Queensland

Criminal Code Act 1899

Current as at 26 December 2025

Amendments not yet in force
There are amendments for this title that have been enacted but have not yet commenced. The following amendments that have not commenced are not incorporated in this reprint but are annotated on the website for information—2024 Act No. 5, 2024 Act No. 47, 2024 Act No. 49, 2025 Act No. 18, 2025 Act No. 20.

These annotations were incorporated on 24 September 2025. See the List of legislation in the Legislative history for uncommenced amendments enacted after this date.

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Queensland

Criminal Code Act 1899

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Criminal Code Act 1899

An Act to establish a Code of Criminal Law

Preamble

Whereas it is desirable to declare, consolidate, and amend the Criminal Law;

Be it enacted and declared by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows—

1 Short title

This Act may be cited as the *Criminal Code Act 1899*.

2 Establishment of Code—schedule 1

(1) On and from 1 January 1901, the provisions contained in the Code of Criminal Law set forth in schedule 1 (***the Code***) shall be the law of Queensland with respect to the several matters therein dealt with.

(2) The said Code may be cited as the Criminal Code.

3 Saving

However—

(a) the repeal of any statute or part of a statute set forth in the schedules shall not affect the construction of any other statute, or of any other part of the same statute, whether as regards the past or the future;

(b) when any enactment not mentioned in the schedules has been repealed, confirmed, revived, or perpetuated, by

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any enactment hereby repealed, such repeal, confirmation, reviver, or perpetuation, shall not be affected by the repeal effected by this Act;

(c) this Act shall not affect the validity, invalidity, effect, or consequences, of anything already done or suffered, or any existing status or capacity, or any right, title, obligation, or liability, civil or criminal, already acquired, accrued, or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim, or demand, or any indemnity, or the proof of any past act or thing; and any action, prosecution, or other proceeding, begun before the coming into operation of the Code, may, subject to the provisions of the Code, be continued as if this Act had not been passed; and any action, prosecution, or other proceeding, in respect of anything done or omitted to be done before the coming into operation of the Code, may, subject to the provisions of the Code, be brought, taken, and prosecuted, in the same manner as if this Act had not been passed;

(d) this Act shall not, except as expressly therein declared, affect any principle or rule of law or equity, or established jurisdiction, or form or course of pleading, practice, or procedure, notwithstanding that the same respectively may have been in any manner affirmed, recognised or derived, by, in, or from, any enactment hereby repealed;

(e) this Act shall not revive or restore any jurisdiction, duty, liability, right, title, privilege, restriction, exemption, usage, practice, procedure, form of punishment, or other matter or thing, not now existing or in force.

4 Construction of statutes, statutory rules, and other instruments

From and after the coming into operation of the Code, the following rules shall apply with respect to the construction of

statutes, statutory rules, by-laws, and other instruments, that is to say—

(a) when in any statute, statutory rule, by-law, or other instrument, public or private, the term ***felony*** is used, or reference is made to an offence by the name of felony, it shall be taken that reference is intended to an offence which is a crime under the provisions of the Code;

(b) when in any statute, statutory rule, by-law, or other instrument, public or private, the term ***murder*** is used, it shall be taken that reference is intended to the crimes of wilful murder and murder and each of them;

(c) when in any statute, statutory rule, by-law, or other instrument, public or private, the term ***larceny*** is used, it shall be taken that reference is intended to the crime of stealing;

(d) when in any statute, statutory rule, by-law, or other instrument, public or private, reference is made to any offence by any specific name, it shall be intended that reference is intended to the offence which, under the provisions of the Code, is constituted by the act or omission that would heretofore have constituted the offence referred to;

(e) when in any statute, statutory rule, by-law, or other instrument, public or private, reference is made to any of the statutory provisions hereby repealed, it shall be taken that reference is intended to the corresponding provisions or substituted provisions of the Code.

5 Provisions of Code exclusive with certain exceptions

From and after the coming into operation of the Code, no person shall be liable to be tried or punished in Queensland as for an indictable offence except under the express provisions of the Code or some other statute law of Queensland, or under the express provisions of some statute of the United Kingdom which is expressly applied to Queensland, or which is in force in all parts of the Sovereign's dominions not expressly excepted from its operation, or which authorises the trial and

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punishment in Queensland of offenders who have at places not in Queensland committed offences against the laws of the United Kingdom.

6 Civil remedies

(1) When by the Code any act is declared to be lawful, no action can be brought in respect thereof.

(2) A person who suffers loss or injury in, or in connection with, the commission of an indictable offence of which the person is found guilty has no right of action against another person for the loss or injury.

(3) Subsection (2) applies whether or not a conviction is recorded for the offence.

(4) Except as aforesaid, the provisions of this Act shall not affect any right of action which any person would have had against another if this Act had not been passed, nor shall the omission from the Code of any penal provision in respect of any act or omission which before the time of the coming into operation of the Code constituted an actionable wrong affect any right of action in respect thereof.

7 Offender may be prosecuted under Code or other statute

When an offender is punishable under the provisions of the Code, and also under the provisions of some other statute, the offender may be prosecuted and convicted under the provisions either of the Code or of such other statute, so that the offender is not twice punished for the same offence.

8 Contempt of court

Nothing in this Act or in the Code shall affect the authority of courts of record to punish a person summarily for the offence commonly known as ‘contempt of court’, but so that a person can not be so punished and also punished under the provisions of the Code for the same act or omission.

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Schedule 1 The Criminal Code

section 2

Part 1 Introductory

Interpretation—application—general principles

Chapter 1 Interpretation

1 Definitions

In this Code—

25 year offence, for chapter 68, see section 678(1).

acquittal, for chapter 68, see section 678(1).

administration of justice offence, for chapter 68, see section 678(1).

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

adult entertainment has the meaning given by the *Liquor Act 1992*, section 103N.

adult entertainment permit means an adult entertainment permit granted under the *Liquor Act 1992* and in force.

affected child, for chapter 62, chapter division 3, see section 590AD.

aircraft includes any machine or apparatus designed to support itself in the atmosphere.

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It is immaterial whether the machine or apparatus is incapable of use through mechanical defect or whether any part or parts thereof have been removed for any purpose or by any person.

A flight of an aircraft shall be deemed to commence—

(a) at the time of the closing of the external door of the aircraft last to be closed before the aircraft first moves for the purpose of taking off from any place; or

(b) if paragraph (a) is not applicable—at the time at which the aircraft first moves for the purpose of taking off from any place; and

shall be deemed to end—

(c) at the time of the opening of the external door of the aircraft first to be opened after the aircraft comes to rest after its next landing after the commencement of the flight; or

(d) if paragraph (c) is not applicable—at the time at which the aircraft comes to rest after its next landing after the commencement of the flight;

or, if the aircraft is destroyed, or the flight is abandoned, before either paragraph (c) or (d) becomes applicable, at the time at which the aircraft is destroyed or the flight is abandoned, as the case may be.

animal includes any living creature other than mankind.

anonymising service, for part 4, chapter 22, see section 207A.

appellant, for chapter 67, see section 668(1).

arresting officer—

(a) for chapter 62, chapter division 3, see section 590AD; or

(b) for chapter 62, chapter division 4A, see section 590E.

assault—

(a) generally—see section 245; or

(b) for chapter 32—see section 347.

associate, of a lawyer, for chapter 62, chapter division 3, see section 590AD.

benefit includes property, advantage, service, entertainment, the use of or access to property or facilities, and anything of benefit to a person whether or not it has any inherent or tangible value, purpose or attribute.

bet or ***make a bet***, for chapter 43, see section 443.

bodily harm means any bodily injury which interferes with health or comfort.

canal includes aqueduct.

child abuse object, for part 4, chapter 22, see section 207A.

child exploitation material, for chapter 22, see section 207A.

child sexual offence, for part 4, chapter 22, see section 207A.

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

circumstances, for chapter 33A, see section 359A.

classified, for chapter 22, see section 207A.

clerk and ***servant*** include any person employed for any purpose as or in the capacity of a clerk or servant, or as a collector of money, although temporarily only, or although employed also by other persons than the person alleged to be the person's employer, or although employed to pay as well as receive money, and any person employed as or in the capacity of a commission agent for the collection or disbursement of money, or in any similar capacity, although the person has no authority from the person's employer to receive money or other property on the employer's account.

coercive control, for chapter 29A, see section 334A.

commercial sexual service, for chapter 22, see section 207A.

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committal for trial includes committal for sentence.

Commonwealth Classification Act, for chapter 22, see section 207A.

company means an incorporated company.

computer game, for chapter 22, see section 207A.

computer generated image means electronically recorded data capable, by way of an electronic device, of being produced on a computer monitor, television screen, liquid crystal display or similar medium as an image, including an image in the form of text.

conduct, for chapter 23, see section 230A.

consent, for chapter 32, see section 348.

consort, for part 2, chapter 9A, see section 77A.

conviction, for part 2, chapter 9A, see section 77.

court, for chapter 62, chapter division 3, see section 590AD.

Court—

(a) for chapter 67, see section 668(1); or

(b) for chapter 68, see section 678(1).

court of trial, for chapter 67, see section 668(1).

crematorium includes the land or water where the crematorium is situated.

criminal history, for chapter 62, chapter division 3, see section 590AD.

criminal organisation see the *Penalties and Sentences Act 1992*, section 161O.

criminal responsibility means liability to punishment as for an offence.

criminally responsible means liable to punishment as for an offence.

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Crown Law Officer means the Attorney-General or director of public prosecutions.

damage, in relation to a document, includes—

(a) obliterate the document; and

(b) make the whole document or part of the document illegible or irrecoverable.

detriment—

(a) caused to a person, includes detriment caused to a person's property; and

(b) for chapter 33A, see section 359A.

disclosure obligation, for chapter 62, chapter division 4A, see section 590E.

disclosure obligation direction, for chapter 62, chapter division 4A, see section 590E.

distribute, for part 4, chapter 22, see section 207A.

document includes—

(a) anything on which there is writing; and

(b) anything on which there are marks, figures, symbols, codes, perforations or anything else having a meaning for a person qualified to interpret them; and

(c) a record.

domestic relationship means a relevant relationship under the *Domestic and Family Violence Protection Act 2012*, section 13.

Note—

Under the *Domestic and Family Violence Protection Act 2012*, section 13, a relevant relationship means an intimate personal relationship, a family relationship or an informal care relationship, as defined under that Act. An intimate personal relationship includes a former intimate personal relationship.

domestic violence, for chapter 29A, see section 334B.

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domestic violence offence means an offence against an Act, other than the *Domestic and Family Violence Protection Act 2012*, committed by a person where the act done, or omission made, which constitutes the offence is also—

(a) domestic violence or associated domestic violence, under the *Domestic and Family Violence Protection Act 2012*, committed by the person; or

(b) a contravention of the *Domestic and Family Violence Protection Act 2012*, section 177(2).

Note—

Under the *Domestic and Family Violence Protection Act 2012*, section 177(2), a respondent against whom a domestic violence order has been made under that Act must not contravene the order.

DPP presenter, for chapter 60, see section 559A.

dwelling includes any building or structure, or part of a building or structure, which is for the time being kept by the owner or occupier for the residence therein of himself or herself, his or her family, or servants, or any of them, and it is immaterial that it is from time to time uninhabited.

A building or structure adjacent to, and occupied with, a dwelling is deemed to be part of the dwelling if there is a communication between such building or structure and the dwelling, either immediate or by means of a covered and enclosed passage leading from the one to the other, but not otherwise.

economic abuse, for chapter 29A, see section 334A.

emergency vehicle see section 6A.

emergency worker means—

(a) a member of the police service; or

(b) a member of the police service of the Commonwealth or another State; or

(c) a service officer under the *Ambulance Service Act 1991*; or

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(d) a member of an ambulance service of another State; or

(e) a fire service officer or rural fire brigade member under the *Fire Services Act 1990*; or

(f) a member of a fire brigade or service of another State.

emotional or psychological abuse, for chapter 29A, see section 334A.

encourage, for chapter 43, see section 443.

end, of the proceedings for a relevant charge, for chapter 62, chapter division 3, see section 590AD.

engage, in penile intercourse, see section 6(2).

Evidence Act section 93A device statement, for chapter 62, chapter division 3, see section 590AD.

exculpatory thing, for chapter 62, chapter division 3, see section 590AD.

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

family, for chapter 16, see section 119A.

film, for chapter 22, see section 207A.

forge a document, means make, alter or deal with the document so that the whole of it or a material part of it—

(a) purports to be what, or of an effect that, in fact it is not; or

(b) purports to be made, altered or dealt with by a person who did not make, alter or deal with it or by or for some person who does not, in fact exist; or

(c) purports to be made, altered or dealt with by authority of a person who did not give that authority; or

(d) otherwise purports to be made, altered or dealt with in circumstances in which it was not made, altered or dealt with.

fresh and compelling evidence—

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(a) for chapter 67, chapter division 3, see section 671AB; or

(b) for chapter 68, see section 678D.

gender identity see the *Anti-Discrimination Act 1991*, schedule 1.

genitalia includes surgically constructed genitalia.

grievous bodily harm means—

(a) the loss of a distinct part or an organ of the body; or

(b) serious disfigurement; or

(c) any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health;

whether or not treatment is or could have been available.

harm, to a person, for chapter 29A, see section 334A.

hidden network, for part 4, chapter 22, see section 207A.

indecent matter includes indecent film, videotape, audiotape, picture, photograph or printed or written matter.

indictment means a written charge preferred against an accused person in order to the person's trial before some court other than justices exercising summary jurisdiction.

information, for part 4, chapter 22, see section 207A.

inland water includes river, canal and reservoir.

interests of justice, for chapter 68, see section 678F.

intimate image, for part 4, chapter 22, see section 207A.

judicial officer includes—

(a) an arbitrator, or umpire, appointed in relation to an arbitration in which evidence may be taken on oath; and

(b) a member of a tribunal established under an Act to perform judicial functions or judicial functions and other functions; and

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(c) a person conducting a hearing of the Crime and Corruption Commission under the *Crime and Corruption Act 2001*, chapter 4; and

(d) a justice of the peace constituting a court.

judicial proceeding, for chapter 16, see section 119.

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

law enforcement agency means—

(a) the Queensland Police Service; or

(b) the Office of the Director of Public Prosecutions; or

(c) the Crime and Corruption Commission; or

(d) any other entity of—

(i) another State; or

(ii) the Commonwealth;

that performs a similar function to an entity in paragraphs (a) to (c).

law enforcement officer means—

(a) a member or officer of a law enforcement agency, including a person appearing for the director under the *Director of Public Prosecutions Act 1984*, section 10(4); or

(b) a person who is authorised, in writing, by the commissioner of the police service, or the chairperson of the Crime and Corruption Commission, to help a member or officer of a law enforcement agency; or

(c) a person who belongs to a class of persons that is authorised, in writing, by the commissioner of the police service, or the chairperson of the Crime and Corruption Commission, to help a member or officer of a law enforcement agency.

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liable, used alone, means liable on conviction upon indictment.

match-fixing arrangement, for chapter 43, see section 443.

match-fixing conduct, for chapter 43, see section 443.

material, for chapter 22, see section 207A.

money includes bank notes, bank drafts, cheques, and any other orders, warrants, authorities, or requests, for the payment of money.

motor vehicle includes any machine or apparatus designed for propulsion wholly or partly by gas, motor spirit, oil, electricity, steam or other mechanical power, and also includes a motor cycle, or a caravan, caravan trailer or other trailer designed to be attached to a motor vehicle.

It is immaterial whether the machine or apparatus is incapable of use through mechanical defect or whether any part or parts thereof have been removed for any purpose or by any person.

network, for part 4, chapter 22, see section 207A.

new and compelling evidence, for chapter 67, chapter division 3, see section 671AB.

night or ***night-time*** means the interval between 9p.m. and 6a.m.

observe, for chapter 22, see section 207A.

occupier, for chapter 23, see section 230A.

offence see section 2.

original evidence, for chapter 62, chapter division 3, see section 590AD.

participant, in a criminal organisation, see the *Penalties and Sentences Act 1992*, section 161P.

party, for chapter 62, chapter division 4A, see section 590E.

penetrate, for chapter 32, see section 347.

penile intercourse see section 6(1).

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penis includes a surgically constructed penis, whether provided for a male or female.

person and ***owner***, and other like terms, when used with reference to property, include corporations of all kinds, and any other associations of persons capable of owning property, and also, when so used, include the Sovereign.

person employed in the public service includes police officers, staff members under the *Ministerial and Other Office Holder Staff Act 2010* and persons employed to execute any process of a court of justice, and also includes the chief executive officer of a rail government entity and persons employed by a rail government entity.

person with an impairment of the mind means a person with a disability that—

(a) is attributable to an intellectual, psychiatric, cognitive or neurological impairment or a combination of these; and

(b) results in—

(i) a substantial reduction of the person's capacity for communication, social interaction or learning; and

(ii) the person needing support.

picture includes image including computer generated image.

place, for chapter 23, see section 230A.

port includes harbour and dock.

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

possession of the prosecution, for chapter 62, chapter division 3, see section 590AE.

premises includes—

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(a) a building or structure, or part of a building or structure, of any type; and

(b) a group of, or part of a group of, buildings or structures, of any type; and

(c) the land or water where a building or structure or a group of buildings or structures is situated; and

(d) a vehicle, or a caravan; and

(e) a tent, or a cave; and

(f) premises in which more than 1 person has ownership.

prescribed offence, for chapter 68, see section 678(1).

prescribed summary trial, for chapter 62, chapter division 3, see section 590AD.

private act, for chapter 22, see section 207A.

private place, for chapter 22, see section 207A.

prohibited symbol see section 52C(1).

prohibited visual recording, for part 4, chapter 22, see section 207A.

property includes—

(a) every thing animate or inanimate that is capable of being the subject of ownership; and

(b) money; and

(c) electrical or other energy, gas and water; and

(d) a plant; and

(e) an animal that is—

(i) a tame animal, whether or not naturally tame; or

(ii) an untamed animal of a type that, if kept, is usually kept confined; or

(iii) an untamed animal in a person's possession or being pursued for return to possession after escape; and

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(f) a thing produced by an animal mentioned in paragraph (e); and

(g) any other property real or personal, legal or equitable, including things in action and other intangible property.

property, of a person, for chapter 33A, see section 359A.

prosecution—

(a) for chapter 62, chapter division 3, see section 590AD; or

(b) for chapter 62, chapter division 4A, see section 590E.

publication, for chapter 22, see section 207A.

public officer means a person other than a judicial officer, whether or not the person is remunerated—

(a) discharging a duty imposed under an Act or of a public nature; or

(b) holding office under or employed by the Crown;

and includes, whether or not the person is remunerated—

(c) a person employed to execute any process of a court; and

(d) a public service employee; and

(e) a person appointed or employed under any of the following Acts—

(i) the *Police Service Administration Act 1990*;

(ii) the *Transport Infrastructure Act 1994*; and

(f) a member, officer, or employee of an authority, board, corporation, commission, local government, council, committee or other similar body established for a public purpose under an Act.

public place, for chapter 23, see section 230A.

race see the *Anti-Discrimination Act 1991*, schedule 1.

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rail government entity see the *Transport Infrastructure Act 1994*, schedule 6.

railway includes every kind of way on which vehicles are borne upon a rail or rails, whatever may be the means of propulsion.

recognised offender, for part 2, chapter 9A, see section 77.

record means any thing or process—

(a) on or by which information is recorded or stored; or

(b) by means of which sounds, images, writings, messages or anything else having meaning can be conveyed in any way in a visible or recoverable form;

even if the use or assistance of some electronic, electrical, mechanical, chemical or other device or process is required to recover or convey the information or meaning.

recorded statement, for chapter 62, chapter division 3, see section 590AD.

registered brand and ***registered mark*** mean respectively a brand or mark which is registered under the authority of the laws relating to brands and each such registered brand or registered mark shall for the purposes of this Code be deemed to be the registered brand or registered mark respectively of the person in whose name such brand or mark is registered.

However, where such brand or mark is registered in the names of 2 or more persons such registered brand or registered mark shall for the purposes of this Code be deemed to be the registered brand or registered mark respectively of each of such persons.

registrar, for chapter 67, see section 668(1).

relevant charge, for chapter 62, chapter division 3, see section 590AD.

relevant offence, for part 2, chapter 9A, see section 77.

relevant proceeding, for chapter 62, chapter division 3, see section 590AD.

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religious confession, for part 4, chapter 22, see section 207A.

sensitive evidence, for chapter 62, chapter division 3, see section 590AF.

sentence, for chapter 67, see section 668(1).

serious disease means a disease that would, if left untreated, be of such a nature as to—

(a) cause or be likely to cause any loss of a distinct part or organ of the body; or

(b) cause or be likely to cause serious disfigurement; or

(c) endanger or be likely to endanger life, or to cause or be likely to cause permanent injury to health;

whether or not treatment is or could have been available.

sex characteristics see the *Anti-Discrimination Act 1991*, schedule 1.

sexuality see the *Anti-Discrimination Act 1991*, schedule 1.

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

someone, for chapter 22, see section 207A.

sporting contingency, for chapter 43, see section 443.

sporting event, for chapter 43, see section 443.

stalked person, for chapter 33A, see section 359B(a).

statement, for chapter 62, chapter division 3, see section 590AD.

state of undress, for chapter 22, see section 207A.

stock means any of the following animals or their young—

(a) horse, asses, mules or camels;

(b) cattle, oxen or buffalo;

(c) sheep;

(d) swine;

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(e) deer;

(f) goats.

subsequent appeal, for chapter 67, see section 668(1).

summary conviction means summary conviction before a Magistrates Court.

tainted acquittal, for chapter 68, see section 678E.

the offender can not be arrested without warrant see section 5(3).

the offender may be arrested without warrant see section 5(1).

trial includes a proceeding wherein a person is to be sentenced.

unauthorised or unreasonable surveillance, of a person, for chapter 29A, see section 334A.

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

unlawful game, for chapter 23, see section 230A.

unlawful stalking, intimidation, harassment or abuse, for chapter 33A, see sections 359B and 359D.

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

vagina includes a surgically constructed vagina, whether provided for a male or female.

valuable security includes any document which is the property of any person, and which is evidence of the ownership of any property or of the right to recover or receive any property.

vehicle includes—

(a) a motor vehicle, train, aircraft, or vessel; or

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(b) anything else used or to be used to carry persons or goods from place to place.

vessel includes a ship, or boat, and every other kind of vessel used in navigation.

view, for chapter 62, chapter division 3, see section 590AD.

visually record, for chapter 22, see section 207A.

vulva includes a surgically constructed vulva, whether provided for a male or female.

woman includes any female.

writing includes any way of representing or reproducing in a visible form any word, inscription, signature or other mark.

2 Definition of *offence*

An act or omission which renders the person doing the act or making the omission liable to punishment is called an ***offence***.

3 Division of offences

(1) Offences are of 2 kinds, namely, criminal offences and regulatory offences.

(2) Criminal offences comprise crimes, misdemeanours and simple offences.

(3) Crimes and misdemeanours are indictable offences; that is to say, the offenders can not, unless otherwise expressly stated, be prosecuted or convicted except upon indictment.

(4) A person guilty of a regulatory offence or a simple offence may be summarily convicted by a Magistrates Court.

(5) An offence not otherwise designated is a simple offence.

4 Attempts to commit offences

(1) When a person, intending to commit an offence, begins to put the person's intention into execution by means adapted to its

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fulfilment, and manifests the person's intention by some overt act, but does not fulfil the person's intention to such an extent as to commit the offence, the person is said to attempt to commit the offence.

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

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

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

5 Arrest without warrant

(1) The expression ***the offender may be arrested without warrant*** means that the provisions of this Code relating to the arrest of offenders or suspected offenders without warrant are applicable to the offence in question, either generally or subject to such conditions (if any) as to time, place, or circumstance, or as to the person authorised to make the arrest, as are specified in the particular case.

(2) Except when otherwise stated, the definition of an offence as a crime imports that the offender may be arrested without warrant.

(3) The expression ***the offender can not be arrested without warrant*** means that the provisions of this Code relating to the arrest of offenders or suspected offenders without warrant are not applicable to the crime in question, except subject to such conditions (if any) as to time, place, or circumstance, or as to the person authorised to make the arrest as are specified in the particular case.

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6 Meaning of *engage* in *penile intercourse*

(1) ***Penile intercourse*** is the penetration, to any extent, of the vagina, vulva or anus of a person by the penis of another person.

(2) A person ***engages*** in penile intercourse with another person if—

(a) the person penetrates, to any extent, the vagina, vulva or anus of another person with the person's penis; or

(b) the person's vagina, vulva or anus is penetrated, to any extent, by the penis of another person.

6A Meaning of *emergency vehicle* and related matters

(1) In this Code—

emergency vehicle means—

(a) a motor vehicle being used by an emergency worker in the course of their duties; or

(b) a motor vehicle ordinarily used by emergency workers in the course of their duties.

(2) For a proceeding against a person (the ***first person***) for an offence involving an emergency vehicle, the first person is taken to know a motor vehicle is an emergency vehicle, unless the first person proves otherwise, if—

(a) the vehicle bears the insignia of an emergency services entity or is otherwise clearly marked as a type of emergency vehicle; or

(b) the vehicle is displaying flashing blue and red lights or a flashing blue light; or

(c) a person who is inside, or emerges from, the vehicle identifies themself to the first person as a type of emergency worker.

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(3) Subsection (2) does not limit the circumstances in which a person may know, or a person ought reasonably to know, a vehicle is an emergency vehicle.

(4) In this section—

emergency services entity means any of the following entities of Queensland, the Commonwealth or another State—

(a) a police service;

(b) an ambulance service;

(c) a fire brigade, fire service or State emergency service.

Chapter 2 Parties to offences

7 Principal offenders

(1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say—

(a) every person who actually does the act or makes the omission which constitutes the offence;

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

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

(d) any person who counsels or procures any other person to commit the offence.

(2) Under subsection (1)(d) the person may be charged either with committing the offence or with counselling or procuring its commission.

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

(4) Any person who procures another to do or omit to do any act of such a nature that, if the person had done the act or made the omission, the act or omission would have constituted an offence on the person's part, is guilty of an offence of the same kind, and is liable to the same punishment, as if the person had done the act or made the omission; and the person may be charged with doing the act or making the omission.

8 Offences committed in prosecution of common purpose

When 2 or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.

9 Mode of execution immaterial

(1) When a person counsels another to commit an offence, and an offence is actually committed after such counsel by the person to whom it is given, it is immaterial whether the offence actually committed is the same as that counselled or a different one, or whether the offence is committed in the way counselled, or in a different way, provided in either case that the facts constituting the offence actually committed are a probable consequence of carrying out the counsel.

(2) In either case the person who gave the counsel is deemed to have counselled the other person to commit the offence actually committed by the other person.

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10 Accessories after the fact

A person who receives or assists another who is, to the person's knowledge, guilty of an offence, in order to enable the person to escape punishment, is said to become an accessory after the fact to the offence.

10A Interpretation of ch 2

(1) Under section 7, a person's criminal responsibility extends to any offence that, on the evidence admissible against him or her, is either the offence proved against the person who did the act or made the omission that constitutes that offence or any statutory or other alternative to that offence.

(2) Under section 8, a person's criminal responsibility extends to any offence that, on the evidence admissible against him or her, is a probable consequence of the prosecution of a common intention to prosecute an unlawful purpose, regardless of what offence is proved against any other party to the common intention.

(3) This section does not limit any other provision of this chapter.

Chapter 3 Application of criminal law

11 Effect of changes in law

(1) A person can not be punished for doing or omitting to do an act unless the act or omission constituted an offence under the law in force when it occurred; nor unless doing or omitting to do the act under the same circumstances would constitute an offence under the law in force at the time when the person is charged with the offence.

(2) If the law in force when the act or omission occurred differs from that in force at the time of the conviction, the offender can not be punished to any greater extent than was authorised

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by the former law, or to any greater extent than is authorised by the latter law.

12 Application of Code as to offences wholly or partially committed in Queensland

(1) This Code applies to every person who does an act in Queensland or makes an omission in Queensland, which in either case constitutes an offence.

(2) Where acts or omissions occur which, if they all occurred in Queensland, would constitute an offence and any of the acts or omissions occur in Queensland, the person who does the acts or makes the omissions is guilty of an offence of the same kind and is liable to the same punishment as if all the acts or omissions had occurred in Queensland.

(3) Where an event occurs in Queensland caused by an act done or omission made out of Queensland which, if done or made in Queensland, would constitute an offence, the person who does the act or makes the omission is guilty of an offence of the same kind and is liable to the same punishment as if the act or omission had occurred in Queensland.

(3A) It is a defence to prove that the person did not intend that the act or omission should have effect in Queensland.

(4) Where an event occurs out of Queensland caused by an act done or omission made in Queensland, which act or omission would constitute an offence had the event occurred in Queensland, the person who does the act or makes the omission is guilty of an offence of the same kind and is liable to the same punishment as if the event had occurred in Queensland.

(5) This section does not extend to a case where the only material event that occurs in Queensland is the death in Queensland of a person whose death is caused by an act done or an omission made out of Queensland at a time when the person was out of Queensland.

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13 Offences enabled, aided, procured or counselled by persons out of Queensland

(1) Any person who while out of Queensland—

(a) does or omits to do an act for the purpose of enabling or aiding another person to commit an offence that is actually committed in Queensland; or

(b) aids another person in committing an offence that is actually committed in Queensland; or

(c) counsels or procures another person to commit an offence that is actually committed in Queensland;

is guilty of an offence of the same kind and is liable to the same punishment as if the person had committed the offence in Queensland.

(2) Any person who while out of Queensland procures another to do or omit to do in Queensland an act of such a nature that, if the person had done the act or made the omission in Queensland, the person would have been guilty of an offence is guilty of an offence of the same kind and is liable to the same punishment as if the person had done the act or made the omission in Queensland.

14 Offences procured in Queensland to be committed out of Queensland

Any person who while in Queensland procures another to do an act or make an omission at a place not in Queensland of such a nature that, if the person had done the act or made the omission in Queensland, the person would have been guilty of an offence, and that, if the person had done the act or made the omission, the person would have been guilty of an offence under the laws in force in the place where the act or omission is done or made, is guilty of an offence of the same kind, and is liable to the same punishment, as if the act had been done or the omission had been made in Queensland, but so that the punishment does not exceed that which the person would have incurred under the laws in force in the place where the act was

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done or the omission was made, if the person had done the act or made the omission.

15 Defence Force

Officers and other members of the Australian Defence Force are, while on duty or in uniform, subject to the special laws relating to that Force, but are not exempt from the provisions of this Code.

16 Person not to be twice punished for same offence

A person can not be twice punished either under the provisions of this Code or under the provisions of any other law for the same act or omission, except in the case where the act or omission is such that by means thereof the person causes the death of another person, in which case the person may be convicted of the offence of which the person is guilty by reason of causing such death, notwithstanding that the person has already been convicted of some other offence constituted by the act or omission.

17 Former conviction or acquittal

It is a defence to a charge of any offence to show that the accused person has already been tried, and convicted or acquitted upon an indictment on which the person might have been convicted of the offence with which the person is charged, or has already been acquitted upon indictment, or has already been convicted, of an offence of which the person might be convicted upon the indictment or complaint on which the person is charged.

Note—

See sections 678B, 678BA and 678C for when this section does not apply to the charge mentioned in those sections.

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Chapter 4 Royal prerogative of mercy

18 Royal prerogative of mercy

This Code does not affect the Royal prerogative of mercy.

Chapter 5 Criminal responsibility

22 Ignorance of the law—bona fide claim of right

(1) Ignorance of the law does not afford any excuse for an act or omission which would otherwise constitute an offence, unless knowledge of the law by the offender is expressly declared to be an element of the offence.

(2) But a person is not criminally responsible, as for an offence relating to property, for an act done or omitted to be done by the person with respect to any property in the exercise of an honest claim of right and without intention to defraud.

(3) A person is not criminally responsible for an act or omission done or made in contravention of a statutory instrument if, at the time of doing or making it, the statutory instrument was not known to the person and had not been published or otherwise reasonably made available or known to the public or those persons likely to be affected by it.

(4) In this section—

publish—

(a) in relation to a statutory instrument that is subordinate legislation—means notify in accordance with section 47 (Notification) of the *Statutory Instruments Act 1992*; and

(b) in relation to a statutory instrument that is not subordinate legislation—means publish in the gazette.

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23 Intention—motive

(1) Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for—

(a) an act or omission that occurs independently of the exercise of the person's will; or

(b) an event that—

(i) the person does not intend or foresee as a possible consequence; and

(ii) an ordinary person would not reasonably foresee as a possible consequence.

Note—

Parliament, in amending subsection (1)(b) by the *Criminal Code and Other Legislation Amendment Act 2011*, did not intend to change the circumstances in which a person is criminally responsible.

(1A) However, under subsection (1)(b), the person is not excused from criminal responsibility for death or grievous bodily harm that results to a victim because of a defect, weakness, or abnormality.

(2) Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.

(3) Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility.

24 Mistake of fact

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

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(2) The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject.

25 Extraordinary emergencies

Subject to the express provisions of this Code relating to acts done upon compulsion or provocation or in self-defence, a person is not criminally responsible for an act or omission done or made under such circumstances of sudden or extraordinary emergency that an ordinary person possessing ordinary power of self-control could not reasonably be expected to act otherwise.

26 Presumption of sanity

Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.

27 Insanity

(1) A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission the person is in such a state of mental disease or natural mental infirmity as to deprive the person of capacity to understand what the person is doing, or of capacity to control the person's actions, or of capacity to know that the person ought not to do the act or make the omission.

(2) A person whose mind, at the time of the person's doing or omitting to do an act, is affected by delusions on some specific matter or matters, but who is not otherwise entitled to the benefit of subsection (1), is criminally responsible for the act or omission to the same extent as if the real state of things had been such as the person was induced by the delusions to believe to exist.

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28 Intoxication

(1) The provisions of section 27 apply to the case of a person whose mind is disordered by intoxication or stupefaction caused without intention on his or her part by drugs or intoxicating liquor or by any other means.

(2) They do not apply to the case of a person who has, to any extent intentionally caused himself or herself to become intoxicated or stupefied, whether in order to afford excuse for the commission of an offence or not and whether his or her mind is disordered by the intoxication alone or in combination with some other agent.

(3) When an intention to cause a specific result is an element of an offence, intoxication, whether complete or partial, and whether intentional or unintentional, may be regarded for the purpose of ascertaining whether such an intention in fact existed.

29 Immature age

(1) A person under the age of 10 years is not criminally responsible for any act or omission.

(2) A person under the age of 14 years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission the person had capacity to know that the person ought not to do the act or make the omission.

30 Judicial officers

Except as expressly provided by this Code, a judicial officer is not criminally responsible for anything done or omitted to be done by the judicial officer in the exercise of the officer's judicial functions, although the act done is in excess of the officer's judicial authority, or although the officer is bound to do the act omitted to be done.

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31 Justification and excuse—compulsion

(1) A person is not criminally responsible for an act or omission, if the person does or omits to do the act under any of the following circumstances, that is to say—

(a) in execution of the law;

(b) in obedience to the order of a competent authority which he or she is bound by law to obey, unless the order is manifestly unlawful;

(c) when the act is reasonably necessary in order to resist actual and unlawful violence threatened to the person, or to another person in the person's presence;

(d) when—

(i) the person does or omits to do the act in order to save himself or herself or another person, or his or her property or the property of another person, from serious harm or detriment threatened to be inflicted by some person in a position to carry out the threat; and

(ii) the person doing the act or making the omission reasonably believes he or she or the other person is unable otherwise to escape the carrying out of the threat; and

(iii) doing the act or making the omission is reasonably proportionate to the harm or detriment threatened.

(2) However, this protection does not extend to an act or omission which would constitute the crime of murder, or an offence of which grievous bodily harm to the person of another, or an intention to cause such harm, is an element, nor to a person who has by entering into an unlawful association or conspiracy rendered himself or herself liable to have such threats made to the person.

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

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34 Offences by partners and members of companies with respect to partnership or corporate property

A person who, being a member of a co-partnership, corporation, or joint stock company, does or omits to do any act with respect to the property of the co-partnership, corporation, or company, which, if the person were not a member of the co-partnership, corporation, or company, would constitute an offence, is criminally responsible to the same extent as if the person were not such member.

36 Application of rules

(1) The provisions of this chapter apply to all persons charged with any criminal offence against the statute law of Queensland.

(2) Except for sections 22(3), 29 and 31, this chapter does not apply to regulatory offences.

Part 2 Offences against public order

Chapter 7 Sedition

44 Definition of *seditious intention*

An intention to effect any of the following purposes, that is to say—

(a) to bring the Sovereign into hatred or contempt;

(b) to excite disaffection against the Sovereign or the Government or Constitution of the United Kingdom or of Queensland as by law established, or against either

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House of Parliament of the United Kingdom or of Queensland, or against the administration of justice;

(c) to excite the Sovereign's subjects to attempt to procure the alteration of any matter in the State as by law established otherwise than by lawful means;

(d) to raise discontent or disaffection amongst the Sovereign's subjects;

(e) to promote feelings of ill will and enmity between different classes of the Sovereign's subjects;

is a ***seditious intention***, unless it is justified by the provisions of section 45.

