (3) | 1.1.2024 |
| s 19AF(1a) | inserted by 28/2021 s 8(1) | 29.8.2022 |
| s 19AF(10) | amended by 28/2021 s 8(2) | 29.8.2022 |
| | amended by 24/2023 s 8(4) | 1.1.2024 |
| s 19AF(13a)—(13d) | inserted by 28/2021 s 8(3) | 29.8.2022 |
| s 19AF(17) | substituted by 28/2021 s 8(4) | 29.8.2022 |
| | amended by 24/2023 s 8(5) | 1.1.2024 |
| s 19B | inserted by 91/1986 s 4 | 18.12.1986 |

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| s 19B(1) | amended by 24/2023 s 9(1) | 1.1.2024 |
| s 19B(2) | amended by 81/2005 s 11(1), (2) | 30.7.2006 |
| | amended by 28/2021 s 9(1) | 16.12.2021 |
| | amended by 24/2023 s 9(2) | 1.1.2024 |
| s 19B(3) | amended by 28/2021 s 9(2) | 16.12.2021 |
| | amended by 24/2023 s 9(3) | 1.1.2024 |
| 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 |
| s 20(3) | amended by 17/2019 s 6(1), (2) | 3.10.2019 |
| | amended by 21/2019 s 6(1) | 3.10.2019 |
| s 20(4) | amended by 17/2019 s 6(3), (4) | 3.10.2019 |
| | amended by 21/2019 s 6(2) | 3.10.2019 |
| s 20AA | inserted by 17/2019 s 7 | 3.10.2019 |
| s 20AA(6) | amended by 34/2020 s 5(1) | 1.10.2020 |
| s 20AA(9) | | |
| pharmacy | inserted by 25/2021 s 6(1) | 9.9.2021 |
| pharmacy services | inserted by 25/2021 s 6(1) | 9.9.2021 |
| prescribed emergency worker | amended by 25/2021 s 6(2), (3) | 9.9.2021 |
| | amended by 8/2025 Sch 1 cl 1 | uncommenced—not incorporated |
| | amended by 28/2025 Sch 1 cl 1 | 17.11.2025 |
| recklessly | inserted by 34/2020 s 5(2) | 1.10.2020 |
| retrieval medicine | inserted by 21/2019 s 7 | 3.10.2019 |
| rural area | inserted by 21/2019 s 7 | 3.10.2019 |
| s 20AB | inserted by 17/2019 s 7 | 3.10.2019 |
| s 20AB(4) | | |
| harm | substituted by 34/2020 s 6 | 1.10.2020 |
| s 20AC | inserted by 17/2019 s 7 | 3.10.2019 |
| Pt 3 Div 7AA | inserted by 38/2018 s 6 | 31.1.2019 |
| s 20A | | |
| s 20A(a1) | inserted by 54/2024 s 3(1) | 1.5.2025 |
| s 20A(1) | amended by 54/2024 s 3(2) | 1.5.2025 |
| s 20A(3) | amended by 35/2025 s 4 | uncommenced—not incorporated |
| | **amended by 73/2025 Sch 1 cl 2** | **1.7.2026** |
| s 20A(4) | substituted by 54/2024 s 3(3) | 1.5.2025 |
| s 20A(5) and (6) | inserted by 54/2024 s 3(3) | 1.5.2025 |

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| Pt 3 Div 7AAB | inserted by 35/2025 s 5 | uncommenced—not incorporated |
| 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 |
| | amended by 33/2012 s 25(1), (2) | 15.10.2012 |
| 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 24(2) | amended by 17/2019 s 8 | 3.10.2019 |
| | amended by 21/2019 s 8 | 3.10.2019 |
| s 25 | amended by 59/1994 Sch 1 | 1.1.1995 |
| | substituted by 62/2005 s 10 | 15.5.2006 |
| *s 26* | *deleted by 59/1994 Sch 1* | *1.1.1995* |
| *s 27* | *amended by 59/1994 Sch 1* | *1.1.1995* |
| | *deleted by 62/2005 s 10* | *15.5.2006* |
| *s 28* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *deleted by 59/1994 Sch 1* | *1.1.1995* |
| 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 |
| | amended by 17/2019 s 9 | 3.10.2019 |
| | amended by 21/2019 s 9 | 3.10.2019 |
| s 29(4) and (5) | inserted by 81/2005 s 12 | 30.7.2006 |
| s 29A | inserted by 33/2012 s 26 | 15.10.2012 |
| *s 30* | *substituted by 90/1986 s 5* | *1.2.1987* |
| | *deleted by 6/2018 s 8* | *6.9.2018* |
| s 31 | substituted by 90/1986 s 5 | 1.2.1987 |
| s 31(1) | amended by 62/2005 s 12(1) | 15.5.2006 |
| | amended by 62/2017 s 4(1) | 1.5.2018 |
| s 31(2) | amended by 62/2005 s 12(2) | 15.5.2006 |
| | amended by 62/2017 s 4(2) | 1.5.2018 |
| Pt 3 Div 7AB | | |

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|---|---|---|
| heading | inserted by 33/2012 s 27 | 15.10.2012 |
| 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 |
| s 32AA | inserted by 33/2012 s 28 | 15.10.2012 |
| 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) and (3) definitions of controlled drug, prescribed label and prescription drug—16.12.2007 |
| s 32C | | |
| s 32C(4) | | |
| licensed premises | inserted by 1/2007 s 4 | 16.12.2007 |
| | amended by 49/2017 Sch 1 cl 2 | 18.11.2019 |
| 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 |
| *ss 34 and 35* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *deleted by 90/1986 s 5* | *1.2.1987* |
| *ss 36 and 37* | *deleted by 90/1986 s 5* | *1.2.1987* |
| *s 38* | *amended by 51/1983 s 5* | *16.6.1983* |
| | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *deleted by 91/1986 s 5* | *18.12.1986* |
| *s 38A* | *substituted by 51/1983 s 6* | *16.6.1983* |
| | *deleted by 91/1986 s 5* | *18.12.1986* |
| Pt 3 Div 8A | inserted by 25/2017 Sch 1 cl 4 | 22.10.2018 |
| *Pt 3 Div 9 before substitution by 62/2005* | | |
| *heading preceding s 39* | *substituted by 26/2002 s 19(1) (Sch 2)* | *16.1.2003* |
| *s 39* | *amended by 107/1981 s 6* | *11.2.1982* |
| | *amended by 69/1991 s 15(a)* | *6.7.1992* |
| | *substituted by 22/1994 Sch cl 1(a)* | *1.8.1994* |
| *s 40* | *amended by 107/1981 s 7* | *11.2.1982* |
| *s 41* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *amended by 59/1994 Sch 1* | *1.1.1995* |
| *s 42* | *amended by 59/1994 Sch 1* | *1.1.1995* |
| *s 43* | *(a) deleted by 107/1981 s 8(a)* | *11.2.1982* |
| | *amended by 107/1981 s 8(b)* | *11.2.1982* |

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| | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *amended by 59/1994 Sch 1* | *1.1.1995* |
| *s 45* | *deleted by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| *s 46* | *amended by 16/1986 s 14* | *1.10.1986* |
| | *deleted by 62/1993 s 24* | *1.7.1993* |
| *s 47* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *amended by 90/1986 s 6* | *1.2.1987* |
| | *deleted by 62/1993 s 24* | *1.7.1993* |
| Pt 3 Div 9 | substituted by 62/2005 s 13 | 15.5.2006 |
| *Pt 3 Div 10 before deletion by 62/2005* | | |
| *heading preceding s 47A* | *inserted by 103/1988 s 3(c)* | *6.3.1989* |
| | *substituted by 26/2002 s 19(1) (Sch 2)* | *16.1.2003* |
| *s 47A* | *inserted by 103/1988 s 3(c)* | *6.3.1989* |
| *Pt 3 Div 10* | *deleted by 62/2005 s 14* | *15.5.2006* |
| Pt 3 Div 11 | | |
| heading | substituted by 26/2002 s 19(1) (Sch 2) | 16.1.2003 |
| s 46 | inserted by 10/2008 s 5 | 23.11.2008 |
| s 46(3) | amended by 25/2022 s 3 | 8.3.2023 |
| s 47 | inserted by 10/2008 s 5 | 23.11.2008 |
| *s 48 before substitution by 10/2008* | *substituted by 83/1976 s 4* | *9.12.1976* |
| | *s 48(1) redesignated as s 48 in pursuance of the Acts Republication Act 1967* | *1.1.1985* |
| | *amended by 98/1985 s 4* | *1.12.1985* |
| | *amended by 59/1994 Sch 1* | *1.1.1995* |
| *s 48(2)* | *deleted by 107/1981 s 9* | *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)* | *deleted by 107/1981 s 10(a)* | *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 |
| | amended by 9/2022 s 9 | 1.10.2022 |
| 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 |