45 Innocent intentions

It is lawful for any person—

(a) to endeavour in good faith to show that the Sovereign has been mistaken in any of the Sovereign's counsels; or

(b) to point out in good faith errors or defects in the government or Constitution of the United Kingdom or of Queensland as by law established, or in legislation, or in the administration of justice, with a view to the reformation of such errors or defects; or

(c) to excite in good faith the Sovereign's subjects to attempt to procure by lawful means the alteration of any matter in the State as by law established; or

(d) to point out in good faith in order to their removal any matters which are producing or have a tendency to produce feelings of ill will and enmity between different classes of the Sovereign's subjects.

46 Definition of *seditious enterprises* etc.

(1) A ***seditious enterprise*** is an enterprise which is undertaken in order to the carrying out of a seditious intention.

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(2) ***Seditious words*** are words expressive of a seditious intention.

(3) In this Code—

seditious writing includes anything intended to be read, and any sign or visible representation, which is expressive of a seditious intention.

51 Unlawful drilling

(1) Any person who—

(a) in contravention of the directions under a regulation, trains or drills any other person to the use of arms or the practice of military exercises, movements, or evolutions; or

(b) is present at any meeting or assembly of persons held in contravention of the directions of any such proclamation, for the purpose of there training or drilling any other person to the use of arms or the practice of military exercises, movements, or evolutions;

is guilty of a crime, and is liable to imprisonment for 7 years.

(2) Any person who, at any meeting or assembly held in contravention of the directions under a regulation, is trained or drilled to the use of arms or the practice of military exercises, movements, or evolutions, or who is present at any such meeting or assembly for the purpose of being so trained or drilled, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

(2A) The offender may be arrested without warrant.

(3) A prosecution for any of the offences defined in this section must be begun within 6 months after the offence is committed.

52 Sedition

(1) Any person who—

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(a) conspires with any person to carry into execution a seditious enterprise; or

(b) advisedly publishes any seditious words or writing;

is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

(2) If the person has been previously convicted of any such offence the person is guilty of a crime, and is liable to imprisonment for 7 years.

(3) A prosecution for any of the offences defined in this section must be begun within 6 months after the offence is committed.

(4) A person can not be convicted of any of the offences defined in this section upon the uncorroborated testimony of 1 witness.

Chapter 7A Serious vilification and prohibited symbols

52A Offence of serious racial, religious, sexuality, sex characteristics or gender identity vilification

(1) A person must not, by a public act, knowingly or recklessly incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race, religion, sexuality, sex characteristics or gender identity of the person or members of the group in a way that includes—

(a) threatening physical harm towards, or towards any property of, the person or group of persons; or

(b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

Maximum penalty—3 years imprisonment.

(2) In this section—

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public act—

(a) includes—

(i) any form of communication to the public, including by speaking, writing, printing, displaying notices, broadcasting, telecasting, screening or playing of tapes or other recorded material, or by electronic means; and

(ii) any conduct that is observable by the public, including actions, gestures and the wearing or display of clothing, signs, flags, emblems or insignia; but

(b) does not include the distribution or dissemination of any matter by a person to the public if the person does not know, and could not reasonably be expected to know, the content of the matter.

52B Circumstances of aggravation for particular offences

(1) It is a circumstance of aggravation for a prescribed offence that the offender was wholly or partly motivated to commit the offence by hatred or serious contempt for a person or group of persons based on—

(a) in relation to a person—the race, religion, sexuality, sex characteristics or gender identity of the person, or presumed race, religion, sexuality, sex characteristics or gender identity of the person; or

(b) in relation to a group of persons—the race, religion, sexuality, sex characteristics or gender identity shared, or presumed to be shared, by the members of the group.

(2) In this section—

prescribed offence means an offence against any of the following sections—

(a) section 69;

(b) section 75;

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(c) section 207;

(d) section 335;

(e) section 339;

(f) section 359;

(g) section 359E;

(h) section 469.

52C Prohibited symbols

(1) A ***prohibited symbol*** is a symbol or image—

(a) prescribed by regulation for this section; or

(b) that so nearly resembles a symbol referred to in paragraph (a) that it is likely to be confused with or mistaken for that symbol.

(2) A regulation under subsection (1)(a)—

(a) must prescribe the symbol or image as a graphic representation of the symbol or image; and

(b) may not prescribe the symbol or image by describing a class of symbols or images.

(3) The Minister may recommend to the Governor in Council the making of a regulation under subsection (1)(a) only if the Minister is satisfied the symbol or image—

(a) is widely known by the public as being solely or substantially representative of an ideology of extreme prejudice against a relevant group; or

(b) is widely known by members of a relevant group as being solely or substantially representative of an ideology of extreme prejudice against that group.

(4) Also, the Minister must, before making the recommendation, consult with each of the following persons about the proposed recommendation—

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(a) the chairperson of the Crime and Corruption Commission;

(b) the Human Rights Commissioner under the *Anti-Discrimination Act 1991*;

(c) the commissioner of the police service under the *Police Service Administration Act 1990*.

(5) In this section—

relevant group means a group of persons who identify with each other on the basis of an attribute or characteristic that is, or is based on, the race, religion, sexuality, sex characteristics or gender identity of the persons.

52D Display, distribution or publication of prohibited symbols

(1) A person who publicly distributes, publishes or publicly displays a prohibited symbol in a way that might reasonably be expected to cause a member of the public to feel menaced, harassed or offended, commits an offence, unless the person has a reasonable excuse.

Maximum penalty—70 penalty units or 6 months imprisonment.

(2) Without limiting what may be a reasonable excuse for subsection (1), a person has a reasonable excuse if—

(a) any of the following apply—

(i) the person engaged in the conduct that is alleged to constitute the offence for a genuine artistic, religious, educational, historical, legal or law enforcement purpose;

(ii) the person engaged in the conduct that is alleged to constitute the offence for a purpose that is in the public interest;

Examples for subparagraph (ii)—

- publication of a fair and accurate report of an event or matter of public interest

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- a genuine political or other genuine public dispute or issue carried on in the public interest

(iii) the person engaged in the conduct that is alleged to constitute the offence in opposition to the ideology represented by the prohibited symbol; and

(b) the person's conduct was, in the circumstances, reasonable for that purpose.

(3) An evidential burden is placed on the defendant in relation to showing a reasonable excuse for subsection (1).

(4) For subsection (1), a person ***publicly displays*** a prohibited symbol if the person—

(a) displays the symbol—

(i) in 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

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

(b) displays the symbol in a way that is visible from a place mentioned in paragraph (a).

(5) To remove any doubt, it is declared that, for subsection (1)—

(a) the offence is committed at the time when the person distributes, publishes or displays the prohibited symbol; and

(b) it is irrelevant whether or not a member of the public has seen the prohibited symbol because of the distribution, publication or display.

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Chapter 8 Offences against the executive and legislative power

53 Evidence of proceedings in the Assembly allowed for prosecution

(1) Despite the *Parliament of Queensland Act 2001*, section 8, evidence of anything said or done during proceedings in the Assembly may be given in a proceeding against a person for an offence under this chapter to the extent necessary to prosecute the person for the offence.

(2) Subsection (1) does not limit the *Parliament of Queensland Act 2001*, section 36.

(3) In this section—

proceedings in the Assembly see the *Parliament of Queensland Act 2001*, section 9 and schedule.

54 Interference with Governor or Ministers

(1) Any person who—

(a) does any act with intention to interfere with the free exercise by the Governor of the duties or authority of the Governor's office; or

(b) does any act with intention to interfere with the free exercise by a member of the Executive Council of the duties or authority of the member's office as a member of the Executive Council or as a Minister of State;

is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

(2) The offender may be, and it is hereby declared that the offender always was liable to be, arrested without warrant.

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54A Demands with menaces upon agencies of government

(1) Any person who demands that anything be done or omitted to be done or be procured by—

(a) the Government of Queensland or a person in the employment of the Crown in right of Queensland, in performance of the duties of the person's employment or otherwise in the person's official capacity; or

(b) the Governor, in his or her role of Governor; or

(c) a Minister of the Crown, in his or her office as Minister or as a member of the Executive Council of Queensland; or

(d) a government corporation, in discharge of its functions conferred by law, or a person in the employment of a government corporation, in performance of the duties of the person's employment or otherwise in the person's official capacity;

with threats of detriment of any kind to be caused to any person aforesaid or any other person or to the public or any member or members of the public or to property, by the offender or by any other person, if the demand is not complied with is guilty of a crime and is liable to imprisonment for 14 years.

(2) A person is not criminally responsible for an act referred to in subsection (1) if the detriment is threatened to himself or herself only or to property of which the person is the sole owner.

(3) It is immaterial to the commission of an offence defined in this section that—

(a) the demand or threat is made by means of a medium ordinarily used for disseminating information to the public and not to a particular person; or

(b) the threat does not specify the detriment that is to be caused or the person or persons to whom or the property to which it is to be caused.

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(4) If the carrying out of the threat would be likely to cause—

(a) loss of life or serious personal injury to any person; or

(b) substantial economic loss—

(i) to the Crown; or

(ii) to a government corporation; or

(iii) in any industrial or commercial activity whether conducted by a public authority or as a private enterprise;

the offender is liable to imprisonment for life and if, in addition, the offender or another person on the offender's behalf has carried out the threat and thereby caused a consequence specified in this subsection or has by some overt act begun to prepare for the carrying out of the threat, the offender is liable to imprisonment for life, which can not be mitigated or varied under this Code or any other law or is liable to an indefinite sentence under part 10 of the *Penalties and Sentences Act 1992*.

(5) A prosecution for an offence defined in this section shall not be commenced without the consent of the Attorney-General.

(6) For the purposes of this section—

detriment includes destruction of or damage to—

(a) flora or fauna protected by or under an Act; or

(b) any place, thing or living creature or plant that by reason of its cultural, educational, environmental, historical, recreational, religious or scientific significance is of substantial public interest or concern;

and, in the absence of proof that any such item destroyed or damaged was or is the property of a particular person, shall be deemed to be detriment to the Crown.

government corporation means any body corporate or corporation sole constituted by or under an Act that represents the Crown or that is declared under a regulation to be a government corporation for the purposes of this section.

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55 Interference with the Legislature

(1) Any person who, by force or fraud, intentionally interferes or attempts to interfere with the free exercise by the Legislative Assembly of its authority, or with the free exercise by any member of the Legislative Assembly of the member's duties or authority as such member, or as a member of a committee of the Legislative Assembly is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

(2) The offender may be, and it is hereby declared that the offender always was liable to be, arrested without warrant.

56 Disturbing the Legislature

(1) A person who, while the Legislative Assembly is in session, intentionally—

(a) disturbs the Assembly; or

(b) commits any disorderly conduct in the immediate view and presence of the Assembly, tending to interrupt its proceedings or to impair the respect due to its authority;

commits a misdemeanour.

Maximum penalty—3 years imprisonment.

(2) A person may be arrested without warrant.

56A Disturbance in House when Parliament not sitting

(1) Any person creating or joining in any disturbance in Parliament House or within the precincts thereof at any time other than during an actual sitting of Parliament therein or at the office or residence of the Governor or of any member of the Legislative Assembly or of the Executive Council shall be guilty of an offence and—

(a) if the person created or joined in such disturbance in Parliament House or within the precincts thereof—may be apprehended without warrant on the verbal order of the Speaker or, in the Speaker's absence, of the clerk of

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the Parliament, or of the person for the time being discharging the duties of the office of the clerk of the Parliament, and may be kept in custody by any officer of Parliament or by any police officer; or

(b) if the person created or joined in such disturbance at the office or residence of the Governor or of any member of the Legislative Assembly or of the Executive Council—may be apprehended without warrant on the verbal order of the Governor or, as the case may be, member of the Legislative Assembly or of the Executive Council concerned, and may be kept in custody by any police officer.

(2) Such person may be so kept in custody until the person can be dealt with in the manner following, that is to say—

(a) every such person shall, as soon as reasonably may be, be brought before a magistrate without formal written complaint and there and then charged with such offence and summarily dealt with according to law;

(b) any such person on summary conviction shall be liable to a fine of 100 penalty units or imprisonment for a term not exceeding 2 years.

56B Going armed to Parliament House

(1) Any person who without lawful excuse being armed enters or is found in Parliament House or in any of the grounds thereof or in any building in or upon such grounds is guilty of an offence and is liable on summary conviction to a fine of 100 penalty units with or without imprisonment for a term not exceeding 2 years.

(1A) The offender may be arrested without warrant.

(2) On the conviction of a person for an offence against subsection (1), any arms found in the person's possession or under the person's control are forfeited to the State.

(3) For the purposes of this section—

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armed shall mean having in the person's possession or under the person's immediate control whether concealed or not—

(a) any firearm whatsoever loaded or unloaded and whether capable of projecting a missile or not; or

(b) any bomb or other explosive matter, machine, or device mechanical or otherwise capable of causing injury to any person or damage to any property or any dangerous or offensive weapon or instrument; or

(c) any corrosive substance;

and the word ***arms*** shall have a correlative meaning.

57 False evidence before Parliament

(1) A person who, during an examination before the Legislative Assembly or a committee, knowingly gives a false answer to a lawful and relevant question put to the person during the examination commits a crime.

Maximum penalty—7 years imprisonment.

(2) A person can not be arrested without warrant.

(3) To remove any doubt, it is declared that a member of the Legislative Assembly does not give an answer during an examination before the Legislative Assembly only because the member answers a question during Question Time, a debate or the conduct of other daily business of the Legislative Assembly.

(4) A person can not be convicted of an offence under this section on the uncorroborated testimony of 1 witness.

(5) In this section—

committee see the *Parliament of Queensland Act 2001*, schedule.

person includes a member of the Legislative Assembly.

proceedings in the Assembly see the *Parliament of Queensland Act 2001*, section 9 and schedule.

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58 Witness refusing to attend, answer question or produce a thing before Legislative Assembly or authorised committee

(1) A person who—

(a) fails to attend before the Legislative Assembly as required under the *Parliament of Queensland Act 2001*, section 29; or

(b) fails to attend before an authorised committee as required under the *Parliament of Queensland Act 2001*, section 30(4); or

(c) fails to answer a question asked by the Assembly, or to produce a document or other thing to the Assembly, as required under the *Parliament of Queensland Act 2001*, section 32(6); or

(d) fails to answer a question asked by an authorised committee, or to produce a document or other thing to an authorised committee, as required under the *Parliament of Queensland Act 2001*, section 33(8);

commits a misdemeanour.

Maximum penalty—2 years imprisonment.

(2) A person can not be convicted of an offence against subsection (1)(a) or (b) if the Assembly has excused the person for the failure mentioned in the subsection.

(3) In this section—

authorised committee see the *Parliament of Queensland Act 2001*, schedule.

59 Member of Parliament receiving bribes

(1) Any person who, being a member of the Legislative Assembly, asks for, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself, herself or any other person upon any understanding that the person's vote, opinion, judgment, or action, in the

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Legislative Assembly, or in any committee thereof, shall be influenced thereby, or shall be given in any particular manner or in favour of any particular side of any question or matter, is guilty of a crime, and is liable to imprisonment for 7 years, and is disqualified from sitting or voting as a member of the Legislative Assembly for 7 years.

(2) The offender can not be arrested without warrant.

60 Bribery of member of Parliament

(1) Any person who—

(a) in order to influence a member of the Legislative Assembly in the member's vote, opinion, judgment, or action, upon any question or matter arising in the Legislative Assembly or in any committee thereof or in order to induce the member to absent himself or herself from the Assembly or from any such committee, gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, any property or benefit of any kind to, upon, or for, such member, or to, upon, or for, any other person; or

(b) attempts, directly or indirectly, by fraud, or by threats or intimidation of any kind, to influence a member of the Legislative Assembly in the member's vote, opinion, judgment, or action, upon any such question or matter, or to induce the member to so absent himself or herself;

is guilty of a crime, and is liable to imprisonment for 7 years.

(2) The offender can not be arrested without warrant.

(3) Where a person has been convicted (whether before or after 1 July 1922) of an offence under this section, all property which has been tendered or produced in evidence at the trial of the offender, as being the property or part of the property which the offender in the course of the commission of such offence gave, conferred or procured, or promised or offered to give, or confer or to procure, or attempt to procure, to, upon, or for a member of the Legislative Assembly, or to, upon, or for any

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other person, shall become and be deemed to have become forthwith upon such conviction and without any further judgment or order the absolute property of the Sovereign, whether such property is the property of the offender or of any other person.

Chapter 9 Breaches of the peace

61 Riot

(1) If—

(a) 12 or more persons who are present together (***assembled persons***) use or threaten to use unlawful violence to a person or property for a common purpose; and

(b) the conduct of them taken together would cause a person in the vicinity to reasonably fear for the person's personal safety;

each of the assembled persons commits the crime of taking part in a riot.

Maximum penalty—

(a) if the offender causes grievous bodily harm to a person, causes an explosive substance to explode or destroys or starts to destroy a building, vehicle or machinery—life imprisonment; or

(b) if—

(i) the offender is armed with a dangerous or offensive weapon, instrument or explosive substance; or

(ii) property is damaged, whether by the offender or another of the assembled persons—7 years imprisonment; or

(c) otherwise—3 years imprisonment.

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(2) For subsection (1)(b), it is immaterial whether there is or is likely to be a person in the vicinity who holds the fear mentioned in the subsection.

(2A) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

(2B) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(3) In this section—

building includes structure.

vehicle means a motor vehicle, train, aircraft or vessel.

69 Going armed so as to cause fear

(1) Any person who goes armed in public without lawful occasion in such a manner as to cause fear to any person is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

(2) If the offender commits the offence with the circumstance of aggravation stated in section 52B, the offender is liable to imprisonment for 3 years.

(3) If the offender publishes material on a social media platform or an online social network to—

(a) advertise the offender's involvement in the offence; or

(b) advertise the act or omission constituting the offence;

the offender is liable to imprisonment for 3 years.

(4) The offender may be, and it is hereby declared that the offender always was liable to be, arrested without warrant.

(5) In this section—

advertise means attract the notice and attention of the public or a limited section of the public.

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material includes an electronic document.

70 Forcible entry

(1) Any person who, in a manner likely to cause, or cause reasonable fear of, unlawful violence to a person or to property, enters on land which is in the actual and peaceable possession of another commits a misdemeanour.

Maximum penalty—2 years imprisonment.

(2) It is immaterial whether the person is entitled to enter on the land or not.

71 Forcible detainer

Any person who, being in actual possession of land without colour of right, holds possession of it, in a manner likely to cause, or cause reasonable fear of, unlawful violence to a person or to property, against a person entitled by law to the possession of the land commits a misdemeanour.

Maximum penalty—2 years imprisonment.

72 Affray

(1) Any person who takes part in a fight in a public place, or takes part in a fight of such a nature as to alarm the public in any other place to which the public have access, commits a misdemeanour.

Maximum penalty—1 year's imprisonment.

(2) The *Penalties and Sentences Act 1992*, section 108B states a circumstance of aggravation for an offence against this section.

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74 Prize fight

Any person who fights in a prize fight, or subscribes to or promotes a prize fight, is guilty of a misdemeanour, and is liable to imprisonment for 1 year.

75 Threatening violence

(1) Any person who—

(a) with intent to intimidate or annoy any person, by words or conduct threatens to enter or damage a dwelling or other premises; or

(b) with intent to alarm any person, discharges loaded firearms or does any other act that is likely to cause any person in the vicinity to fear bodily harm to any person or damage to property;

commits a crime.

Maximum penalty—2 years imprisonment.

(2) If the offender commits the offence with the circumstance of aggravation stated in section 52B, the offender is liable to imprisonment for 3 years.

(3) If the offence is committed in the night the offender is guilty of a crime, and is liable to imprisonment for 5 years.

76 Recruiting person to become participant in criminal organisation

(1) A person who—

(a) is a participant in a criminal organisation or is subject to a control order or a registered corresponding control order; and

(b) recruits, or attempts to recruit, another person to become, or associate with, a participant in a criminal organisation;

commits a misdemeanour.

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Maximum penalty—500 penalty units or 5 years imprisonment.

(2) In this section—

control order see the *Penalties and Sentences Act 1992*, section 161N.

recruit, a person to become, or associate with, a participant in a criminal organisation, includes counsel, procure, solicit, incite and induce the person, including by promoting the organisation, to become, or associate with, a participant in the organisation.

registered corresponding control order see the *Penalties and Sentences Act 1992*, section 161N.

Chapter 9A Consorting

77 Definitions for chapter

In this chapter—

consort see section 77A.

conviction means a finding of guilt, or the acceptance of a plea of guilty, by a court.

recognised offender means an adult who has a recorded conviction, other than a spent conviction, for a relevant offence (whether on indictment or summary conviction).

relevant offence means—

(a) an indictable offence for which the maximum penalty is at least 5 years imprisonment, including an offence against a repealed provision of an Act; or

(b) an offence against—

(i) any of the following provisions of this Code—

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- section 61(1), if the penalty, paragraph (c) applies
- section 69
- section 75
- section 77B
- section 130
- section 317A(2)
- section 327
- section 355
- section 408D
- section 413
- section 414; or

(ii) any of the following provisions of the *Weapons Act 1990*—

- section 50(1), if the penalty, paragraph (c)(ii) or (iii) applies
- section 50B(1), if the penalty, paragraph (c)(iii) applies
- section 57(3) or (4)
- section 58
- section 61
- section 62
- section 63
- section 69(1A), if the penalty, paragraph (c) applies
- section 151B
- section 151D; or

(c) an offence against the law of another State or the Commonwealth, or a place outside Australia, that, if the

offence had been committed in Queensland, would be a relevant offence under paragraph (a) or (b); or

(d) an offence against either of the following provisions—

- the Criminal Code (Cwlth), section 102.8
- the *Crimes Act 1900* (NSW), section 310J.

77A Meaning of *consort*

(1) A person ***consorts*** with another person if the person associates with the other person in a way that involves seeking out, or accepting, the other person's company.

(2) For subsection (1), the person's association with the other person need not have a purpose related to criminal activity.

(3) Also, for subsection (1), it does not matter whether the person's association with the other person happens in person or in another way, including, for example, electronically.

77B Habitually consorting with recognised offenders

(1) A person commits a misdemeanour if—

(a) the person habitually consorts with at least 2 recognised offenders, whether together or separately; and

(b) at least 1 occasion on which the person consorts with each recognised offender mentioned in paragraph (a) happens after the person has been given an official warning for consorting in relation to the offender.

Maximum penalty—300 penalty units or 3 years imprisonment.

(2) For subsection (1), a person does not ***habitually consort*** with a recognised offender unless the person consorts with the offender on at least 2 occasions.

(3) This section does not apply to a child.

(4) In this section—

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official warning, for consorting, see the *Police Powers and Responsibilities Act 2000*, section 53BAA.

77C Particular acts of consorting to be disregarded

(1) In a proceeding against a person for an offence against section 77B(1), the following acts of consorting must be disregarded if the consorting was reasonable in the circumstances—

(a) consorting with a recognised offender who is a close family member of the person;

(b) consorting with a recognised offender while the person is—

(i) genuinely conducting a lawful business or genuinely engaging in lawful employment or a lawful occupation; or

(ii) genuinely receiving education or training at an educational institution; or

(iii) genuinely obtaining education or training at an educational institution for a dependent child of the person; or

(iv) receiving a health service; or

(v) obtaining a health service for a dependent child of the person; or

(vi) obtaining legal services; or

(vii) complying with a court order; or

(viii) being detained in lawful custody.

(2) Proof that the consorting was reasonable in the circumstances lies on the person.

(3) For subsection (1), it is not reasonable for a person to consort with a recognised offender if the purpose (or 1 of the purposes) of the consorting is related to criminal activity.

(4) In this section—

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Australian Association of Social Workers means Australian Association of Social Workers Ltd ACN 008 576 010.

Australian Register of Counsellors and Psychotherapists means Australian Register of Counsellors and Psychotherapists Pty Ltd ACN 110 047 197.

child includes stepchild.

close family member, of a person—

(a) means—

(i) a spouse of the person; or

(ii) someone with whom the person shares parental responsibility for a child; or

(iii) a parent or step-parent of the person; or

(iv) a child of the person; or

(v) a grandparent or step-grandparent of the person; or

(vi) a grandchild or step-grandchild of the person; or

(vii) a brother, sister, stepbrother or stepsister of the person; or

(viii) an aunt or uncle of the person; or

(ix) a niece or nephew of the person; or

(x) a first cousin of the person; or

(xi) a brother-in-law, sister-in-law, parent-in-law, son-in-law or daughter-in-law of the person; and

(b) includes—

(i) for an Aboriginal person—a person who, under Aboriginal tradition, is regarded as a person mentioned in paragraph (a); and

(ii) for a Torres Strait Islander—a person who, under Island custom, is regarded as a person mentioned in paragraph (a).

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dependent child, of a person, means a child of the person who is dependent on the person for support.

educational institution means—

(a) an approved education and care service under the Education and Care Services National Law (Queensland); or

(b) a State educational institution or non-State school under the *Education (General Provisions) Act 2006*; or

(c) a registered higher education provider under the *Tertiary Education Quality and Standards Agency Act 2011* (Cwlth); or

(d) a registered training organisation under the *National Vocational Education and Training Regulator Act 2011* (Cwlth).

health service means a service for managing a person's physical or mental health, including drug and alcohol counselling, that is provided by—

(a) a registered health practitioner or student under the Health Practitioner Regulation National Law (Queensland); or

(b) a counsellor or psychotherapist registered with the Australian Register of Counsellors and Psychotherapists; or

(c) a social worker registered with the Australian Association of Social Workers.

legal services means legal services within the meaning of the *Legal Profession Act 2007* that are provided by an Australian legal practitioner within the meaning of that Act.

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Chapter 10 Offences against political liberty

78 Interfering with political liberty

(1) Any person who by violence, or by threats or intimidation of any kind, hinders or interferes with the free exercise of any political right by another person, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

(2) If the offender is a public officer, and commits the offence in abuse of the offender's authority as such officer, the offender is liable to imprisonment for 3 years.

Chapter 11 Piracy

79 Definition of *act of piracy*

(1) A person does an ***act of piracy*** if the person, in relation to a ship travelling at sea, unlawfully—

(a) boards the ship without the master's consent and with intent—

(i) to commit robbery; or

(ii) to deal with the ship, a person on the ship or the equipment of the ship in a way that would be likely to endanger the safe use of the ship; or

(b) boards the ship without the master's consent and—

(i) commits robbery; or

(ii) deals with the ship, a person on the ship or the equipment of the ship in a way that is likely to endanger the safe use of the ship; or

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(c) steals the ship, or directly or indirectly takes control of the ship without the master's consent, in circumstances that constitute robbery; or

(d) having taken possession of the ship in contravention of paragraph (c), retains possession of the ship; or

(e) confines the ship's master against his or her will.

(2) A person also does ***an act of piracy*** if the person—

(a) trades with or supplies provisions to a pirate when the person knows or ought reasonably to know the person is dealing with a pirate; or

(b) builds a ship with the intention that the ship will be used for an act of piracy.

(3) In this section—

builds includes fits out.

master means the person having command or charge of the ship and does not include a pilot having the conduct of the ship, but not belonging to the ship.

pirate means a person carrying out or intending to carry out an act of piracy.

80 Crime of piracy

A person who does an act of piracy commits a crime.

Maximum penalty—life imprisonment.

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Part 3 Offences against the administration of law and justice, against office and against public authority

Chapter 12 Unlawfully obtaining or disclosing information

85 Disclosure of official secrets

A person who is or has been employed as a public officer who unlawfully publishes or communicates any information that comes or came to his or her knowledge, or any document that comes or came into his or her possession, by virtue of the person's office, and that it is or was his or her duty to keep secret, commits a misdemeanour.

Maximum penalty—2 years imprisonment.

86 Obtaining of or disclosure of secret information about the identity of informant

(1) A person who, without lawful justification or excuse, obtains or attempts to obtain secret information in the possession of a law enforcement agency or law enforcement officer about the identity of a criminal organisation informant commits a crime.

Maximum penalty—10 years imprisonment.

(2) A person who, without lawful justification or excuse, publishes or communicates secret information in the possession of, or obtained from, a law enforcement agency or law enforcement officer about the identity of a criminal organisation informant commits a crime.

Maximum penalty—10 years imprisonment.

(3) In this section—

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criminal intelligence means information relating to actual or suspected criminal activity (including information the commissioner has obtained through the police service or from an external agency), whether in the State or elsewhere, the disclosure of which could reasonably be expected to—

(a) prejudice a criminal investigation; or

(b) enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement; or

(c) endanger a person's life or physical safety.

criminal organisation informant means any of the following—

(a) anyone who has given, to the police service or an external agency, information that the commissioner reasonably believes is criminal intelligence about a criminal organisation or a participant in a criminal organisation, and who is not a police officer or officer of the external agency;

(b) an authorised officer who has obtained information in relation to the activities of a criminal organisation while acting under the *Police Powers and Responsibilities Act 2000*, chapter 12;

(c) a police officer who has obtained information through the use of an assumed identity, whether or not under the *Police Powers and Responsibilities Act 2000*, chapter 12.

external agency means any of the following—

(a) the Crime and Corruption Commission;

(b) the Australian Federal Police;

(c) a police force or service of another State;

(d) the chief executive (corrective services);

(e) an officer of another State with powers and functions substantially corresponding to the powers and functions

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of the chief executive (corrective services) under the *Corrective Services Act 2006*;

(f) another entity—

(i) established under a law of another jurisdiction, including a jurisdiction outside Australia; and

(ii) with functions that include investigating or inquiring into criminal conduct, misconduct or corruption (whether or not the functions are stated in the law mentioned in subparagraph (i)); and

(iii) declared by regulation to be an external agency.

information, about the identity of a criminal organisation informant, includes information that is likely to lead to the identity of the informant becoming known.

officer, of an external agency, includes a person employed by the agency, seconded to the agency or engaged by the agency under a contract for services.

secret information, in the possession of a law enforcement agency or law enforcement officer, means information it is the duty of the agency or officer to keep secret.

Chapter 13 Corruption and abuse of office

87 Official corruption

(1) Any person who—

(a) being employed in the public service, or being the holder of any public office, and being charged with the performance of any duty by virtue of such employment or office, not being a duty touching the administration of justice, corruptly asks for, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself, herself or any other person on

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account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by the person in the discharge of the duties of the person's office; or

(b) corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for, any person employed in the public service, or being the holder of any public office, or to, upon, or for, any other person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed or holding such office;

is guilty of a crime, and is liable to imprisonment for 7 years, and to be fined at the discretion of the court.

(1A) If the offence is committed by or in relation to a Minister of the Crown, as the holder of public office mentioned in subsection (1), the offender is liable to imprisonment for 14 years, and to be fined at the discretion of the court.

(1B) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

(1C) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(2) The offender can not be arrested without warrant.

88 Extortion by public officers

Any person who, being employed in the public service, takes or accepts from any person, for the performance of the person's duty as such officer, any reward beyond the person's proper pay and emoluments, or any promise of such reward, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

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89 Public officers interested in contracts

(1) Any person who, being employed in the public service, knowingly acquires or holds, directly or indirectly, otherwise than as a member of a registered joint stock company consisting of more than 20 persons, a private interest in any contract or agreement which is made on account of the public service with respect to any matter concerning the department of the service in which the person is employed (the ***relevant department***), is guilty of a misdemeanour, and is liable to imprisonment for 3 years, and to be fined at the discretion of the court.

(2) However, the person does not commit an offence against subsection (1) if, before the person acquires or starts to hold the private interest—

(a) the person discloses the nature of the interest to the chief executive of the relevant department; and

(b) the chief executive of the relevant department authorises the person, in writing, to acquire or hold the interest.

(3) In a proceeding against a person for an offence against subsection (1), proof of the matters mentioned in subsection (2) lies on the person.

(4) The chief executive of a department may delegate the chief executive's function under subsection (2) to an appropriately qualified person.

(5) A reference in subsection (1) to a person employed in the public service includes a ministerial staff member under the *Ministerial and Other Office Holder Staff Act 2010* and, for that purpose—

(a) a ministerial staff member employed in the office of a Minister is taken to be employed in each department administered by the Minister; and

(b) a ministerial staff member employed in the office of an Assistant Minister is taken to be employed in each department for which the Assistant Minister is given responsibility under his or her functions.

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Note—

Under the *Constitution of Queensland 2001*, section 25, an Assistant Minister has the functions decided by the Premier.

(6) In this section—

function includes power.

90 Officers charged with administration of property of a special character or with special duties

Any person who, being employed in the public service, and being charged by virtue of the person's employment with any judicial or administrative duties respecting property of a special character, or respecting the carrying on of any manufacture, trade, or business, of a special character, and having acquired or holding, directly or indirectly, a private interest in any such property, manufacture, trade, or business, discharges any such duties with respect to the property, manufacture, trade, or business, in which the person has such interest, or with respect to the conduct of any person in relation thereto, is guilty of a misdemeanour, and is liable to imprisonment for 1 year, and to be fined at the discretion of the court.

91 False claims by officials

Any person who, being employed in the public service in such a capacity as to require the person or to enable the person to furnish returns or statements touching any remuneration payable or claimed to be payable to himself, herself or to any other person, or touching any other matter required by law to be certified for the purpose of any payment of money or delivery of goods to be made to any person, makes a return or statement touching any such matter which is, to the person's knowledge, false in any material particular, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

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92 Abuse of office

(1) Any person who, being employed in the public service, does or directs to be done, in abuse of the authority of the person's office, any arbitrary act prejudicial to the rights of another is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

(2) If the act is done or directed to be done for purposes of gain, the person is liable to imprisonment for 3 years.

92A Misconduct in relation to public office

(1) A public officer who, with intent to dishonestly gain a benefit for the officer or another person or to dishonestly cause a detriment to another person—

(a) deals with information gained because of office; or

(b) performs or fails to perform a function of office; or

(c) without limiting paragraphs (a) and (b), does an act or makes an omission in abuse of the authority of office;

is guilty of a crime.

Maximum penalty—7 years imprisonment.

(2) A person who ceases to be a public officer in a particular capacity is guilty of a crime if, with intent to dishonestly gain a benefit for the person or another person or to dishonestly cause a detriment to another person, the person deals with information gained because of the capacity.

Maximum penalty—7 years imprisonment.

(3) Subsection (2) applies whether or not the person continues to be a public officer in some other capacity.

(4) A reference in subsections (1) and (2) to information gained because of office or a particular capacity includes information gained because of an opportunity provided by the office or capacity.

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(4A) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(4B) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(5) In this section—

authority, of office, includes the trust imposed by office and the influence relating to office.

deals with includes the following—

(a) uses;

(b) supplies;

(c) copies;

(d) publishes.

function includes power.

information includes knowledge.

office, in relation to a person who is a public officer, means the position, role or circumstance that makes the person a public officer.

performs includes purportedly performs and in relation to a power, exercises and purportedly exercises.

93 Corruption of surveyor and valuator

Any person who, being duly appointed under any statute to be a valuator for determining the compensation to be paid to any person for land compulsorily taken from the person under the authority of any statute, or for injury done to any land under the authority of any statute—

(a) acts as such valuator while the person has, to the person's knowledge, an interest in the land in question; or

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(b) executes unfaithfully, dishonestly, or with partiality, the duty of making a valuation of the land or of the extent of the injury;

is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

94 False certificates by public officers

Any person who, being authorised or required by law to give any certificate touching any matter by virtue whereof the rights of any person may be prejudicially affected, gives a certificate which is, to the person's knowledge, false in any material particular is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

95 Administering extrajudicial oaths

(1) Any person who administers an oath, or takes a solemn declaration or affirmation or affidavit, touching any matter with respect to which the person has not by law any authority to do so, is guilty of a misdemeanour, and is liable to imprisonment for 1 year.

(2) This section does not apply to an oath, declaration, affirmation, or affidavit, administered or taken before a justice in any matter relating to the preservation of the peace or the punishment of offences, or relating to inquiries respecting sudden death, or to proceedings before the Legislative Assembly or a committee of the Legislative Assembly; nor to an oath, declaration, affirmation, or affidavit, administered or taken for some purpose which is lawful under the laws of another country, or for the purpose of giving validity to an instrument in writing which is intended to be used in another country.