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| | 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 |
| | deleted by 41/2017 s 5(1) | 24.10.2017 |
| | The amendment to s 49(5a) purportedly made by s 63 of 64/2017 is of no effect because of its deletion by 41/2017. | |
| | inserted by 57/2021 s 4 | 1.6.2022 |
| 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 49(9) | inserted by 41/2017 s 5(2) | 24.10.2017 |
| | amended by 6/2019 s 5 | 9.5.2019 |
| *s 50 before substitution by 41/2017* | *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* |
| s 50 | substituted by 41/2017 s 6 | 24.10.2017 |
| heading | amended by 17/2023 s 3(1) | 22.6.2023 |
| s 50(8) | The amendment to s 50(8) purportedly made by s 64 of 64/2017 is of no effect because of the substitution of s 50 by 41/2017. | |
| s 50(13) | amended by 6/2019 s 6 | 9.5.2019 |
| s 50(14) | inserted by 17/2023 s 3(2) | 22.6.2023 |
| s 51 | deleted by 83/1976 s 4 | 9.12.1976 |
| | inserted by 23/2014 s 4 | 30.3.2015 |
| *ss 52—55* | *deleted by 83/1976 s 4* | *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(1) | amended by 9/2022 s 10(1), (2) | 1.10.2022 |
| *s 56(2)* | *amended by 31/2005 s 12* | *15.5.2006* |
| | *deleted by 9/2022 s 10(3)* | *1.10.2022* |
| s 57 | | |
| s 57(1) | substituted by 10/2008 s 8(1) | 23.11.2008 |
| | amended by 57/2021 s 5(1) | 1.6.2022 |
| s 57(1a) | inserted by 57/2021 s 5(2) | 1.6.2022 |
| s 57(4) | inserted by 10/2008 s 8(2) | 23.11.2008 |
| | amended by 46/2011 Sch 3 cl 17 | 1.1.2012 |
| | substituted by 41/2017 s 7 | 24.10.2017 |
| | The amendment to s 57(4) purportedly made by s 65 of 64/2017 is of no effect because of its substitution by 41/2017. | |

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| | amended by 6/2019 s 7 | 9.5.2019 |
| 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* | *deleted by 83/1976 s 6* | *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 |
| | amended by 9/2022 s 11(1), (2) | 1.10.2022 |
| *s 58(3)—(6)* | *inserted by 92/1978 s 2(b)* | *7.12.1978* |
| | *deleted by 114/1983 s 3* | *22.12.1983* |
| *s 58A* | *inserted by 84/1983 s 2* | *1.12.1983* |
| | *deleted by 52/2004 s 4* | *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* | *deleted by 83/1976 s 7* | *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 63* | *amended by 107/1981 s 13* | *11.2.1982* |
| | *amended by 59/1994 Sch 1* | *1.1.1995* |
| | *deleted by 20/2000 s 2* | *8.6.2000* |
| s 64—see s 60 | | |
| s 65—see s 61 | | |
| Pt 3 Div 11A | inserted by 52/2004 s 7 | 30.1.2005 |
| heading | amended by 25/2014 s 6 | 1.4.2015 |
| s 62 | | |
| administering | inserted by 13/2019 s 5(1) | 24.10.2019 |
| *child* | *deleted by 43/2011 s 3(1)* | *17.11.2011* |
| child exploitation material | child pornography amended to read child exploitation material by 25/2014 s 7(1) | 1.4.2015 |
| | amended by 25/2014 s 7(2) | 1.4.2015 |
| | substituted by 26/2019 s 4(1) | 3.1.2020 |

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| child-like sex doll | inserted by 26/2019 s 4(1) | 3.1.2020 |
| child pornography | amended by 43/2011 s 3(2), (3) | 17.11.2011 |
| deal with | inserted by 13/2019 s 5(2) | 24.10.2019 |
| disseminate | amended by 25/2014 s 7(3) | 1.4.2015 |
| | amended by 26/2019 s 4(2) | 3.1.2020 |
| encourage | inserted by 13/2019 s 5(3) | 24.10.2019 |
| hosting | inserted by 13/2019 s 5(3) | 24.10.2019 |
| material | amended by 26/2019 s 4(3) | 3.1.2020 |
| pornographic nature | substituted by 25/2014 s 7(4) | 1.4.2015 |
| relevant industry regulatory authority | inserted by 13/2019 s 5(4) | 24.10.2019 |
| website | inserted by 13/2019 s 5(4) | 24.10.2019 |
| s 63 | amended by 31/2005 s 13 | 15.5.2006 |
| | amended by 25/2014 s 8 | 1.4.2015 |
| | amended by 26/2019 s 5 | 3.1.2020 |
| | amended by 9/2022 s 12 | 1.10.2022 |
| s 63AA | inserted by 26/2019 s 6 | 3.1.2020 |
| | amended by 9/2022 s 13 | 1.10.2022 |
| s 63A | | |
| s 63A(1) | amended by 31/2005 s 14 | 15.5.2006 |
| | amended by 25/2014 s 9(1) | 1.4.2015 |
| | amended by 26/2019 s 7(1), (2) | 3.1.2020 |
| | amended by 9/2022 s 14 | 1.10.2022 |
| *s 63A(3)* | *amended by 25/2014 s 9(2)* | *1.4.2015* |
| | *deleted by 29/2022 s 5* | *8.12.2022* |
| s 63AAB | inserted by 26/2019 s 8 | 3.1.2020 |
| | amended by 9/2022 s 15 | 1.10.2022 |
| s 63AB | inserted by 13/2019 s 6 | 24.10.2019 |
| 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 |
| | amended by 9/2022 s 16(1), (2) | 1.10.2022 |
| s 63B(3) | amended by 31/2005 s 15(2) | 15.5.2006 |
| | amended by 43/2011 s 4(4), (5) | 17.11.2011 |
| | amended by 9/2022 s 16(3), (4) | 1.10.2022 |
| s 63B(3a) | inserted by 9/2022 s 16(5) | 1.10.2022 |
| s 63B(4) | inserted by 43/2011 s 4(6) | 17.11.2011 |
| s 63B(4a) | inserted by 57/2021 s 6 | 1.6.2022 |
| s 63B(5) | inserted by 43/2011 s 4(6) | 17.11.2011 |
| s 63B(6) | inserted by 43/2011 s 4(6) | 17.11.2011 |
| | substituted by 41/2017 s 8 | 24.10.2017 |

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| | The amendment to s 63B(6) purportedly made by s 66 of 64/2017 is of no effect because of its substitution by 41/2017. | |
| | amended by 6/2019 s 8 | 9.5.2019 |
| s 63B(7) | inserted by 43/2011 s 4(6) | 17.11.2011 |
| s 63C | | |
| s 63C(2) | amended by 13/2019 s 7(1), (2) | 24.10.2019 |
| s 63C(2a) | inserted by 11/2013 s 5 | 9.6.2013 |
| | amended by 13/2019 s 7(3), (4) | 24.10.2019 |
| s 63C(2b) | inserted by 11/2013 s 5 | 9.6.2013 |
| | amended by 13/2019 s 7(5), (6) | 24.10.2019 |
| s 63C(3) | amended by 25/2014 s 10 | 1.4.2015 |
| | amended by 13/2019 s 7(7), (8) | 24.10.2019 |
| s 63C(4) | amended by 13/2019 s 7(9), (10) | 24.10.2019 |
| s 63D | inserted by 13/2019 s 8 | 24.10.2019 |
| Pt 3 Div 11B | inserted by 57/2021 s 7 | 1.6.2022 |
| 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 |
| | amended by 21/2023 s 6 | 1.10.2023 |
| s 65A | inserted by 20/2000 s 4 | 8.6.2000 |
| heading | amended by 21/2023 s 7(1) | 1.10.2023 |
| s 65A(1) | amended by 26/2002 s 19(1) (Sch 2) | 16.1.2003 |
| commercial sexual acts | inserted by 21/2023 s 7(2) | 1.10.2023 |
| *commercial sexual services* | *deleted by 21/2023 s 7(2)* | *1.10.2023* |
| sexual servitude | amended by 21/2023 s 7(3) | 1.10.2023 |
| 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 |
| | amended by 21/2023 s 8(1), (2) | 1.10.2023 |
| s 66(2) | amended by 31/2005 s 16(3), (4) | 15.5.2006 |
| | amended by 44/2006 s 16(2) | 18.1.2007 |
| | amended by 21/2023 s 8(1), (2) | 1.10.2023 |
| s 67 | deleted by 83/1976 s 10 | 9.12.1976 |
| | inserted by 20/2000 s 4 | 8.6.2000 |
| | amended by 21/2023 s 9(2) | 1.10.2023 |
| heading | amended by 21/2023 s 9(1) | 1.10.2023 |
| s 68 | deleted by 83/1976 s 10 | 9.12.1976 |
| | inserted by 20/2000 s 4 | 8.6.2000 |
| heading | amended by 21/2023 s 10(1) | 1.10.2023 |

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| s 68(1) | amended by 31/2005 s 17(1) | 15.5.2006 |
| | amended by 9/2022 s 17(1) | 1.10.2022 |
| | amended by 21/2023 s 10(2), (3) | 1.10.2023 |
| s 68(2) | amended by 31/2005 s 17(2) | 15.5.2006 |
| | amended by 9/2022 s 17(2), (3) | 1.10.2022 |
| | amended by 21/2023 s 10(2), (3) | 1.10.2023 |
| s 68(3) | amended by 31/2005 s 17(3) | 15.5.2006 |
| | amended by 9/2022 s 17(4), (5) | 1.10.2022 |
| | amended by 21/2023 s 10(3)—(5) | 1.10.2023 |
| Pt 3 Div 13 | | |
| heading | substituted by 26/2002 s 19(1) (Sch 2) | 16.1.2003 |
| *s 69 before substitution by 10/2008* | *s 69(1) redesignated as s 69 in pursuance of the Acts Republication Act 1967* | *1.1.1985* |
| | *amended by 59/1994 Sch 1* | *1.1.1995* |
| *s 69(2)* | *deleted by 107/1981 s 15* | *11.2.1982* |
| 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(2a) | inserted by 57/2021 s 8 | 1.6.2022 |
| *s 73(5)* | *substituted by 9/1992 s 2* | *16.4.1992* |
| | *deleted by 10/2008 s 11* | *23.11.2008* |
| *s 74 before deletion by 10/2008* | *deleted by 107/1984 s 9* | *20.12.1984* |
| | *inserted by 23/1994 s 3* | *28.7.1994* |
| *s 74(11)* | | |
| *sexual offence* | *amended by 20/2000 s 5* | *8.6.2000* |
| | *amended by 31/2005 s 18* | *15.5.2006* |
| *s 74* | *deleted by 10/2008 s 12* | *23.11.2008* |
| 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* | *amended by 83/1976 s 15* | *9.12.1976* |
| | *deleted by 98/1985 s 5* | *1.12.1985* |
| *s 77* | *amended by 83/1976 s 16* | *9.12.1976* |

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| | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *deleted by 51/1988 s 28* | *12.5.1988* |
| *s 77A* | *amended by 83/1976 s 17* | *9.12.1976* |
| | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *deleted by 51/1988 s 29* | *12.5.1988* |
| 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 |
| | amended by 46/2019 s 6 | 1.5.2020 |
| s 79 | amended by 50/1984 s 3(1) (Sch 1) | 1.1.1985 |
| | amended by 46/2019 s 7 | 1.5.2020 |
| 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 |
| 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 before deletion by 7/2021* | | |
| *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 17* | *deleted by 7/2021 Sch 1 cl 3* | *7.7.2022* |
| 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 |
| s 83CA | inserted by 61/2017 s 4 | 23.1.2018 |
| Pt 3B | inserted by 12/2012 s 30 | 17.6.2012 |

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| Pt 3B Div 1 | | |
| heading | inserted by 19/2015 s 5 | 6.8.2015 |
| s 83D | | |
| s 83D(1) | amended by 19/2015 s 6(1) | 6.8.2015 |
| s 83D(2) | amended by 19/2015 s 6(2) | 6.8.2015 |
| s 83G | | |
| s 83G(1) | amended by 19/2015 s 7 | 6.8.2015 |
| Pt 3B Div 2 | inserted by 19/2015 s 8 | 6.8.2015 |
| s 83GA | | |
| s 83GA(2) | amended by 25/2023 s 2(1) | 15.9.2023 |
| s 83GA(5a) | inserted by 25/2023 s 2(2) | 15.9.2023 |
| s 83GA(6) | amended by 25/2023 s 2(3) | 15.9.2023 |
| s 83GC | | |
| *s 83GC(2)* | *deleted by 47/2017 s 3* | *14.11.2017* |
| s 83GD | | |
| *s 83GD(3)* | *deleted by 47/2017 s 4* | *14.11.2017* |
| s 83GE | | |
| *s 83GE(2)* | *deleted by 47/2017 s 5* | *14.11.2017* |
| s 83GF | | |
| s 83GF(1) | amended by 53/2017 s 14 | 30.4.2018 |
| Pt 3BA | inserted by 45/2025 s 3 | 16.2.2026 |
| Pt 3C | inserted by 83/2013 s 4 | 31.12.2013 |
| | deleted by 8/2025 Sch 1 cl 2 | uncommenced—not incorporated |
| s 83H | | |
| s 83H(1) | | |
| accredited assistance dog | accredited guide dog amended to read accredited assistance dog by 33/2016 Sch 1 cl 1(1) | 1.7.2017 |
| | amended by 33/2016 Sch 1 cl 1(2), (3) | 1.7.2017 |
| *guide dog* | *deleted by 33/2016 Sch 1 cl 1(4)* | *1.7.2017* |
| working animal | amended by 33/2016 Sch 1 cl 1(5) | 1.7.2017 |
| s 83K | amended by 53/2017 s 15(1), (2) | 30.4.2018 |
| s 83L | | |
| s 83L(2) | amended by 33/2016 Sch 2 cl 2 | 1.7.2017 |
| Pt 3D | inserted by 62/2017 s 5 | 1.5.2018 |
| *Pt 4 before substitution 90/1986* | *amended by 107/1981 ss 16—19* | *11.2.1982* |
| | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *amended by 16/1986 ss 15—18* | *1.10.1986* |
| 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 |

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|---|---|---|
| *s 85 before substitution by 40/2009* | | |
| *s 85(1)* | *amended by 69/1991 s 15(b)* | *6.7.1992* |
| | *amended by 69/2001 s 7(a)—(f)* | *3.2.2002* |
| *s 85(3)* | *amended by 69/1991 s 15(c)* | *6.7.1992* |
| | *amended by 69/2001 s 7(g)—(l)* | *3.2.2002* |
| 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 85B(1) | amended by 33/2021 s 3(1) | 16.9.2021 |
| s 85B(3) | amended by 9/2025 s 9 | 12.3.2025 |
| s 85B(4) | inserted by 33/2021 s 3(2) | 16.9.2021 |
| 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 86A(3) | amended by 34/2020 s 7(1), (2) | 1.10.2020 |
| *s 87* | *deleted by 69/1991 s 15(e)* | *6.7.1992* |
| Pt 4A | inserted by 2/2004 s 4 | 30.5.2004 |
| *Pt 5 before deletion by 26/2002* | | |
| *s 130* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *amended by 33/1999 Sch (item 16(a))* | *1.7.1999* |
| | *deleted by 26/2002 s 4* | *5.7.2003* |
| *s 131* | *amended by 59/1994 Sch 1* | *1.1.1995* |
| | *deleted by 26/2002 s 4* | *5.7.2003* |
| *s 132* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *deleted by 26/2002 s 4* | *5.7.2003* |
| *s 133* | *deleted by 26/2002 s 4* | *5.7.2003* |
| *ss 134 and 135* | *deleted by 59/1994 s 7* | *1.1.1995* |
| *heading preceding s 136* | *deleted by 26/2002 s 4* | *5.7.2003* |
| *ss 136 and 137* | *amended by 59/1994 Sch 1* | *1.1.1995* |
| | *deleted by 26/2002 s 4* | *5.7.2003* |
| *s 138* | *amended by 107/1981 s 20* | *11.2.1982* |
| | *amended by 59/1994 Sch 1* | *1.1.1995* |
| | *deleted by 26/2002 s 4* | *5.7.2003* |
| *s 139* | *amended by 16/1986 s 19* | *1.10.1986* |
| | *amended by 59/1994 Sch 1* | *1.1.1995* |
| | *deleted by 26/2002 s 4* | *5.7.2003* |
| *s 140* | *amended by 59/1994 Sch 1* | *1.1.1995* |
| | *deleted by 26/2002 s 4* | *15.5.2003* |
| *s 141* | *amended by 16/1986 s 20* | *1.10.1986* |