96 False assumption of authority

Any person who—

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(a) not being a justice assumes to act as a justice; or

(b) without authority assumes to act as a person having authority by law to administer an oath or take a solemn declaration or affirmation or affidavit, or to do any other act of a public nature which can only be done by persons authorised by law to do so; or

(c) represents himself or herself to be a person authorised by law to sign a document testifying to the contents of any register or record kept by lawful authority, or testifying to any fact or event, and signs such document as being so authorised, when the person is not, and knows that the person is not, in fact, so authorised;

is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

97 Personating public officers

(1) A person who—

(a) personates a public officer on an occasion when the officer is required or authorised to do an act or attend in a place by virtue of the officer's office; or

(b) falsely represents himself or herself to be a public officer, and assumes to do an act or to attend in a place for the purpose of doing an act by virtue of being that officer;

commits a misdemeanour.

Maximum penalty—3 years imprisonment.

(2) A person found committing the offence may be arrested without warrant.

(3) In this section—

office includes appointment and employment.

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Chapter 14 Corrupt and improper practices at elections

Chapter division 1 Definitions for ch 14

98 Definitions

In this chapter—

authorising Act, for an election, means the Act under which the election is held.

ballot box includes any receptacle in which voting papers are put before being counted at an election.

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

elector includes any person entitled to vote at an election.

Chapter division 2 Legislative Assembly elections and referendums

98A Reference to election or referendum

In this chapter division—

(a) a reference to an election is a reference to an election of a member or members of the Legislative Assembly; and

(b) a reference to a referendum is a reference to a referendum under the *Referendums Act 1997*.

98B False or misleading information

(1) A person who gives information to the Electoral Commission of Queensland under the *Electoral Act 1992* or *Referendums Act 1997*, including information in a document, that the

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person knows is false or misleading in a material particular is guilty of a crime.

Maximum penalty—7 years imprisonment.

(2) Subsection (1) does not apply to a person giving a document if, when giving the document to someone, the person—

(a) informs the other person, to the best of the person's ability, how it is false or misleading; and

(b) if the person has, or can reasonably obtain, the correct information—gives the other person the correct information.

98C Bribery

(1) A person who—

(a) asks for or receives; or

(b) offers, or agrees, to ask for or receive;

a benefit of any kind, whether for himself or herself or for someone else, on the understanding that the person's election conduct will be influenced or affected is guilty of a crime.

Maximum penalty—7 years imprisonment.

(2) A person who, in order to influence or affect another person's election conduct, gives a benefit of any kind to anyone is guilty of a crime.

Maximum penalty—7 years imprisonment.

(3) In this section—

election conduct of a person means—

(a) the way in which the person votes at an election or referendum; or

(b) the person's nominating as a candidate for an election; or

(c) the person's support of, or opposition to, a candidate or a political party at an election; or

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(d) the person's approval or disapproval of the Bill or question submitted to the electors at a referendum.

give includes promise or offer to give.

98D Forging or uttering electoral or referendum paper

(1) A person who—

(a) forges an electoral or referendum paper; or

(b) utters a forged electoral or referendum paper knowing it to be forged;

is guilty of a crime.

Maximum penalty—10 years imprisonment.

(2) A person who makes the signature of another person on—

(a) an electoral paper, unless the person is authorised to do so under the *Electoral Act 1992*; or

(b) a referendum paper, unless the person is authorised to do so under the *Referendums Act 1997*;

is guilty of a crime.

Maximum penalty—10 years imprisonment.

(3) In this section—

electoral paper means a ballot paper, declaration envelope or other document issued by the Electoral Commission of Queensland under the *Electoral Act 1992*.

referendum paper means a ballot paper, declaration envelope or other document issued by the Electoral Commission of Queensland under the *Referendums Act 1997*.

98E Influencing voting

(1) A person who improperly influences the vote of a person at an election or referendum is guilty of a crime.

Maximum penalty—2 years imprisonment.

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(2) In this section—

improperly influence means influence by intimidation or violence.

98F Providing money for illegal payments

A person who knowingly provides money for—

(a) a payment that is contrary to law relating to elections or referendums; or

(b) replacing any money that has been spent in making a payment that is contrary to law relating to elections or referendums;

is guilty of a crime.

Maximum penalty—2 years imprisonment.

98G Voting if not entitled

A person who, at an election or referendum—

(a) votes in the name of another person, including a dead or fictitious person; or

(b) votes more than once; or

(c) casts a vote that the person knows the person is not entitled to cast; or

(d) procures someone to vote who, to the procuring person's knowledge, is not entitled to vote;

is guilty of a crime.

Maximum penalty—3 years imprisonment.

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Chapter division 3 Other elections

98H Application of ch div 3

This chapter division applies to an election other than—

(a) an election of a member or members of the Legislative Assembly; or

(b) an election for a local government.

99 Voting if not entitled

(1) A person who votes at an election in the name of another person, including a dead or fictitious person, commits a misdemeanour.

Maximum penalty—2 years imprisonment.

(2) A person who votes at an election more often than the person is entitled to vote at the election commits a misdemeanour.

Maximum penalty—2 years imprisonment.

(3) A person who casts a vote at an election that the person knows the person is not entitled to cast commits a misdemeanour.

Maximum penalty—2 years imprisonment.

(4) A person who procures another person to vote at an election who, to the procurer's knowledge, is not entitled to vote at the election commits a misdemeanour.

Maximum penalty—2 years imprisonment.

(5) A person who, at an election for which voting is by post, attests the signature to a voting paper of a person who is, to the first person's knowledge, not entitled to vote at the election by way of the voting paper commits a misdemeanour.

Maximum penalty—2 years imprisonment.

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100 Hindering or interfering with voting conduct

(1) A person who, in order to hinder or interfere with another person's voting conduct—

(a) acts fraudulently; or

(b) uses or threatens to use force against any person; or

(c) causes or threatens to cause a detriment to any person;

commits a misdemeanour.

Maximum penalty—1 year's imprisonment.

(2) A person who causes or threatens to cause a detriment to another person (the ***affected person***) because of the voting conduct of any person (whether or not the affected person) commits a misdemeanour.

Maximum penalty—1 year's imprisonment.

(3) In this section—

voting conduct of a person means—

(a) the person's voting or not voting at an election; or

(b) the way in which the person votes at an election.

101 Bribery

(1) A person who—

(a) asks for or receives; or

(b) offers, or agrees, to ask for or receive;

a benefit, whether for the person or for another person, on the understanding that the person's election conduct will be influenced or affected commits a misdemeanour.

Maximum penalty—1 year's imprisonment.

(2) A person who, in order to influence or affect the election conduct of another person (the ***affected person***), gives a benefit to any person (whether or not the affected person) commits a misdemeanour.

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Maximum penalty—1 year's imprisonment.

(3) In this section—

election conduct of a person means—

(a) the person's voting or not voting at an election; or

(b) the way in which the person votes at an election; or

(c) the person's nominating as a candidate for an election; or

(d) the person's support of, or opposition to, a candidate at an election.

give includes promise and offer to give.

102 Publishing false information about a candidate

A person who, before or during an election, in order to affect the election result, knowingly publishes false information about—

(a) a candidate's personal character or conduct; or

(b) whether a candidate has withdrawn from the election;

commits a misdemeanour.

Maximum penalty—1 year's imprisonment.

103 Providing money for illegal payments

A person who knowingly provides money—

(a) for a payment that is contrary to this chapter division or the authorising Act for an election; or

(b) to replace money that has been spent in making a payment mentioned in paragraph (a);

commits an offence.

Maximum penalty—10 penalty units.

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104 Election notices to contain particular matters

(1) A person who, before or during an election, prints or publishes, or permits another person to print or publish, an election notice for the election that does not state the name and address of the person who authorised the notice commits an offence.

Maximum penalty—3 penalty units.

(2) In this section—

address means address other than a post office box.

election notice means a notice containing anything able to, or intended to—

(a) influence an elector in relation to voting in an election; or

(b) affect the result of an election.

notice includes a poster, handbill and pamphlet.

publish includes publish on the internet, even if the internet site on which the publication is made is located outside Queensland.

107 Corrupt and illegal practices—time

(1) A prosecution for any of the offences defined in sections 99 to 104 must be begun within 1 year after the offence is committed.

(2) The service or execution of process on or against the alleged offender is deemed to be the commencement of the prosecution, unless such service or execution is prevented by some act on the person's part, in which case the issue of the process is deemed to be the commencement of the proceeding.

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108 Interfering at elections

A person who wilfully interrupts, obstructs or disturbs a proceeding at an election commits a misdemeanour.

Maximum penalty—3 years imprisonment.

109 Electors attempting to violate secrecy of ballot

Any person who, having received a ballot paper from the presiding officer at an election—

(a) wilfully makes on the ballot paper any mark or writing not expressly authorised by law; or

(b) wilfully fails to fold up the ballot paper in such a manner as to conceal how the person has voted; or

(c) wilfully fails to deposit the ballot paper in the ballot box in the presence of the presiding officer;

commits a misdemeanour.

Maximum penalty—3 years imprisonment.

110 Stuffing ballot boxes

A person who wilfully puts in a ballot box a ballot paper that has not been lawfully handed to, and marked by, an elector commits a crime.

Maximum penalty—7 years imprisonment.

111 Presiding officer helping an elector with a disability

If—

(a) a presiding officer at an election agrees to help an elector who is blind, or otherwise unable to vote without help, by marking the elector's ballot paper for the elector; and

(b) the presiding officer wilfully fails to mark the ballot paper—

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(i) in the way requested by the elector; and

(ii) in the sight of anyone else lawfully present;

the presiding officer commits a misdemeanour.

Maximum penalty—3 years imprisonment.

112 False or misleading information

(1) A person (the ***giver***) who gives to another person, under the authorising Act for an election, for a purpose relating to the election, information that the giver knows is false or misleading in a material particular commits a crime.

Maximum penalty—7 years imprisonment.

(2) Subsection (1) does not apply if, when giving information in a document, the giver—

(a) informs the recipient, to the best of the giver's ability, how it is false or misleading; and

(b) if the giver has, or can reasonably obtain, the correct information—gives the correct information to the recipient.

113 Interfering with secrecy at elections

(1) This section applies to an election at which voting is by ballot.

(2) A person who unfolds a ballot paper that has been marked and folded by an elector at the election commits a misdemeanour.

Maximum penalty—2 years imprisonment.

(3) An officer who ascertains or discovers, or attempts to ascertain or discover, how an elector has voted at the election commits a misdemeanour.

Maximum penalty—2 years imprisonment.

(4) An officer who discloses any information about how an elector has voted at the election commits a misdemeanour.

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Maximum penalty—2 years imprisonment.

(5) An officer who places a mark or writing on an elector's ballot paper commits a misdemeanour.

Maximum penalty—2 years imprisonment.

(6) A person does not commit an offence against this section only by doing something the person is ordered by a court or authorised under the authorising Act to do.

(7) Also this section does not apply to a police officer doing a thing in the course of performing a duty of a police officer.

(8) In this section—

officer, in relation to an election, means a person performing duties at the election under the authorising Act.

114 Breaking the seal of a parcel at elections

(1) A person who wilfully opens or breaks the seal of a parcel sealed under the authorising Act for an election commits a misdemeanour.

Maximum penalty—2 years imprisonment.

(2) A person does not commit an offence against subsection (1) only by doing something the person is ordered by a court or authorised under the authorising Act to do.

(3) Also subsection (1) does not apply to a police officer doing a thing in the course of performing a duty of a police officer.

Chapter 15 Selling and trafficking in offices

118 Bargaining for offices in public service

Any person who—

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(a) corruptly asks for, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself, herself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by the person or any other person, with regard to the appointment or contemplated appointment of any person to any office or employment in the public service, or with regard to any application by any person for employment in the public service; or

(b) corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for, any person any property or benefit of any kind on account of any such act or omission;

is guilty of a misdemeanour, and is liable to imprisonment for 3 years, and to be fined at the discretion of the court.

Chapter 16 Offences relating to the administration of justice

119 Definitions for ch 16

In this chapter—

family see section 119A.

judicial proceeding includes any proceeding had or taken in or before any court, tribunal or person, in which evidence may be taken on oath.

119A Meaning of *family*

(1) Each of the following is a member of a person's ***family***—

(a) a spouse of the person;

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(b) a child of the person;

(c) a parent, grandparent, grandchild or sibling of the person, including—

(i) if the person is an Aboriginal person, a person—

(A) who is recognised under Aboriginal tradition as a member of the Aboriginal person's family; and

Note—

'Aboriginal tradition' is defined under the *Acts Interpretation Act 1954*. See schedule 1 of that Act.

(B) with whom the Aboriginal person has a relationship like that between an individual and a parent, grandparent, grandchild or sibling of the individual; or

(ii) if the person is a Torres Strait Islander, a person—

(A) who is recognised under Island custom as a member of the Torres Strait Islander's family; and

Note—

'Island custom' is defined under the *Acts Interpretation Act 1954*. See schedule 1 of that Act.

(B) with whom the Torres Strait Islander has a relationship like that between an individual and a parent, grandparent, grandchild or sibling of the individual.

(2) For subsection (1)(b)—

(a) a biological, adopted, step or foster child of a person is a child of the person; and

(b) an individual who is under 18 years and ordinarily a member of a person's household is also a child of the person; and

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(c) if a person is an Aboriginal person, an individual who is recognised under Aboriginal tradition as a child of the person is also a child of the person; and

(d) if a person is a Torres Strait Islander, an individual who is recognised under Island custom as a child of the person is also a child of the person.

119B Retaliation against or intimidation of judicial officer, juror, witness etc.

(1) A person who, without reasonable cause, causes, or threatens to cause, any injury or detriment to a judicial officer, juror, witness or member of a community justice group, or a member of the family of a judicial officer, juror, witness or member of a community justice group, for the purpose of retaliation or intimidation because of—

(a) anything lawfully done or omitted to be done or that may be lawfully done or omitted to be done by the judicial officer as a judicial officer; or

(b) anything lawfully done or omitted to be done or that may be lawfully done or omitted to be done by the juror or witness in any judicial proceeding; or

(c) anything lawfully done or omitted to be done or that may be lawfully done or omitted to be done by any member of the community justice group a representative of which makes or may make a submission—

(i) to a court or police officer under the *Bail Act 1980* about a defendant who is an Aboriginal or Torres Strait Islander person; or

(ii) to a court or police officer under the *Youth Justice Act 1992* about a child who is an Aboriginal or Torres Strait Islander person; or

(iii) to a court under the *Penalties and Sentences Act 1992* about an offender who is an Aboriginal or Torres Strait Islander person;

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is guilty of a crime.

Maximum penalty—7 years imprisonment.

(1A) The offender is liable to a maximum penalty of 10 years imprisonment if the act constituting the offence is done in relation to a proceeding before a court for a prescribed offence charged with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q.

(1B) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

(1C) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(2) In this section—

community justice group means—

(a) for a defendant under the *Bail Act 1980*—see the *Bail Act 1980*, section 6; or

(b) for a child—see the *Youth Justice Act 1992*, schedule 4; or

(c) for an offender under the *Penalties and Sentences Act 1992*—see the *Penalties and Sentences Act 1992*, section 4.

injury or detriment includes intimidation.

intimidation includes harassment.

prescribed offence see the *Penalties and Sentences Act 1992*, section 161N.

120 Judicial corruption

(1) Any person who—

(a) being a judicial officer, corruptly asks for, receives, or obtains, or agrees or attempts to receive or obtain, any

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property or benefit of any kind for himself, herself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by the person in the person's judicial capacity; or

(b) corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for, a judicial officer, or to, upon, or for any other person, any property or benefit of any kind on account of any such act or omission on the part of the judicial officer;

is guilty of a crime, and is liable to imprisonment for 14 years, and to be fined at the discretion of the court.

(2) However, if the judicial officer is an arbitrator or umpire, the maximum term of imprisonment to which the person is liable is 7 years.

(3) The offender can not be arrested without warrant.

(4) A prosecution for an offence against subsection (1) can not be started without a Crown Law Officer's consent.

121 Official corruption not judicial but relating to offences

(1) Any person who—

(a) being a justice not acting judicially, or being a person employed in the public service in any capacity not judicial for the prosecution or detention or punishment of offenders, corruptly asks for, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself, herself or any other person, on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by the person, with a view to corrupt or improper interference with the due administration of justice, or the procurement or facilitation of the commission of any offence, or the protection of any offender or intending offender from detection or punishment; or

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(b) corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for, any such person, or to, upon, or for, any other person, any property or benefit of any kind, on account of any such act or omission on the part of the justice or other person so employed;

is guilty of a crime, and is liable to imprisonment for 14 years, and to be fined at the discretion of the court.

(2) The offender can not be arrested without warrant.

122 Corruption of jurors

(1) Any person who—

(a) attempts by threats or intimidation of any kind, or by benefits or promises of benefit of any kind, or by other corrupt means, to influence any person, whether a particular person or not, in the person's conduct as a juror in any judicial proceeding, whether the person has been sworn as a juror or not; or

(b) accepts any benefit or promise of benefit on account of anything to be done by the person as a juror in any judicial proceeding, whether the person has been sworn as a juror or not, or on account of anything already done by the person as a juror in any judicial proceeding;

is guilty of a crime.

Maximum penalty—7 years imprisonment.

(2) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

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123 Perjury

(1) Any person who in any judicial proceeding, or for the purpose of instituting any judicial proceeding, knowingly gives false testimony touching any matter which is material to any question then depending in that proceeding, or intended to be raised in that proceeding, is guilty of a crime, which is called ***perjury***.

(2) It is immaterial whether the testimony is given on oath or under any other sanction authorised by law.

(3) The forms and ceremonies used in administering the oath or in otherwise binding the person giving the testimony to speak the truth are immaterial, if the person assents to the forms and ceremonies actually used.

(4) It is immaterial whether the false testimony is given orally or in writing.

(5) It is immaterial whether the court or tribunal is properly constituted, or is held in the proper place, or not, if it actually acts as a court or tribunal in the proceeding in which the testimony is given.

(6) It is immaterial whether the person who gives the testimony is a competent witness or not, or whether the testimony is admissible in the proceeding or not.

(7) The offender can not be arrested without warrant.

123A Perjury—contradictory statements

If, on the trial of a person for perjury, the jury is satisfied that—

(a) the accused has made 2 statements on oath or under another sanction authorised by law, 1 of which is irreconcilably in conflict with the other; and

(b) the accused made 1 of the statements knowing it to be false;

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but the jury is unable to say which statement was falsely made, the jury may make a special finding to that effect and find the accused guilty of perjury.

124 Punishment of perjury

(1) Any person who commits perjury is liable to imprisonment for 14 years.

(2) If the offender commits the crime in order to procure the conviction of another person for a crime punishable with imprisonment for life, the offender is liable to imprisonment for life.

125 Evidence on charge of perjury

A person can not be convicted of committing perjury or of counselling or procuring the commission of perjury upon the uncorroborated testimony of 1 witness.

126 Fabricating evidence

(1) Any person who, with intent to mislead any tribunal in any judicial proceeding—

(a) fabricates evidence by any means other than perjury or counselling or procuring the commission of perjury; or

(b) knowingly makes use of such fabricated evidence;

is guilty of a crime, and is liable to imprisonment for 7 years.

(2) The offender can not be arrested without warrant.

127 Corruption of witnesses

(1) Any person who—

(a) gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, any property or benefit of any kind to, upon, or for, any

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person, upon any agreement or understanding that any person called or to be called as a witness in any judicial proceeding shall give false testimony or withhold true testimony; or

(b) attempts by any other means to induce a person called or to be called as a witness in any judicial proceeding to give false testimony or to withhold true testimony; or

(c) asks for, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself, herself or any other person, upon any agreement or understanding that any person shall as a witness in any judicial proceeding give false testimony or withhold true testimony;

is guilty of a crime, and is liable to imprisonment for 7 years.

(2) The offender can not be arrested without warrant.

(3) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(4) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

128 Deceiving witnesses

Any person who practises any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or writing, to any person called or to be called as a witness in any judicial proceeding, with intent to affect the testimony of such person as a witness, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

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129 Damaging evidence with intent

A person who, knowing something is or may be needed in evidence in a judicial proceeding, damages it with intent to stop it being used in evidence commits a misdemeanour.

Maximum penalty—7 years imprisonment.

130 Preventing witnesses from attending

Any person who wilfully prevents or attempts to prevent any person who has been duly summoned to attend as a witness before any court or tribunal from attending as a witness, or from producing anything in evidence pursuant to the subpoena or summons, commits a misdemeanour.

Maximum penalty—3 years imprisonment.

131 Conspiracy to bring false accusation

(1) Any person who conspires with another to charge any person or cause any person to be charged with any offence, whether alleged to have been committed in Queensland, or elsewhere, knowing that such person is innocent of the alleged offence, or not believing the person to be guilty of the alleged offence, is guilty of a crime.

(2) If the offence is such that a person convicted of it is liable to be sentenced to imprisonment for life, the offender is liable to imprisonment for life.

(3) If the offence is such that a person convicted of it is liable to be sentenced to imprisonment, but for a term less than life, the offender is liable to imprisonment for 14 years.

(4) In any other case the offender is liable to imprisonment for 7 years.

(5) The offender can not be arrested without warrant.

(6) A prosecution for an offence defined in this section shall not be instituted without the consent of the Attorney-General.

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132 Conspiring to defeat justice

(1) Any person who conspires with another to obstruct, prevent, pervert, or defeat, the course of justice is guilty of a crime, and is liable to imprisonment for 7 years.

(2) The offender can not be arrested without warrant.

(3) A prosecution for an offence defined in this section shall not be instituted without the consent of the Attorney-General.

133 Compounding an indictable offence

(1) Any person who asks for, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself, herself or any other person, upon any agreement or understanding that the person will compound or conceal an indictable offence, or will abstain from, discontinue, or delay, a prosecution for an indictable offence, or will withhold any evidence thereof, is guilty of an indictable offence.

(2) If the indictable offence is such that a person convicted of it is liable to be sentenced to imprisonment for life, the offender is guilty of a crime, and is liable to imprisonment for 7 years.

(3) In any other case the offender is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

(4) The offender can not be arrested without warrant.

(5) Subsection (1) does not apply to an act done for the purpose of the following—

(a) negotiations in accordance with established legal practice between a lawyer representing the alleged offender and the prosecution to achieve a just outcome in relation to the proceedings for the offence;

(b) mediation in good faith between the alleged offender and a victim of the offence or anyone acting in the interests of the victim in relation to an apology, compensation or restitution;

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(c) dispute resolution relating to the alleged offence;

(d) discussions in good faith between the alleged offender and police officers calculated to ameliorate the conduct of the offender relevant to the alleged offence.

136 Justices exercising jurisdiction in a matter of personal interest

A person who, being a justice, wilfully and perversely exercises jurisdiction in a matter in which the justice has a personal interest commits a misdemeanour.

Maximum penalty—3 years imprisonment.

137 Delay to take person arrested before magistrate

(1) Any person who, having arrested another upon a charge of an offence, wilfully and without lawful excuse delays to take the person before a justice to be dealt with according to law is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

(2) For subsection (1)—

(a) if the person carrying out the arrest is a police officer, it is sufficient if the person complies with the requirements of the *Police Powers and Responsibilities Act 2000*, section 393; and

(b) if the person carrying out the arrest is not a police officer, it is sufficient if the person immediately delivers the arrested person into the custody of a police officer as mentioned in section 552(2).

139 Inserting advertisement without authority of court

Any person who, without authority, or knowing the advertisement to be false in any material particular, inserts or causes to be inserted in the gazette or in any newspaper an advertisement purporting to be published under the authority

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of any court or tribunal is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

140 Attempting to pervert justice

(1) A person who attempts to obstruct, prevent, pervert, or defeat the course of justice is guilty of a crime.

Maximum penalty—7 years imprisonment.

(2) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

Chapter 17 Escapes—obstructing officers of courts

141 Aiding persons to escape from lawful custody

A person who—

(a) aids a person in lawful custody to escape, or to attempt to escape, from lawful custody; or

(b) conveys anything to a person in lawful custody, or to a place where a person is or will be in lawful custody, with the intention of aiding a person to escape from lawful custody; or

(c) frees a person from lawful custody without authority;

is guilty of a crime.

Maximum penalty—imprisonment for 7 years.

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142 Escape by persons in lawful custody

A person who escapes from lawful custody is guilty of a crime.

Maximum penalty—imprisonment for 7 years.

143 Permitting escape

A person who is responsible for keeping another person in lawful custody and permits the other person to escape is guilty of a crime.

Maximum penalty—imprisonment for 7 years.

144 Harbouring escaped prisoners etc.

A person who harbours, maintains or employs another person knowing that the other person has escaped from lawful custody is guilty of a crime.

Maximum penalty—imprisonment for 2 years.

145A Sections 141 to 144 do not apply to certain types of custody

Sections 141 to 144 do not apply to—

(a) the custody of a patient mentioned in the *Mental Health Act 2016*; or

(b) the custody of a child under the *Child Protection Act 1999*; or

(c) the custody of a forensic disability client mentioned in the *Forensic Disability Act 2011*;

unless the person is held in a corrective services facility within the meaning of the *Corrective Services Act 2006*.

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145B Evidence of lawful custody

Evidence given by a person authorised by the chief executive (corrective services) to give the evidence that a person is, or on a particular date was, in lawful custody is to be admitted as prima facie evidence of the custody.

147 Removing etc. property under lawful seizure

Any person who, when any property has been attached or taken under the process or authority of any court of justice, knowingly, and with intent to hinder or defeat the attachment, or process, receives, removes, retains, conceals, or disposes of, such property, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

148 Obstructing officers of courts of justice

Any person who wilfully obstructs or resists any person lawfully charged with the execution of an order or warrant of any court of justice commits a misdemeanour.

Maximum penalty—2 years imprisonment.

Chapter 20 Miscellaneous offences against public authority

193 False verified statements

(1) A person who makes a verified statement that the person knows is false in a material particular when the person is required by law to make the statement in the form of a verified statement commits a crime.

Maximum penalty—7 years imprisonment.

(2) The person can not be arrested without a warrant.

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(3) In this section—

verified statement means—

(a) a statement made on oath or under another sanction that may by law be substituted for an oath; or

(b) a statement verified by solemn declaration or affirmation.

194 False declarations

(1) A person who makes a declaration that the person knows is false in a material particular, whether or not the person is permitted or required by law to make the declaration, before a person authorised by law to take or receive declarations, commits a misdemeanour.

Maximum penalty—3 years imprisonment.

(2) In this section—

declaration includes a statement and an affidavit.

195 Evidence

A person can not be convicted of any of the offences defined in sections 193 and 194 upon the uncorroborated testimony of 1 witness.

195A Contradictory statements—false statements or declarations

If, on the trial of a person for an offence defined in section 193 or 194, the jury is satisfied that—

(a) the accused has made 2 statements or declarations and 1 is irreconcilably in conflict with the other; and

(b) the accused made 1 of the statements or declarations knowing it to be false;

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but the jury is unable to say which statement or declaration was falsely made, the jury may make a special finding to that effect and find the accused guilty of the offence.

199 Resisting public officers

Any person who in any manner obstructs or resists any public officer while engaged in the discharge or attempted discharge of the duties of his or her office under any statute, or obstructs or resists any person while engaged in the discharge or attempted discharge of any duty imposed on the person by any statute, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

200 Refusal by public officer to perform duty

Any person who, being employed in the public service, or as an officer of any court or tribunal, perversely and without lawful excuse omits or refuses to do any act which it is his or her duty to do by virtue of his or her employment is guilty of a misdemeanour, and is liable to imprisonment for 2 years, and to be fined at the discretion of the court.

204 Disobedience to statute law

(1) Any person who without lawful excuse, the proof of which lies on the person, does any act which the person is, by the provisions of any public statute in force in Queensland, forbidden to do, or omits to do any act which the person is, by the provisions of any such statute, required to do, is guilty of a misdemeanour, unless some mode of proceeding against the person for such disobedience is expressly provided by statute, and is intended to be exclusive of all other punishment.

(2) The offender is liable to imprisonment for 1 year.

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205 Disobedience to lawful order issued by statutory authority

(1) Any person who without lawful excuse, the proof of which lies on the person, disobeys any lawful order issued by any court of justice, or by any person authorised by any public statute in force in Queensland to make the order, is guilty of a misdemeanour, unless some mode of proceeding against the person for such disobedience is expressly provided by statute, and is intended to be exclusive of all other punishment.

(2) The offender is liable to imprisonment for 1 year.

205A Contravening order about device information from digital device

(1) A person who, without reasonable excuse, contravenes—

(a) an order made under the *Police Powers and Responsibilities Act 2000*, section 154(1) or (2), 154A(2) or 178A(1); or

(b) an order made under the *Crime and Corruption Act 2001*, section 88A(1) or (2) or 88B(2);

commits a crime.

Maximum penalty—5 years imprisonment.

(2) It is not a reasonable excuse to contravene the order on the basis that complying with the order might tend to incriminate the person or expose the person to a penalty.

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Part 4 Acts injurious to the public in general

Chapter 21 Offences relating to religious worship

206 Offering violence to officiating ministers of religion

Any person who—

(a) by threats or force prevents or attempts to prevent any minister of religion from lawfully officiating in any place of religious worship, or from performing the minister's duty in the lawful burial of the dead in any cemetery or other burial place; or

(b) by threats or force obstructs or attempts to obstruct any minister of religion while so officiating or performing the minister's duty; or

(c) assaults, or, upon or under the pretence of executing any civil process, arrests, any minister of religion who is engaged in, or is, to the knowledge of the offender, about to engage in, any of the offices or duties aforesaid, or who is, to the knowledge of the offender, going to perform the same or returning from the performance thereof;

is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

207 Disturbing religious worship

(1) Any person who wilfully and without lawful justification or excuse, the proof of which lies on the person, disquiets or disturbs any meeting of persons lawfully assembled for religious worship, or assaults any person lawfully officiating at any such meeting, or any of the persons there assembled, is

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guilty of an offence, and is liable to imprisonment for 2 months, or to a fine of $10.

(2) If the offender commits the offence with the circumstance of aggravation stated in section 52B, the offender is liable to imprisonment for 6 months.

Chapter 22 Offences against morality

207A Definitions for this chapter

In this chapter—

anonymising service means a device or other thing, or a physical, digital or other measure, used to hide—

(a) the identity or location of a person who administers, accesses or uses a network, computer or other device; or

(b) information stored on a network, computer or other device; or

(c) communication, including the exchange of information, between 2 or more persons using a network, computer or other device; or

(d) the location of a network, computer or other device.

Examples of physical, digital or other measures—

software, password or other authorisation, encryption, routing systems, communications ports

child abuse object means a doll, robot or other object if—

(a) a reasonable adult would consider—

(i) the doll, robot or other object is a representation or portrayal of a person, or part of a person, who is a child under 16 years; or

(ii) the predominant impression conveyed by the doll, robot or other object is that it is a representation or

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portrayal of a person, or part of a person, who is a child under 16 years, irrespective of whether it has adult characteristics; and

(b) the doll, robot or other object has been used, or a reasonable adult would consider it is intended for use, in an indecent or sexual context including, for example, engaging in a sexual activity.

child exploitation material means material that, in a way likely to cause offence to a reasonable adult, describes or depicts a person, or a representation of a person, who is, or apparently is, a child under 16 years—

(a) in a sexual context, including for example, engaging in a sexual activity; or

(b) in an offensive or demeaning context; or

(c) being subjected to abuse, cruelty or torture.

child sexual offence means an offence of a sexual nature committed in relation to a child, including, for example, an offence against a provision of this chapter or chapter 32.

classified—

(a) for a computer game—see the *Classification of Computer Games and Images Act 1995*; or

(b) for a film—see the *Classification of Films Act 1991*; or

(c) for a publication—see the *Classification of Publications Act 1991*.

commercial sexual service means a service—

(a) provided by a person, involving—

(i) a sexual act as described in section 218(2) and (3) engaged in by the person; or

(ii) the use or display of the person's body for the sexual arousal or gratification of another person; and

(b) that is—

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(i) provided for payment or reward, whether the payment or reward accrues or is given to the person providing the service or someone else; and

(ii) provided under an arrangement of a commercial character.

Commonwealth Classification Act means the *Classification (Publications, Films and Computer Games) Act 1995* (Cwlth).

computer game see the *Classification of Computer Games and Images Act 1995*.

distribute includes—

(a) communicate, exhibit, send, supply or transmit to someone, whether to a particular person or not; and

(b) make available for access by someone, whether by a particular person or not; and

(c) enter into an agreement or arrangement to do something in paragraph (a) or (b); and

(d) attempt to distribute.

film see the *Classification of Films Act 1991*.

hidden network means a network of computers or other devices (whether or not part of the internet) that has, or uses, digital, physical or other measures to do, or that are designed to do, any of the following—

(a) restrict access to the network;

(b) make the network undiscoverable when searched for in a way that is generally used to search for networks, including, for example, by using an internet search engine;

(c) hide the identity or location of persons who administer, access or use the network;

(d) hide information stored on the network;

(e) hide communication, including the exchange of information, between—

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(i) the network and a person who administers, accesses or uses the network; or

(ii) 2 or more persons who administer, access or use the network;

(f) hide the location of the network.

Examples of physical, digital or other measures—

software, password or other authorisation, encryption, routing systems, communications ports

information includes a photograph, picture, videotape, digital image and any other visual representation.

intimate image, of a person—

(a) means a moving or still image that depicts—

(i) the person engaged in an intimate sexual activity that is not ordinarily done in public; or

(ii) the person's genital or anal region, when it is bare or covered only by underwear; or

(iii) if the person is female or a transgender or intersex person who identifies as female—the person's bare breasts; and

(b) includes an image that has been altered to appear to show any of the things mentioned in paragraph (a)(i) to (iii); and

(c) includes an image depicting a thing mentioned in paragraph (a)(i) to (iii), even if the thing has been digitally obscured, if the person is depicted in a sexual way.

material includes anything that contains data from which text, images or sound can be generated.

network, of computers or other devices, includes part of a network of computers or other devices.

observe means observe by any means.

private act, for a person, means—

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(a) showering or bathing; or

(b) using a toilet; or

(c) another activity when the person is in a state of undress; or

(d) intimate sexual activity that is not ordinarily done in public.

private place means a place where a person might reasonably be expected to be engaging in a private act.

prohibited visual recording, of a person, means—

(a) a visual recording of the person, in a private place or engaging in a private act, made in circumstances where a reasonable adult would expect to be afforded privacy; or

(b) a visual recording of the person's genital or anal region, when it is bare or covered only by underwear, made in circumstances where a reasonable adult would expect to be afforded privacy in relation to that region.

publication see the *Classification of Publications Act 1991*.

religious confession means a confession made by a person to a member of the clergy in the member's professional capacity according to the ritual of the member's church or religious denomination.

someone, in the context of a description or depiction, includes the body parts of someone, including for example, someone's breast or genitalia.

state of undress, for a person, means—

(a) the person is naked or the person's genital or anal region is bare or, if the person is female or a transgender or intersex person who identifies as female, the person's breasts are bare; or

(b) the person is wearing only underwear; or

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(c) the person is wearing only some outer garments so that some of the person's underwear is not covered by an outer garment.

visually record, a person, means record, or transmit, by any means, moving or still images of the person or part of the person.

210 Indecent treatment of children under 16

(1) Any person who—

(a) unlawfully and indecently deals with a child under the age of 16 years; or

(b) unlawfully procures a child under the age of 16 years to commit an indecent act; or

(c) unlawfully permits himself or herself to be indecently dealt with by a child under the age of 16 years; or

(d) wilfully and unlawfully exposes a child under the age of 16 years to an indecent act by the offender or any other person; or

(e) without legitimate reason, wilfully exposes a child under the age of 16 years to any indecent object or any indecent film, videotape, audiotape, picture, photograph or printed or written matter; or

(f) without legitimate reason, takes any indecent photograph or records, by means of any device, any indecent visual image of a child under the age of 16 years;

is guilty of an indictable offence.

(2) If the child is of or above the age of 12 years, the offender is guilty of a crime, and is liable to imprisonment for 14 years.

(3) If the child is under the age of 12 years, the offender is guilty of a crime, and is liable to imprisonment for 20 years.

(4) If the child is, to the knowledge of the offender, his or her lineal descendant or if the offender is the guardian of the child

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or, for the time being, has the child under his or her care, the offender is guilty of a crime, and is liable to imprisonment for 20 years.

(4A) If the child is a person with an impairment of the mind, the offender is guilty of a crime, and is liable to imprisonment for 20 years.

(4B) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

(4C) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(5) If the offence is alleged to have been committed in respect of a child of or above the age of 12 years, it is a defence to prove that the accused person believed, on reasonable grounds, that the child was of or above the age of 16 years.

(5A) If the offence is alleged to have been committed with the circumstance of aggravation mentioned in subsection (4A), it is a defence to the circumstance of aggravation to prove that the accused person believed on reasonable grounds that the child was not a person with an impairment of the mind.

(6) In this section—

deals with includes doing any act which, if done without consent, would constitute an assault as defined in this Code.