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| | *deleted by 26/2002 s 4* | *5.7.2003* |
| *s 142* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *amended by 16/1986 s 21* | *1.10.1986* |
| | *deleted by 26/2002 s 4* | *5.7.2003* |
| *s 143* | *amended by 59/1994 Sch 1* | *1.1.1995* |
| | *deleted by 26/2002 s 4* | *5.7.2003* |
| *heading preceding s 144* | *deleted by 26/2002 s 4* | *5.7.2003* |
| *s 144* | *amended by 59/1994 Sch 1* | *1.1.1995* |
| | *deleted by 26/2002 s 4* | *5.7.2003* |
| *s 145* | *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 4* | *5.7.2003* |
| *s 146* | *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 4* | *5.7.2003* |
| *heading preceding s 147* | *deleted by 26/2002 s 4* | *5.7.2003* |
| *ss 147 and 148* | *amended by 59/1994 Sch 1* | *1.1.1995* |
| | *deleted by 26/2002 s 4* | *5.7.2003* |
| *s 149* | *amended by 16/1986 s 22* | *1.10.1986* |
| | *amended by 59/1994 Sch 1* | *1.1.1995* |
| | *deleted by 26/2002 s 4* | *5.7.2003* |
| *s 150* | *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 4* | *5.7.2003* |
| *s 151* | *amended by 16/1986 s 23* | *1.10.1986* |
| | *amended by 59/1994 Sch 1* | *1.1.1995* |
| | *deleted by 26/2002 s 4* | *5.7.2003* |
| *heading preceding s 152* | *deleted by 26/2002 s 4* | *5.7.2003* |
| *s 152* | *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 4* | *5.7.2003* |
| *ss 152A and 153* | *amended by 59/1994 Sch 1* | *1.1.1995* |
| | *deleted by 26/2002 s 4* | *5.7.2003* |
| *s 153A* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *deleted by 26/2002 s 4* | *5.7.2003* |
| *heading preceding s 154* | *inserted by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *deleted by 26/2002 s 4* | *5.7.2003* |
| *s 154* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *deleted by 26/2002 s 4* | *5.7.2003* |

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| *heading preceding s 155* | *deleted by 26/2002 s 4* | *5.7.2003* |
| *s 155* | *amended by 59/1994 Sch 1* | *1.1.1995* |
| | *deleted by 26/2002 s 4* | *5.7.2003* |
| *s 156* | *deleted by 107/1981 s 21* | *11.2.1982* |
| *s 157* | *deleted by 26/2002 s 4* | *5.7.2003* |
| *s 158* | *amended by 59/1994 Sch 1* | *1.1.1995* |
| | *deleted by 26/2002 s 4* | *5.7.2003* |
| *s 159* | *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 4* | *5.7.2003* |
| *s 160* | *amended by 59/1994 Sch 1* | *1.1.1995* |
| | *deleted by 26/2002 s 4* | *5.7.2003* |
| *ss 161 and 162* | *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 4* | *5.7.2003* |
| *s 163* | *amended by 59/1994 Sch 1* | *1.1.1995* |
| | *deleted by 26/2002 s 4* | *5.7.2003* |
| *ss 164 and 165* | *amended by 59/1994 Sch 1* | *1.1.1995* |
| | *deleted by 26/2002 s 4* | *5.7.2003* |
| *s 166* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *deleted by 26/2002 s 4* | *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)* | *deleted by 62/2005 s 19(2)* | *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 |
| *serious drug offence* | *deleted by 80/2005 Sch 1 cl 3(2)* | *3.12.2007* |
| Pt 5 Div 5 | | |
| s 139 | amended by 62/2005 s 20 | 15.5.2006 |
| Pt 5 Div 5A | inserted by 4/2018 s 4 | 13.8.2018 |
| s 139A | | |
| s 139A(1) | amended by 9/2022 s 18(1), (2) | 1.10.2022 |

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| s 139A(2) | amended by 9/2022 s 18(3), (4) | 1.10.2022 |
| s 139A(3) | substituted by 9/2022 s 18(5) | 1.10.2022 |
| 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 144A | | |
| close relative | inserted by 29/2024 s 3(1) | 1.4.2025 |
| personal identification information | amended by 29/2024 s 3(2)—(4) | 1.4.2025 |
| public identification information | inserted by 29/2024 s 3(5) | 1.4.2025 |
| *serious criminal offence* | *deleted by 29/2024 s 3(6)* | *1.4.2025* |
| s 144B | | |
| s 144B(3) | amended by 29/2024 s 4 | 1.4.2025 |
| s 144C | | |
| s 144C(1) | amended by 29/2024 s 5 | 1.4.2025 |
| s 144D | | |
| s 144D(1)—(3) | amended by 29/2024 s 6 | 1.4.2025 |
| s 144DA | inserted by 29/2024 s 7 | 1.4.2025 |
| s 144F | amended by 37/2011 Sch 1 cl 1 | 15.12.2012 |
| Pt 5B | inserted by 7/2013 s 4 | 12.5.2013 |
| Pt 6 | inserted by 26/2002 s 4 | 5.7.2003 |
| s 145 | | |
| s 145(1) | | |
| public agency | amended by 5/2017 s 28 | 1.7.2019 |
| heading preceding s 167 | substituted by 80/1999 s 4 | 25.12.1999 |
| | deleted by 26/2002 s 5 | 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)* | *deleted by 62/2005 s 22(2)* | *18.1.2007* |
| s 170 | substituted by 59/1994 s 8 | 1.1.1995 |
| | substituted by 80/1999 s 5 | 25.12.1999 |

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| 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* |

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

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

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| *s 228* | *amended by 59/1994 Sch 1* | *1.1.1995* |
| | *deleted by 26/2002 s 8* | *5.7.2003* |
| *s 229* | *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 230* | *amended by 59/1994 Sch 1* | *1.1.1995* |
| | *deleted by 26/2002 s 8* | *5.7.2003* |
| *s 231* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *deleted by 26/2002 s 8* | *5.7.2003* |
| *s 232* | *amended by 59/1994 Sch 1* | *1.1.1995* |
| | *deleted by 26/2002 s 8* | *5.7.2003* |
| *heading preceding s 233* | *deleted by 26/2002 s 8* | *5.7.2003* |
| *ss 233 and 234* | *amended by 59/1994 Sch 1* | *1.1.1995* |
| | *deleted by 26/2002 s 8* | *5.7.2003* |
| *s 235* | *deleted by 26/2002 s 8* | *5.7.2003* |
| *s 236* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *deleted by 26/2002 s 8* | *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 | 17.6.2012 |
| Pt 6C | inserted by 26/2002 s 8 | 5.7.2003 |
| Pt 6D | inserted by 13/2022 s 3 | 16.12.2022 |
| *Pt 7 before substitution by 35/1992* | *amended by 115/1976 s 8* | *23.12.1976* |
| | *amended by 107/1981 s 23* | *11.2.1982* |
| | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *amended by 56/1984 s 4* | *1.7.1984* |
| | *amended by 46/1985 s 37* | *10.5.1985* |
| Pt 7 | substituted by 35/1992 s 7 | 6.7.1992 |
| Pt 7 Div 1 | | |
| s 237 | | |
| *local government body* | *deleted by 26/2002 s 9* | *16.1.2003* |
| public officer | amended by 36/2003 s 4 | 29.4.2004 |
| | substituted by 54/2016 Sch 1 cl 1 | 16.12.2016 |
| | The amendments purportedly made by 5/2017 s 29(1) and (2) are of no effect because of other amendments. | |
| | amended by 38/2021 Sch 1 cl 12 | 7.10.2021 |
| Pt 7 Div 2A | inserted by 36/2019 s 4 | 18.6.2020 |
| Pt 7 Div 3 | | |
| s 244 | | |

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|---|---|---|
| s 244(1)—(3) and (5) | amended by 12/2012 s 32 | 17.6.2012 |
| s 245 | | |
| s 245(1)—(3) and (5) | amended by 12/2012 s 33 | 17.6.2012 |
| s 246 | substituted by 16/1999 s 3 | 16.5.1999 |
| s 246(5) | amended by 52/2012 Sch 3 cl 12(1) | 1.9.2013 |
| | amended by 38/2021 Sch 1 cl 13(1) | 7.10.2021 |
| s 246(6) | amended by 52/2012 Sch 3 cl 12(2) | 1.9.2013 |
| | amended by 38/2021 Sch 1 cl 13(2) | 7.10.2021 |
| 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)* | *deleted by 16/1999 s 4(b)* | *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 | 17.6.2012 |
| s 248(4) | amended by 52/2012 Sch 3 cl 13 | 1.9.2013 |
| Pt 7 Div 4 | | |
| s 249 | | |
| s 249(1) and (2) | amended by 12/2012 s 35 | 17.6.2012 |
| s 250 | substituted by 13/2008 Sch 1 cl 4 | 4.9.2008 |
| s 250(1) and (2) | amended by 12/2012 s 36 | 17.6.2012 |
| s 251 | | |
| s 251(1) | s 251 redesignated as s 251(1) by 36/2003 s 5 | 29.4.2004 |
| | amended by 12/2012 s 37(1) | 17.6.2012 |
| s 251(2) | inserted by 36/2003 s 5 | 29.4.2004 |
| | amended by 12/2012 s 37(2) | 17.6.2012 |
| s 251(3) | inserted by 38/2021 Sch 1 cl 14 | 7.10.2021 |
| Pt 7 Div 5 | | |
| 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 |
| Pt 7 Div 7 | | |
| 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 *Acts Republication Act 1967* | 1.4.1999 |
| s 267 | substituted by 59/1994 s 9 | 1.1.1995 |
| *s 268* | *amended by 107/1981 s 24* | *11.2.1982* |
| | *deleted by 35/1992 s 8* | *6.7.1992* |
| *s 269* | *deleted by 59/1994 s 9* | *1.1.1995* |
| Pt 7C | inserted by 40/2015 s 4 | 7.2.2016 |

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|---|---|---|
| s 267AA | | |
| s 267AA(3) | amended by 12/2025 s 4 | 14.7.2025 |
| s 267AA(6) | | |
| prescribed firearm offence | amended by 46/2015 Sch 1 cl 6 | 1.7.2017 |
| Pt 7D | inserted by 35/2024 s 3 | 16.12.2024 |
| s 267AB | | |
| s 267AB(3) | | |
| prescribed adult | amended by 45/2025 s 4(1) | 16.2.2026 |
| street gang | inserted by 45/2025 s 4(2) | 16.2.2026 |
| 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 |
| intoxication | inserted by 19/2017 s 4 | 27.11.2017 |
| 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 | 25.11.2004 |
| | substituted by 10/2008 s 15 | 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 |
| Pt 8A Div 1 | | |
| s 269A | | |
| s 269A(1) | | |
| authorised person | amended by 39/2000 s 3(a) | 29.10.2000 |
| consumption | inserted by 19/2017 s 5(1) | 27.11.2017 |
| continuing supervision order | inserted by 19/2017 s 5(1) | 14.6.2019 |
| defence | inserted by 39/2000 s 3(b) | 29.10.2000 |
| defensible | inserted by 39/2000 s 3(b) | 29.10.2000 |
| Division 3A order | inserted by 19/2017 s 5(2) | 27.11.2017 |
| drug | inserted by 19/2017 s 5(2) | 27.11.2017 |

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| intoxication | inserted by 39/2000 s 3(b) | 29.10.2000 |
| | substituted by 19/2017 s 5(3) | 27.11.2017 |
| limiting term | inserted by 19/2017 s 5(4) | 27.11.2017 |
| medical practitioner | inserted by 19/2017 s 5(4) | 27.11.2017 |
| mental impairment | amended by 39/2000 s 3(c) | 29.10.2000 |
| | amended by 19/2017 s 5(5) | 27.11.2017 |
| Minister | inserted by 39/2000 s 3(d) | 29.10.2000 |
| next of kin | amended by 43/2006 s 68 | 1.6.2007 |
| prescribed authority | inserted by 19/2017 s 5(6) | 14.6.2019 |
| psychiatrist | amended by 5/2010 Sch 1 cl 9 | 1.7.2010 |
| recreational use | inserted by 19/2017 s 5(7) | 27.11.2017 |
| self-induced | inserted by 19/2017 s 5(7) | 27.11.2017 |
| therapeutic | inserted by 19/2017 s 5(8) | 27.11.2017 |
| training centre | inserted by 6/2016 Sch 1 cl 3(1) | 1.12.2016 |
| youth | inserted by 6/2016 Sch 1 cl 3(2) | 1.12.2016 |
| s 269A(2a) and (2b) | inserted by 19/2017 s 5(9) | 27.11.2017 |
| s 269A(3) | inserted by 6/2016 Sch 1 cl 3(3) | 1.12.2016 |
| s 269AB | inserted by 12/2025 s 5 | 14.7.2025 |
| 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 |
| Pt 8A Div 2 | | |
| s 269C | | |
| s 269C(1) | amended by 19/2017 s 6(1), (2) | 23.10.2017 |
| | s 269C redesignated as s 269C(1) by 19/2017 s 6(3) | 27.11.2017 |
| s 269C(2) | inserted by 19/2017 s 6(3) | 27.11.2017 |
| s 269C(3) | inserted by 19/2017 s 6(3) | 6.9.2018 |
| s 269E | | |
| s 269E(3) | amended by 18/2017 Sch 2 cl 6 | 5.3.2018 |
| s 269F | | |
| s 269F A.(3) | substituted by 39/2000 s 6(a) | 29.10.2000 |
| *s 269F A.(4)* | *deleted by 39/2000 s 6(a)* | *29.10.2000* |
| s 269F B.(3) | amended by 19/2017 s 7(2) | 23.10.2017 |
| | amended by 19/2017 s 7(1) | 27.11.2017 |
| | amended by 12/2025 s 6 | 14.7.2025 |
| 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 |

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| 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 |
| | amended by 19/2017 s 8(2) | 23.10.2017 |
| | amended by 19/2017 s 8(1) | 27.11.2017 |
| | amended by 12/2025 s 7(1) | 14.7.2025 |
| 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 |
| | amended by 19/2017 s 8(4) | 23.10.2017 |
| | amended by 19/2017 s 8(3) | 27.11.2017 |
| | amended by 12/2025 s 7(2) | 14.7.2025 |
| s 269J | | |
| s 269J(4) | amended by 18/2017 Sch 2 cl 7 | 5.3.2018 |
| Pt 8A Div 3 | | |
| s 269M | | |
| s 269M A.(3) | substituted by 39/2000 s 8(a) | 29.10.2000 |
| *s 269M A.(4)* | *deleted by 39/2000 s 8(a)* | *29.10.2000* |
| s 269M B.(2) | substituted by 39/2000 s 8(b) | 29.10.2000 |
| | amended by 19/2017 s 9(2) | 23.10.2017 |
| | amended by 19/2017 s 9(1) | 27.11.2017 |
| 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 269N B.(3) | amended by 19/2017 s 10(2) | 23.10.2017 |
| | amended by 19/2017 s 10(1) | 27.11.2017 |
| Pt 8A Div 3A | | |
| Pt 8A Div 3A Subdiv 1 | inserted by 19/2017 s 11 | 27.11.2017 |
| Pt 8A Div 3A Subdiv 2 | inserted by 19/2017 s 11 | 27.11.2017 |
| s 269NB | | |
| s 269NB(1) | amended by 12/2025 s 8 | 14.7.2025 |
| Pt 8A Div 3A Subdiv 3 | inserted by 19/2017 s 11 | 14.6.2019 |
| Pt 8A Div 3A Subdivs 4 and 5 | inserted by 19/2017 s 11 | 27.11.2017 |
| Pt 8A Div 4 | | |
| heading | amended by 19/2017 s 12 | 23.10.2017 |
| Pt 8A Div 4 Subdiv 1 | inserted by 19/2017 s 13 | 23.10.2017 |
| Pt 8A Div 4 Subdiv 2 | | |
| heading | inserted by 19/2017 s 14 | 23.10.2017 |
| s 269O | | |
| s 269O(1) | amended by 33/2012 s 29(1) | 4.3.2013 |
| | amended by 78/2013 s 8 | 5.12.2015 |
| | amended by 19/2017 s 15(1), (2) | 23.10.2017 |