210A Sexual acts with a child aged 16 or 17 under one's care, supervision or authority

(1) An adult who has a child of or above the age of 16 under their care, supervision or authority and—

(a) engages in penile intercourse with the child; or

(b) penetrates the vulva, vagina or anus of the child to any extent with a thing or a part of the person's body that is not a penis; or

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(c) penetrates the mouth of the child to any extent with the person's penis;

commits a crime and is liable to imprisonment for 14 years.

(2) An adult who has a child of or above the age of 16 under their care, supervision or authority and—

(a) indecently deals with the child; or

(b) procures the child to commit an indecent act; or

(c) permits themself to be indecently dealt with by the child; or

(d) wilfully exposes the child to an indecent act by the adult or any other person; or

(e) without legitimate reason, wilfully exposes the child to any indecent object or any indecent film, videotape, audiotape, picture, photograph or printed or written matter; or

(f) without legitimate reason, takes any indecent photograph or, by means of any device, records any indecent visual image of the child;

commits a crime and is liable to imprisonment for 10 years.

Examples of persons who might have a child under their care, supervision, or authority—

1 an employer, or other person with the authority to determine significant aspects of the child's employment (whether the work is paid, unpaid, or voluntary)

2 a tutor, sports coach or music teacher

3 a religious or spiritual leader

4 a police officer who has dealt with a child in the exercise or performance of their duties or functions

(3) Without limiting subsection (1) or (2), the following are taken to have a child under their care, supervision, or authority—

(a) the child's parent, grandparent, step-parent, or guardian;

(b) the spouse of the child's parent, grandparent, or guardian;

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(c) an approved carer of the child or the spouse of an approved carer of the child;

(d) a teacher, principal or deputy principal at a school at which the child is a student;

(e) a health practitioner if the child is their patient;

(f) a person employed or providing services at a place where the child is in custody;

(g) a person associated with a residential care service that provides accommodation where the child resides.

(4) The following are defences to a charge of an offence against this section—

(a) that the accused person believed, on reasonable grounds, that the child was at least 18 years;

(b) that all of the following apply—

(i) the accused is a person other than a person referred to in subsection (3);

(ii) the accused person is less than 3 years older than the child;

(iii) the act or omission that constitutes the offence did not, in the circumstances, constitute sexual exploitation of the child;

(c) that the accused person and the child are lawfully married.

(5) To remove any doubt, it is declared that it is not necessary for the prosecution to prove—

(a) abuse of a position of authority; or

(b) exercise of a position of authority; or

(c) the acts constituting the offence were done without consent.

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(6) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(7) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(8) In this section—

approved carer means an approved foster carer, approved kinship carer, or provisionally approved carer for the purpose of the *Child Protection Act 1999*.

associated, in relation to a residential care service, means—

(a) owns, or is involved in the management or control of, the service; or

(b) is employed or engaged by the service; or

(c) works as a volunteer for the service.

chief executive (child safety) means the chief executive of the department in which the *Child Protection Act 1999* is administered.

health practitioner means a person registered under the Health Practitioner Regulation National Law to practise in a health profession, other than as a student.

penetration, for subsection (1)(b), does not include penetration carried out for a proper medical, hygienic or law enforcement purpose.

residential care service means a service whose main purpose is to provide accommodation to children who are in the custody, or under the guardianship, of the chief executive (child safety) under the *Child Protection Act 1999*.

211 Bestiality

(1) Any person who engages in penile intercourse with an animal is guilty of a crime and is liable to imprisonment for 7 years.

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(2) For subsection (1), the definitions *penile intercourse* and *engages* in penile intercourse with another person in section 6 apply as if a reference in that section to another person were a reference to the animal mentioned in subsection (1).

213 Owner etc. permitting abuse of children on premises

(1) Any person who, being the owner or occupier of any premises, or having, or acting or assisting in, the management or control of any premises, induces or knowingly permits any child under the age of 16 years to be in or upon the premises for the purpose of any person, whether a particular person or not, doing an act in relation to the child (a ***proscribed act***) defined to constitute an offence in section 210 or 215 is guilty of an indictable offence.

(2) If the child is of or above the age of 12 years, the offender is guilty of a crime, and is liable to imprisonment for 10 years.

(3) If the child is under the age of 12 years, the offender is guilty of a crime, and is liable to imprisonment—

(a) for life, where the proscribed act is one defined to constitute an offence in section 215; or

(b) for 14 years in any other case.

(3A) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

(3B) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(4) If the proscribed act is one defined to constitute an offence in section 210 or 215 and the child is of or above 12 years, it is a defence to prove that the accused person believed, on reasonable grounds, that the child was of or above 16 years.

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215 Engaging in penile intercourse with child under 16

(1) Any person who engages or attempts to engage in unlawful penile intercourse with a child under the age of 16 years is guilty of an indictable offence.

(2) If the child is of or above the age of 12 years, the offender is guilty of a crime, and is liable to imprisonment for 14 years.

(3) If the child is under the age of 12 years, the offender is guilty of a crime, and is liable to imprisonment for life or, in the case of an attempt to engage in unlawful penile intercourse, to imprisonment for 14 years.

(4) If the child is not the lineal descendant of the offender but the offender is the child's guardian or, for the time being, has the child under the offender's care, the offender is guilty of a crime, and is liable to imprisonment for life or, in the case of an attempt to engage in unlawful penile intercourse, to imprisonment for 14 years.

(4A) If the child is a person with an impairment of the mind, the offender is guilty of a crime, and is liable to imprisonment for life.

(4B) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

(4C) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(5) If the offence is alleged to have been committed in respect of a child of or above the age of 12 years, it is a defence to prove that the accused person believed, on reasonable grounds, that the child was of or above the age of 16 years.

(5A) If the offence is alleged to have been committed with the circumstance of aggravation mentioned in subsection (4A), it is a defence to the circumstance of aggravation to prove that the accused person believed on reasonable grounds that the child was not a person with an impairment of the mind.

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Note—

See section 745 in relation to the application of this section as in force from time to time before the commencement of the *Criminal Code, Evidence Act and Other Acts Amendment Act 1989*, section 14.

216 Abuse of persons with an impairment of the mind

(1) Any person who engages or attempts to engage in unlawful penile intercourse with a person with an impairment of the mind is, subject to subsection (3)(a) and (b), guilty of a crime, and is liable to imprisonment for 14 years.

(2) Any person who—

(a) unlawfully and indecently deals with a person with an impairment of the mind; or

(b) unlawfully procures a person with an impairment of the mind to commit an indecent act; or

(c) unlawfully permits himself or herself to be indecently dealt with by a person with an impairment of the mind; or

(d) wilfully and unlawfully exposes a person with an impairment of the mind to an indecent act by the offender or any other person; or

(e) without legitimate reason, wilfully exposes a person with an impairment of the mind to any indecent object or any indecent film, videotape, audiotape, picture, photograph or printed or written matter; or

(f) without legitimate reason, takes any indecent photograph or records, by means of any device, any indecent visual image of a person with an impairment of the mind;

is, subject to subsections (3)(c) and (3A), guilty of a crime, and is liable to imprisonment for 10 years.

(3) If the person with an impairment of the mind is not the lineal descendant of the offender but the offender is the guardian of that person or, for the time being, has that person under the

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offender's care, the offender is guilty of a crime, and is liable—

(a) in the case of the offence of engaging in unlawful penile intercourse—to imprisonment for life; or

(b) in the case of an attempt to engage in unlawful penile intercourse—to imprisonment for life; or

(c) in the case of an offence defined in subsection (2)—to imprisonment for 14 years.

(3A) In the case of an offence defined in subsection (2), if the person with an impairment of the mind is, to the knowledge of the offender, the offender's lineal descendant, the offender is guilty of a crime, and is liable to imprisonment for 14 years.

(4) It is a defence to a charge of an offence defined in this section to prove—

(a) that the accused person believed on reasonable grounds that the person was not a person with an impairment of the mind; or

(b) that the doing of the act or the making of the omission which, in either case, constitutes the offence did not in the circumstances constitute sexual exploitation of the person with an impairment of the mind.

(5) In this section—

deals with includes doing any act that, if done without consent, would constitute an assault.

217 Procuring young person etc. for penile intercourse

(1) A person who procures a person who is not an adult or is a person with an impairment of the mind to engage in penile intercourse (either in Queensland or elsewhere) commits a crime.

Maximum penalty—imprisonment for 14 years.

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(1A) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(1B) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(2) In this section—

procure means knowingly entice or recruit for the purposes of sexual exploitation.

217A Obtaining commercial sexual services from person who is not an adult

(1) A person who obtains commercial sexual services from another person who is not an adult (the ***child***) commits a crime.

Maximum penalty—10 years imprisonment.

(2) If the child is under 16 years, the person is liable to a maximum penalty of 14 years imprisonment.

(3) If the child is under 12 years, the person is liable to a maximum penalty of imprisonment for life.

(4) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(5) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(6) If the offence is alleged to have been committed in respect of a child of or above the age of 12 years, it is a defence to an offence against subsection (1) that the accused person believed, on reasonable grounds, that the child was an adult.

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217B Allowing person who is not an adult to take part in commercial sexual services

(1) A person—

(a) who owns or occupies, or is in control of, premises; and

(b) who allows another person who is not an adult to enter or remain on the premises for the purpose of taking part in providing commercial sexual services;

commits a crime.

Maximum penalty—14 years imprisonment.

(2) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(4) If the offence is alleged to have been committed in respect of a child of or above the age of 12 years, it is a defence to an offence against subsection (1) that the accused person believed, on reasonable grounds, that the person was an adult.

217C Conduct relating to provision of commercial sexual services by person who is not an adult

(1) A person who—

(a) causes or induces another person who is not an adult to provide commercial sexual services; or

(b) enters into or offers to enter into an agreement under which another person who is not an adult is to provide commercial sexual services; or

(c) receives a payment or reward that the person knows, or ought reasonably to know, is derived directly or indirectly from commercial sexual services provided by another person who is not an adult;

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commits a crime.

Maximum penalty—14 years imprisonment.

(2) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(4) If the offence is alleged to have been committed in respect of a child of or above the age of 12 years, it is a defence to an offence against subsection (1) that the accused person believed, on reasonable grounds, that the person was an adult.

218 Procuring sexual acts by coercion etc.

(1) A person who—

(a) by coercion, procures another person to—

(i) engage in a sexual act, either in Queensland or elsewhere; or

(ii) provide, or continue to provide, commercial sexual services; or

(b) by coercion, causes another person to provide, or continue to provide, payment derived directly or indirectly from the provision of commercial sexual services; or

(c) administers to another person, or causes the other person to take, a drug or other thing with intent to stupefy or overpower the person to enable a sexual act to be engaged in with the person;

commits a crime.

Maximum penalty—14 years imprisonment.

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(2) For subsection (1), a person engages in a sexual act if the person—

(a) allows a sexual act to be done to the person's body; or

(b) does a sexual act to the person's own body or the body of another person; or

(c) otherwise engages in an act of an indecent nature with another person.

(3) Subsection (2) is not limited to sexual intercourse or acts involving physical contact.

(3A) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(3B) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(4) In this section—

coercion includes, for example, coercion by—

(a) intimidation or threats of any kind; or

(b) assaulting a person; or

(c) damaging the property of a person; or

(d) making false representations or using false pretence or fraudulent means.

procure means knowingly entice or recruit for the purposes of sexual exploitation.

218A Using internet etc. to procure children under 16

(1) Any adult who uses electronic communication with intent to procure a person under the age of 16 years, or a person the adult believes is under the age of 16 years, to engage in a sexual act, either in Queensland or elsewhere, commits a crime.

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Maximum penalty—10 years imprisonment.

(2) The adult is liable to 14 years imprisonment if—

(a) the person is—

(i) a person under 12 years; or

(ii) a person the adult believes is under 12 years; or

(b) the offence involves the adult—

(i) intentionally meeting the person; or

(ii) going to a place with the intention of meeting the person.

(2A) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

(2B) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(3) For subsection (1), a person engages in a sexual act if the person—

(a) allows a sexual act to be done to the person's body; or

(b) does a sexual act to the person's own body or the body of another person; or

(c) otherwise engages in an act of an indecent nature.

(4) Subsection (3) is not limited to sexual intercourse or acts involving physical contact.

(5) For subsection (1), it is not necessary to prove that the adult intended to procure the person to engage in any particular sexual act.

(6) Also, for subsection (1), it does not matter that, by reason of circumstances not known to the adult, it is impossible in fact for the person to engage in the sexual act.

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(7) For subsection (1), it does not matter that the person is a fictitious person represented to the adult as a real person.

(8) Evidence that the person was represented to the adult as being under the age of 16 years, or 12 years, as the case may be, is, in the absence of evidence to the contrary, proof that the adult believed the person was under that age.

(9) It is a defence to a charge under this section to prove the adult believed on reasonable grounds that the person was at least 16 years.

(9A) For an offence defined in subsection (1) alleged to have been committed with the circumstance of aggravation mentioned in subsection (2)(a)(i), it is a defence to the circumstance of aggravation to prove that the adult believed on reasonable grounds that the person was at least 12 years.

(10) In this section—

electronic communication means email, internet chat rooms, SMS messages, real time audio/video or other similar communication.

meeting means meeting in person.

procure means knowingly entice or recruit for the purposes of sexual exploitation.

218B Grooming child under 16 years or parent or carer of child under 16 years

(1) In this section—

(a) a reference to a ***child***, in relation to an adult engaging in conduct in relation to a child, is a reference to—

(i) a person under 16 years; or

(ii) a person the adult believes is under 16 years, whether the person is a real person or a fictitious person who is represented to the adult as a real person under 16 years; and

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(b) a reference to a ***child***, in relation to an adult engaging in conduct in relation to another person who has care of a child, is a reference to—

(i) a person under 16 years; or

(ii) a person the adult believes is under 16 years; and

(c) a reference to a ***person who has care of a child***, in relation to an adult engaging in conduct in relation to another person who has care of a child, includes a reference to a person whom the adult believes is a person who has care of a child.

(2) An adult who engages in conduct in relation to a child, or a person who has care of a child, with intent to—

(a) facilitate the procurement of the child to engage in a sexual act, either in Queensland or elsewhere; or

(b) expose, without legitimate reason, the child to any indecent matter, either in Queensland or elsewhere;

commits a crime.

Note—

See section 1 for the definition *indecent matter*.

Maximum penalty—5 years imprisonment.

(3) The adult is liable to 10 years imprisonment if the child is—

(a) a person under 12 years; or

(b) a person, including a fictitious person, the adult believes is under 12 years.

(4) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

(5) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

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(6) For subsection (2)(a), a child engages in a sexual act if the child—

(a) allows a sexual act to be done to the child; or

(b) does a sexual act to the child's own body or the body of another person; or

(c) otherwise engages in an act of an indecent nature.

(7) Subsection (6) is not limited to sexual intercourse or acts involving physical contact.

(8) For subsection (2)(a)—

(a) it is not necessary to prove that the adult intended to facilitate the procurement of the child to engage in any particular sexual act; and

(b) it does not matter that, by reason of circumstances not known to the adult, it is impossible in fact for the child to engage in the sexual act; and

(c) it does not matter when the adult intended the child would be procured to engage in a sexual act.

(9) Evidence that the child was represented to the adult as being under 16 years, or under 12 years, as the case may be, is, in the absence of evidence to the contrary, proof that the adult believed the child was under that age.

(10) It is a defence to a charge under this section to prove the adult believed on reasonable grounds that the child was at least 16 years.

(11) For an offence defined in subsection (2) alleged to have been committed with the circumstance of aggravation mentioned in subsection (3), it is a defence to the circumstance of aggravation to prove that the adult believed on reasonable grounds that the child was at least 12 years.

(12) In this section—

person who has care of a child includes a parent, foster-parent, step-parent, guardian or other adult in charge of

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the child, whether or not the person has lawful custody of the child.

procure means knowingly entice or recruit for the purposes of sexual exploitation.

219 Taking child for immoral purposes

(1) Any person who takes or entices away, or detains a child who is under the age of 16 years and is not the husband or wife of that person for the purpose of any person, whether a particular person or not, doing an act in relation to the child (a ***proscribed act***) defined to constitute an offence in section 210 or 215 is guilty of a crime.

(2) If the child is of or above the age of 12 years, the offender is liable to imprisonment for 10 years.

(3) If the child is under the age of 12 years, the offender is liable to imprisonment—

(a) for life, where the proscribed act is one defined to constitute an offence in section 215; or

(b) for 14 years in any other case.

(3A) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

(3B) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(4) If the proscribed act is one defined to constitute an offence defined in section 210 or 215 and the child is of or above 12 years, it is a defence to prove that the accused person believed, on reasonable grounds, the child was of or above 16 years.

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221 Conspiracy to defile

Any person who conspires with another to induce a third person, by any false pretence or other fraudulent means, to permit any person to engage in unlawful penile intercourse with the third person commits a crime.

Maximum penalty—10 years imprisonment.

222 Incest

(1) Any person who—

(a) engages in penile intercourse with the person's offspring or other lineal descendant, or sibling, parent, grandparent, uncle, aunt, nephew or niece; and

(b) knows that the other person bears that relationship to him or her, or some relationship of that type to him or her;

commits a crime.

Maximum penalty—imprisonment for life.

(2) Any person who attempts to commit the crime of incest is liable to imprisonment for 10 years.

(3) It is immaterial that the act or attempted act of penile intercourse happened with the consent of either person.

(4) It is a defence to a charge under this section to prove that the accused person was, at the time when the act or attempted act of penile intercourse happened, acting under the coercion of the other person.

(5) A reference in this section to an offspring or other lineal descendant, or a sibling or a parent includes a relationship of that type that is a half, adoptive or step relationship.

(5A) For subsection (5), a reference to an adoptive relationship includes a relationship of that type that came into existence as a result of the making of an adoption order under the *Adoption Act 2009* regardless of whether the order has been discharged.

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(6) For subsection (5), a reference to a step relationship includes a relationship corresponding to a step relationship arising because of cohabitation in a de facto relationship or because of a foster relationship or a legal arrangement.

(7) Also, for subsection (5), a reference to a step relationship does not include a step relationship that first arose after the relevant persons became adults.

(7A) Also, if a parentage order is made under the *Surrogacy Act 2010*, a reference in this section to an offspring or other lineal descendant, or a sibling or a parent includes a relationship of that type that—

(a) existed before the making of the order; or

(b) came into existence as a result of the making of the order regardless of whether the order has been discharged.

(7B) Also, if a cultural recognition order is made under the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*, a reference in this section to an offspring or other lineal descendant, or a sibling or a parent includes a relationship of that type that—

(a) existed before the making of the order; or

(b) came into existence as a result of the making of the order regardless of whether the order has been discharged.

(8) This section does not apply to penile intercourse between persons who are—

(a) lawfully married; or

(b) if both persons are adults—entitled to be lawfully married.

223 Distributing intimate images

(1) A person who distributes an intimate image of another person—

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(a) without the other person's consent; and

(b) in a way that would cause the other person distress reasonably arising in all the circumstances;

commits a misdemeanour.

Examples of circumstances for subsection (1)(b)—

- the circumstances surrounding the distribution of the intimate image
- the extent to which the distribution of the intimate image interferes with the other person's privacy
- the relationship, if any, between the person who distributes the intimate image and the other person

Maximum penalty—3 years imprisonment.

(2) For subsection (1)(a), a child under the age of 16 years is incapable of giving consent.

(3) For subsection (1)(b), it is immaterial whether the person who distributes the intimate image intends to cause, or actually causes, the other person distress.

(4) It is a defence to a charge of an offence against subsection (1) to prove that—

(a) the person engaged in the conduct that is alleged to constitute the offence for a genuine artistic, educational, legal, medical, scientific or public benefit purpose; and

(b) the person's conduct was, in the circumstances, reasonable for that purpose.

(5) In this section—

consent means free and voluntary agreement by a person with the cognitive capacity to make the agreement.

227 Indecent acts

(1) Any person who—

(a) wilfully and without lawful excuse does any indecent act in any place to which the public are permitted to

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have access, whether on payment of a charge for admission or not; or

(b) wilfully does any indecent act in any place with intent to insult or offend any person;

is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

(2) The offender may be arrested without warrant.

(3) Subsection (1) does not apply to a person who does an indecent act under the authority of an adult entertainment permit.

227A Observations or recordings in breach of privacy

(1) A person who observes or visually records another person, in circumstances where a reasonable adult would expect to be afforded privacy—

(a) without the other person's consent; and

(b) when the other person—

(i) is in a private place; or

(ii) is engaging in a private act and the observation or visual recording is made for the purpose of observing or visually recording a private act;

commits a misdemeanour.

Maximum penalty—3 years imprisonment.

Examples of circumstances where a reasonable adult would expect to be afforded privacy—

1 A person changing in a communal change room at a swimming pool may expect to be observed by another person who is also changing in the room but may not expect to be visually recorded.

2 A person who needs help to dress or use a toilet may expect to be observed by the person giving the help but may not expect to be observed by another person.

(2) A person who observes or visually records another person's genital or anal region, in circumstances where a reasonable

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adult would expect to be afforded privacy in relation to that region—

(a) without the other person's consent; and

(b) when the observation or visual recording is made for the purpose of observing or visually recording the other person's genital or anal region;

commits a misdemeanour.

Maximum penalty—3 years imprisonment.

Example for subsection (2)—

using a mobile phone in a public place to take photos of women's underwear under their skirts without their consent

(3) In this section—

consent means free and voluntary agreement by a person with the cognitive capacity to make the agreement.

genital or anal region, of a person, means the person's genital or anal region when it is bare or covered only by underwear.

227B Distributing prohibited visual recordings

(1) A person who distributes a prohibited visual recording of another person having reason to believe it to be a prohibited visual recording, without the other person's consent, commits a misdemeanour.

Maximum penalty—3 years imprisonment.

(2) In this section—

consent means free and voluntary agreement by a person with the cognitive capacity to make the agreement.

227C Persons who are not criminally responsible for offences against ss 223, 227A and 227B

(1) A person is not criminally responsible for an offence against section 223, 227A(1) or (2) or 227B(1) if—

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(a) the person is, at the time of the offence, a law enforcement officer acting in the course of the person's duties; and

(b) the person's conduct is reasonable in the circumstances for the performance of the duties.

(2) A person is not criminally responsible for an offence against section 223, 227A(1) or (2) or 227B(1) in relation to an intimate image or an observation or visual recording of another person who is in lawful custody or subject to a supervision order if—

(a) the person is, at the time of the offence, acting in the course of the person's duties in relation to the other person's lawful custody or supervision order; and

(b) the person's conduct is reasonable in the circumstances for the performance of the duties.

Examples of conduct that may be reasonable for the performance of duties—

- the observation of a person for the safety of the person or another person
- the observation of a person providing a urine sample for a drug test

(3) In this section—

lawful custody includes detention under the *Mental Health Act 2016* in—

(a) an authorised mental health service or a high security unit within the meaning of that Act; or

(b) the forensic disability service within the meaning of the *Forensic Disability Act 2011*.

supervision order, for a person, means an order under an Act or a law of the Commonwealth or another State or made by an Australian court that subjects the person to supervision including, for example, the following orders—

(a) a community based order, or drug and alcohol treatment order, under the *Penalties and Sentences Act 1992*;

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(b) a community based order or supervised release order under the *Youth Justice Act 1992*;

(c) a parole order under the *Corrective Services Act 2006*;

(d) a supervision order or an interim supervision order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

228 Obscene publications and exhibitions

(1) Any person who knowingly, and without lawful justification or excuse—

(a) publicly sells, distributes or exposes for sale any obscene book or other obscene printed or written matter, any obscene computer generated image or any obscene picture, photograph, drawing, or model, or any other object tending to corrupt morals; or

(b) exposes to view in any place to which the public are permitted to have access, whether on payment of a charge for admission or not, any obscene picture, photograph, drawing, or model, or any other object tending to corrupt morals; or

(c) publicly exhibits any indecent show or performance, whether on payment of a charge for admission to see the show or performance or not;

is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

(2) In the case of an offence defined in subsection (1)(a) or (b), if the matter or thing is obscene or tends to corrupt morals by reason of depicting a person who is or is represented to be—

(a) a child under the age of 16 years—the offender is liable to imprisonment for 5 years; or

(b) a child under the age of 12 years—the offender is liable to imprisonment for 10 years.

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(3) In the case of an offence defined in subsection (1)(c), if a person appearing in the indecent show or performance is or is represented to be—

(a) a child under the age of 16 years—the offender is liable to imprisonment for 5 years; or

(b) a child under the age of 12 years—the offender is liable to imprisonment for 10 years.

(4) It is a defence to a charge of any of the offences defined in this section to prove that it was for the public benefit that the act complained of should be done.

(5) Whether the doing of any such act is or is not for the public benefit is a question of fact.

(5A) Section 207A, definition *distribute*, does not apply to this section.

(6) In this section—

computer generated image means electronically recorded data capable, by way of an electronic device, of being produced on a computer monitor, television screen, liquid crystal display or similar medium as an image, including an image in the form of text.

228A Involving child in making child exploitation material

(1) A person who involves a child in the making of child exploitation material commits a crime.

Maximum penalty—

(a) if the offender uses a hidden network or an anonymising service in committing the offence—25 years imprisonment; or

(b) otherwise—20 years imprisonment.

(2) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

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(3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(4) In this section—

involves a child in the making of child exploitation material includes—

(a) in any way concerns a child in the making of child exploitation material; and

(b) attempts to involve a child in the making of child exploitation material.

228B Making child exploitation material

(1) A person who makes child exploitation material commits a crime.

Maximum penalty—

(a) if the offender uses a hidden network or an anonymising service in committing the offence—25 years imprisonment; or

(b) otherwise—20 years imprisonment.

(2) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

(3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(4) In this section—

make child exploitation material includes—

(a) produce child exploitation material; and

(b) attempt to make child exploitation material.

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228C Distributing child exploitation material

(1) A person who distributes child exploitation material commits a crime.

Maximum penalty—

(a) if the offender uses a hidden network or an anonymising service in committing the offence—20 years imprisonment; or

(b) otherwise—14 years imprisonment.

(2) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

(3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

228D Possessing child exploitation material

(1) A person who knowingly possesses child exploitation material commits a crime.

Maximum penalty—

(a) if the offender uses a hidden network or an anonymising service in committing the offence—20 years imprisonment; or

(b) otherwise—14 years imprisonment.

(2) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

(3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

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228DA Administering child exploitation material website

(1) A person who administers a website knowing the website is used to distribute child exploitation material commits a crime.

Maximum penalty—

(a) if the offender uses a hidden network or an anonymising service in committing the offence—20 years imprisonment; or

(b) otherwise—14 years imprisonment.

(2) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

(3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(4) It is a defence to a charge under this section to prove that the person, on becoming aware the website was being used to distribute child exploitation material, took all reasonable steps in the circumstances to prevent other persons from being able to use the website to access child exploitation material.

Examples of steps that may be reasonable in the circumstances—

- telling a police officer the website is being used to distribute child exploitation material and complying with any reasonable direction given by the police officer about what to do in relation to the website
- shutting the website down
- modifying the operation of the website so it can not be used to distribute or access child exploitation material

(5) In this section—

administer, a website, includes—

(a) design, create, manage or maintain the website, part of the website or a function of the website; or

(b) provide a device to host the website, part of the website or a function of the website; or

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(c) facilitate the operation and use of the website, part of the website or a function of the website.

228DB Encouraging use of child exploitation material website

(1) A person who, knowing a website is used to distribute child exploitation material, distributes information—

(a) to encourage someone, whether a particular person or not, to use the website; or

(b) to advertise or promote the website to someone, whether a particular person or not;

commits a crime.

Maximum penalty—

(a) if the offender uses a hidden network or an anonymising service in committing the offence—20 years imprisonment; or

(b) otherwise—14 years imprisonment.

(2) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

(3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

228DC Distributing information about avoiding detection

(1) A person who distributes information about how to avoid detection of, or prosecution for, conduct that involves the commission of a child exploitation material offence commits a crime.

Maximum penalty—

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(a) if the offender uses a hidden network or an anonymising service in committing the offence—20 years imprisonment; or

(b) otherwise—14 years imprisonment.

(2) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

(3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(4) In this section—

child exploitation material offence means an offence against section 228A, 228B, 228C, 228D, 228DA, 228DB or this section.

228E Defences for ss 228A–228DC

(1) Subsections (2), (3) and (5) prescribe defences available to a person charged with an offence against section 228A, 228B, 228C, 228D, 228DA, 228DB or 228DC.

(2) It is a defence for the person to prove that—

(a) the person engaged in the conduct that is alleged to constitute the offence for a genuine artistic, educational, legal, medical, scientific or public benefit purpose; and

(b) the person's conduct was, in the circumstances, reasonable for that purpose.

Example of something made for a public benefit—

a current affairs television program showing children being tortured during a civil war

(3) It is a defence for the person to prove that, at the time of the alleged offence—

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(a) the material that is alleged to be child exploitation material was subject to a conditional cultural exemption in relation to a relevant showing; and

(b) the person engaged in the conduct that is alleged to constitute the offence for the purpose of the relevant showing.

(4) Whether conduct was engaged in for a purpose mentioned in subsection (2)(a) or (3)(b) is a question of fact.

(5) It is a defence for the person to prove that the material alleged to be child exploitation material is a computer game, film or publication that is classified as something other than RC.

(6) For subsection (5), the material may have been classified before, or may be classified after, the offence is alleged to have been committed.

(7) A certificate that states any of the following facts is evidence of that fact—

(a) whether a stated computer game, film or publication has been classified;

(b) if a stated computer game, film or publication has been classified—the classification given to the computer game, film or publication.

(8) In this section—

certificate means a certificate under the Commonwealth Classification Act, section 25 or 87.

relevant showing has the meaning given by the Commonwealth Classification Act, sections 6C and 6E.

subject to a conditional cultural exemption has the meaning given by the Commonwealth Classification Act, section 5.

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228F Excluding non-essential persons from court when child exploitation material displayed

(1) When material alleged to be child exploitation material is on display in a courtroom, the court must exclude from the courtroom anyone who is not an essential person.

(2) An ***essential person*** is—

(a) a party, or a person representing a party, to the proceeding; or

(b) a Crown Law Officer or a person authorised by a Crown Law Officer; or

(c) the prosecutor; or

(d) a witness giving evidence; or

(e) a person who is an intermediary under the *Evidence Act 1977*, part 2, division 4C for a witness giving evidence; or

(f) a person who a witness is entitled to have present in court under the *Evidence Act 1977*, section 21A(2)(d), 21AV or 103ZE(2)(g); or

(g) a person whose presence is, in the court's opinion, necessary or desirable for the proper conduct of the proceeding; or

(h) a person who applies to the court to be present and whose presence, in the court's opinion—

(i) would serve a proper interest of the person; and

(ii) would not be prejudicial to the interests of any child described or depicted in the child exploitation material, whether or not any child can be identified from the child exploitation material.

(3) When forming an opinion under subsection (2)(g) or (h), the court must consider the public benefit of limiting the number of people with access to child exploitation material.

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228G Forfeiture of child abuse objects, child exploitation material etc.

(1) This section applies if a person is prosecuted for an offence against—

(a) section 210(1)(e) or (f), 218A or 218B; or

(b) section 228A, 228B, 228C, 228D, 228DA, 228DB, 228DC, 228I or 228J.

(2) Whether or not the person is convicted of the offence, the court may order the photograph, visual image, material or object that is the subject of the offence be forfeited to the State.

(3) If the person is convicted of the offence, the court may also order that anything used to commit the offence be forfeited to the State.

Example of a thing used to commit the offence—

a computer, camera or sound recording device

(4) Subsections (2) and (3) apply whether the thing to be forfeited has been seized or is in its owner's possession.

(5) The court may also make any order that it considers appropriate to enforce the forfeiture.

(6) This section does not limit the court's powers under the *Penalties and Sentences Act 1992*, the *Criminal Proceeds Confiscation Act 2002* or another law.

(7) When forfeited to the State, the thing becomes the State's property and may be dealt with as directed by the chief executive.

228H Possession etc. of child abuse objects or child exploitation material by law enforcement officer

(1) A person is not criminally responsible for an offence against section 228B, 228C, 228D, 228DA, 228DB, 228DC, 228I or 228J if—

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(a) the person is, at the time of the offence, a law enforcement officer acting in the course of the person's duties; and

(b) the person's conduct is reasonable in the circumstances for the performance of the duties.

Examples of conduct that may be reasonable for the performance of a law enforcement officer's duties—

- copying child exploitation material for the purposes of preparing a brief for police prosecutors
- supplying child exploitation material to the Classification Board established under the Commonwealth Classification Act for classification under that Act or to the Office of the Director of Public Prosecutions for use during the prosecution of a person for an offence
- keeping child exploitation material obtained during an investigation for legitimate intelligence purposes

(2) However, subsection (1) does not apply to the extent that the person's conduct consists of engaging in conduct or an activity that—

(a) is authorised under—

(i) the *Police Powers and Responsibilities Act 2000*, chapter 10 or 11; or

(ii) the *Crime and Corruption Act 2001*, chapter 3, part 6A; or

(b) is otherwise directed to gaining evidence of the commission of an offence against a particular person.

(3) In this section—

law enforcement officer includes an inspector under any of the following Acts—

(a) the *Classification of Computer Games and Images Act 1995*;

(b) the *Classification of Films Act 1991*;

(c) the *Classification of Publications Act 1991*.

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228I Producing or supplying child abuse object

(1) A person who produces or supplies a child abuse object commits a crime.

Maximum penalty—

(a) if the production or supply is for a commercial purpose—20 years imprisonment; or

(b) otherwise—14 years imprisonment.

(2) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

(3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(4) In this section—

produce includes—

(a) prepare, manufacture or package; and

(b) offer to produce; and

(c) do or offer to do any act in preparation for or furtherance of, or for the purpose of, an act of producing.

supply includes—

(a) give, distribute, sell or transport; and

(b) offer to supply; and

(c) do or offer to do any act in preparation for or furtherance of, or for the purpose of, an act of supply.

228J Possessing child abuse object

(1) A person who knowingly possesses a child abuse object commits a crime.

Maximum penalty—14 years imprisonment.

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(2) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

228K Defence for ss 228I and 228J

(1) It is a defence for a person charged with an offence against section 228I or 228J to prove that—

(a) the person engaged in the conduct that is alleged to constitute the offence for a genuine artistic, educational, legal, medical, scientific or public benefit purpose; and

(b) the person's conduct was, in the circumstances, reasonable for that purpose.

(2) Whether conduct was engaged in for a purpose mentioned in subsection (1)(a) is a question of fact.

229 Knowledge of age immaterial

Except as otherwise expressly stated, it is immaterial, in the case of any of the offences defined in this chapter committed with respect to a person under a specified age, that the accused person did not know that the person was under that age, or believed that the person was not under that age.

229A Threats to distribute intimate image or prohibited visual recording

(1) A person commits a misdemeanour if—

(a) the person makes a threat to another person to distribute an intimate image or prohibited visual recording of the other person—

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(i) without the other person's consent; and

(ii) in a way that would cause the other person distress reasonably arising in all the circumstances; and

(b) the threat is made in a way that would cause the other person fear, reasonably arising in all the circumstances, of the threat being carried out.

Examples of circumstances for subsection (1)—

- the circumstances surrounding the threat
- the relationship, if any, between the person who makes the threat and the other person

Maximum penalty—3 years imprisonment.

(2) A person commits a misdemeanour if—

(a) the person makes a threat to another person (***person A***) to distribute an intimate image or prohibited visual recording of another person (***person B***)—

(i) without person B's consent; and

(ii) in a way that would cause either person A or person B distress reasonably arising in all the circumstances; and

(b) the threat is made in a way that would cause person A fear, reasonably arising in all the circumstances, of the threat being carried out.

Examples of circumstances for subsection (2)—

- the circumstances surrounding the threat
- the relationship, if any, between the person who makes the threat and person A or person B

Maximum penalty—3 years imprisonment.

(3) For subsections (1) and (2) it is immaterial whether—

(a) the intimate image or prohibited visual recording exists or does not exist; or

(b) the person who makes the threat intends to cause, or actually causes, the fear mentioned in the subsection.

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(4) For subsections (1)(a)(i) and (2)(a)(i), a child under the age of 16 years is incapable of giving consent.

(5) In this section—

consent means free and voluntary agreement by a person with the cognitive capacity to make the agreement.

229AA Rectification order—offence against s 223, 227A, 227B or 229A

(1) If a person is convicted of an offence against section 223(1), 227A(1) or (2), 227B(1) or 229A(1) or (2) the court may order the person to take reasonable action to remove, retract, recover, delete or destroy an intimate image or prohibited visual recording involved in the offence within a stated period.

(2) A person who fails to comply with an order made under subsection (1) commits a misdemeanour.

Maximum penalty—2 years imprisonment.

229B Repeated sexual conduct with a child

(1) Any adult who maintains an unlawful sexual relationship with a child under the age of 16 years commits a crime.

Maximum penalty—life imprisonment.

(1A) Any adult who has a child of or above the age of 16 under their care, supervision or authority and maintains an unlawful sexual relationship with the child commits a crime.