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| s 269O(1aa) | inserted by 19/2017 s 15(3) | 23.10.2017 |
| s 269O(1a) | inserted by 33/2012 s 29(2) | 4.3.2013 |
| | amended by 46/2015 Sch 1 cl 7 | 1.7.2017 |
| s 269O(1b) | inserted by 33/2012 s 29(2) | 4.3.2013 |
| s 269OA | inserted by 33/2012 s 30 | 4.3.2013 |
| s 269OA(1) | amended by 19/2017 s 16(1), (2) | 23.10.2017 |
| s 269P | | |
| s 269P(1) | amended by 19/2017 s 17(1), (2) | 23.10.2017 |
| s 269P(1a) | inserted by 19/2017 s 17(3) | 23.10.2017 |
| s 269Q | | |
| s 269Q(1) | amended by 39/2000 s 10 | 29.10.2000 |
| | amended by 19/2017 s 18 | 23.10.2017 |
| s 269Q(2) | amended by 39/2000 s 10 | 29.10.2000 |
| s 269R | | |
| s 269R(1) | amended by 19/2017 s 19 | 23.10.2017 |
| s 269R(2) | amended by 79/2009 s 16(1) | 19.9.2010 |
| s 269R(3) | inserted by 79/2009 s 16(2) | 19.9.2010 |
| | amended by 19/2017 s 19 | 23.10.2017 |
| | amended by 53/2017 s 16(1) | 30.4.2018 |
| s 269R(4) | inserted by 79/2009 s 16(2) | 19.9.2010 |
| | amended by 53/2017 s 16(2) | 30.4.2018 |
| s 269R(5) | inserted by 79/2009 s 16(2) | 19.9.2010 |
| | amended by 19/2017 s 19 | 23.10.2017 |
| | amended by 53/2017 s 16(3) | 30.4.2018 |
| s 269R(6) | inserted by 79/2009 s 16(2) | 19.9.2010 |
| prescribed summary offence | amended by 53/2017 s 16(4) | 30.4.2018 |
| *s 269S* | *deleted by 19/2017 s 20* | *23.10.2017* |
| s 269T | | |
| s 269T(1) | amended by 19/2017 s 21(1) | 23.10.2017 |
| s 269T(2) | amended by 39/2000 s 11(a), (b) | 29.10.2000 |
| | amended by 19/2017 s 21(1)—(3) | 23.10.2017 |
| s 269T(2a) | inserted by 39/2000 s 11(c) | 29.10.2000 |
| | substituted by 19/2017 s 21(4) | 23.10.2017 |
| s 269U | substituted by 39/2000 s 12 | 29.10.2000 |
| s 269U(1) | amended by 19/2017 s 22(1) | 23.10.2017 |
| s 269U(1a) | inserted by 19/2017 s 22(2) | 27.11.2017 |
| s 269U(2) | substituted by 19/2017 s 22(2) | 27.11.2017 |
| Pt 8A Div 4 Subdivs 3 and 4 | inserted by 19/2017 s 23 | 14.6.2019 |
| Pt 8A Div 4 Subdiv 5 | | |
| heading | inserted by 19/2017 s 24 | 23.10.2017 |
| s 269V | | |

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|---|---|---|
| s 269V(1) | amended by 39/2000 s 13 | 29.10.2000 |
| | amended by 19/2017 s 25 | 23.10.2017 |
| s 269V(2) and (3) | amended by 39/2000 s 13 | 29.10.2000 |
| s 269V(4) and (5) | inserted by 52/2009 s 4 | 27.6.2010 |
| Pt 8A Div 4 Subdiv 6 | | |
| heading | inserted by 19/2017 s 26 | 23.10.2017 |
| s 269VA | inserted by 39/2000 s 14 | 29.10.2000 |
| Pt 8A Div 4A | inserted by 19/2017 s 27 | 14.6.2019 |
| Pt 8A Div 5 | | |
| 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 269X | | |
| s 269X(1) | amended by 18/2017 Sch 2 cl 8 | 5.3.2018 |
| | amended by 34/2020 s 8(1) | 1.4.2021 |
| s 269X(2) | amended by 34/2020 s 8(2) | 1.4.2021 |
| s 269X(3)—(7) | inserted by 34/2020 s 8(3) | 1.4.2021 |
| s 269Y | | |
| s 269Y(1) | amended by 19/2017 s 28 | 27.11.2017 |
| 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 |
| s 269ZB | | |
| s 269ZB(1) | amended by 19/2017 s 29 | 23.10.2017 |
| 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 |

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| 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 |
| *s 270B note* | *deleted by 26/2002 s 12(b)* | *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* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *deleted by 59/1994 s 10* | *1.1.1995* |
| s 273 | amended by 50/1984 s 3(1) (Sch 1) | 1.1.1985 |
| *Pt 9 Div 6 before deletion by 18/2017* | | |
| *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* | *17.6.2012* |
| *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* |
| | *(c) deleted by 34/2011 s 5(1)* | *1.6.2012* |
| *s 278(3)* | *substituted by 34/2011 s 5(2)* | *1.6.2012* |
| *s 278(4)* | *inserted by 10/2008 s 16(2)* | *23.11.2008* |
| *sexual offence* | *amended by 34/2011 s 5(3), (4)* | *1.6.2012* |

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| | *amended by 28/2016 s 8* | *16.6.2016* |
| *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* | *inserted by 109/1981 s 59* | *1.2.1982* |
| | *deleted by 26/2002 s 19(1) (Sch 2)* | *16.1.2003* |
| *s 281A* | *inserted by 109/1981 s 59* | *1.2.1982* |
| | *amended by 49/1991 Sch 2* | *6.7.1992* |
| | *deleted by 69/1991 s 15(f)* | *6.7.1992* |
| *Pt 9 Div 7 before deletion by 18/2017* | | |
| *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 before deletion by 18/2017* | | |
| *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 285AB* | *inserted by 43/2012 s 10* | *11.3.2013* |
| *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)* | *5.8.2012* |
| *s 285BA(5)* | *deleted by 17/2012 s 4(2)* | *5.8.2012* |
| *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)* | | |
| *evidence* | *deleted by 90/1986 s 8* | *1.2.1987* |
| *s 287* | *deleted by 10/2001 s 6(a)* | *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* |

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| *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 before deletion by 18/2017* | | |
| *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* | *deleted by 91/1995 Sch cl 1* | *2.3.1996* |
| *s 292* | *amended by 22/1992 s 3* | *6.7.1992* |
| | *deleted by 91/1995 Sch cl 1* | *2.3.1996* |
| *s 293* | *amended by 22/1992 s 4* | *6.7.1992* |
| | *deleted by 91/1995 Sch cl 1* | *2.3.1996* |
| *s 293A* | *amended by 78/1988 s 2* | *1.12.1988* |
| | *substituted by 22/1992 s 5* | *6.7.1992* |
| | *deleted by 91/1995 Sch cl 1* | *2.3.1996* |
| *Pt 9 Div 10 before deletion by 18/2017* | | |
| *heading preceding s 294* | *substituted by 26/2002 s 19(1) (Sch 2)* | *16.1.2003* |
| *s 295* | | |
| *s 295(1)* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *amended by 59/1994 Sch 1* | *1.1.1995* |
| *s 295(2)* | *amended by 59/1994 Sch 1* | *1.1.1995* |
| *s 295(3)* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| *s 296* | *amended by 115/1976 s 9* | *23.12.1976* |
| | *deleted by 49/1984 s 3* | *24.5.1984* |
| *Pt 9 Div 11 before substitution by 23/2004* | | |
| *heading preceding s 297* | *substituted by 26/2002 s 19(1) (Sch 2)* | *16.1.2003* |
| *s 297* | | |
| *s 297* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| *s 297(4)* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *amended by 59/1994 Sch 1* | *1.1.1995* |
| *s 297(5)* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *deleted by 51/1988 s 32* | *1.1.1989* |
| *s 297(6)* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| *s 297(7) and (8)* | *amended by 59/1994 Sch 1* | *1.1.1995* |
| *s 298* | *deleted by 51/1988 s 33* | *1.1.1989* |
| *s 299* | *substituted by 16/1986 s 25* | *1.10.1986* |
| | *deleted by 51/1988 s 33* | *1.1.1989* |