Maximum penalty—life imprisonment.

(2) An unlawful sexual relationship is a relationship that involves more than 1 unlawful sexual act over any period.

(3) For an adult to be convicted of the offence of maintaining an unlawful sexual relationship with a child, all the members of the jury must be satisfied beyond reasonable doubt that the evidence establishes that an unlawful sexual relationship with the child involving unlawful sexual acts existed.

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(4) However, in relation to the unlawful sexual acts involved in an unlawful sexual relationship—

(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 jury 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; and

(c) all the members of the jury are not required to be satisfied about the same unlawful sexual acts.

(5) If the child was at least 12 years when the crime was alleged to have been committed, it is a defence to a charge of an offence against subsection (1) to prove the adult believed on reasonable grounds the child was at least the age of 16 years.

(5A) It is a defence to a charge of an offence against subsection (1A) that—

(a) the adult believed on reasonable grounds that the child was at least 18 years of age; or

(b) all of the following apply—

(i) the adult is not a person referred to in section 210A(3);

(ii) the adult was less than 3 years older than the child;

(iii) the acts or omissions that constitute the offence did not, in the circumstances, constitute sexual exploitation of the child; or

(c) the adult and the child were lawfully married.

(6) An adult can not be prosecuted for the crime without a Crown Law Officer's consent.

(6A) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for the crime.

(7) An adult may be charged in 1 indictment with—

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

(b) 1 or more other offences of a sexual nature alleged to have been committed by the adult in relation to the child in the course of the alleged unlawful sexual relationship (the ***other offence or offences***).

(8) The adult charged in 1 indictment as mentioned in subsection (7) may be convicted of and punished for any or all of the offences charged.

(9) However, if the adult is—

(a) charged in 1 indictment as mentioned in subsection (7); and

(b) sentenced to imprisonment for the maintaining offence and for the other offence or offences;

the court imposing imprisonment may not order that the sentence for the maintaining offence be served cumulatively with the sentence or sentences for the other offence or offences.

Note—

See the *Penalties and Sentences Act 1992*, section 155 (Imprisonment to be served concurrently unless otherwise ordered).

(9A) The heading of this section—

(a) is not part of this section, despite the *Acts Interpretation Act 1954*, section 14; 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 *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation 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.

(10) In this section—

offence of a sexual nature means—

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(a) for subsection (1), an offence defined in section 210 (other than section 210(1)(e) or (f)), 215, 222, 349, 350 or 352; and

(b) for subsection (1A), an offence defined in section 210A.

unlawful sexual act means an act that constitutes, or would constitute (if it were sufficiently particularised), an offence of a sexual nature.

(11) To remove any doubt, it is declared that the persons in section 210A(3) are taken, for the purpose of subsection (1A), to have a child under their care, supervision or authority.

Notes—

1 See sections 746 and 747 in relation to—

(a) the application of this section in relation to acts done before 3 July 1989; and

(b) the application of this section during the period 3 July 1989 to 30 April 2003.

2 See section 767 in relation to the application of subsection (1A).

229BB Failure to protect child from child sexual offence

(1) An accountable person commits a crime if—

(a) the person knows there is a significant risk that another adult (the ***alleged offender***) will commit a child sexual offence in relation to a child; and

(b) the alleged offender—

(i) is associated with an institution; or

(ii) is a regulated volunteer; and

(c) the child is under the care, supervision or control of an institution; and

(d) the child is either—

(i) under 16 years; or

(ii) a person with an impairment of the mind; and

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(e) the person has the power or responsibility to reduce or remove the risk; and

(f) the person wilfully or negligently fails to reduce or remove the risk.

Maximum penalty—5 years imprisonment.

(2) For subsection (1), it does not matter that the knowledge was gained by the accountable person during, or in connection with, a religious confession.

(3) For this section, an adult is ***associated*** with an institution if the adult—

(a) owns, or is involved in the management or control of, the institution; or

(b) is employed or engaged by the institution; or

(c) works as a volunteer for the institution; or

(d) engages in an activity in relation to the institution for which a working with children authority under the *Working with Children (Risk Management and Screening) Act 2000* is required; or

(e) engages in the delivery of a service to a child who is under the care, supervision or control of the institution.

(4) In this section—

accountable person means an adult who is associated with an institution, other than a regulated volunteer.

institution means an entity, other than an individual, that—

(a) provides services to children; or

(b) operates a facility for, or engages in activities with, children under the entity's care, supervision or control.

Examples of institutions—

schools, government agencies, religious organisations, hospitals, child care centres, licensed residential facilities, sporting clubs, youth organisations

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regulated volunteer means an adult who is taken to be a volunteer employed or engaged in regulated employment at a person's home, residence or household under any of the following provisions of the *Working with Children (Risk Management and Screening) Act 2000*, schedule 1—

(a) section 4(2) or (3);

(b) section 9(2);

(c) section 14(2).

229BC Failure to report belief of child sexual offence committed in relation to child

(1) This section applies to an adult if—

(a) the adult gains information that causes the adult to believe on reasonable grounds, or ought reasonably to cause the adult to believe, that a child sexual offence is being or has been committed against a child by another adult; and

(b) at the relevant time, the child is or was—

(i) under 16 years; or

(ii) a person with an impairment of the mind.

(2) If, without reasonable excuse, the adult fails to disclose the information to a police officer as soon as reasonably practicable after the belief is, or ought reasonably to have been, formed, the adult commits a misdemeanour.

Maximum penalty—3 years imprisonment.

(3) For subsection (1), it does not matter that the information was gained by the adult during, or in connection with, a religious confession.

(4) Without limiting what may be a reasonable excuse for subsection (2), an adult has a reasonable excuse if—

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(a) the adult believes on reasonable grounds that the information has already been disclosed to a police officer; or

(b) the adult has already reported the information under any of the following provisions, or believes on reasonable grounds that another person has done or will do so—

(i) the *Child Protection Act 1999*, chapter 2, part 1AA;

(ii) the *Education (General Provisions) Act 2006*, chapter 12, part 10;

(iii) the *Youth Justice Act 1992*, part 8 or 9; or

(c) the adult gains the information after the child turns 16 years (the ***alleged victim***), and the adult reasonably believes the alleged victim does not want the information to be disclosed to a police officer; or

(d) both of the following apply—

(i) the adult reasonably believes disclosing the information to a police officer would endanger the safety of the adult or another person, other than the alleged offender, regardless of whether the belief arises because of the fact of the disclosure or the information disclosed;

(ii) failure to disclose the information to a police officer is a reasonable response in the circumstances; or

(e) both of the following apply—

(i) the adult gains the information—

(A) as a relevant professional while acting in the adult's professional capacity; and

(B) in the course of a confidential professional relationship with the child in which there is an express or implied obligation of

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confidentiality between the adult and the child;

(ii) the adult reasonably believes there is no real risk of serious harm to the child or any other child in not disclosing the information to a police officer.

(5) An adult who, in good faith, discloses information mentioned in subsection (1)(a) to a police officer is not liable civilly, criminally or under an administrative process for making the disclosure.

(6) In this section—

relevant time, in relation to the child sexual offence mentioned in subsection (1)(a), means the time that the adult—

(a) believes to be the time of commission of the offence; or

(b) ought reasonably to believe to be the time of commission of the offence.

counsel, a person, means—

(a) to listen to and give verbal or other support, help or encouragement to the person, whether one-on-one or in a group; or

(b) to advise, give therapy to or treat the person, whether one-on-one or in a group.

counsellor means a person who—

(a) has undertaken training or study, or has experience, that is relevant to the process of counselling other persons; and

(b) in the course of the person's paid or voluntary employment, other than as a religious representative, counsels another person.

relevant professional means—

(a) a medical practitioner; or

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(b) a person registered under the Health Practitioner Regulation National Law to practise in the psychology profession, other than as a student; or

(c) a person registered under the Health Practitioner Regulation National Law to practise in the registered nurses division of the nursing profession, other than as a student; or

(d) a person registered under the Health Practitioner Regulation National Law to practise in the midwifery profession, other than as a student; or

(e) a person who is a member of the Australian Association of Social Workers Ltd ACN 008 576 010; or

(f) a counsellor; or

(g) a person who is of a class of persons prescribed by regulation.

religious representative means a person who—

(a) is a member of—

(i) an organised religion; or

(ii) a religious group, even if the group is not part of, or does not consider itself to be part of, an organised religion; and

(b) holds a position in the religion or group that allows the person to hold themself out as a representative of the religion or group.

Chapter 23 Nuisances—misconduct relating to corpses

230A Definitions for ch 23

In this chapter—

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conduct means conduct, promote, organise, control or operate.

occupier, of a place, means any of the following—

(a) the owner, lessee or person apparently in charge of the place;

(b) the person who has the care, management or supervision of the place or who is conducting a business at the place.

place includes land, premises and a vehicle.

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.

unlawful game means a game of chance, or mixed chance and skill, that—

(a) is not authorised under an Act; and

(b) is played by 1 or more persons (***players***) who gamble or bet on an outcome of the game for the purpose of winning money or another consideration; and

(c) has at least 1 of the following characteristics—

(i) the game is conducted or played in a public place;

(ii) the game is played in a place, or part of a place, the occupier of which allows, on payment of money or for other consideration, players to enter and use for playing the game;

(iii) a percentage of the amount gambled or bet is—

(A) kept by 1 or more of the players, or another person; and

(B) not included in the winnings of the players.

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230 Common nuisances

Any person who—

(a) without lawful justification or excuse, the proof of which lies on the person, does any act, or omits to do any act with respect to any property under the person's control, by which act or omission danger is caused to the lives, safety, or health, of the public; or

(b) without lawful justification or excuse, the proof of which lies on the person, does any act, or omits to do any act with respect to any property under the person's control, by which act or omission danger is caused to the property or comfort of the public, or the public are obstructed in the exercise or enjoyment of any right common to all the Sovereign's subjects, and by which injury is caused to the person of some person;

is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

232 Operating a place for unlawful games

(1) A person who operates a place—

(a) for the purpose of conducting an unlawful game, by the person or another person; or

(b) for the purpose of playing an unlawful game;

commits a misdemeanour.

Maximum penalty—600 penalty units or 3 years imprisonment.

(2) In this section—

operates includes owns, leases, manages, controls and maintains.

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233 Possession of thing used to play an unlawful game

(1) A person who possesses gaming equipment that has been used, or is intended to be used, for playing an unlawful game commits an offence.

Maximum penalty—200 penalty units.

(2) In this section—

gaming equipment means a machine or other device (whether electronic, electrical or mechanical), computer software, or another thing, used or suitable for use, for playing an unlawful game.

Example of another thing, used or suitable for use, for playing an unlawful game—

implements for playing two-up

234 Conducting or playing unlawful games

(1) A person who conducts an unlawful game commits an offence.

Maximum penalty—200 penalty units.

(2) A person who plays an unlawful game commits an offence.

Maximum penalty—40 penalty units.

236 Misconduct with regard to corpses

(1) A person who, without lawful justification or excuse, the proof of which lies on the person, neglects to perform any duty imposed on the person by law, or undertaken by the person, whether for reward or otherwise, touching the burial or other disposition of a human body or human remains is guilty of a misdemeanour.

Maximum penalty—2 years imprisonment.

(2) A person who, without lawful justification or excuse, the proof of which lies on the person, improperly or indecently interferes with, or offers any indignity to, any dead human

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body or human remains, whether buried or not, is guilty of a crime.

Maximum penalty—5 years imprisonment.

Chapter 24 Offences against public health

238 Contamination of goods

(1) A person who contaminates or interferes with goods, or makes it appear that goods have been contaminated or interfered with, commits a misdemeanour.

Maximum penalty—3 years imprisonment.

(2) If the person commits the offence with intent to cause—

(a) public alarm or anxiety; or

(b) members of the public who are aware of the contamination or interference or apparent contamination or interference to refrain from purchasing those goods or goods of that or any similar class; or

(c) any person to suffer economic loss through taking steps to avoid public alarm or anxiety; or

(d) members of the public to refrain from purchasing those goods or goods of that or any similar class;

the person commits a crime.

Maximum penalty—10 years imprisonment.

(3) A person who, with any intent mentioned in subsection (2), threatens that he or she or any other person will contaminate or interfere with goods or make it appear that goods have been contaminated or interfered with, commits a crime.

Maximum penalty—7 years imprisonment.

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(4) If the threat is accompanied by the making of a demand, the person commits a crime.

Maximum penalty—14 years imprisonment.

239 Hoax contamination of goods

A person who makes a statement or conveys information to another person that he or she knows or believes to be false with the intention of inducing in that person or another person a belief that goods have been contaminated or interfered with and causes—

(a) public alarm or anxiety; or

(b) that person or that other person to refrain from purchasing those goods or goods of that or any similar class; or

(c) any person to suffer economic loss through taking steps to avoid public alarm or anxiety; or

(d) members of the public to refrain from purchasing those goods or goods of that or any similar class;

commits a crime.

Maximum penalty—7 years imprisonment.

240 Dealing in contaminated goods

A person who knowingly—

(a) sells or exposes for sale as goods for human consumption, or has in the person's possession with intent to sell it as goods for human consumption, any article that the person knows to be contaminated or otherwise unfit as goods for human consumption; or

(b) takes into a slaughter house used for the slaughter of any animals intended for human consumption the whole or any part of the carcass of an animal that has died of a disease; or

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(c) sells or exposes for sale the whole or part of the carcass of an animal that has died of a disease or that was diseased when slaughtered;

commits a misdemeanour.

Maximum penalty—3 years imprisonment.

241 Definitions for ch 24

In this chapter—

contaminate includes to add, mix or put in a deleterious or poisonous substance.

goods includes beverage and food for human consumption and any substances whether natural or manufactured and whether or not incorporated in or mixed with other goods.

Chapter 25 Cruelty to animals

242 Serious animal cruelty

(1) A person who, with the intention of inflicting severe pain or suffering, unlawfully kills, or causes serious injury or prolonged suffering to, an animal commits a crime.

Maximum penalty—7 years imprisonment.

(2) An act or omission that causes the death of, or serious injury or prolonged suffering to, an animal is unlawful unless it is authorised, justified or excused by—

(a) the *Animal Care and Protection Act 2001*; or

(b) another law, other than section 458 of this Code.

(3) In this section—

serious injury means—

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(a) the loss of a distinct part or an organ of the body; or

(b) a bodily injury of such a nature that, if left untreated, would—

(i) endanger, or be likely to endanger, life; or

(ii) cause, or be likely to cause, permanent injury to health.

Part 5 Offences against the person and relating to marriage and parental rights and duties

Chapter 26 Assaults and violence to the person generally—justification and excuse

245 Definition of *assault*

(1) A person who strikes, touches, or moves, or otherwise applies force of any kind to, the person of another, either directly or indirectly, without the other person's consent, or with the other person's consent if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without the other person's consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect the person's purpose, is said to assault that other person, and the act is called an ***assault***.

(2) In this section—

applies force includes the case of applying heat, light, electrical force, gas, odour, or any other substance or thing

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whatever if applied in such a degree as to cause injury or personal discomfort.

246 Assaults unlawful

(1) An assault is unlawful and constitutes an offence unless it is authorised or justified or excused by law.

(2) The application of force by one person to the person of another may be unlawful, although it is done with the consent of that other person.

247 Execution of sentence

It is lawful for a person who is charged by law with the duty of executing or giving effect to the lawful sentence of a court to execute or give effect to that sentence.

248 Execution of process

It is lawful for a person who is charged by law with the duty of executing the lawful process of a court, and who is required to arrest or detain another person under such process, and for every person lawfully assisting a person so charged, to arrest or detain that other person according to the terms of the process.

249 Execution of warrants

It is lawful for a person who is charged by law with the duty of executing a lawful warrant issued by any court or justice or other person having jurisdiction to issue it, and who is required to arrest or detain another person under such warrant, and for every person lawfully assisting a person so charged, to arrest or detain that other person according to the directions of the warrant.

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250 Erroneous sentence or process or warrant

If the sentence was passed, or the process was issued, by a court having jurisdiction under any circumstances to pass such a sentence or to issue such process, or if the warrant was issued by a court or justice or other person having authority under any circumstances to issue such a warrant, it is immaterial whether the court or justice or person had or had not authority to pass the sentence or issue the process or warrant in the particular case; unless the person executing the same knows that the sentence or process or warrant was in fact passed or issued without authority.

251 Sentence or process or warrant without jurisdiction

A person who executes or assists in executing any sentence, process, or warrant, which purports to be passed or issued by a court, justice, or other person, and who would be justified, under the provisions of sections 247 to 250, in executing the same if it had been passed or issued by a court, justice, or person having authority to pass or issue it, is not criminally responsible for any act done in such execution, notwithstanding that the court, justice, or person, had no authority to pass the sentence or issue the process or warrant, if in such execution the person acted in good faith and in the belief that the sentence, process, or warrant, was that of a court, justice, or other person, having such authority.

252 Arrest of wrong person

(1) A person who, being duly authorised to execute a warrant to arrest one person, arrests another person, believing in good faith and on reasonable grounds that the person arrested is the person named in the warrant, is not criminally responsible for doing so to any greater extent than if the person arrested had been the person named in the warrant.

(2) Any person who lawfully assists in making such an arrest, believing that the person arrested is the person named in the warrant, or who, being required by the warrant to receive and

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detain the person named in it, receives and detains the person so arrested, is not criminally responsible for doing so to any greater extent than if the person arrested had been the person named in the warrant.

253 Irregular process or warrant

When any process or warrant is bad in law by reason of some defect in substance or in form apparent on the face of it, a person who, in good faith and believing that it is good in law, acts in the execution of the process or warrant, is not criminally responsible for anything done in such execution to any greater extent than if the process or warrant were good in law.

254 Force used in executing process or in arrest

It is lawful for a person who is engaged in the lawful execution of any sentence, process, or warrant, or in making any arrest, and for any person lawfully assisting the person, to use such force as may be reasonably necessary to overcome any force used in resisting such execution or arrest.

255 Duty of persons arresting

(1) It is the duty of a person executing any process or warrant to have it with him or her, if reasonably practicable, and to produce it if required.

(2) It is the duty of a person arresting another, whether with or without warrant, to give notice, if practicable, of the process or warrant under which the person is acting or of the cause of the arrest.

(3) A failure to fulfil either of the aforesaid duties does not of itself make the execution of the process or warrant or the arrest unlawful, but is relevant to the inquiry whether the process or warrant might not have been executed or the arrest made by reasonable means in a less forcible manner.

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257 Other cases of preventing escape from arrest

(1) When a person who is not a police officer is proceeding lawfully to arrest, without warrant, another person for an offence which is such that the offender may be arrested without warrant, and when any person is proceeding lawfully to arrest another person for any cause other than such an offence, and, in either case, the person sought to be arrested takes to flight in order to avoid arrest, it is lawful for the person seeking to arrest the other person to use such force as may be reasonably necessary to prevent the other person's escape.

(2) But this section does not authorise the use of force which is intended or is likely to cause death or grievous bodily harm.

258 Preventing escape or rescue after arrest

(1) When any person has lawfully arrested another person for any offence, it is lawful for the person to use such force as the person believes, on reasonable grounds, to be necessary to prevent the escape or rescue of the person arrested.

(2) But, if the offence is not a crime which is such that the offender may be arrested without warrant, this section does not authorise the use of force which is intended or is likely to cause death or grievous bodily harm.

(3) This section does not limit the powers a police officer has under the *Police Powers and Responsibilities Act 2000*.

260 Preventing a breach of the peace

It is lawful for any person who witnesses a breach of the peace to interfere to prevent the continuance or renewal of it, and to use such force as is reasonably necessary for such prevention and is reasonably proportioned to the danger to be apprehended from such continuance or renewal, and to detain any person who is committing or who is about to join in or to renew the breach of the peace for such time as may be

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reasonably necessary in order to give the person into the custody of a police officer.

261 Suppression of riot

It is lawful for any person to use such force as is necessary to suppress a riot, and is reasonably proportioned to the danger to be apprehended from its continuance.

262 Suppression of riot by magistrates

It is lawful for a justice to use or order to be used such force as the justice believes, on reasonable grounds, to be necessary in order to suppress a riot, and is reasonably proportioned to the danger which the justice believes, on reasonable grounds, is to be apprehended from its continuance.

263 Suppression of riot by person acting under lawful orders

(1) It is lawful for any person acting in good faith in obedience to orders, not manifestly unlawful, given by a justice for the suppression of a riot, to use such force as the person believes, on reasonable grounds, to be necessary for carrying such orders into effect.

(2) Whether any particular order so given is or is not manifestly unlawful is a question of law.

264 Suppression of riot by person acting without order in case of emergency

When any person, whether subject to military law or not, believes, on reasonable grounds, that serious mischief will arise from a riot before there is time to procure the intervention of a justice, it is lawful for the person to use such force as the person believes, on reasonable grounds, to be necessary for the suppression of the riot, and as is reasonably proportioned to the danger which the person believes, on

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reasonable grounds, is to be apprehended from its continuance.

265 Riot—persons subject to military law

(1) It is lawful for a person who is bound by military law to obey the lawful commands of the person's superior officer to obey any command given to the person by his or her superior officer in order to the suppression of a riot, unless the command is manifestly unlawful.

(2) Whether any particular command is or is not manifestly unlawful is a question of law.

266 Prevention of crimes and offences for which an offender may be arrested without warrant—prevention of violence by particular persons

It is lawful for any person to use such force as is reasonably necessary in order to prevent the commission of an offence which is such that the offender may be arrested without warrant; or in order to prevent any act from being done as to which the person believes, on reasonable grounds, that it would, if done, amount to any such offence; or in order to prevent a person whom the person believes, on reasonable grounds, to be an involuntary patient under the *Mental Health Act 2016* or a forensic disability client under the *Forensic Disability Act 2011* from doing violence to any person or property.

267 Defence of dwelling

It is lawful for a person who is in peaceable possession of a dwelling, and any person lawfully assisting him or her or acting by his or her authority, to use force to prevent or repel another person from unlawfully entering or remaining in the dwelling, if the person using the force believes on reasonable grounds—

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(a) the other person is attempting to enter or to remain in the dwelling with intent to commit an indictable offence in the dwelling; and

(b) it is necessary to use that force.

268 Provocation

(1) The term ***provocation***, used with reference to an offence of which an assault is an element, means and includes, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done to an ordinary person, or in the presence of an ordinary person to another person who is under the person's immediate care, or to whom the person stands in a conjugal, parental, filial, or fraternal, relation, or in the relation of master or servant, to deprive the person of the power of self-control, and to induce the person to assault the person by whom the act or insult is done or offered.

(2) When such an act or insult is done or offered by one person to another, or in the presence of another to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as aforesaid, the former is said to give to the latter provocation for an assault.

(3) A lawful act is not provocation to any person for an assault.

(4) An act which a person does in consequence of incitement given by another person in order to induce the person to do the act, and thereby to furnish an excuse for committing an assault, is not provocation to that other person for an assault.

(5) An arrest which is unlawful is not necessarily provocation for an assault, but it may be evidence of provocation to a person who knows of the illegality.

269 Defence of provocation

(1) A person is not criminally responsible for an assault committed upon a person who gives the person provocation for the assault, if the person is in fact deprived by the

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provocation of the power of self-control, and acts upon it on the sudden and before there is time for the person's passion to cool, and if the force used is not disproportionate to the provocation and is not intended, and is not such as is likely, to cause death or grievous bodily harm.

(2) Whether any particular act or insult is such as to be likely to deprive an ordinary person of the power of self-control and to induce the ordinary person to assault the person by whom the act or insult is done or offered, and whether, in any particular case, the person provoked was actually deprived by the provocation of the power of self-control, and whether any force used is or is not disproportionate to the provocation, are questions of fact.

270 Prevention of repetition of insult

It is lawful for any person to use such force as is reasonably necessary to prevent the repetition of an act or insult of such a nature as to be provocation to the person for an assault, if the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.

271 Self-defence against unprovoked assault

(1) When a person is unlawfully assaulted, and has not provoked the assault, it is lawful for the person to use such force to the assailant as is reasonably necessary to make effectual defence against the assault, if the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.

(2) If the nature of the assault is such as to cause reasonable apprehension of death or grievous bodily harm, and the person using force by way of defence believes, on reasonable grounds, that the person can not otherwise preserve the person defended from death or grievous bodily harm, it is lawful for the person to use any such force to the assailant as is necessary for defence, even though such force may cause death or grievous bodily harm.

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272 Self-defence against provoked assault

(1) When a person has unlawfully assaulted another or has provoked an assault from another, and that other assaults the person with such violence as to cause reasonable apprehension of death or grievous bodily harm, and to induce the person to believe, on reasonable grounds, that it is necessary for the person's preservation from death or grievous bodily harm to use force in self-defence, the person is not criminally responsible for using any such force as is reasonably necessary for such preservation, although such force may cause death or grievous bodily harm.

(2) This protection does not extend to a case in which the person using force which causes death or grievous bodily harm first begun the assault with intent to kill or to do grievous bodily harm to some person; nor to a case in which the person using force which causes death or grievous bodily harm endeavoured to kill or to do grievous bodily harm to some person before the necessity of so preserving himself or herself arose; nor, in either case, unless, before such necessity arose, the person using such force declined further conflict, and quitted it or retreated from it as far as was practicable.

273 Aiding in self-defence

In any case in which it is lawful for any person to use force of any degree for the purpose of defending himself or herself against an assault, it is lawful for any other person acting in good faith in the first person's aid to use a like degree of force for the purpose of defending the first person.

274 Defence of moveable property against trespassers

It is lawful for any person who is in peaceable possession of any moveable property, and for any person lawfully assisting him or her or acting by his or her authority, to use such force as is reasonably necessary in order to resist the taking of such property by a trespasser, or in order to retake it from a

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trespasser, provided that the person does not do grievous bodily harm to the trespasser.

275 Defence of moveable property with claim of right

When a person is in peaceable possession of any moveable property under a claim of right, it is lawful for the person, and for any person lawfully assisting him or her or acting by his or her authority, to use such force as is reasonably necessary in order to defend the person's possession of the property, even against a person who is entitled by law to possession of the property, provided that he or she does not do grievous bodily harm to such other person.

276 Defence of moveable property without claim of right

When a person who is entitled by law to the possession of moveable property attempts to take it from another person who is in possession of the property, but who neither claims right to it, nor acts by the authority of a person who claims right, and the person in possession resists him or her, it is lawful for the person so entitled to possession to use the force that is reasonably necessary in order to obtain possession of the property, provided that he or she does not do grievous bodily harm to the person in possession.

277 Defence of premises against trespassers—removal of disorderly persons

(1) It is lawful for a person who is in peaceable possession of any land, structure, vessel, or place, or who is entitled to the control or management of any land, structure, vessel, or place, and for any person lawfully assisting him or her or acting by his or her authority, to use such force as is reasonably necessary in order to prevent any person from wrongfully entering upon such land, structure, vessel, or place, or in order to remove therefrom a person who wrongfully remains

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therein, provided that he or she does not do grievous bodily harm to such person.

(2) It is lawful for a person who is in peaceable possession of any land, structure, vessel, or place, or who is entitled to the control or management of any land, structure, vessel, or place, and for any person acting by his or her authority, to use the force that is reasonably necessary in order to remove therefrom any person who conducts himself or herself in a disorderly manner therein, provided that he or she does not do the person grievous bodily harm.

(3) In this section—

place includes any part of an enclosure or structure, whether separated from the rest of the enclosure or structure by a partition, fence, rope, or any other means, or not.

278 Defence of possession of real property or vessel with claim of right

When a person is in peaceable possession of any land, structure, or vessel, with a claim of right, it is lawful for the person, and for any person lawfully assisting him or her or acting by his or her authority, to use such force as is reasonably necessary in order to defend the person's possession, even against a person who is entitled by law to the possession of the property, provided that he or she does not do grievous bodily harm to such person.

279 Exercise of right of way or easement

When a person who is lawfully entitled to enter upon land for the exercise of a right of way or other easement or profit enters upon the land for the purpose of exercising such right of way, easement, or profit, after notice that right to use such way or easement or to take such profit is disputed by the person in possession of the land, or having entered persists in entry after such notice, it is lawful for the person in possession, and for any person lawfully assisting him or her or

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acting by his or her authority, to use such force as is reasonably necessary for the purpose of making the person so entering desist from the entry, provided that he or she does not do the person entering grievous bodily harm.

280 Domestic discipline

It is lawful for a parent or a person in the place of a parent, or for a schoolteacher or master, to use, by way of correction, discipline, management or control, towards a child or pupil, under the person's care such force as is reasonable under the circumstances.

281 Discipline of vehicle

It is lawful for a person in charge of a vehicle on a journey and for any person acting by his or her authority to use, for the purpose of maintaining good order and discipline on board the vehicle, such force as the person or such person acting by his or her authority believes, on reasonable grounds, to be necessary, and as is reasonable under the circumstances.

282 Surgical operations and medical treatment

(1) A person is not criminally responsible for performing or providing, in good faith and with reasonable care and skill, a surgical operation on or medical treatment of a person or unborn child if performing the operation or providing the treatment is reasonable, having regard to all the circumstances of the case.

(1A) A person is not criminally responsible for performing or providing, in good faith and with reasonable care and skill, a surgical operation on or medical treatment of a person or unborn child in an emergency if it is necessary to perform the operation or provide the treatment to save the mother's life or the life of another unborn child.

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(2) If the administration by a health professional of a substance to a patient would be lawful under this section, the health professional may lawfully direct or advise another person, whether the patient or another person, to administer the substance to the patient or procure or supply the substance for that purpose.

(3) It is lawful for a person acting under the lawful direction or advice, or in the reasonable belief that the advice or direction was lawful, to administer the substance, or supply or procure the substance, in accordance with the direction or advice.

(4) In this section—

health professional see the *Hospital and Health Boards Act 2011*, schedule 2.

medical treatment, for subsection (1), does not include medical treatment provided by an unqualified person that is intended to adversely affect an unborn child.

patient means the person or unborn child on whom the surgical operation is performed or of whom the medical treatment is provided.

surgical operation, for subsection (1), does not include a surgical operation performed by an unqualified person that is intended to adversely affect an unborn child.

unqualified person see section 319A(3).

282A Palliative care

(1) A person is not criminally responsible for providing palliative care to another person if—

(a) the person provides the palliative care in good faith and with reasonable care and skill; and

(b) the provision of the palliative care is reasonable, having regard to the other person's state at the time and all the circumstances of the case; and

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(c) the person is a doctor or, if the person is not a doctor, the palliative care is ordered by a doctor who confirms the order in writing.

(2) Subsection (1) applies even if an incidental effect of providing the palliative care is to hasten the other person's death.

(3) However, nothing in this section authorises, justifies or excuses—

(a) an act done or omission made with intent to kill another person; or

(b) aiding another person to kill himself or herself.

(4) To remove any doubt, it is declared that the provision of the palliative care is reasonable only if it is reasonable in the context of good medical practice.

(5) In this section—

good medical practice means good medical practice for the medical profession in Australia having regard to—

(a) the recognised medical standards, practices and procedures of the medical profession in Australia; and

(b) the recognised ethical standards of the medical profession in Australia.

palliative care means care, whether by doing an act or making an omission, directed at maintaining or improving the comfort of a person who is, or would otherwise be, subject to pain and suffering.

283 Excessive force

In any case in which the use of force by one person to another is lawful the use of more force than is justified by law under the circumstances is unlawful.

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284 Consent to death immaterial

Consent by a person to the causing of the person's own death does not affect the criminal responsibility of any person by whom such death is caused.

Chapter 27 Duties relating to the preservation of human life

285 Duty to provide necessaries

It is the duty of every person having charge of another who is unable by reason of age, sickness, unsoundness of mind, detention, or any other cause, to withdraw himself or herself from such charge, and who is unable to provide himself or herself with the necessaries of life, whether the charge is undertaken under a contract, or is imposed by law, or arises by reason of any act, whether lawful or unlawful, of the person who has such charge, to provide for that other person the necessaries of life; and the person is held to have caused any consequences which result to the life or health of the other person by reason of any omission to perform that duty.

286 Duty of person who has care of child

(1) It is the duty of every person who has care of a child under 16 years to—

(a) provide the necessaries of life for the child; and

(b) take the precautions that are reasonable in all the circumstances to avoid danger to the child's life, health or safety; and

(c) take the action that is reasonable in all the circumstances to remove the child from any such danger;

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and he or she is held to have caused any consequences that result to the life and health of the child because of any omission to perform that duty, whether the child is helpless or not.

(2) In this section—

person who has care of a child includes a parent, foster parent, step parent, guardian or other adult in charge of the child, whether or not the person has lawful custody of the child.

288 Duty of persons doing dangerous acts

It is the duty of every person who, except in a case of necessity, undertakes to administer surgical or medical treatment to any other person, or to do any other lawful act which is or may be dangerous to human life or health, to have reasonable skill and to use reasonable care in doing such act, and the person is held to have caused any consequences which result to the life or health of any person by reason of any omission to observe or perform that duty.

289 Duty of persons in charge of dangerous things

It is the duty of every person who has in the person's charge or under the person's control anything, whether living or inanimate, and whether moving or stationary, of such a nature that, in the absence of care or precaution in its use or management, the life, safety, or health, of any person may be endangered, to use reasonable care and take reasonable precautions to avoid such danger, and the person is held to have caused any consequences which result to the life or health of any person by reason of any omission to perform that duty.

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290 Duty to do certain acts

When a person undertakes to do any act the omission to do which is or may be dangerous to human life or health, it is the person's duty to do that act: and the person is held to have caused any consequences which result to the life or health of any person by reason of any omission to perform that duty.

Chapter 28 Homicide—suicide— concealment of birth

291 Killing of a human being unlawful

It is unlawful to kill any person unless such killing is authorised or justified or excused by law.

292 When a child becomes a human being

A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not.

293 Definition of *killing*

Except as hereinafter set forth, any person who causes the death of another, directly or indirectly, by any means whatever, is deemed to have killed that other person.

294 Death by acts done at childbirth

When a child dies in consequence of an act done or omitted to be done by any person before or during its birth, the person

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who did or omitted to do such act is deemed to have killed the child.

295 Causing death by threats

A person who, by threats or intimidation of any kind, or by deceit, causes another person to do an act or make an omission which results in the death of that other person, is deemed to have killed the other person.

296 Acceleration of death

A person who does any act or makes any omission which hastens the death of another person who, when the act is done or the omission is made, is labouring under some disorder or disease arising from another cause, is deemed to have killed that other person.

297 When injury or death might be prevented by proper precaution

When a person causes a bodily injury to another from which death results, it is immaterial that the injury might have been avoided by proper precaution on the part of the person injured, or that the injured person's death from that injury might have been prevented by proper care or treatment.

298 Injuries causing death in consequence of subsequent treatment

When a person does grievous bodily harm to another, and such other person has recourse to surgical or medical treatment, and death results either from the injury or the treatment, the person is deemed to have killed that other person, although the immediate cause of death was the surgical or medical treatment, provided that the treatment was reasonably proper under the circumstances, and was applied in good faith.

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300 Unlawful homicide

Any person who unlawfully kills another is guilty of a crime, which is called murder or manslaughter, according to the circumstances of the case.

302 Definition of *murder*

(1) Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances, that is to say—

(a) if the offender intends to cause the death of the person killed or that of some other person or if the offender intends to do to the person killed or to some other person some grievous bodily harm;

(aa) if death is caused by an act done, or omission made, with reckless indifference to human life;

(b) if death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life;

(c) if the offender intends to do grievous bodily harm to some person for the purpose of facilitating the commission of a crime which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such crime;

(d) if death is caused by administering any stupefying or overpowering thing for either of the purposes mentioned in paragraph (c);

(e) if death is caused by wilfully stopping the breath of any person for either of such purposes;

is guilty of ***murder***.

(2) Under subsection (1)(a) it is immaterial that the offender did not intend to hurt the particular person who is killed.

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(3) Under subsection (1)(b) it is immaterial that the offender did not intend to hurt any person.

(4) Under subsection (1)(c) to (e) it is immaterial that the offender did not intend to cause death or did not know that death was likely to result.

(5) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

303 Definition of *manslaughter*

(1) A person who unlawfully kills another under such circumstances as not to constitute murder is guilty of ***manslaughter***.

(2) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

304 Killing on provocation

(1) When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation, and before there is time for the person's passion to cool, the person is guilty of manslaughter only.

(2) Subsection (1) does not apply if the sudden provocation is based on words alone, other than in circumstances of an exceptional character.

(3) Also, subsection (1) does not apply, other than in circumstances of an exceptional character, if—

(a) a domestic relationship exists between 2 persons; and

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(b) one person unlawfully kills the other person (the ***deceased***); and

(c) the sudden provocation is based on anything done by the deceased or anything the person believes the deceased has done—

(i) to end the relationship; or

(ii) to change the nature of the relationship; or

(iii) to indicate in any way that the relationship may, should or will end, or that there may, should or will be a change to the nature of the relationship.

(4) Further, subsection (1) does not apply, other than in circumstances of an exceptional character, if the sudden provocation is based on an unwanted sexual advance to the person.

(5) For subsection (3)(a), despite the *Domestic and Family Violence Protection Act 2012*, section 18(6), a domestic relationship includes a relationship in which 2 persons date or dated each other on a number of occasions.

(6) Subsection (3)(c)(i) applies even if the relationship has ended before the sudden provocation and killing happens.

(7) For proof of circumstances of an exceptional character mentioned in subsection (2) or (3) regard may be had to any history of violence that is relevant in all the circumstances.

(8) For proof of circumstances of an exceptional character mentioned in subsection (4), regard may be had to any history of violence, or of sexual conduct, between the person and the person who is unlawfully killed that is relevant in all the circumstances.

(9) On a charge of murder, it is for the defence to prove that the person charged is, under this section, liable to be convicted of manslaughter only.

(10) When 2 or more persons unlawfully kill another, the fact that 1 of the persons is, under this section, guilty of manslaughter

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only does not affect the question whether the unlawful killing amounted to murder in the case of the other person or persons.

(11) In this section—

unwanted sexual advance, to a person, means a sexual advance that—

(a) is unwanted by the person; and

(b) if the sexual advance involves touching the person—involves only minor touching.

Examples of what may be minor touching depending on all the relevant circumstances—

patting, pinching, grabbing or brushing against the person, even if the touching is an offence against section 352(1)(a) or another provision of this Code or another Act

304A Diminished responsibility

(1) When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, is at the time of doing the act or making the omission which causes death in such a state of abnormality of mind (whether arising from a condition of arrested or retarded development of mind or inherent causes or induced by disease or injury) as substantially to impair the person's capacity to understand what the person is doing, or the person's capacity to control the person's actions, or the person's capacity to know that the person ought not to do the act or make the omission, the person is guilty of manslaughter only.

(2) On a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section liable to be convicted of manslaughter only.

(3) When 2 or more persons unlawfully kill another, the fact that 1 of such persons is by virtue of this section guilty of manslaughter only shall not affect the question whether the unlawful killing amounted to murder in the case of any other such person or persons.

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304B Killing for preservation in an abusive domestic relationship

(1) A person who unlawfully kills another (the ***deceased***) under circumstances that, but for the provisions of this section, would constitute murder, is guilty of manslaughter only, if—

(a) the deceased has committed acts of serious domestic violence against the person in the course of an abusive domestic relationship; and

(b) the person believes that it is necessary for the person's preservation from death or grievous bodily harm to do the act or make the omission that causes the death; and

(c) the person has reasonable grounds for the belief having regard to the abusive domestic relationship and all the circumstances of the case.

(2) An ***abusive domestic relationship*** is a domestic relationship existing between 2 persons in which there is a history of acts of serious domestic violence committed by either person against the other.

(3) A history of acts of serious domestic violence may include acts that appear minor or trivial when considered in isolation.

(4) Subsection (1) may apply even if the act or omission causing the death (the ***response***) was done or made in response to a particular act of domestic violence committed by the deceased that would not, if the history of acts of serious domestic violence were disregarded, warrant the response.

(5) Subsection (1)(a) may apply even if the person has sometimes committed acts of domestic violence in the relationship.

(6) For subsection (1)(c), without limiting the circumstances to which regard may be had for the purposes of the subsection, those circumstances include acts of the deceased that were not acts of domestic violence.

(7) In this section—

domestic violence see the *Domestic and Family Violence Protection Act 2012*, section 8.

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305 Punishment of murder

(1) Any person who commits the crime of murder is liable to imprisonment for life, which can not be mitigated or varied under this Code or any other law or is liable to an indefinite sentence under part 10 of the *Penalties and Sentences Act 1992*.

(2) If the person is being sentenced—

(a) on more than 1 conviction of murder; or

(b) on 1 conviction of murder and another offence of murder is taken into account; or

(c) on a conviction of murder and the person has on a previous occasion been sentenced for another offence of murder;

the court sentencing the person must make an order that the person must not be released from imprisonment until the person has served a minimum of 30 or more specified years of imprisonment, unless released sooner under exceptional circumstances parole under the *Corrective Services Act 2006*.

(3) Subsection (2)(c) applies whether the crime for which the person is being sentenced was committed before or after the conviction for the other offence of murder mentioned in the paragraph.

(4) If—

(a) the person killed was a police officer at the time the act or omission that caused the person's death was done or made; and

(b) the person being sentenced did the act or made the omission that caused the police officer's death—

(i) when—

(A) the police officer was performing the officer's duty; and

(B) the person knew or ought reasonably to have known that he or she was a police officer; or

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(ii) because the police officer was a police officer; or

(iii) because of, or in retaliation for, the actions of the police officer or another police officer in the performance of the officer's duty;

the court sentencing the person must make an order that the person must not be released from imprisonment until the person has served a minimum of 25 or more specified years of imprisonment, unless released sooner under exceptional circumstances parole under the *Corrective Services Act 2006*.

(5) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for the crime of murder.

306 Attempt to murder

(1) Any person who—

(a) attempts unlawfully to kill another; or

(b) with intent unlawfully to kill another does any act, or omits to do any act which it is the person's duty to do, such act or omission being of such a nature as to be likely to endanger human life;

is guilty of a crime, and is liable to imprisonment for life.

(2) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

307 Accessory after the fact to murder

(1) Any person who becomes an accessory after the fact to murder is guilty of a crime, and is liable to imprisonment for life.

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(2) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

308 Threats to murder in document

(1) Any person who, knowing the contents thereof, directly or indirectly causes any person to receive any document threatening to kill any person, is guilty of a crime, and is liable to imprisonment for 7 years.

(2) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

309 Conspiring to murder

(1) Any person who conspires with any other person to kill any person, whether such person is in Queensland or elsewhere, is guilty of a crime, and is liable to imprisonment for 14 years.

(2) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

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310 Punishment of manslaughter

(1) Any person who commits the crime of manslaughter is liable to imprisonment for life.

(2) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for the crime of manslaughter.

311 Aiding suicide

Any person who—

(a) procures another to kill himself or herself; or

(b) counsels another to kill himself or herself and thereby induces the other person to do so; or

(c) aids another in killing himself or herself;

is guilty of a crime, and is liable to imprisonment for life.

313 Killing unborn child

(1) Any person who, when another person is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had then died, the person would be deemed to have unlawfully killed the child, is guilty of a crime, and is liable to imprisonment for life.

(1A) A person does not commit an offence against subsection (1) by performing a termination, or assisting in the performance of a termination, under the *Termination of Pregnancy Act 2018*.

Note—

See also the *Termination of Pregnancy Act 2018*, section 10 in relation to a person's criminal liability for a termination on themself.

(2) Any person who unlawfully assaults another person who is pregnant with a child and destroys the life of, or does grievous bodily harm to, or transmits a serious disease to, the child before its birth, commits a crime.

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Maximum penalty—imprisonment for life.

314 Concealing the birth of children

Any person who, when a woman is delivered of a child, endeavours, by any secret disposition of the dead body of the child, to conceal the birth, whether the child died before, at, or after, its birth, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

Chapter 28A Unlawful striking causing death

314A Unlawful striking causing death

(1) A person who unlawfully strikes another person to the head or neck and causes the death of the other person is guilty of a crime.

Maximum penalty—life imprisonment.

(1A) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(1B) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(2) Sections 23(1)(b) and 270 do not apply to an offence against subsection (1).

(3) An assault is not an element of an offence against subsection (1).

(3A) For subsection (1), the striking of another person is unlawful unless it is authorised or justified or excused by law.

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(4) A person is not criminally responsible for an offence against subsection (1) if the act of striking the other person is—

(a) done as part of a socially acceptable function or activity; and

(b) reasonable in the circumstances.

(5) If a court sentences a person to a term of imprisonment for an offence mentioned in subsection (1), the court must make an order that the person must not be released from imprisonment until the person has served the lesser of—

(a) 80% of the person's term of imprisonment for the offence; or

(b) 15 years.

(6) Subsection (5) does not apply if the court sentences the person to—

(a) a term of imprisonment for life; or

Note—

See the *Corrective Services Act 2006*, section 181 for the parole eligibility date for a prisoner serving a term of imprisonment for life for an offence mentioned in subsection (1).

(b) an indefinite sentence under the *Penalties and Sentences Act 1992*; or

Note—

See the *Penalties and Sentences Act 1992*, section 171 for the time of the earliest review of an indefinite sentence being served by a prisoner serving an indefinite sentence for an offence mentioned in subsection (1).

(c) a term of imprisonment and makes either of the following orders under the *Penalties and Sentences Act 1992* for the person—

(i) an intensive correction order;

(ii) an order that the whole or a part of the term of imprisonment be suspended.

(7) In this section—

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causing means causing directly or indirectly.

function or activity includes a sporting event.

strike, a person, means directly apply force to the person by punching or kicking, or by otherwise hitting using any part of the body, with or without the use of a dangerous or offensive weapon or instrument.

Chapter 29 Offences endangering life or health

315 Disabling in order to commit indictable offence

Any person who, by any means calculated to choke, suffocate, or strangle, and with intent to commit or to facilitate the commission of an indictable offence, or to facilitate the flight of an offender after the commission or attempted commission of an indictable offence, renders or attempts to render any person incapable of resistance, is guilty of a crime, and is liable to imprisonment for life.

315A Choking, suffocation or strangulation in a domestic setting

(1) A person commits a crime if—

(a) the person unlawfully chokes, suffocates or strangles another person, without the other person's consent; and

(b) either—

(i) the person is in a domestic relationship with the other person; or

(ii) the choking, suffocation or strangulation is associated domestic violence under the *Domestic and Family Violence Protection Act 2012*.

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Maximum penalty—7 years imprisonment.

(1A) For subsection (1) and without limiting the subsection, a person is taken to choke, suffocate or strangle another person if the person applies pressure to the other person's neck that completely or partially restricts the other person's respiration or blood circulation, or both.

(2) An assault is not an element of an offence against subsection (1).

316 Stupefying in order to commit indictable offence

Any person who, with intent to commit or to facilitate the commission of an indictable offence, or to facilitate the flight of an offender after the commission or attempted commission of an indictable offence, administers, or attempts to administer, any stupefying or overpowering drug or thing to any person, is guilty of a crime, and is liable to imprisonment for life.

316A Unlawful drink spiking

(1) A person who administers, or attempts to administer, in drink a substance to another person (the ***other person***) without the other person having knowledge of the substance with intent to cause the other person to be stupefied or overpowered is guilty of a crime and is liable to imprisonment for 5 years.

(2) If the substance is alcohol, for section 24 only, the circumstances in which the other person is taken to have knowledge of the alcohol include where the other person would not object to the administration of the alcohol if the other person had actual knowledge of it.

(3) The following matters are immaterial—

(a) whether the lack of knowledge of the substance is lack of knowledge of the presence at all of the substance or of the particular quantity of the substance;

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(b) whether the substance is capable of having the effect intended;

(c) whether a particular person is intended to be the person to whom the substance is administered or attempted to be administered.

(4) A reference to causing the other person to be stupefied or overpowered is—

(a) a reference to causing the other person to be stupefied or overpowered in circumstances where the other person is not intending to be stupefied or overpowered at all; or

(b) a reference to causing the other person to be further stupefied or overpowered in circumstances where the other person is not intending to be further stupefied or overpowered at all or to the extent intended by the person who administers, or attempts to administer, the substance.

(5) This section does not apply to an act lawfully done in the course of the practice of a health professional, the carrying out of a function under an Act or the performance of the responsibilities of a parent or carer.

(6) In relation to an attempt to administer a substance, for this section and section 4, attempt includes adding a substance to drink in preparation for the administration of the substance.

(7) In this section—

adding a substance, to drink, includes, without limiting section 7, the following—

(a) cause to be added to drink;

(b) substitute drink with other drink containing the substance;

(c) take any step to provide drink containing the substance instead of other drink.

circumstances, where the other person is not intending to be stupefied or overpowered, includes any circumstance of

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timing, place, condition, or way of stupefaction or overpowering.

dangerous drug see the *Drugs Misuse Act 1986*, section 4.

drink includes water, beverage, or other liquid, intended or prepared for human consumption.

health professional see the *Hospital and Health Boards Act 2011*, schedule 2.

stupefied or overpowered includes—

(a) a state of intoxication caused by alcohol, a drug or another substance; and

(b) behavioural change caused by a dangerous drug, whether or not the mind is otherwise affected.

317 Acts intended to cause grievous bodily harm and other malicious acts

(1) Any person who, with intent—

(a) to maim, disfigure or disable, any person; or

(b) to do some grievous bodily harm or transmit a serious disease to any person; or

(c) to resist or prevent the lawful arrest or detention of any person; or

(d) to resist or prevent a public officer from acting in accordance with lawful authority—

either—

(e) in any way unlawfully wounds, does grievous bodily harm, or transmits a serious disease to, any person; or

(f) unlawfully strikes, or attempts in any way to strike, any person with any kind of projectile or anything else capable of achieving the intention; or

(g) unlawfully causes any explosive substance to explode; or

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(h) sends or delivers any explosive substance or other dangerous or noxious thing to any person; or

(i) causes any such substance or thing to be taken or received by any person; or

(j) puts any corrosive fluid or any destructive or explosive substance in any place; or

(k) unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applies any such fluid or substance to the person of any person;

is guilty of a crime, and is liable to imprisonment for life.

(2) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

317A Carrying or sending dangerous goods in a vehicle

(1) Any person who—

(a) carries or places dangerous goods in or on a vehicle; or

(b) delivers dangerous goods to another person for the purpose of such goods being placed in or on a vehicle; or

(c) has dangerous goods in his or her possession in or on a vehicle;

is guilty of a crime and is liable to imprisonment for 14 years.

(2) A person who knowingly sends by a vehicle any dangerous goods under a false description of the goods or with a false description of the sender of the goods commits a misdemeanour.

Maximum penalty—3 years imprisonment.

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(2A) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(2B) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(3) It is a defence to a charge of any offence defined in subsection (1) to prove that the act was done by authority or permission of or under a law of the Commonwealth or of the State.

(4) For the purposes of this section—

dangerous goods means—

(a) firearms, ammunition, weapons and explosive substances; and

(b) an explosive or noxious substance, acid or other thing of a dangerous or destructive nature that because of its nature or condition may endanger the safety of a vehicle, a person in, on or in the vicinity of the vehicle.

318 Obstructing rescue or escape from unsafe premises

(1) Any person who unlawfully obstructs anyone in the other person's efforts to save the life of someone who is in, or escaping from, dangerous, destroyed or other unsafe premises commits a crime.

Maximum penalty—imprisonment for life.

(2) In this section—

obstruct includes hinder and attempt to obstruct.

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319 Endangering the safety of a person in a vehicle with intent

(1) A person who does anything that endangers, or is likely to endanger, the safe use of a vehicle, with intent to injure or endanger the safety of any person in the vehicle, whether a particular person or not, commits a crime.

Maximum penalty—life imprisonment.

(2) In this section—

do anything, for a person who has a duty to do the thing, includes omit to do the thing.

in includes on.

319A Termination of pregnancy performed by unqualified person

(1) An unqualified person who performs a termination on another person commits a crime.

Maximum penalty—7 years imprisonment.

(2) An unqualified person who assists in the performance of a termination on another person commits a crime.

Maximum penalty—7 years imprisonment.

Note—

The *Termination of Pregnancy Act 2018*, section 10 provides that a person who consents to, assists in, or performs a termination on themself does not commit an offence.

(3) In this section—

assisting, in the performance of a termination on a person—

(a) includes—

(i) dispensing a termination drug for use in the termination; and

(ii) supplying a termination drug for use in the termination; and

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(iii) procuring the supply of a termination drug from an unqualified person for use in the termination; and

(iv) administering a termination drug; but

(b) does not include providing care to the person before or after the termination is performed.

medical termination means a termination caused by use of a termination drug.

perform includes attempt to perform.

prescribed health profession means any of the following health professions under the Health Practitioner Regulation National Law—

(a) Aboriginal and Torres Strait Islander health practice;

(b) medical;

(c) midwifery;

(d) nursing;

(e) pharmacy;

(f) another health profession prescribed under the *Termination of Pregnancy Act 2018*, schedule 1, definition *prescribed health profession*, paragraph (f).

prescribed practitioner means a person registered under the Health Practitioner Regulation National Law to practise in a prescribed health profession, other than as a student.

prescribed student means a person—

(a) whose name is entered in a student register, for a prescribed health profession, as being currently registered under the Health Practitioner Regulation National Law; and

(b) who assists in the performance of a termination on a person only—

(i) under the supervision of—

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(A) a medical practitioner performing the termination; or

(B) for a medical termination—a registered health practitioner, to whom the *Termination of Pregnancy Act 2018*, section 6A applies, performing the termination; or

(C) a prescribed practitioner lawfully assisting in the performance of the termination; or

(D) the student's primary clinical supervisor; and

(ii) to the extent necessary to complete the student's program of study for, or clinical training in, the student's health profession.

primary clinical supervisor, of a prescribed student, means a prescribed practitioner who has primary responsibility for supervising the clinical work performed by the student for the student's program of study for, or clinical training in, the student's health profession.

student register, for a health profession, see the Health Practitioner Regulation National Law.

termination means an intentional termination of a pregnancy in any way, including, for example, by—

(a) administering a drug; or

(b) using an instrument or other thing.

termination drug means a drug of a kind used to cause a termination.

unqualified person means—

(a) in relation to the performance of a termination—a person who is not—

(i) a medical practitioner; or

(ii) for a medical termination—a registered health practitioner to whom the *Termination of Pregnancy Act 2018*, section 6A applies; or

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(b) in relation to assisting in the performance of a termination on another person—a person who is not—

(i) a medical practitioner; or

(ii) for a medical termination—a registered health practitioner to whom the *Termination of Pregnancy Act 2018*, section 6A applies; or

(iii) a prescribed practitioner providing the assistance in the practice of the practitioner's prescribed health profession; or

(iv) a prescribed student.

320 Grievous bodily harm

(1) Any person who unlawfully does grievous bodily harm to another is guilty of a crime, and is liable to imprisonment for 14 years.

(3A) The *Penalties and Sentences Act 1992*, sections 108B and 161Q state a circumstance of aggravation for an offence against this section.

(4) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

320A Torture

(1) A person who tortures another person commits a crime.

Maximum penalty—14 years imprisonment.

(1A) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(1B) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and*

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Sentences Act 1992, section 161Q may not be presented without the consent of a Crown Law Officer.

(2) In this section—

pain or suffering includes physical, mental, psychological or emotional pain or suffering, whether temporary or permanent.

torture means the intentional infliction of severe pain or suffering on a person by an act or series of acts done on 1 or more than 1 occasion.

321 Attempting to injure by explosive or noxious substances

(1) Any person who unlawfully, and with intent to do any bodily harm to another, puts any explosive or noxious substance in any place whatever, is guilty of a crime, and is liable to imprisonment for 14 years.

(2) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

321A Bomb hoaxes

(1) Any person who—

(a) places an article or substance in any place; or

(b) sends an article or substance in any way;

with the intention of inducing in another person a belief that the article or substance is likely to explode, ignite, or discharge a dangerous or noxious substance, commits a crime.

Maximum penalty—7 years imprisonment.

(2) Any person who, in Queensland or elsewhere, makes a statement or conveys information to another person that he or

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she knows or believes to be false, with the intention of inducing in that person or another person a belief that an explosive or noxious substance, acid or other thing of a dangerous or destructive nature is present in a place in Queensland, commits a crime.

Maximum penalty—5 years imprisonment.

(3) Subsections (1) and (2) apply whether or not the accused had any particular person in mind as the person in whom he or she intended to induce the belief mentioned in the subsections.

322 Administering poison with intent to harm

A person who unlawfully, and with intent to injure or annoy another person, causes a poison or another noxious thing to be administered to, or taken by, any person commits a crime.

Maximum penalty—

(a) if the poison or other noxious thing endangers the life of, or does grievous bodily harm to, the person to whom it is administered or by whom it is taken—14 years imprisonment; or

(b) otherwise—7 years imprisonment.

323 Wounding

(1) A person who unlawfully wounds anyone else commits a misdemeanour.

Maximum penalty—7 years imprisonment.

(2) The offender may be arrested without warrant.

(3) The *Penalties and Sentences Act 1992*, section 108B states a circumstance of aggravation for an offence against this section.

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323A Female genital mutilation

(1) Any person who performs female genital mutilation on another person is guilty of a crime.

Maximum penalty—14 years imprisonment.

(2) It is not a defence that the other person, or, if the other person is a child, a parent or guardian of the other person, consented to the mutilation.

(3) In this section—

female genital mutilation means—

(a) clitoridectomy; or

(b) excision of any other part of the female genitalia; or

(c) a procedure to narrow or close the vaginal opening; or

(d) any other mutilation of the female genitalia;

but does not include—

(e) a sexual reassignment procedure; or

(f) a medical procedure for a genuine therapeutic purpose.

medical procedure for a genuine therapeutic purpose means a medical procedure that is—

(a) directed only at curing or alleviating a physiological disability, physical abnormality, psychological disorder or pathological condition; or

(b) performed on a person in labour or who has just given birth and directed only at alleviating physical symptoms in relation to the labour or birth or for other medical purposes; or

(c) performed on a person who has been subjected to female genital mutilation and directed only at treating the effects, or to reversing the effects, of the previous mutilation.

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sexual reassignment procedure means a surgical procedure to give a person the genital appearance of a particular sex, whether male or female.

323B Removal of child from State for female genital mutilation

(1) Any person who takes a child from the State, or arranges for a child to be taken from the State, with the intention of having female genital mutilation performed on the child is guilty of a crime.

Maximum penalty—14 years imprisonment.

(2) In the absence of proof to the contrary, it is to be presumed that a person took a child, or arranged for a child to be taken, from the State with the intention of having female genital mutilation performed on the child if it is proved—

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

(b) female genital mutilation was performed on the child while outside the State.

(3) In this section—

child means a person under 18 years.

female genital mutilation see section 323A.

324 Failure to supply necessaries

Any person who, being charged with the duty of providing for another the necessaries of life, without lawful excuse fails to do so, whereby the life of that other person is or is likely to be endangered or the other person's health is or is likely to be permanently injured, is guilty of a crime.

Maximum penalty—7 years imprisonment.

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326 Endangering life of children by exposure

Any person who unlawfully abandons or exposes a child under the age of 7 years, whereby the life of such child is or is likely to be endangered, or the child's health is or is likely to be permanently injured, commits a crime.

Maximum penalty—7 years imprisonment.

327 Setting mantraps

(1) Any person who sets or places any spring gun, mantrap, or other engine calculated to destroy human life or to inflict grievous bodily harm, or causes any such thing to be set or placed, in any place with the intent that it may kill or inflict grievous bodily harm upon a trespasser or other person coming in contact with it, or sets or places any such thing in any such place and in any such manner that it is likely to cause any such result, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

(2) Any person who knowingly permits any such spring gun, mantrap, or other engine, which has been set or placed by another person in any such place and in any such manner that it is likely to cause any such result, to continue so set or placed in any place which is then in, or afterwards comes into, the person's possession or occupation, is deemed to have set and placed the gun, trap, or engine, with the intent aforesaid.

(3) This section does not make it unlawful to set any gin or trap such as is usually set for the purpose of destroying vermin; or to set any spring gun, mantrap, or engine, at night in a dwelling house for the protection of the dwelling house.

328 Negligent acts causing harm

(1) Any person who unlawfully does any act, or omits to do any act which it is the person's duty to do, by which act or omission bodily harm is actually caused to any person, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

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(2) The offender may be arrested without warrant.

328A Dangerous operation of a vehicle

(1) A person who operates, or in any way interferes with the operation of, a vehicle dangerously in any place commits a misdemeanour.

Maximum penalty—200 penalty units or 3 years imprisonment.

(1A) If the offender publishes material on a social media platform or an online social network to—

(a) advertise the offender's involvement in the offence; or

(b) advertise the act or omission constituting the offence;

the offender commits a crime.

Maximum penalty—400 penalty units or 5 years imprisonment.

(2) If the offender—

(a) at the time of committing the offence is adversely affected by an intoxicating substance; or

(b) at the time of committing the offence is excessively speeding or taking part in an unlawful race or unlawful speed trial; or

(c) has been previously convicted either upon indictment or summarily of an offence against this section;

the person commits a crime.

Maximum penalty—400 penalty units or 5 years imprisonment.

(3) If the offender has been—

(a) previously convicted either upon indictment or summarily of an offence against this section committed while the offender was adversely affected by an intoxicating substance; or

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(b) twice previously convicted either upon indictment or summarily (or once upon indictment and once summarily) of the same prescribed offence or different prescribed offences;

the court or justices shall, upon conviction, impose as the whole or part of the punishment, imprisonment.

(4) A person who operates, or in any way interferes with the operation of, a vehicle dangerously in any place and causes the death of or grievous bodily harm to another person commits a crime and is liable on conviction on indictment—

(a) to imprisonment for 14 years, if none of paragraphs (b) to (d) applies; or

(b) to imprisonment for 20 years if, at the time of committing the offence, the offender is—

(i) adversely affected by an intoxicating substance; or

(ii) excessively speeding; or

(iii) taking part in an unlawful race or unlawful speed trial; or

(c) to imprisonment for 20 years, if the offender knows, or ought reasonably know, the other person has been killed or injured, and the offender leaves the scene of the incident, other than to obtain medical or other help for the other person, before a police officer arrives; or

(d) to imprisonment for 20 years if, before or while committing the offence, the offender commits an offence against the *Police Powers and Responsibilities Act 2000*, section 754(2).

(5) The offender may be arrested without warrant.

(6) In this section—

advertise means attract the notice and attention of the public or a limited section of the public.

excessively speeding means driving or operating a vehicle at a speed more than 40km/h over the speed limit applying to the

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driver under the *Transport Operations (Road Use Management) Act 1995*.

material includes an electronic document.

operates, or in any way interferes with the operation of, a vehicle dangerously means operate, or in any way interfere with the operation of, a vehicle at a speed or in a way that is dangerous to the public, having regard to all the circumstances, including—

(a) the nature, condition and use of the place; and

(b) the nature and condition of the vehicle; and

(c) the number of persons, vehicles or other objects that are, or might reasonably be expected to be, in the place; and

(d) the concentration of alcohol in the operator's blood or breath; and

(e) the presence of any other substance in the operator's body.

place does not include a place being lawfully used to race or test vehicles under a licence or another authority under an Act and from which other traffic is excluded at the time.

prescribed offence means—

(a) an offence against this section; or

(b) an offence charged on indictment involving the driving or operation of a vehicle at a speed causing or likely to cause injury to anyone; or

(c) an offence against the *Transport Operations (Road Use Management) Act 1995*, section 79(1), (1F), (2), (2AA), (2A), (2B), (2D) or (2J).

previously convicted, for an offender who is an adult, includes a previous finding of guilt, within the meaning of the *Youth Justice Act 1992*, schedule 4, against the offender as a child.

Note—

See the *Youth Justice Act 1992*, section 148B in relation to the admissibility of evidence about a previous finding of guilt.

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the public includes passengers in a vehicle whether in a public or private place.

unlawful race means a race involving a vehicle in contravention of the *Transport Operations (Road Use Management) Act 1995*, section 85.

unlawful speed trial mean a trial of the speed of a vehicle in contravention of the *Transport Operations (Road Use Management) Act 1995*, section 85.

328B Additional power to convict for dangerous operation of a vehicle

(1) Upon an indictment charging a person with any offence in connection with or arising out of the operation, or interference in any way with the operation, of a vehicle by the person (not being the offence defined in section 328A), the person may be convicted of the offence defined in section 328A with or without a circumstance of aggravation specified in section 328A(4), if such offence is established by the evidence.

(2) The provisions of this section shall apply notwithstanding the provisions of section 576.

328C Damaging emergency vehicle when operating motor vehicle

A person commits a crime if—

(a) the person operates a motor vehicle in a way that damages an emergency vehicle; and

(b) the person knows, or ought reasonably to know, the damaged vehicle is an emergency vehicle; and

(c) the person—

(i) intends to damage the emergency vehicle or to injure or endanger the safety of an emergency worker; or

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(ii) knows, or ought reasonably to know, the person is operating a motor vehicle in a way that will damage an emergency vehicle.

Maximum penalty—14 years imprisonment.

328D Endangering police officer when driving motor vehicle

(1) A person commits a crime if—

(a) the person drives a motor vehicle towards or near a police officer; and

(b) the person knows, or ought reasonably to know, the officer is a police officer; and

(c) the officer is acting in the performance of their duties as a police officer; and

(d) the person—

(i) intends to injure or endanger the safety of the police officer; or

(ii) endangers the safety of the police officer and knows, or ought reasonably to know, the person is endangering the safety of the police officer.

Maximum penalty—14 years imprisonment.

(2) In this section—

police officer includes a police officer of the Commonwealth or another State.

329 Endangering safety of persons travelling by railway

Any person who by any unlawful act, or by any omission to do any act which it is the person's duty to do, causes the safety of any person travelling by any railway to be endangered, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

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330 Sending or taking unseaworthy ships to sea

(1) Any person who—

(a) sends or attempts to send a ship to sea in such an unseaworthy state that the life of any person is likely to be thereby endangered; or

Editor's note—

Subsection (1)(a) as originally enacted was numbered as (1) and subsection (1)(b) was numbered as (2).

(b) being a master of a British ship, knowingly takes or attempts to take the ship to sea in such an unseaworthy state that the life of any person is likely to be thereby endangered;

is guilty of a crime, and is liable to imprisonment for 14 years.

(2) It is a defence to a charge of any of the offences defined in this section to prove that the going of the ship to sea in such unseaworthy state was, under the circumstances, reasonable and justifiable.

(3) It is a defence to a charge of either of the offences firstly defined in this section to show that the accused person used all reasonable means to ensure the ship being sent to sea in a seaworthy state.

333 Evading laws as to equipment of ships

Any person who, being a person having actual control over a vessel on board of which any article has been placed with the person's knowledge or consent in order to the obtaining of permission or authority to leave a port, removes or allows the removal of such article from the vessel after such permission or authority has been obtained is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

334 Landing explosives

Any person who—

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(a) being charged by law with any duty respecting the landing or delivery of any explosive substance or of any acid or other thing of a dangerous or destructive nature, from any vessel, fails to perform that duty; or

(b) being concerned in the landing of any such substance or thing from any vessel, violates the provisions of the laws relating to such landing;

is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

Chapter 29A Coercive control

334A Definitions for chapter

In this chapter—

coercive control means the offence mentioned in section 334C.

domestic violence see section 334B.

economic abuse means behaviour by a person (the ***first person***) that is coercive, deceptive or unreasonably controls another person (the ***second person***)—

(a) in a way that denies the second person the economic or financial autonomy the second person would have had but for that behaviour; or

(b) by withholding or threatening to withhold the financial support necessary for meeting the reasonable living expenses of the second person or a child.

Examples—

- coercing a person to relinquish control over assets and income
- unreasonably removing or keeping a person's property, or threatening to do so

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- unreasonably disposing of property owned by a person, or owned jointly with a person, without lawful excuse
- preventing a person from having access to joint financial assets for the purposes of meeting normal household expenses without lawful excuse
- preventing a person from seeking or keeping employment
- coercing a person to claim social security payments
- coercing a person to sign a power of attorney that would enable the person's finances to be managed by another person
- coercing a person to sign a contract for the purchase of goods or services
- coercing a person to sign a contract for the provision of finance, a loan or credit
- coercing a person to sign a contract of guarantee
- coercing a person to sign any legal document for the establishment or operation of a business

emotional or psychological abuse means behaviour by a person towards another person that torments, intimidates, harasses or degrades the other person.

Examples—

- following a person when the person is out in public, including by vehicle or on foot
- remaining outside a person's residence or place of work
- repeatedly contacting a person by telephone, SMS message, email or social networking site
- repeated derogatory taunts, including racial taunts
- threatening to disclose a person's sexual orientation to another person
- threatening to withhold a person's medication
- preventing a person from making or keeping connections with the person's family, friends, kin or culture, including cultural or spiritual ceremonies or practices, or preventing the person from expressing the person's cultural identity
- threatening to withdraw support for a visa for a person or a member of the person's family
- threatening to have a person or a member of the person's family deported

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- coercing or threatening a person to gain further or larger dowry gifts
- interfering with a person's ability to access or communicate with the person's friends or family or with support services by restricting access to any means of communication or otherwise

harm, to a person, means any detrimental effect on the person's physical, emotional, financial, psychological or mental wellbeing, whether temporary or permanent.

unauthorised or unreasonable surveillance, of a person, means the monitoring or tracking of the person's movements, activities or interpersonal associations, including, for example, by using technology, that is unauthorised or otherwise unreasonable.

Examples of surveillance by using technology—

- reading a person's SMS messages
- monitoring a person's email account or internet browser history
- monitoring a person's account with a social networking internet site
- using a GPS device to track a person's movements
- checking the recorded history in a person's GPS device
- monitoring a person's activities using cameras or smart home devices

334B What is *domestic violence*

(1) ***Domestic violence*** means behaviour by a person (the ***first person***) towards another person (the ***second person***) with whom the first person is in a domestic relationship that—

(a) is physically or sexually abusive; or

(b) is emotionally or psychologically abusive; or

(c) is economically abusive; or

(d) is threatening; or

(e) is coercive; or

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(f) in any other way controls or dominates the second person and causes the second person to fear for the second person's safety or wellbeing or that of someone else.

(2) Behaviour mentioned in subsection (1)—

(a) may occur over a period of time; and

(b) may be more than 1 act, or a series of acts, that when considered cumulatively is abusive, threatening, coercive or causes fear in a way mentioned in that subsection; and

(c) is to be considered in the context of the relationship between the first person and the second person as a whole.

(3) Without limiting subsection (1) or (2), domestic violence includes the following behaviour—

(a) causing personal injury to a person or threatening to do so;

(b) coercing a person to engage in sexual activity or attempting to do so;

(c) damaging a person's property or threatening to do so;

(d) depriving a person of the person's liberty or threatening to do so;

(e) threatening a person with the death or injury of the person, a child of the person, or someone else;

(f) threatening to commit suicide or self-harm so as to torment, intimidate or frighten the person to whom the behaviour is directed;

(g) causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the person to whom the behaviour is directed, so as to control, dominate or coerce the person;

(h) unauthorised or unreasonable surveillance of a person;

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(i) unlawfully stalking, intimidating, harassing or abusing a person;

(j) making a person dependent on, or subordinate to, another person;

(k) isolating a person from friends, relatives or other sources of support;

(l) controlling, regulating or monitoring a person's day-to-day activities;

(m) depriving a person of, or restricting a person's, freedom of action;

(n) frightening, humiliating, degrading or punishing a person.

(4) In this section—

coerce, a person, means compel or force a person to do, or refrain from doing, something.

unlawful stalking, intimidation, harassment or abuse see sections 359B and 359D.

334C Coercive control

(1) A person who is an adult commits an offence (a ***coercive control offence***) if—

(a) the person is in a domestic relationship with another person (the ***other person***); and

(b) the person engages in a course of conduct against the other person that consists of domestic violence occurring on more than 1 occasion; and

(c) the person intends the course of conduct to coerce or control the other person; and

(d) the course of conduct would, in all the circumstances, be reasonably likely to cause the other person harm.

Maximum penalty—14 years imprisonment.

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(2) An offence against subsection (1) is a crime.

(3) For subsection (1)(c), the prosecution is not required to prove that the person intended each act of domestic violence that constitutes the course of conduct, when considered in isolation, to coerce or control the other person.

(4) For subsection (1)(d), without limiting the circumstances for the purpose of the subsection, those circumstances include the behaviour of the person and the other person in the context of their relationship as a whole.

(5) In relation to the domestic violence that constitutes the course of conduct—

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

(b) the jury is not required to be satisfied of the particulars of any act of domestic violence constituting an offence that it would have to be satisfied of if the act were charged as a separate offence; and

(c) all the members of the jury are not required to be satisfied about the same acts of domestic violence.

(6) A person may be charged with—

(a) the coercive control offence; and

(b) 1 or more other offences of domestic violence alleged to have been committed by the person against the other person during the course of conduct for the coercive control offence.

(7) The offences mentioned in subsection (6)(a) and (b) may be charged in the 1 indictment.

(8) The person charged as mentioned in subsection (6) may be convicted of and punished for any or all of the offences charged.

(9) However, if the person is—

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(a) charged as mentioned in subsection (6); and

(b) sentenced to imprisonment for the coercive control offence and for the other offence or offences;

the court imposing imprisonment may not order that the sentence for the coercive control offence be served cumulatively with the sentence or sentences for the other offence or offences.

Note—

See the *Penalties and Sentences Act 1992*, section 155 (Imprisonment to be served concurrently unless otherwise ordered).