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|---|---|---|
| *Pt 9 Div 11 before deletion by 18/2017* | *substituted by 23/2004 s 5* | *1.9.2004* |
| *Pt 9 Div 12 before deletion by 18/2017* | | |
| *heading preceding s 299A* | *substituted by 26/2002 s 19(1) (Sch 2)* | *16.1.2003* |
| *s 299A* | | |
| *s 299A(1)* | *amended by 15/2008 Sch 1 cl 1* | *27.11.2008* |
| | *amended by 46/2015 Sch 1 cl 8* | *1.7.2017* |
| *s 299A(6)* | | |
| *court* | *amended by 43/1994 s 7* | *9.6.1994* |
| | *amended by 56/2005 Sch 2 cl 16* | *1.7.2006* |
| *heading preceding s 300* | *deleted by 51/1988 s 34* | *1.1.1989* |
| *s 300* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *deleted by 51/1988 s 34* | *1.1.1989* |
| *s 300A* | *amended by 49/1987 Sch 2* | *21.6.1987* |
| | *deleted by 51/1988 s 34* | *1.1.1989* |
| *ss 300B—300D* | *deleted by 51/1988 s 34* | *1.1.1989* |
| *s 300E* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *deleted by 51/1988 s 34* | *1.1.1989* |
| *ss 300F and 300G* | *deleted by 51/1988 s 34* | *1.1.1989* |
| *s 300H* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *deleted by 51/1988 s 34* | *1.1.1989* |
| *heading preceding s 301* | *amended by 115/1976 s 10(1)* | *23.12.1976* |
| | *deleted by 51/1988 s 35* | *1.1.1989* |
| *s 301* | *deleted by 115/1976 s 10(2)* | *23.12.1976* |
| | *inserted by 16/1986 s 26* | *1.10.1986* |
| | *deleted by 51/1988 s 35* | *1.1.1989* |
| *s 301A* | *deleted by 115/1976 s 10(2)* | *23.12.1976* |
| *s 302* | *deleted by 115/1976 s 10(2)* | *23.12.1976* |
| | *inserted by 69/1986 s 18* | *8.12.1986* |
| | *deleted by 51/1988 s 35* | *1.1.1989* |
| *ss 303—306* | *deleted by 115/1976 s 10(2)* | *23.12.1976* |
| *s 309* | *deleted by 51/1988 s 35* | *1.1.1989* |
| *s 310* | *substituted by 67/1980 s 3* | *11.12.1980* |
| | *amended by 69/1986 s 19* | *8.12.1986* |
| | *deleted by 51/1988 s 35* | *1.1.1989* |
| *s 311* | *deleted by 51/1988 s 35* | *1.1.1989* |
| *ss 313 and 313A* | *deleted by 51/1988 s 35* | *1.1.1989* |
| *s 314* | *amended by 115/1976 s 11* | *23.12.1976* |
| | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *deleted by 51/1988 s 35* | *1.1.1989* |

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|---|---|---|
| *heading preceding s 315* | *amended by 51/1988 s 36* | *1.1.1989* |
| | *deleted by 26/2002 s 19(1) (Sch 2)* | *16.1.2003* |
| *ss 315 and 316* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *deleted by 51/1988 s 37* | *1.1.1989* |
| *s 317* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *amended by 51/1988 s 38* | *1.1.1989* |
| | *deleted by 26/2002 s 15* | *5.7.2003* |
| *s 318* | *amended by 51/1988 s 39* | *1.1.1989* |
| | *deleted by 26/2002 s 15* | *5.7.2003* |
| *heading preceding s 319* | *deleted by 51/1988 s 40* | *12.5.1988* |
| *s 319* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *amended by 90/1986 s 9* | *1.2.1987* |
| | *deleted by 51/1988 s 40* | *12.5.1988* |
| *s 320* | *deleted by 51/1988 s 40* | *12.5.1988* |
| *s 321* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *deleted by 51/1988 s 40* | *12.5.1988* |
| *s 323* | *deleted by 51/1988 s 40* | *12.5.1988* |
| *s 328* | *deleted by 51/1988 s 40* | *12.5.1988* |
| *Pt 9 Divs 6—12* | *deleted by 18/2017 Sch 2 cl 9* | *5.3.2018* |
| *Pt 9 Div 13 before deletion by 43/2020* | | |
| *heading preceding s 328A* | *substituted by 26/2002 s 19(1) (Sch 2)* | *16.1.2003* |
| *Pt 9 Div 13* | *deleted by 43/2020 s 9* | *1.2.2021* |
| 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* |
| | *deleted by 18/2017 Sch 2 cl 10* | *5.3.2018* |
| *Pt 10* | *deleted by 49/1984 s 5* | *24.5.1984* |
| | *inserted by 28/2008 s 5* | *3.8.2008* |
| | *deleted by 18/2017 Sch 2 cl 11* | *5.3.2018* |
| *Pt 10A* | *inserted by 28/2008 s 5* | *3.8.2008* |
| | *deleted by 18/2017 Sch 2 cl 11* | *5.3.2018* |
| *Pt 11 before deletion by 18/2017* | | |
| *heading* | *inserted by 26/2002 s 19(1) (Sch 2)* | *16.1.2003* |
| | *substituted by 17/2006 s 93* | *4.9.2006* |
| *s 347* | *deleted by 67/1980 s 4* | *11.12.1980* |
| *s 348* | | |

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|---|---|---|
| *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* |
| *District Criminal Court* | *deleted by 43/1994 s 8(b)* | *9.6.1994* |
| *Full Court* | *deleted by 28/2008 s 6* | *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* |
| *Master* | *deleted 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| *question of law* | *inserted by 90/1995 s 3(c)* | *4.1.1996* |
| | *deleted by 67/1996 s 8* | *17.10.1996* |
| *sentence* | *amended by 13/1999 s 4* | *16.5.1999* |
| *s 348A* | *inserted by 67/1980 s 5* | *11.12.1980* |
| | *deleted by 49/1991 Sch 2* | *6.7.1992* |
| *s 349* | *s 349(1) redesignated as s 349 in pursuance of the Acts Republication Act 1967* | *1.1.1985* |
| *heading preceding s 350* | *substituted by 26/2002 s 19(1) (Sch 2)* | *16.1.2003* |
| *s 350 before substitution by 90/1995* | *amended by 67/1980 s 6* | *11.12.1980* |
| | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *amended by 49/1991 Sch 2* | *6.7.1992* |
| *s 350 before substitution by 17/2006* | *substituted by 90/1995 s 4* | *4.1.1996* |
| *s 350(a1)* | *inserted by 67/1996 s 9(a)* | *17.10.1996* |
| *s 350(1)* | *amended by 67/1996 s 9(b)* | *17.10.1996* |
| *s 350(2)* | *amended by 67/1996 s 9(c)* | *17.10.1996* |
| *s 350(3)* | *amended by 67/1996 s 9(d)* | *17.10.1996* |
| *s 350(4)* | *amended by 67/1996 s 9(e)* | *17.10.1996* |
| *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* |

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|---|---|---|
| *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* |
| | *amended by 47/2013 s 4* | *17.5.2014* |
| *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* |
| | *amended by 9/2013 s 5(1)* | *5.5.2013* |
| *s 352(2)* | *deleted by 17/2006 s 95(2)* | *4.9.2006* |
| | *inserted by 9/2013 s 5(2)* | *5.5.2013* |
| *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* |
| | *amended by 9/2013 s 6* | *5.5.2013* |
| *s 353(4)* | *amended by 67/1980 s 10(a)* | *11.12.1980* |
| | *substituted by 23/2004 s 6* | *1.9.2004* |
| | *amended by 28/2016 s 9* | *16.6.2016* |
| *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 353A* | *inserted by 9/2013 s 7* | *5.5.2013* |
| *s 354* | | |
| *s 354(4)* | *deleted by 26/2002 s 17* | *16.1.2003* |
| *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* |

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|---|---|---|
| *s 356A* | *inserted by 43/1994 s 10* | *9.6.1994* |
| *heading preceding s 357* | *deleted by 26/2002 s 19(1) (Sch 2)* | *16.1.2003* |
| *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 357(3) and (4)* | *inserted by 9/2013 s 8* | *5.5.2013* |
| *s 358* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *amended by 43/1994 s 11* | *9.6.1994* |
| | *deleted by 90/1995 s 9* | *4.1.1996* |
| *s 360* | *deleted by 10/2001 s 6(b)* | *12.4.2001* |
| *s 361 before substitution by 62/2016* | | |
| *s 361(1)* | *amended by 17/2006 s 98* | *4.9.2006* |
| *s 361(1a) and (1b)* | *inserted by 43/2012 s 11(1)* | *11.3.2013* |
| *s 361(3)* | *inserted by 43/2012 s 11(2)* | *11.3.2013* |
| *s 361* | *substituted by 62/2016 s 6* | *8.12.2016* |
| *s 362* | *amended by 49/1991 Sch 2* | *6.7.1992* |
| *s 363* | | |
| *s 363(2)* | *deleted by 10/2001 s 6(c)* | *12.4.2001* |
| *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* |
| | *deleted by 9/2013 s 9* | *5.5.2013* |
| *s 368* | *amended by 50/1984 s 3(1) (Sch 1)* | *1.1.1985* |
| | *amended by 43/1994 s 12* | *9.6.1994* |
| | *deleted by 90/1995 s 10* | *12.9.1996* |
| *heading preceding s 369* | *substituted by 26/2002 s 19(1) (Sch 2)* | *16.1.2003* |

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|---|---|---|
| *s 369* | | |
| *s 369(1)* | *s 369 amended by 115/1976 s 13* | *23.12.1976* |
| | *s 369 amended by 49/1991 Sch 2* | *6.7.1992* |
| | *s 369 redesignated as s 369(1) by 9/2013 s 10* | *5.5.2013* |
| *s 369(2)* | *inserted by 9/2013 s 10* | *5.5.2013* |
| *Pt 11* | *deleted by 18/2017 Sch 2 cl 11* | *5.3.2018* |
| Pt 12 | inserted by 26/2002 s 18 | 16.1.2003 |
| *Schs 1 and 2* | *amended by 49/1991 Sch 2* | *6.7.1992* |
| | *deleted by 18/2017 Sch 2 cl 12* | *5.3.2018* |
| *Sch 3 before deletion by 18/2017* | *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* |
| | *all rules revoked by 5.01 of Supreme Court Criminal Rules 2013* | *1.1.2013* |
| *Sch 3* | *deleted by 18/2017 Sch 2 cl 12* | *5.3.2018* |
| *Appendix to Rules* | *deleted by 26/2002 s 19(1) (Sch 2)* | *16.1.2003* |
| *Schs 8 and 9* | *deleted by 115/1976 s 14* | *23.12.1976* |
| *Sch 10* | *deleted by 18/2017 Sch 2 cl 12* | *5.3.2018* |
| Sch 11 | inserted by 35/1992 s 10 (Sch) | 6.7.1992 |
| cl 1 | | |
| cl 1(30) | inserted by 7/2021 Sch 1 cl 4 | 7.7.2022 |

# 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.

### *Statutes Amendment (Courts Efficiency Reforms) Act 2012*

#### 12—Transitional provision

The amendments made to the *Criminal Law Consolidation Act 1935* by this Part are to be considered procedural rather than substantive.

### *Statutes Amendment (Appeals) Act 2013, Sch 1—Transitional provision*

The amendments effected by this Act apply in relation to appeals instituted after the commencement of this Act, regardless of whether the offence to which the appeal relates was committed, or allegedly committed, before or after the commencement of this Act.

### *Statutes Amendment (Attorney-General's Portfolio) (No 2) Act 2017, Pt 4*

#### 9—Sentencing for offences under previous law

(1) A sentence imposed on a person, before the commencement of this section, in respect of an offence against section 50 of the *Criminal Law Consolidation Act 1935* (as in force before the commencement of section 6 of this Act) is taken to be, and always to have been, not affected by error or otherwise manifestly excessive merely because—

(a) the trial judge did not ask any question of the trier of fact directed to ascertaining which acts of sexual exploitation, or which particulars of the offence as alleged, the trier of fact found to have been proved beyond a reasonable doubt and the person was not sentenced on the view of the facts most favourable to the person; and

(b) the sentencing court sentenced the person consistently with the verdict of the trier of fact but having regard to the acts of sexual exploitation determined by the sentencing court to have been proved beyond a reasonable doubt.

(2) Where, after the commencement of this section, a person is to be sentenced for an offence against section 50 of the *Criminal Law Consolidation Act 1935* (as in force before the commencement of section 6 of this Act) the following provisions apply:

(a) a verdict of guilt handed down by the trier of fact in relation to the offence is taken to be, and always to have been, a finding by the trier of fact that the person is guilty of the acts of sexual exploitation comprising the course of conduct alleged by the information;

(b) notwithstanding paragraph (a), in sentencing the person for the offence, the sentencing court may determine which alleged acts of sexual exploitation the sentencing court finds proved beyond a reasonable doubt and may disregard any acts of sexual exploitation that the sentencing court is not satisfied were proved beyond a reasonable doubt;

(c) for the avoidance of doubt, the sentencing court need not ask any question of the trier of fact directed to ascertaining which acts of sexual exploitation, or which particulars of the offence as alleged, the trier of fact found to have been proved beyond a reasonable doubt and, unless it has so determined in accordance with paragraph (b), need not sentence the person on the view of the facts most favourable to the person.

(3) This section does not apply in relation to the particular matter that was the subject of the determination in Chiro v The Queen [2017] HCA 37 (13 September 2017).

**Note—**

Except as provided in subsection (3), this section negates the effect of the determination of the High Court in Chiro v The Queen [2017] HCA 37 (13 September 2017).

## *Criminal Law Consolidation (Criminal Organisations) Amendment Act 2017, Sch 1*

### 1—Transitional provision

An amendment of the *Criminal Law Consolidation Act 1935* made by this Act will apply only in respect of an offence alleged to have occurred after the commencement of this Act.

## *Summary Procedure (Indictable Offences) Amendment Act 2017, Sch 2 Pt 14*

### 41—Transitional provision

The amendments made by this Act apply to proceedings relating to an offence that are commenced after the commencement of this Act, regardless of when the offence occurred (and the Acts amended by this Act, as in force before the commencement of this Act, continue to apply to proceedings that were commenced before the commencement of this Act).

### *Statutes Amendment (Explosives) Act 2017, Pt 2*

#### 6—Review

(1) The Attorney-General must undertake a review of the operation and effectiveness of the amendments effected by this Part.

(2) The review required under this section must commence not later than 3 years after the commencement of this Part.

(3) The Attorney-General must prepare a report based on the review and must, within 12 sitting days after the report is prepared, cause copies of the report to be laid before each House of Parliament.

### *Statutes Amendment (Abolition of Defence of Provocation and Related Matters) Act 2020, Sch 1*

#### 1—Transitional provision—amendments to *Criminal Law Consolidation Act 1935*

Section 15B(2) of the *Criminal Law Consolidation Act 1935* (as enacted by this Act) will be taken not to apply in relation to a trial that commenced before the commencement of this clause.

### *Statutes Amendment (Attorney-General's Portfolio) Act 2020, Pt 3*

#### 9—Transitional provision

(1) If, immediately before the relevant day, a defendant is in any form of custody pursuant to an order of a court under section 269X(1)(b) or (2)(b) of the *Criminal Law Consolidation Act 1935*, the custody of the defendant may, after the relevant day, be determined as if the defendant had been committed to custody in accordance with section 269X(1)(b) or (2)(b) (as the case may be) of the *Criminal Law Consolidation Act 1935* as in force after the relevant day.

(2) In this section—

***relevant day*** means the day on which section 8 of this Part comes into operation.

### *Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act 2021, Sch 1 Pt 21—Savings and transitional provisions*

#### 76—Savings and transitional regulations

Regulations may be made under any Act amended by this Act (including under the *Independent Commission Against Corruption Act 2012* as in force after the commencement of this Act) to make provisions of a saving or transitional nature consequent on the enactment of this Act or on the commencement of specified provisions of this Act.

### *Criminal Law Consolidation (Section 20A) Amendment Act 2024, Sch 1*

#### 1—Transitional provision

The amendments to section 20A of the *Criminal Law Consolidation Act 1935* effected by section 3 of this Act do not apply to an offence allegedly committed before the commencement of section 3.

## 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
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13.8.2006
4.9.2006 (electronic only)
10.9.2006
23.11.2006
18.1.2007
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29.3.2021
1.4.2021
9.9.2021 (electronic only)
16.9.2021
7.10.2021
16.12.2021
1.6.2022
7.7.2022
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1.10.2022
8.12.2022
16.12.2022
31.1.2023
8.3.2023
22.6.2023
15.9.2023
1.10.2023
1.1.2024
16.12.2024
12.3.2025
1.4.2025
28.4.2025 (electronic only)
1.5.2025
8.6.2025
14.7.2025
1.9.2025
17.11.2025
16.2.2026