(10) It is a defence for the person to prove that the course of conduct for the coercive control offence was reasonable in the context of the relationship between the person and the other person as a whole.

(11) It is not a defence to a charge for a coercive control offence that the person believed that any single act of domestic violence that formed part of the course of conduct for the coercive control offence, or each of the acts of domestic violence that constituted the course of conduct when considered in isolation, was reasonable in the context of the relationship between the person and the other person as a whole.

334D What is immaterial for coercive control

(1) For section 334C(1)(b) and (c), it is immaterial whether the domestic violence that constituted the course of conduct against the other person was carried out in relation to another person or the property of another person.

(2) For section 334C(1)(d)—

(a) it is immaterial whether the course of conduct actually caused harm to the other person; and

(b) if an act of domestic violence that formed part of the course of conduct was unauthorised or unreasonable surveillance or economic abuse of the other person, it is

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immaterial whether the other person was aware of the act.

(3) Despite particular matters being immaterial for section 334C(1) as mentioned in subsection (1) or (2), nothing in this section prevents evidence being adduced about the matters.

(4) In this section—

other person see section 334C(1)(a).

334E Court may restrain coercive control

(1) This section applies on the hearing before a court of a charge against a person of coercive control.

(2) Whether the person is found guilty or not guilty or the prosecution ends in another way, if the presiding judge or magistrate considers it desirable, the judge or magistrate may constitute the court to consider whether a restraining order should be made against the person.

(3) The judge or magistrate may act under subsection (2) on application by the Crown or an interested person or on the judge's or magistrate's own initiative.

(4) Also, if the restraining order proceeding is started before the Supreme Court or the District Court, the court may order the proceeding to be transferred to a Magistrates Court.

(5) If a court makes an order under subsection (4), the registrar of the court must send to the clerk of the relevant Magistrates Court a copy of the order and the record of proceedings of the hearing of the charge and any application mentioned in subsection (3).

(6) The court hearing the restraining order proceeding may make a restraining order against the person in relation to any person or any property if it considers it desirable to do so having regard to the evidence given at the hearing of the charge and any application under subsection (3) and any further evidence the court may admit.

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(7) A restraining order takes effect on the day it is made and continues in force until—

(a) the day stated by the court in the restraining order; or

(b) if no day is stated, the day that is 5 years after the day the restraining order is made.

(8) The court may order that a restraining order continues in force for a period of less than 5 years only if the court is satisfied that the safety of a person in relation to whom the restraining order is made is not compromised by the shorter period.

(9) A restraining order may be varied or revoked at any time by the court, and, if the order provides, by another court.

(10) A person who knowingly contravenes a restraining order commits an offence.

Maximum penalty—120 penalty units or 3 years imprisonment.

(11) However, if the person has been convicted of a domestic violence offence in the 5 years before the contravention, the person is guilty of a misdemeanour and is liable to a fine of 240 penalty units or imprisonment for 5 years.

(12) A restraining order may be made against a person whether or not another order is made against the person in the proceeding for the charge.

(13) A restraining order proceeding is not a criminal proceeding.

(14) A question of fact for a decision under subsection (2) and in a restraining order proceeding must be decided on the balance of probabilities.

(15) In this section—

charge means the charge of coercive control mentioned in subsection (1).

domestic violence offence includes an offence against the *Domestic and Family Violence Protection Act 2012*, part 7.

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Note—

See also the definition of *domestic violence offence* in section 1.

restraining order, against a person, means any order considered appropriate for the purpose of prohibiting particular conduct, including, for example, contact for a stated period by the person with a stated person or the property of a stated person.

restraining order proceeding means a proceeding started under subsection (2).

334F Alternative offence to crime of coercive control

Upon an indictment charging a person with the crime of coercive control, the person may alternatively be convicted of the crime of unlawful stalking, intimidation, harassment or abuse if that offence is established by the evidence.

Chapter 30 Assaults

335 Common assault

(1) Any person who unlawfully assaults another is guilty of a misdemeanour, and is liable, if no greater punishment is provided, to imprisonment for 3 years.

(2) If the offender publishes material on a social media platform or an online social network to—

(a) advertise the offender's involvement in the offence; or

(b) advertise the act or omission constituting the offence;

the offender is liable to imprisonment for 4 years.

(3) The following provisions also state a circumstance of aggravation for an offence against this section—

(a) section 52B;

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(b) the *Penalties and Sentences Act 1992*, section 108B.

(4) If the offender commits the offence with the circumstance of aggravation stated in section 52B, the offender is liable to imprisonment for 4 years.

(5) In this section—

advertise means attract the notice and attention of the public or a limited section of the public.

material includes an electronic document.

338A Assaults of member of crew on aircraft

Any person who while on board an aircraft unlawfully assaults a member of the crew of the aircraft or threatens such a member with any violence or detriment of any kind to be caused to the member or any other person on the aircraft by the offender or by any other person with the intention of affecting the performance by the member of the member's functions or duties in connection with the operation of the aircraft or with the intention of lessening the member's ability to perform those functions or duties is guilty of a crime and is liable to imprisonment for 14 years.

339 Assaults occasioning bodily harm

(1) Any person who unlawfully assaults another and thereby does the other person bodily harm is guilty of a crime, and is liable to imprisonment for 7 years.

(2) If the offender publishes material on a social media platform or an online social network to—

(a) advertise the offender's involvement in the offence; or

(b) advertise the act or omission constituting the offence;

the offender is liable to imprisonment for 9 years.

(3) If the offender does bodily harm, and is or pretends to be armed with any dangerous or offensive weapon or instrument

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or is in company with 1 or more other person or persons, the offender is liable to imprisonment for 10 years.

(4) The following provisions also state a circumstance of aggravation for an offence against this section—

(a) section 52B;

(b) the *Penalties and Sentences Act 1992*, sections 108B and 161Q.

(5) If the offender commits the offence with the circumstance of aggravation stated in section 52B, the offender is liable to imprisonment for 10 years.

(6) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(7) In this section—

advertise means attract the notice and attention of the public or a limited section of the public.

material includes an electronic document.

340 Serious assaults

(1) Any person who—

(a) assaults another with intent to commit a crime, or with intent to resist or prevent the lawful arrest or detention of himself or herself or of any other person; or

(b) assaults, resists, or wilfully obstructs, a police officer while acting in the execution of the officer's duty, or any person acting in aid of a police officer while so acting; or

(c) unlawfully assaults any person while the person is performing a duty imposed on the person by law; or

(d) assaults any person because the person has performed a duty imposed on the person by law; or

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(f) assaults any person in pursuance of any unlawful conspiracy respecting any manufacture, trade, business, or occupation, or respecting any person or persons concerned or employed in any manufacture, trade, business, or occupation, or the wages of any such person or persons; or

(g) unlawfully assaults any person who is 60 years or more; or

(h) unlawfully assaults any person who relies on a guide, hearing or assistance dog, wheelchair or other remedial device;

is guilty of a crime.

Maximum penalty—

(a) for subsection (1)(b), if the offender assaults a police officer in any of the following circumstances—

(i) the offender bites or spits on the police officer or throws at, or in any way applies to, the police officer a bodily fluid or faeces;

(ii) the offender causes bodily harm to the police officer;

(iii) the offender is, or pretends to be, armed with a dangerous or offensive weapon or instrument—14 years imprisonment; or

(b) otherwise—7 years imprisonment.

Examples of remedial device for paragraph (h)—

walking frame, caliper, walking stick and artificial limb

(1C) The *Penalties and Sentences Act 1992*, sections 108B and 161Q also state a circumstance of aggravation for an offence against subsection (1)(b).

(1D) An indictment charging an offence against subsection (1)(b) with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

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(2) A prisoner who unlawfully assaults a working corrective services officer commits a crime.

Maximum penalty—

(a) if the prisoner assaults a working corrective services officer in any of the following circumstances—

(i) the prisoner bites or spits on the corrective services officer or throws at, or in any way applies to, the corrective services officer a bodily fluid or faeces;

(ii) the prisoner causes bodily harm to the corrective services officer;

(iii) the prisoner is, or pretends to be, armed with a dangerous or offensive weapon or instrument—14 years imprisonment; or

(b) otherwise—7 years imprisonment.

(2AA) A person who—

(a) unlawfully assaults, or resists or wilfully obstructs, a public officer while the officer is performing a function of the officer's office; or

Example—

A person unlawfully assaults an authorised officer under the *Child Protection Act 1999* while the officer is investigating an allegation of harm to a child under that Act.

(b) assaults a public officer because the officer has performed a function of the officer's office;

commits a crime.

Maximum penalty—

(a) if the offender assaults a public officer in any of the following circumstances—

(i) the offender bites or spits on the public officer or throws at, or in any way applies to, the public officer a bodily fluid or faeces;

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(ii) the offender causes bodily harm to the public officer;

(iii) the offender is, or pretends to be, armed with a dangerous or offensive weapon or instrument—14 years imprisonment; or

(b) otherwise—7 years imprisonment.

(2B) The *Penalties and Sentences Act 1992*, section 108B also states a circumstance of aggravation for an offence against subsection (2AA).

(3) In this section—

corrective services facility see the *Corrective Services Act 2006*, schedule 4.

corrective services officer see the *Corrective Services Act 2006*, schedule 4.

office includes appointment and employment.

prisoner see the *Corrective Services Act 2006*, schedule 4.

public officer includes—

(a) a member, officer or employee of a service established for a public purpose under an Act; and

Example of a service—

Queensland Ambulance Service established under the *Ambulance Service Act 1991*

(b) a health service employee under the *Hospital and Health Boards Act 2011*; and

Example—

a person appointed as a health service employee to perform functions as a security officer, wardsperson, cleaner or food service worker

(c) an authorised officer under the *Child Protection Act 1999*; and

(d) a transit officer under the *Transport Operations (Passenger Transport) Act 1994*.

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working corrective services officer means a corrective services officer present at a corrective services facility in his or her capacity as a corrective services officer.

346 Assaults in interference with freedom of trade or work

Any person who assaults another with intent to hinder or prevent the other person from working at or exercising the other person's lawful trade, business, or occupation, or from buying, selling, or otherwise dealing, with any property intended for sale, commits a crime.

Maximum penalty—5 years imprisonment.

Chapter 32 Rape and sexual assaults

347 Definitions for ch 32

In this chapter—

assault has the meaning given by section 245 as if a reference in section 245 to consent were a reference to consent within the meaning given by section 348.

consent see section 348.

penetrate does not include penetrate for a proper medical, hygienic or law enforcement purpose only.

348 Consent

(1) In this chapter, ***consent*** means free and voluntary agreement.

(2) A person may withdraw consent to an act at any time.

(3) A person who does not offer physical or verbal resistance to an act is not, by reason only of that fact, to be taken to consent to the act.

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(4) A person does not consent to an act just because they consented to—

(a) a different act with the same person; or

(b) the same act with the same person at a different time or place; or

(c) the same act with a different person; or

(d) a different act with a different person.

348AA Circumstances in which there is no consent

(1) Circumstances in which a person does not consent to an act include the following—

(a) the person does not say or do anything to communicate consent;

(b) the person does not have the cognitive capacity to consent to the act;

(c) the person is so affected by alcohol or another drug as to be incapable of consenting to the act;

(d) the person is so affected by alcohol or another drug as to be incapable of withdrawing consent to the act;

Note—

This circumstance may apply where a person gave consent when not so affected by alcohol or another drug as to be incapable of consenting.

(e) the person is unconscious or asleep;

(f) the person participates in the act because of force, a fear of force, harm of any type or a fear of harm of any type, whether to that person or someone else or to an animal or property, regardless of—

(i) when the force, harm or conduct giving rise to the fear occurs; or

(ii) whether it is, or is a result of, a single incident or is part of an ongoing pattern;

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Examples of harm—

- economic or financial harm
- reputational harm
- harm to the person's family, cultural or community relationships
- harm to the person's employment
- domestic violence involving psychological abuse or harm to mental health
- sexual harassment

(g) the person participates in the act because of coercion, blackmail or intimidation, regardless of—

(i) when the coercion, blackmail or intimidation occurs; or

(ii) whether it occurs as a single incident or as part of an ongoing pattern;

(h) the person participates in the act because the person or another person is unlawfully confined, detained or otherwise deprived of their personal liberty;

(i) the person participates in the act because the person is overborne by the abuse of a relationship of authority, trust or dependence;

(j) the person participates in the act because of a false or fraudulent representation about the nature or purpose of the act, including about whether the act is for health, hygienic or cosmetic purposes;

(k) the person participates in the act with another person because the person is mistaken—

(i) about the identity of the other person; or

(ii) that the person is married to the other person;

(l) the person is a sex worker and participates in the act because of a false or fraudulent representation that the person will be paid or receive some reward for the act;

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(n) the person participates in the act with another person on the basis that a condom is used for the act and the other person does any of the following things before or during the act—

(i) does not use a condom;

(ii) tampers with the condom;

(iii) removes the condom;

(iv) becomes aware that the condom is no longer effective but continues with the act.

(2) If a person, against whom an offence under this chapter is alleged to have been committed, suffers grievous bodily harm as a result of, or in connection with, the offence, the grievous bodily harm suffered is evidence of the lack of consent on the part of the person unless the contrary is proved.

(3) This section does not limit the grounds on which it may be established that a person does not consent to an act.

(4) In this section—

sex worker means a person who provides services to another person that involve the person participating in a sexual activity with the other person for payment or reward.

348A Mistake of fact in relation to consent

(1) This section applies for deciding whether, for section 24, a person charged with an offence under this chapter did an act under an honest and reasonable, but mistaken, belief that another person consented to the act.

(2) In deciding whether a belief of the person was honest and reasonable, regard may not be had to the voluntary intoxication of the person caused by alcohol, a drug or another substance.

(3) A belief by the person that another person consented to an act is not reasonable if the person did not, immediately before or

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at the time of the act, say or do anything to ascertain whether the other person consented to the act.

(4) Subsection (3) does not apply if the person proves that—

(a) the person had at the time of the act—

(i) a cognitive impairment within the meaning of section 348B; or

(ii) a mental health impairment within the meaning of section 348C; and

(b) the impairment was a substantial cause of the person not saying or doing anything.

(5) The person bears the burden of proving the matters mentioned in subsection (4).

(6) Evidence adduced by the person of the matters mentioned in subsection (4) must include evidence given by a person qualified to give expert evidence on the matters.

348B Cognitive impairment

(1) For the purposes of section 348A(4)(a)(i), a person has a cognitive impairment if—

(a) the person has an ongoing impairment in adaptive functioning; and

(b) the person has an ongoing impairment in comprehension, reason, judgment, learning or memory so as to affect functioning in daily life to a material extent; and

(c) the impairments result from damage to or dysfunction, developmental delay or deterioration of the person's brain or mind that may arise from a condition set out in subsection (2) or for other reasons.

(2) A cognitive impairment may arise from any of the following conditions but may also arise for other reasons—

(a) intellectual disability;

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(b) borderline intellectual functioning;

(c) dementia;

(d) an acquired brain injury;

(e) drug or alcohol related brain damage, including fetal alcohol spectrum disorder;

(f) autism spectrum disorder.

348C Mental health impairment

(1) For the purposes of section 348A(4)(a)(ii), a person has a mental health impairment if—

(a) the person has a temporary or ongoing disturbance of thought, mood, volition, perception or memory; and

(b) the disturbance would be regarded as significant for clinical diagnostic purposes; and

(c) the disturbance impairs the emotional wellbeing, judgment or behaviour of the person so as to affect functioning in daily life to a material extent.

(2) A mental health impairment may arise from any of the following disorders but may also arise for other reasons—

(a) an anxiety disorder;

(b) an affective disorder;

(c) a psychotic disorder;

(d) a substance induced mental disorder.

(3) A person does not have a mental health impairment for the purposes of section 348A(4)(a)(ii) if the person's impairment is caused solely by the temporary effect of ingesting a substance.

349 Rape

(1) Any person who rapes another person is guilty of a crime.

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Maximum penalty—life imprisonment.

(2) A person rapes another person if—

(a) the person engages in penile intercourse with the other person without the other person's consent; or

(b) the person penetrates the vulva, vagina or anus of the other person to any extent with a thing or a part of the person's body that is not a penis without the other person's consent; or

(c) the person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent.

(3) For this section, a child under the age of 12 years is incapable of giving consent.

(4) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(5) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

350 Attempt to commit rape

(1) Any person who attempts to commit the crime of rape is guilty of a crime, and is liable to imprisonment for 14 years.

(2) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

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351 Assault with intent to commit rape

(1) Any person who assaults another with intent to commit rape is guilty of a crime, and is liable to imprisonment for 14 years.

(2) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

352 Sexual assaults

(1) Any person who—

(a) unlawfully and indecently assaults another person; or

(b) procures another person, without the person's consent—

(i) to commit an act of gross indecency; or

(ii) to witness an act of gross indecency by the person or any other person;

is guilty of a crime.

Maximum penalty—10 years imprisonment.

(2) However, the offender is liable to a maximum penalty of 14 years imprisonment for an offence defined in subsection (1)(a) or (1)(b)(i) if the indecent assault or act of gross indecency includes bringing into contact any part of the genitalia or the anus of a person with any part of the mouth of a person.

(3) Further, the offender is liable to a maximum penalty of life imprisonment if—

(a) immediately before, during, or immediately after, the offence, the offender is, or pretends to be, armed with a dangerous or offensive weapon, or is in company with any other person; or

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(b) for an offence defined in subsection (1)(a), the indecent assault includes the person who is assaulted penetrating the offender's vagina, vulva or anus to any extent with a thing or a part of the person's body that is not a penis; or

(c) for an offence defined in subsection (1)(b)(i), the act of gross indecency includes the person who is procured by the offender penetrating the vagina, vulva or anus of the person who is procured or another person to any extent with a thing or a part of the body of the person who is procured that is not a penis.

(4) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

(5) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

Chapter 33 Offences against liberty

354 Kidnapping

(1) Any person who kidnaps another person is guilty of a crime.

Maximum penalty—7 years imprisonment.

(2) A person kidnaps another person if the person unlawfully and forcibly takes or detains the other person with intent to gain anything from any person or to procure anything to be done or omitted to be done by any person.

(3) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

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(4) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

354A Kidnapping for ransom

(1) Any person who—

(a) with intent to extort or gain anything from or procure anything to be done or omitted to be done by any person by a demand containing threats of detriment of any kind to be caused to any person, either by the offender or any other person, if the demand is not complied with, takes or entices away, or detains, the person in respect of whom the threats are made; or

(b) receives or harbours the said person in respect of whom the threats are made, knowing such person to have been so taken or enticed away, or detained;

is guilty of a crime which is called ***kidnapping for ransom***.

(2) Any person who commits the crime of kidnapping for ransom is liable to imprisonment for 14 years.

(3) If the person kidnapped has been unconditionally set at liberty without such person having suffered any grievous bodily harm, the offender is liable to imprisonment for 10 years.

(4) Any person who attempts to commit the crime of kidnapping for ransom is guilty of a crime and is liable to imprisonment for 7 years.

(5) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(6) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

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355 Deprivation of liberty

Any person who unlawfully confines or detains another in any place against the other person's will, or otherwise unlawfully deprives another of the other person's personal liberty, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

356 False certificates by officers charged with duties relating to liberty

Any person who—

(a) being required by law to give any certificate touching any matter by virtue whereof the liberty of any person may be affected, gives a certificate which, in any material particular, is to the person's knowledge false; or

(b) not being a person authorised by law to give such a certificate as aforesaid, gives such a certificate, and represents himself or herself to be a person authorised to give the same;

is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

357 Concealment of matters affecting liberty

Any person who—

(a) being required by law to keep any record touching any matter relating to any person in confinement, refuses or neglects to keep such record, or makes in such record an entry which, in any material particular, is to the person's knowledge false; or

(b) being required by law to give any information to any person touching any person in confinement, or to show to any person any person in confinement, or any place in which a person is confined—

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(i) refuses or neglects to give such information, or to show such person or place, to any person to whom the person is so required to give the information or show the person or place; or

(ii) gives to any person to whom the person is so required to give it, information touching any such matter which, in any material particular, is to the person's knowledge false;

is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

358 Unlawful custody of particular persons

Any person who detains or assumes the custody of an involuntary patient under the *Mental Health Act 2016* or a forensic disability client under the *Forensic Disability Act 2011* contrary to the provisions of the laws relating to such persons is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

359 Threats

(1) A person (the ***first person***) who threatens to cause a detriment to a second person with intent to prevent or hinder any person (the ***other person***) other than the first person from doing any act which the other person is lawfully entitled to do, or with intent to compel the other person to do any act which the other person is lawfully entitled to abstain from doing, or with intent to cause public alarm or anxiety, commits a crime.

Maximum penalty—5 years imprisonment.

(2) The offender is liable to a maximum penalty of 10 years imprisonment if the threat is made to a law enforcement officer, or a person helping a law enforcement officer, when or because the officer is investigating the activities of a criminal organisation.

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(3) The following provisions also state a circumstance of aggravation for an offence against this section—

(a) section 52B;

(b) the *Penalties and Sentences Act 1992*, section 161Q.

(4) If the offender commits the offence with the circumstance of aggravation stated in section 52B, the offender is liable to imprisonment for 7 years.

(5) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

Chapter 33A Unlawful stalking, intimidation, harassment or abuse

359A Definitions for ch 33A

In this chapter—

circumstances means the following circumstances—

(a) the alleged stalker's circumstances;

(b) the circumstances of the stalked person known, foreseen or reasonably foreseeable by the alleged stalker;

(c) the circumstances surrounding the unlawful stalking;

(d) any other relevant circumstances.

detriment includes the following—

(a) apprehension or fear of violence to, or against property of, the stalked person or another person;

(b) serious mental, psychological or emotional harm;

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(c) prevention or hindrance from doing an act a person is lawfully entitled to do;

(d) compulsion to do an act a person is lawfully entitled to abstain from doing.

Examples of paragraph (c)—

A person no longer walks outside the person's place of residence or employment.

A person significantly changes the route or form of transport the person would ordinarily use to travel to work or other places.

Example of paragraph (d)—

A person sells a property the person would not otherwise sell.

property, of a person, means—

(a) property in which the person has an interest, whether or not the defendant also has an interest in the property; or

Note—

Under the *Acts Interpretation Act 1954*, schedule 1—

interest, in relation to land or other property, means—

(a) a legal or equitable estate in the land or other property; or

(b) a right, power or privilege over, or in relation to, the land or other property.

(b) property that is otherwise—

(i) used and enjoyed by the person; or

(ii) available for the person's use or enjoyment; or

(iii) in the person's care or custody; or

(iv) at the premises at which the person is residing.

stalked person see section 359B.

unlawful stalking, intimidation, harassment or abuse see sections 359B and 359D.

violence—

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(a) does not include any force or impact within the limits of what is acceptable as incidental to social interaction or to life in the community; and

(b) against a person includes an act depriving a person of liberty; and

(c) against property includes an act of damaging, destroying, removing, using or interfering with the property.

359B What is *unlawful stalking, intimidation, harassment or abuse*

Unlawful stalking, intimidation, harassment or abuse is conduct—

(a) intentionally directed at a person (the ***stalked person***); and

(b) engaged in on any 1 occasion if the conduct is protracted or on more than 1 occasion; and

(c) consisting of 1 or more acts of the following, or a similar, type—

(i) following, loitering near, watching or approaching a person;

(ii) contacting a person in any way, including, for example, using any technology and over any distance;

Examples of ways of contacting a person, including using technology—

by telephone, mail, fax, SMS message, email, an app on a computer, smart phone or other electronic device, or an online social network

(iii) loitering near, watching, approaching or entering a place where a person lives, works or visits;

(iv) monitoring, tracking or surveilling a person's movements, activities or interpersonal associations

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without the person's consent, including, for example, using technology;

Examples of monitoring, tracking or surveilling using technology—

- using a tracking device or drone to track a person's movements
- checking the recorded history in a person's digital device
- reading a person's SMS messages
- monitoring a person's email account or internet browser history
- monitoring a person's account with a social media platform or online social network

(v) leaving offensive material where it will be found by, given to or brought to the attention of, a person;

(vi) publishing offensive material on a website, social media platform or online social network in a way that will be found by, or brought to the attention of, a person;

(vii) giving offensive material to a person, directly or indirectly, including by using a website, social media platform or online social network;

(viii) an intimidating, harassing, threatening, humiliating or abusive act against a person, whether or not involving violence or a threat of violence;

Example—

publishing a person's personal information, including, for example, the person's home address or phone number, on a website

(ix) an act of violence, or a threat of violence, against, or against property of, anyone, including the defendant; and

(d) that—

(i) would cause the stalked person apprehension or fear, reasonably arising in all the circumstances, of

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violence to, or against property of, the stalked person or another person; or

(ii) causes detriment, reasonably arising in all the circumstances, to the stalked person or another person.

359C What is immaterial for unlawful stalking, intimidation, harassment or abuse

(1) For section 359B(a), it is immaterial whether the person doing the unlawful stalking, intimidation, harassment or abuse—

(a) intends that the stalked person be aware the conduct is directed at the stalked person; or

(b) has a mistaken belief about the identity of the person at whom the conduct is intentionally directed.

(2) For section 359B(a) and (c), it is immaterial whether the conduct directed at the stalked person consists of conduct carried out in relation to another person or property of another person.

(3) For section 359B(b), it is immaterial whether the conduct throughout the occasion on which the conduct is protracted, or the conduct on each of a number of occasions, consists of the same or different acts.

(4) For section 359B(d), it is immaterial whether the person doing the unlawful stalking, intimidation, harassment or abuse intended to cause the apprehension or fear, or the detriment, mentioned in the section.

(5) For section 359B(d)(i), it is immaterial whether the apprehension or fear, or the violence, mentioned in the section is actually caused.

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359D Particular conduct that is not *unlawful stalking, intimidation, harassment or abuse*

Unlawful stalking, intimidation, harassment or abuse does not include the following acts—

(a) acts done in the execution of a law or administration of an Act or for a purpose authorised by an Act;

(b) acts done for the purposes of a genuine industrial dispute;

(c) acts done for the purposes of a genuine political or other genuine public dispute or issue carried on in the public interest;

(d) reasonable conduct engaged in by a person for the person's lawful trade, business or occupation;

(e) reasonable conduct engaged in by a person to obtain or give information that the person has a legitimate interest in obtaining or giving.

359E Punishment of unlawful stalking, intimidation, harassment or abuse

(1) A person who unlawfully stalks, intimidates, harasses or abuses another person is guilty of a crime.

(2) A person who commits the crime of unlawful stalking, intimidation, harassment or abuse is liable to a maximum penalty of imprisonment for 5 years.

(3) However, a person is liable to a maximum penalty of imprisonment for 7 years if, for any of the acts constituting the unlawful stalking, intimidation, harassment or abuse, the person—

(a) uses or intentionally threatens to use, violence against anyone or anyone's property; or

(b) possesses a weapon within the meaning of the *Weapons Act 1990*; or

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(c) contravenes or intentionally threatens to contravene an injunction or order imposed or made by a court or tribunal under a law of the Commonwealth or a State.

(4) Also, a person is liable to a maximum penalty of imprisonment for 7 years if a domestic relationship exists between the person and the stalked person.

(5) Further, a person is liable to a maximum penalty of imprisonment for 10 years if any of the acts constituting the unlawful stalking, intimidation, harassment or abuse are done when or because the stalked person is a law enforcement officer investigating the activities of a criminal organisation.

(6) The following provisions also state a circumstance of aggravation for an offence against this section—

(a) section 52B;

(b) the *Penalties and Sentences Act 1992*, section 161Q.

(7) If the offender commits the offence with the circumstance of aggravation stated in section 52B, the offender is liable to imprisonment for 7 years.

(8) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

359F Court may restrain unlawful stalking, intimidation, harassment or abuse

(1) This section applies on the hearing before a court of a charge against a person of unlawful stalking, intimidation, harassment or abuse.

(2) Whether the person is found guilty or not guilty or the prosecution ends in another way, if the presiding judge or magistrate considers it desirable, the judge or magistrate may constitute the court to consider whether a restraining order should be made against the person.

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(3) The judge or magistrate may act under subsection (2) on application by the Crown or an interested person or on the judge's or magistrate's own initiative.

(4) Also, if the restraining order proceeding is started before the Supreme Court or the District Court, the court may order the proceeding to be transferred to a Magistrates Court.

(5) If a court makes an order under subsection (4), the registrar of the court must send to the clerk of the relevant Magistrates Court a copy of the order and the record of proceedings of the hearing of the charge and any application mentioned in subsection (3).

(6) The court hearing the restraining order proceeding may make a restraining order against the person in relation to any person or any property if it considers it desirable to do so having regard to the evidence given at the hearing of the charge and any application under subsection (3) and any further evidence the court may admit.

(7) A restraining order takes effect on the day it is made and continues in force until—

(a) the day stated by the court in the restraining order; or

(b) if no day is stated, the day that is 5 years after the day the restraining order is made.

(8) The court may order that a restraining order continues in force for a period of less than 5 years only if the court is satisfied that the safety of a person in relation to whom the restraining order is made is not compromised by the shorter period.

(9) A restraining order may be varied or revoked at any time by the court, and, if the order provides, by another court.

(10) A person who knowingly contravenes a restraining order commits an offence.

Maximum penalty—120 penalty units or 3 years imprisonment.

(11) However, if the person has been convicted of a domestic violence offence in the 5 years before the contravention, the

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person is guilty of a misdemeanour and is liable to a fine of 240 penalty units or imprisonment for 5 years.

(12) A restraining order may be made against a person whether or not another order is made against the person in the proceeding for the charge.

(13) A restraining order proceeding is not a criminal proceeding.

(14) A question of fact for a decision under subsection (2) and in a restraining order proceeding must be decided on the balance of probabilities.

(15) In this section—

charge means the charge of unlawful stalking, intimidation, harassment or abuse mentioned in subsection (1).

domestic violence offence includes an offence against the *Domestic and Family Violence Protection Act 2012*, part 7.

Note—

See also the definition of *domestic violence offence* in section 1.

restraining order against a person means any order considered appropriate for the purpose of prohibiting particular conduct, including, for example, contact for a stated period by the person with a stated person or the property of a stated person.

restraining order proceeding means a proceeding started under subsection (2).

Chapter 34 Offences relating to marriage and parental rights and duties

360 Bigamy

(1) Any person who—

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(a) being married, goes through the form of marriage with any other person during the life of his or her wife or husband; or

(b) goes through the form of marriage with any person whom he or she knows to be married;

is guilty of a crime, and is liable to imprisonment for 7 years.

(2) It is a defence to a charge of either of the offences defined in this section to prove that at the time of committing the alleged offence the wife or husband of the person already married had been continually absent from him or her for the space of 7 years then last past, unless it is shown that the accused person knew that such wife or husband was living within that time.

361 Unlawful celebration of marriage

Any person who—

(a) celebrates, or attempts or professes to celebrate, the marriage of any person who, to the person's knowledge, is under the age of 18 years, and is not a widower or widow, without the written consent of some person authorised by law to give such consent, or with a written consent which, to the person's knowledge, is not given by a person authorised by law to give it; or

(b) celebrates, or attempts or professes to celebrate, any marriage contrary to the provisions of the laws relating to the solemnisation of marriage; or

(c) celebrates, or attempts or professes to celebrate, any marriage in any case in which any provision of those laws has not been complied with, knowing that it has not been complied with; or

(d) induces, or attempts to induce, any person to celebrate the marriage of any person who is to the knowledge of the offender under the age of 18 years, and is not a widower or widow, without the consent mentioned in paragraph (a), or with a consent which, to the person's

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knowledge, is not given by a person authorised by law to give it, or to celebrate any marriage contrary to or without compliance with the laws relating to the solemnisation of marriage; or

(e) marries a person who is, to his or her knowledge, under the age of 18 years, and is not a widow or widower, without the consent mentioned in paragraph (a), or with a consent which, to his or her knowledge, is not given by a person authorised by law to give it;

is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

362 Unqualified persons procuring registration as persons qualified to celebrate marriages

Any person who, not being a person entitled to be registered under the laws relating to the solemnisation of marriage as a person authorised to celebrate marriages, and knowing that the person is not such a person, procures the person's name to be registered as a person so entitled, is guilty of a misdemeanour, and is liable to imprisonment for 2 years, and to a fine of $400.

363 Child-stealing

(1) Any person who, with intent to deprive any parent, guardian, or other person who has the lawful care or charge, of a child under the age of 16 years, of the possession of such child, or with intent to steal any article upon or about the person of any such child—

(a) forcibly or fraudulently takes or entices away, or detains, the child; or

(b) receives or harbours the child, knowing it to have been so taken or enticed away or detained;

is guilty of a crime, and is liable to imprisonment for 7 years.

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(2) It is a defence to a charge of any of the offences defined in this section to prove that the accused person claimed in good faith a right to the possession of the child, or, in the case of a child whose parents were not married to each other at the time of its conception and have not since married each other, not being a child who has been adopted as aforesaid, is its mother or claimed in good faith to be its father.

(3) In this section—

corresponding parentage order means an order under a law of another State that provides for a parentage order similar to a parentage order under the *Surrogacy Act 2010*.

parent includes—

(a) for a child who has been legally adopted in Queensland or in another State—a person who has adopted the child; or

(b) for a child whose parentage has been transferred by a parentage order under the *Surrogacy Act 2010* or a corresponding parentage order—a person who is a parent of the child under the order; or

(c) for a child whose parentage has been transferred under a cultural recognition order made under the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*—a person who is a parent of the child under the order;

but does not include a natural parent of the child.

363A Abduction of child under 16

(1) Any person who unlawfully takes an unmarried child under the age of 16 years out of the custody or protection of the child's father or mother, or other person having the lawful care or charge of the child, and against the will of the father, mother or other person, is guilty of a crime, and is liable to imprisonment for 7 years.

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(2) It is immaterial that the offender believed the child to be of or above the age of 16 years.

(3) It is immaterial that the child was taken with the consent of or at the suggestion of the child.

364 Cruelty to children under 16

(1) A person who, having the lawful care or charge of a child under 16 years, causes harm to the child by any prescribed conduct that the person knew or ought reasonably to have known would be likely to cause harm to the child commits a crime.

Maximum penalty—7 years imprisonment.

(2) In this section—

harm, to a child, means any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing, whether temporary or permanent.

prescribed conduct means—

(a) failing to provide the child with adequate food, clothing, medical treatment, accommodation or care when it is available to the person from his or her own resources; or

(b) failing to take all lawful steps to obtain adequate food, clothing, medical treatment, accommodation or care when it is not available to the person from his or her own resources; or

(c) deserting the child; or

(d) leaving the child without means of support.

364A Leaving a child under 12 unattended

(1) A person who, having the lawful care or charge of a child under 12 years, leaves the child for an unreasonable time without making reasonable provision for the supervision and care of the child during that time commits a misdemeanour.

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Maximum penalty—3 years imprisonment.

(2) Whether the time is unreasonable depends on all the relevant circumstances.

Chapter 35 Criminal defamation

365 Criminal defamation

(1) Any person who publishes matter defamatory of another living person (the ***relevant person***)—

(a) knowing the matter to be false or without having regard to whether the matter is true or false; and

(b) intending to cause serious harm to the relevant person or any other person or without having regard to whether serious harm to the relevant person or any other person is caused;

commits a misdemeanour.

Maximum penalty—3 years imprisonment.

(2) However, the person does not commit an offence against subsection (1) if the person has a lawful excuse for the publication of the defamatory matter.

(3) In a proceeding for an offence defined in this section, the accused person has a lawful excuse for the publication of defamatory matter about the relevant person if, and only if, subsection (4) or (5) applies.

(4) This subsection applies if the accused person would, having regard only to the circumstances happening before or at the time of the publication, have had a relevant defence for the publication if the relevant person had brought civil proceedings for defamation against the accused person.

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(5) This subsection applies if, having regard to the circumstances happening before, at the time of publication or after the publication—

(a) the accused person would not be liable for defamation for the publication under a relevant digital intermediary provision if the relevant person brought civil proceedings for defamation against the accused person; or

(b) the accused person would have a digital intermediary defence for the publication if the relevant person brought civil proceedings for defamation against the accused person.

(6) The prosecution has the burden of negativing the existence of a lawful excuse if, and only if, evidence directed to establishing the excuse is first adduced by or on behalf of the accused person.

(7) Whether the matter complained of is capable of bearing a defamatory meaning is a question of law.

(8) Whether the matter complained of does bear a defamatory meaning is a question of fact.

(9) A person can not be prosecuted for an offence defined in this section without the consent of the director of public prosecutions.

(10) In this section—

defamatory has the meaning that it has in the law of tort (as modified by the *Defamation Act 2005*) relating to defamation.

digital intermediary defence means the defence stated in the *Defamation Act 2005*, section 31A.

modified statutory defence of justification means the defence stated in the *Defamation Act 2005*, section 25 as if that section provided that it is a defence to the publication of defamatory matter if the defendant proves that—

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(a) the defamatory imputations carried by the matter of which the relevant person complains are substantially true; and

(b) it was for the public benefit that the publication should be made.

publish has the meaning that it has in the law of tort (as modified by the *Defamation Act 2005*) relating to defamation.

relevant defence means—

(a) a defence available under the *Defamation Act 2005* other than—

(i) the statutory defence of failure to accept reasonable offer; or

(ii) the statutory defence of justification; or

(iii) the digital intermediary defence; or

(b) the modified statutory defence of justification; or

(c) a defence available other than under the *Defamation Act 2005*, including under the general law.

relevant digital intermediary provision means the *Defamation Act 2005*, section 10C or 10D.

statutory defence of failure to accept reasonable offer means the defence stated in the *Defamation Act 2005*, section 18(1).

statutory defence of justification means the defence stated in the *Defamation Act 2005*, section 25.

Chapter 35A Circumstance of aggravation for particular offences

365A Application of ch 35A

(1) This chapter applies to an offence against—

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(a) section 320; or

(b) section 323; or

(c) section 340(1)(b), if the circumstances mentioned in section 340(1), penalty, paragraph (a) apply; or

(d) section 340(2AA), if the circumstances mentioned in section 340(2AA), penalty, paragraph (a) apply.

(2) This chapter applies in relation to proof of the circumstance of aggravation that the offence was committed in a public place while the person was adversely affected by an intoxicating substance.

Notes—

1 The *Penalties and Sentences Act 1992*, part 5, division 2, subdivision 2 provides for the making of a community service order for the person if the offence is committed in a public place while the person is adversely affected by an intoxicating substance.

2 The *Police Powers and Responsibilities Act 2000*, chapter 18A applies the *Transport Operations (Road Use Management) Act 1995*, section 80 to allow evidentiary certificates about breath, saliva, blood or urine specimens taken from the person to be used in proceedings for the offence.

365B Application of defences

(1) Section 24 does not apply in relation to a belief of the person that the person is not adversely affected by an intoxicating substance.

(2) A person is taken to be not adversely affected by an intoxicating substance at the relevant time if the person proves—

(a) the person ingested an intoxicating substance that the person did not know the person was ingesting; and

(b) an ordinary person would not reasonably have known the person was ingesting the intoxicating substance; and

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(c) the person would not be adversely affected by an intoxicating substance at the relevant time apart from that ingestion.

(3) In this section—

ingest includes drink, administer, inhale and smoke.

365C Proof of being adversely affected by an intoxicating substance

(1) A person is taken to be adversely affected by an intoxicating substance if—

(a) the concentration of alcohol in the person's blood is at least 150mg of alcohol in 100mL of blood; or

(b) the concentration of alcohol in the person's breath is at least 0.150g of alcohol in 210L of breath; or

(c) any amount of a drug prescribed by regulation is present in the person's saliva; or

(d) the person fails to provide a specimen as required under the *Transport Operations (Road Use Management) Act 1995*, section 80 as applied under the *Police Powers and Responsibilities Act 2000*, chapter 18A.

(2) However, subsection (1)(c) or (d) does not apply if the person proves he or she was not adversely affected by an intoxicating substance at the relevant time.

(3) Subsection (1) does not limit the circumstances in which a person may be adversely affected by an intoxicating substance.

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Part 6 Offences relating to property and contracts

Division 1 Stealing and like offences

Chapter 36 Stealing

390 Things capable of being stolen

Anything that is the property of any person is capable of being stolen if it is—

(a) moveable; or

(b) capable of being made moveable, even if it is made moveable in order to steal it.

391 Definition of *stealing*

(1) A person who fraudulently takes anything capable of being stolen, or fraudulently converts to the person's own use or to the use of any other person anything capable of being stolen, is said to steal that thing.

(2) A person who takes or converts anything capable of being stolen is deemed to do so fraudulently if the person does so with any of the following intents, that is to say—

(a) an intent to permanently deprive the owner of the thing of it;

(b) an intent to permanently deprive any person who has any special property in the thing of such property;

(c) an intent to use the thing as a pledge or security;

(d) an intent to part with it on a condition as to its return which the person taking or converting it may be unable to perform;

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(e) an intent to deal with it in such a manner that it can not be returned in the condition in which it was at the time of the taking or conversion;

(f) in the case of money—an intent to use it at the will of the person who takes or converts it, although the person may intend to afterwards repay the amount to the owner.

(2A) A person who has taken possession of anything capable of being stolen in such circumstances that the thing thereupon is not identifiable is deemed to have taken or converted the thing fraudulently notwithstanding that the property in the thing has passed to the person if, at the time the person transports the thing away, the person has not discharged or made arrangements with the owner or previous owner of the thing for discharging the person's indebtedness in respect of the thing.

(2B) The presumption provided for by subsection (2A) is rebuttable.

(3) The taking or conversion may be fraudulent, although it is effected without secrecy or attempt at concealment.

(4) In the case of conversion, it is immaterial whether the thing converted is taken for the purpose of conversion, or whether it is at the time of the conversion in the possession of the person who converts it.

(4A) It is also immaterial that the person who converts the property is the holder of a power of attorney for the disposition of it, or is otherwise authorised to dispose of the property.

(5) When a thing converted has been lost by the owner and found by the person who converts it, the conversion is not deemed to be fraudulent if at the time of the conversion the person taking or converting the thing does not know who is the owner, and believes, on reasonable grounds, that the owner can not be discovered.

(6) The act of stealing is not complete until the person taking or converting the thing actually moves it or otherwise actually deals with it by some physical act.

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(6A) For stealing that is a failure to pay an employee, or another person on behalf of the employee, an amount payable to the employee or other person in relation to the performance of work by the employee—

(a) the amount is a thing that is capable of being stolen; and

(b) subsection (6) does not apply; and

(c) the amount is converted to the person's own use when—

(i) the amount becomes, under an Act, industrial instrument or agreement, payable to the employee or to the other person on behalf of the employee; and

(ii) the amount is not paid.

(7) In this section—

Act includes an Act of another State or the Commonwealth.

industrial instrument means—

(a) an industrial instrument under the *Industrial Relations Act 2016*, schedule 5; or

(b) a fair work instrument under the *Fair Work Act 2009* (Cwlth).

owner includes the owner, any part owner, or any person having possession or control of, or a special property in, the thing in question.

special property, in a thing, includes—

(a) a charge or lien on the thing; and

(b) a right arising from or dependent on holding possession of the thing, whether by the person entitled to the right or by another person for the other person's benefit; and

(c) a right of an employee, in relation to the performance of work by the employee—

(i) to be paid the thing; or

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(ii) to have the thing paid to another person on behalf of the employee.

392 Special cases

(1) When a wild animal in the enjoyment of its natural liberty has been killed by any person, the taking of the dead body of the animal by that person, or by any person acting under the person's orders, before it has been reduced into actual possession by the owner of the land on which the animal was killed or on which it died, is not deemed to be stealing.

(2) When a factor or agent pledges or gives a lien on any goods or document of title to goods entrusted to the factor or agent for the purpose of sale or otherwise for any sum of money not greater than the amount due to the factor or agent from his or her principal at the time of pledging or giving the lien, together with the amount of any bill of exchange or promissory note accepted or made by the factor or agent for or on account of his or her principal, such dealing with the goods or document of title is not deemed to be stealing.

393 Funds etc. held under direction

(1) When a person receives, either alone or jointly with another person, any money or valuable security, or a power of attorney for the sale, mortgage, pledge, or other disposition, of any property, whether capable of being stolen or not, with a direction in either case that such money or any part thereof, or any other money received in exchange for it, or any part thereof, or the proceeds or any part of the proceeds of such security, or of such mortgage, pledge, or other disposition, shall be applied to any purpose or paid to any person specified in the direction, such money and proceeds are deemed to be the property of the person from whom the money, security, or power of attorney, was received until the direction has been complied with.

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(2) However, if the person receiving the money, security or power of attorney, and the person from whom the person receives it ordinarily deal with each other on such terms that in the absence of any special direction all money paid to the former on account of the latter would be properly treated as an item in a debtor and creditor account between them, the former can not be charged with stealing the money or any such proceeds unless the direction is in writing.

394 Funds etc. received by agents for sale

When a person receives, either alone or jointly with another person, any property from another on terms authorising or requiring the person to sell it or otherwise dispose of it, and requiring the person to pay or account for the proceeds of the property, or any part of such proceeds, or to deliver anything received in exchange for the property, to the person from whom it is received, or some other person, then the proceeds of the property, and anything so received in exchange for it, are deemed to be the property of the person from whom the property was so received, until they have been disposed of in accordance with the terms on which the property was received, unless it is a part of those terms that the proceeds (if any) shall form an item in a debtor and creditor account between the person and the person to whom the person is to pay them or account for them, and that the relation of debtor and creditor only shall exist between them in respect thereof.

395 Money received for another

When a person receives, either alone or jointly with another person, any money on behalf of another, the money is deemed to be the property of the person on whose behalf it is received, unless the money is received on the terms that it shall form an item in a debtor and creditor account, and that the relation of debtor and creditor only shall exist between the parties in respect of it.

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396 Stealing by persons having an interest in the thing stolen

When any person takes or converts anything capable of being stolen, under such circumstances as would otherwise amount to stealing, it is immaterial that the person has a special property or interest therein, or that the person is the owner of the thing taken or converted subject to some special property or interest of some other person therein; or that the person is lessee of the thing, or that the person is 1 of 2 or more joint owners of the thing; or that the person is a director or officer of a corporation or company or society who are the owners of it.

398 Punishment of stealing

(1) Any person who steals anything capable of being stolen is guilty of a crime, and is liable, if no other punishment is provided, to imprisonment for 5 years.

(2) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

Punishment in special cases

1 Stealing wills

If the thing stolen is a testamentary instrument, whether the testator is living or dead, the offender is liable to 14 years imprisonment.

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2 Stealing stock

(1) If the thing stolen is 1 or more animals and the offender is sentenced to pay a fine, the fine must be at least the following amount for each animal—

(a) if the animal's value is determined under a regulation under section 450F—that value or 10 penalty units, whichever is higher;

(b) otherwise—10 penalty units.

(2) Subclause (1) applies whether the person is sentenced to pay the fine in addition to, or instead of, imprisonment.

(3) Subclause (1) applies whether the person is liable to imprisonment for 5 years or a longer period under this section.

(4) In this clause—

animal means an animal that is stock.

4 Stealing from the person—stealing goods in transit etc.

If the offence is committed under any of the circumstances following, that is to say—

(a) if the thing is stolen from the person of another;

(b) if the thing is stolen in a dwelling, and its value exceeds $1,000, or the offender at or immediately before or after the time of stealing uses or threatens to use violence to any person in the dwelling;

(c) if the thing is stolen from any kind of vehicle or place of deposit used for the conveyance or custody of goods in transit from 1 place to another;

(d) if the thing is stolen from a vehicle which is in distress or wrecked or stranded;

(e) if the thing is stolen from a public office in which it is deposited or kept;

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(f) if the offender, in order to commit the offence, opens any locked room, box, or other receptacle, by means of a key or other instrument;

the offender is liable to imprisonment for 10 years.

5 Stealing by persons in the public service

If the offender is a person employed in the public service, and the thing stolen is the property of the Sovereign, or came into the possession of the offender by virtue of the offender's employment, the offender is liable to imprisonment for 10 years.

6 Stealing by clerks and servants

If the offender is a clerk or servant, and the thing stolen is the property of the offender's employer, or came into the possession of the offender on account of the offender's employer, the offender is liable to imprisonment for 10 years.

7 Stealing by directors or officers of companies

If the offender is a director or officer of a corporation or company, and the thing stolen is the property of the corporation or company, the offender is liable to imprisonment for 10 years.

8 Stealing by agents etc.

If the thing stolen is any of the things following, that is to say—

(a) property which has been received by the offender with a power of attorney for the disposition thereof;

(b) money received by the offender with a direction that the same should be applied to any purpose or paid to any person specified in the direction;

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(c) the whole or part of the proceeds of any valuable security which has been received by the offender with a direction that the proceeds thereof should be applied to any purpose or paid to any person specified in the direction;

(d) the whole or part of the proceeds arising from any disposition of any property which have been received by the offender by virtue of a power of attorney or other authority for the disposition of the property received by the offender with a direction that such proceeds should be applied to any purpose or paid to any person specified in the direction;

the offender is liable to imprisonment for 10 years.

9 Stealing property valued at more than $5,000

If the thing stolen is property, including an animal that is stock, and its value is more than $5,000, the offender is liable to imprisonment for 10 years.

10 Stealing by tenants or lodgers

If the thing stolen is a fixture or chattel let to the offender to be used by him or her with a house or lodging, and its value exceeds $1,000, the offender is liable to imprisonment for 10 years.

11 Stealing after previous conviction

If the offender, before committing the offence, had been convicted upon indictment of any of the indictable offences defined in this division, or had been twice previously summarily convicted of an offence punishable on summary conviction under this division, whether each of the convictions was in respect of an offence of the same character or not, the offender is liable to imprisonment for 10 years.

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12 Stealing of a vehicle

If the thing stolen is a vehicle the offender is liable to imprisonment for 14 years.

13 Stealing by looting

If—

(a) the offence is committed during a natural disaster, civil unrest or an industrial dispute; or

(b) the thing stolen is left unattended by the death or incapacity of the person in possession of the property; or

(c) the offence is committed in an area that—

(i) is a declared area for a disaster situation under the *Disaster Management Act 2003*; or

(ii) was, immediately before the offence was committed, a declared area for a disaster situation under the *Disaster Management Act 2003*;

the offender is liable to imprisonment for 10 years.

14 Stealing firearm for use in another indictable offence

If—

(a) the thing stolen is a firearm; and

(b) the offender steals the firearm intending that it be used by anyone to commit an indictable offence;

the offender is liable to imprisonment for 14 years.

15 Stealing firearm or ammunition

If the thing stolen is a firearm or ammunition, the offender is liable to imprisonment for 10 years.

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16 Stealing by employers

If the offender is or was an employer and the thing stolen is the property of a person who is or was the offender's employee, the offender is liable to imprisonment for 10 years.

Chapter 37 Offences analogous to stealing

399 Fraudulent concealment of particular documents

A person who, with intent to defraud, conceals the whole or part of—

(a) a register or record kept by lawful authority; or

(b) a document recording title to property; or

(c) a testamentary instrument (whether the testator is living or dead);

commits a crime.

Maximum penalty—

(a) if the offence is committed in relation to a document recording title to property—3 years imprisonment; or

(b) otherwise—14 years imprisonment.

403 Severing with intent to steal

Any person who makes anything moveable with intent to steal it is guilty of a crime, and is liable to the same punishment as if the person had stolen the thing after it became moveable.

406 Bringing stolen goods into Queensland

Any person who, having at any place not in Queensland obtained any property by any act which if it had been done in Queensland would have constituted the crime of stealing, and

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which is an offence under the laws in force in the place where it was done, brings such property into Queensland, or has it in the person's possession in Queensland, is guilty of a crime, and is liable to the same punishment as if the person had stolen it in Queensland; but so that the punishment does not exceed that which would be incurred for the same act under the laws in force in the place where the act by which the person obtained the property was done.

408A Unlawful use or possession of motor vehicles, aircraft or vessels

(1) A person who—

(a) unlawfully uses any motor vehicle, aircraft or vessel without the consent of the person in lawful possession thereof; or

(b) has in the person's possession any motor vehicle, aircraft or vessel without the consent of the person in lawful possession thereof with intent to deprive the owner or person in lawful possession thereof of the use and possession thereof either temporarily or permanently;

is guilty of a crime and is liable to imprisonment for 10 years.

(2) If the offender uses or intends to use the motor vehicle, aircraft or vessel for the purpose of facilitating the commission of an indictable offence, the offender is liable to imprisonment for 12 years.

(3) If the offender publishes material on a social media platform or an online social network to—

(a) advertise the offender's involvement in the offence; or

(b) advertise the act or omission constituting the offence;

the offender is liable to imprisonment for 12 years.

(4) If—

(a) the offence is committed in the night; or

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(b) the offender—

(i) uses or threatens to use actual violence; or

(ii) is or pretends to be armed with a dangerous or offensive weapon, instrument or noxious substance; or

(iii) is in company with 1 or more persons; or

(iv) damages, or threatens or attempts to damage, any property;

the offender is liable to imprisonment for 14 years.

(5) If—

(a) the motor vehicle, aircraft or vessel is an emergency vehicle; and

(b) the offender knows, or ought reasonably to know, it is an emergency vehicle;

the offender is liable to imprisonment for 14 years.

(6) Subsections (1) to (5) do not apply if the accused person had the lawful consent of the owner of the motor vehicle, aircraft or vessel to its use or possession by the accused person.

(7) The accused person bears the evidential burden in relation to the matters stated in subsection (6).

(8) This section applies without prejudice to any provision of any other Act relating to the unlawful use or possession of motor vehicles, aircraft or vessels save that an offender shall not be liable to be convicted under both this section and such other provision in respect of any one and the same unlawful use or possession of any motor vehicle, aircraft or vessel.

(9) In this section—

advertise means attract the notice and attention of the public or a limited section of the public.

material includes an electronic document.

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vessel means every kind of vessel designed for use on or in water, not propelled exclusively by oars.

408C Fraud

(1) A person who dishonestly—

(a) applies to his or her own use or to the use of any person—

(i) property belonging to another; or

(ii) property belonging to the person, or which is in the person's possession, either solely or jointly with another person, subject to a trust, direction or condition or on account of any other person; or

(b) obtains property from any person; or

(c) induces any person to deliver property to any person; or

(d) gains a benefit or advantage, pecuniary or otherwise, for any person; or

(e) causes a detriment, pecuniary or otherwise, to any person; or

(f) induces any person to do any act which the person is lawfully entitled to abstain from doing; or

(g) induces any person to abstain from doing any act which that person is lawfully entitled to do; or

(h) makes off, knowing that payment on the spot is required or expected for any property lawfully supplied or returned or for any service lawfully provided, without having paid and with intent to avoid payment;

commits the crime of fraud.

Maximum penalty—5 years imprisonment.

(2) The offender is liable to imprisonment for 14 years if, for an offence against subsection (1)—

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(a) the offender is a director or officer of a corporation, and the victim is the corporation; or

(b) the offender is an employee of the victim; or

(c) any property in relation to which the offence is committed came into the possession or control of the offender subject to a trust, direction or condition that it should be applied to any purpose or be paid to any person specified in the terms of trust, direction or condition or came into the offender's possession on account of any other person; or

(d) the property, or the yield to the offender from the dishonesty, or the detriment caused, is of a value of at least $30,000 but less than $100,000; or

(e) the offender is or was an employer of the victim.

(2A) The offender is liable to imprisonment for 20 years, if, for an offence against subsection (1)—

(a) the property, or the yield to the offender from the dishonesty, or the detriment caused, is of a value of at least $100,000; or

(b) the offender carries on the business of committing the offence.

(2B) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

(2C) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(3) For the purposes of this section—

(a) ***property***, without limiting the definition of property in section 1, includes credit, service, any benefit or advantage, anything evidencing a right to incur a debt or to recover or receive a benefit, and releases of obligations; and

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(b) a person's act or omission in relation to property may be dishonest even though—

(i) he or she is willing to pay for the property; or

(ii) he or she intends to afterwards restore the property or to make restitution for the property or to afterwards fulfil his or her obligations or to make good any detriment; or

(iii) an owner or other person consents to doing any act or to making any omission; or

(iv) a mistake is made by another person; and

(c) a person's act or omission in relation to property is not taken to be dishonest, if when the person does the act or makes the omission, he or she does not know to whom the property belongs and believes on reasonable grounds that the owner can not be discovered by taking reasonable steps, unless the property came into his or her possession or control as trustee or personal representative; and

(d) persons to whom property belongs include the owner, any joint or part owner or owner in common, any person having a legal or equitable interest in or claim to the property and any person who, immediately before the offender's application of the property, had control of it; and

(e) ***obtain*** includes to get, gain, receive or acquire in any way; and

(f) if a person obtains property from any person or induces any person to deliver property to any person it is immaterial in either case whether the owner passes or intends to pass ownership in the property or whether he or she intends to pass ownership in the property to any person.

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408D Obtaining or dealing with identification information

(1) A person who obtains or deals with another entity's identification information for the purpose of committing, or facilitating the commission of, an indictable offence commits a misdemeanour.

Maximum penalty—5 years imprisonment.

(1A) A person who possesses equipment for the purpose of committing, or facilitating the commission of, an offence against subsection (1), commits a misdemeanour.

Maximum penalty—5 years imprisonment.

(1B) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(1C) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(2) For subsection (1), it is immaterial whether the other entity is alive or dead, or exists or does not exist, or consents or does not consent to the obtaining or dealing.

(3) When a court is sentencing a person for an offence against subsection (1), the court may order that the court's certificate be issued to the other entity stating the offence, the entity's name and anything else the court considers relevant for the entity's benefit.

(4) The order may be made on the court's own initiative or on application by the entity or the prosecutor.

(5) If the person is sentenced on a plea of guilty, the certificate may be given to the entity immediately.

(6) If subsection (5) does not apply, the certificate must not be given to the entity until the later of the following—

(a) the end of any period allowed for appeal against conviction;

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(b) if an appeal is started—the end of any proceedings on the appeal.

(7) In this section—

dealing, with identification information, includes supplying or using the information.

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.

identification information, of another entity, means information about, or identifying particulars of, the entity that is capable of being used, whether alone or in conjunction with other information, to identify or purportedly identify the entity.

Examples for an entity that is an individual—

- information about the individual or the individual's relatives including name, address, date of birth, marital status and similar information
- the individual's driver licence or driver licence number
- the individual's passport or passport number
- anything commonly used by an individual to identify himself or herself, including a digital signature
- the individual's financial account numbers, user names and passwords
- a series of numbers or letters (or a combination of both) intended for use as a means of personal identification
- any data stored or encrypted on the individual's credit or debit card
- biometric data relating to the individual
- the individual's voice print
- a false driver licence or other false form of identification for a fictitious individual

Examples for an entity that is a body corporate—

- the body corporate's name
- the body corporate's ABN

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- the body corporate's financial account numbers
- any data stored or encrypted on a credit or debit card issued to the body corporate

obtaining, identification information, includes possessing or making the information.

408E Misuse of restricted computer

(1) A person who uses a restricted computer without the consent of the computer's controller commits a misdemeanour.

Maximum penalty—3 years imprisonment.

(2) If the person causes or intends to cause detriment or damage, or gains or intends to gain a benefit, the person commits a crime and is liable to imprisonment for 5 years.

(3) If the person causes a detriment or damage or obtains a benefit for any person to the value of more than $5,000, or intends to commit an indictable offence, the person commits a crime and is liable to imprisonment for 10 years.

(4) It is a defence to a charge under this section to prove that the use of the restricted computer was authorised, justified or excused by law.

(5) In this section—

benefit includes a benefit, pecuniary or otherwise, obtained by or delivered to any person.

computer means all or part of a computer, computer system or computer network and includes, for example, all external devices connected to the computer in any way or capable of communicating with each other as part of a system or network.

controller means a person who has a right to control the computer's use.

damage includes—

(a) damage to any computer hardware or software; and

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(b) for information—any alteration, addition, removal or loss of, or other damage to, information.

detriment includes any detriment, pecuniary or otherwise, to any person.

information includes data, file, document, or computer language or coding.

restricted computer means a computer for which—

(a) a device, code or a particular sequence of electronic impulses is necessary in order to gain access to or to use the computer; and

(b) the controller—

(i) withholds or takes steps to withhold access to the device, or knowledge of the code or of the sequence or of the way of producing the code or the sequence, from other persons; or

(ii) restricts access or takes steps to restrict access to the device or knowledge of the code or of the sequence, or to the way of producing the sequence, to a person or a class of person authorised by the controller.

use, of a restricted computer, includes accessing or altering any information stored in, or communicate information directly or indirectly to or from, the restricted computer, or cause a virus to become installed on or to otherwise affect, the computer.

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Chapter 38 Stealing with violence—extortion by threats

409 Definition of *robbery*

(1) Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain the thing stolen or to prevent or overcome resistance to its being stolen, is said to be guilty of ***robbery***.

(2) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

411 Punishment of robbery

(1) Any person who commits the crime of robbery is liable to imprisonment for 14 years.

(2) If the offender is or pretends to be armed with any dangerous or offensive weapon or instrument, or is in company with 1 or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, the offender wounds or uses any other personal violence to any person, the offender is liable to imprisonment for life.

(3) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for the crime of robbery.

412 Attempted robbery

(1) Any person who assaults any person with intent to steal anything, and, at or immediately before or immediately after the time of the assault, uses or threatens to use actual violence to any person or property in order to obtain the thing intended to be stolen, or to prevent or overcome resistance to its being

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stolen, is guilty of a crime, and is liable to imprisonment for 7 years.

(2) If the offender is or pretends to be armed with any dangerous or offensive weapon or instrument, or is in company with 1 or more other person or persons, the offender is liable to imprisonment for 14 years.

(3) If the offender is armed with any dangerous or offensive weapon, instrument or noxious substance, and at or immediately before or immediately after the time of the assault the offender wounds, or uses other personal violence to, any person by the weapon, instrument or noxious substance, the offender is liable to imprisonment for life.

(4) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

(5) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

413 Assault with intent to steal

Any person who assaults any person with intent to steal anything is guilty of a crime, and is liable to imprisonment for 3 years.

414 Demanding property with menaces with intent to steal

Any person who, with intent to steal anything, demands it from any person with threats of any injury or detriment of any kind to be caused to the other person, either by the offender or by any other person, if the demand is not complied with, is guilty of a crime, and is liable to imprisonment for 3 years.

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415 Extortion

(1) A person (the ***demander***) who, without reasonable cause, makes a demand—

(a) with intent to—

(i) gain a benefit for any person (whether or not the demander); or

(ii) cause a detriment to any person other than the demander; and

(b) with a threat to cause a detriment to any person other than the demander;

commits a crime.

Maximum penalty—

(a) if carrying out the threat causes, or would be likely to cause, serious personal injury to a person other than the offender—life imprisonment; or

(b) if carrying out the threat causes, or would be likely to cause, substantial economic loss in an industrial or commercial activity conducted by a person or entity other than the offender (whether the activity is conducted by a public authority or as a private enterprise)—life imprisonment; or

(c) otherwise—14 years imprisonment.

(1A) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

(2) It is immaterial that—

(a) the demand or threat is made in a way ordinarily used to inform the public rather than a particular person; or

(b) the threat does not specify the detriment to be caused; or

(c) the threat does not specify the person to whom the detriment is to be caused or specifies this in a general way; or

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Example—

a threat to cause a detriment to the public or any members of the public

(d) the detriment is to be caused by someone other than the demander.

(3) A reference to making a demand includes causing someone to receive a demand.

(4) A reference to a threat to cause a detriment to any person other than the demander includes a statement that gives rise to a threat of detriment to the other person.

(5) A prosecution for an offence in which it is intended to rely on a circumstance of aggravation mentioned in paragraph (a) or (b) of the penalty can not be commenced without the consent of the Attorney-General.

(5A) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(6) In this section—

threat includes a statement that may reasonably be interpreted as a threat.

417A Taking control of aircraft

(1) Any person who unlawfully either directly or indirectly takes or exercises control of any aircraft is guilty of a crime and is liable to imprisonment for 7 years.

(2) If another person not being an accomplice of the offender is on board the aircraft the offender is liable to imprisonment for 14 years.

(3) If the offender at or immediately before or immediately after the time of taking or exercising such control uses or threatens to use actual violence to any person or property in order to take or exercise control of the aircraft or to prevent or overcome resistance to such control being taken or exercised

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or is armed with any dangerous or offensive weapon or instrument or is in company with one or more other person or persons or takes or exercises such control by any fraudulent representation trick device or other means the offender is liable to imprisonment for life.

Chapter 39 Burglary—housebreaking—and like offences

418 Definitions

(1) A person who breaks any part, whether external or internal, of a dwelling or any premises, or opens, by unlocking, pulling, pushing, lifting, or any other means whatever, any door, window, shutter, cellar, flap, or other thing, intended to close or cover an opening in a dwelling or any premises, or an opening giving passage from one part of a dwelling or any premises to another, is said to break the dwelling or premises.

(2) A person is said to enter a dwelling or premises as soon as any part of the person's body or any part of any instrument used by the person is within the dwelling or premises.

(3) A person who obtains entrance into a dwelling or premises by means of any threat or artifice used for that purpose, or by collusion with any person in the dwelling or premises, or who enters any chimney or other aperture of the dwelling or premises permanently left open for any necessary purpose, but not intended to be ordinarily used as a means of entrance, is deemed to have broken and entered the dwelling or premises.

(4) In this chapter—

premises includes—

(a) a building or structure and a part of a building or structure other than a dwelling; and

(b) a tent, caravan, or vehicle; and

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(c) any similar place.

419 Burglary

(1) Any person who enters or is in the dwelling of another with intent to commit an indictable offence in the dwelling commits a crime.

Maximum penalty—14 years imprisonment.

(2) If the offender enters the dwelling by means of any break, he or she is liable to imprisonment for life.

(3) If—

(a) the offence is committed in the night; or

(b) the offender—

(i) uses or threatens to use actual violence; or

(ii) is or pretends to be armed with a dangerous or offensive weapon, instrument or noxious substance; or

(iii) is in company with 1 or more persons; or

(iv) damages, or threatens or attempts to damage, any property;

the offender is liable to imprisonment for life.

(4) If the offender publishes material on a social media platform or an online social network to—

(a) advertise the offender's involvement in the offence; or

(b) advertise the act or omission constituting the offence;

the offender is liable to imprisonment for 16 years.

(5) Any person who enters or is in the dwelling of another and commits an indictable offence in the dwelling commits a crime.

Maximum penalty—imprisonment for life.

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(6) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

(7) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(8) In this section—

advertise means attract the notice and attention of the public or a limited section of the public.

material includes an electronic document.

421 Entering or being in premises and committing indictable offences

(1) Any person who enters or is in any premises with intent to commit an indictable offence in the premises commits a crime.

Maximum penalty—10 years imprisonment.

(2) Any person who enters or is in any premises and commits an indictable offence in the premises commits a crime.

Maximum penalty—14 years imprisonment.

(3) If the offender gains entry to the premises by any break and commits an indictable offence in the premises, he or she is liable to imprisonment for life.

425 Possession of things used in connection with unlawful entry

(1) Any person who is found under any of the circumstances following, that is to say—

(a) being armed with any dangerous or offensive weapon or instrument, or a noxious substance, and being so armed

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with intent to break or enter a dwelling or premises, and to commit an indictable offence therein;

(b) having in his or her possession anything intended for use in or in connection with the commission of an offence defined in section 419 or 421;

(c) having in the person's possession by night without lawful excuse, the proof of which lies on the person, any instrument of housebreaking;

(d) having in the person's possession by day any such instrument with intent to commit an indictable offence;

(e) having his or her face masked or blackened or being otherwise disguised, with intent to commit an indictable offence;

is guilty of a crime, and is liable to imprisonment for 3 years.

(2) If the offender has been previously convicted of a crime relating to property, the offender is liable to imprisonment for 7 years.

427 Unlawful entry of vehicle for committing indictable offence

(1) A person who unlawfully enters another person's vehicle with intent to commit an indictable offence commits a crime.

Maximum penalty—10 years imprisonment.

(2) If—

(a) the offence is committed in the night; or

(b) the offender—

(i) uses or threatens to use actual violence; or

(ii) is or pretends to be armed with a dangerous or offensive weapon, instrument or noxious substance; or

(iii) is in company with 1 or more persons; or

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(iv) damages, or threatens or attempts to damage, any property;

the offender is liable to imprisonment for 14 years.

(3) If—

(a) the vehicle is an emergency vehicle; and

(b) the offender knows, or ought reasonably to know, the vehicle is an emergency vehicle;

the offender is liable to imprisonment for 14 years.

Chapter 40 Other fraudulent practices

427A Obtaining property by passing valueless cheques

(1) Any person who—

(a) obtains from any other person any chattel, money, valuable security, credit, benefit or advantage by passing a cheque that is not paid on presentation for payment; or

(b) passes a cheque in the discharge or attempted discharge of any debt, liability or obligation, which cheque is not paid on presentation for payment;

is guilty of a misdemeanour and is liable to imprisonment for 2 years.

(2) It is a defence to a charge of an offence defined in this section to prove that the accused person—

(a) had reasonable grounds for believing that the cheque would be paid in full on presentation for payment; and

(b) had no intent to defraud.

(3) The fact that at the time when the cheque was passed there were some funds to the credit of the account on which the

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cheque was drawn is not of itself a defence to a charge of an offence defined in this section.

430 Fraudulent falsification of records

Any person who with intent to defraud—

(a) makes a false entry in any record; or

(b) omits to make an entry in any record; or

(c) gives any certificate or information that is false in a material particular; or

(d) in any way falsifies, destroys, alters or damages any record; or

(e) produces or makes use of any record the person knows is false in a material particular;

commits a crime.

Maximum penalty—10 years imprisonment.

431 False accounting by public officer

Any person who, being an officer charged with the receipt, custody, or management of any part of the public revenue or property, knowingly furnishes any false statement or return of any money or property received by the person or entrusted to the person's care, or of any balance of money or property in the person's possession or under the person's control, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

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Chapter 41 Receiving property stolen or fraudulently obtained and like offences

432 What is *tainted property* for ch 41

(1) In this chapter—

tainted property means—

(a) a thing that has been obtained by way of an act constituting an indictable offence; or

(b) if tainted property mentioned in paragraph (a) is converted into other property—any of the other property; or

(c) if tainted property mentioned in paragraph (a) is mortgaged, pledged or exchanged for other property—any of the proceeds of the mortgage, pledge, or exchange.

(2) However, a thing stops being ***tainted property*** after a person acquires a lawful title to it.

433 Receiving tainted property

(1) A person who receives tainted property, and has reason to believe it is tainted property, commits a crime.

Maximum penalty—

(a) if the property was obtained by way of an act constituting a crime—14 years imprisonment; or

(b) if the property is a firearm or ammunition—14 years imprisonment; or

(c) if the offender received the property while acting as a pawnbroker or dealer in second hand goods, under a licence or otherwise—14 years imprisonment; or

(d) otherwise—7 years imprisonment.

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(1A) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

(1B) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(2) For the purpose of proving the receiving of anything it is sufficient to show that the accused person has, either alone or jointly with some other person, had the thing in his or her possession, or has aided in concealing it or disposing of it.

435 Taking reward for recovery of property obtained by way of indictable offences

If—

(a) a thing is obtained by way of any act constituting an indictable offence; and

(b) a person dishonestly receives, or dishonestly agrees to receive, any benefit on an agreement or understanding that the person will help anyone to recover the thing;

then, unless the person has used all due diligence to cause the offender to be brought to trial for the offence, the person commits a crime.

Maximum penalty—7 years imprisonment.

Chapter 42A Secret commissions

442A Definitions

(1) In this chapter—

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advice given or words to the like effect includes every report, certificate, statement, and suggestion intended to influence the person to whom the same is made or given, and every influence deliberately or expressly exercised by one person over another.

agent includes any corporation, firm, or person acting or having been acting, or desirous or intending to act, for or on behalf of any corporation, firm, or person, whether as agent, partner, co-owner, clerk, servant, employee, banker, broker, auctioneer, architect, clerk of works, charterer, master mariner, purser, or any member of the crew of a vessel, engineer, barrister, solicitor, legal practitioner, conveyancer, surveyor, buyer, salesperson, supervisor, trustee, official assignee, executor, administrator, liquidator, trustee in bankruptcy or of a deed of assignment, receiver, director, manager, or other officer or member of the committee or governing body of any corporation, club, partnership, or association, or in any other capacity, either alone or jointly with any other corporation, firm, or person, and whether in the person's own name or in the name of the person's principal or otherwise, and also includes a Minister of the Crown, and a person serving under the Crown or a Minister of the Crown, or corporation representing the Crown, and a person serving under any local government, harbour board, water authority, or any other local or public body constituted by or under any Act.

contract includes contract of sale or of employment, or any other contract whatever including an order for any commodity.

court means the Supreme Court or a judge thereof, or magistrate or justices having jurisdiction with respect to an offence against this chapter.

in relation to his or her principal's affairs or business implies the additional words 'whether within the scope of his or her authority or course of his or her employment as agent or not'.

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person having business relations with the principal includes the Crown, a Minister of the Crown, or corporation representing the Crown, or any local government, harbour board, water authority, or any other local or public body constituted by or under any Act; also every corporation, firm, or other person, whether as principal or agent, carrying on or having carried on or desirous or intending to carry on any negotiation or business with any principal, or engaged or interested or having been engaged or interested in the performance of any contract with or in the execution of any work or business for or in the supply of any goods or chattels to any principal; and also includes any agent or employee of the Crown, a Minister of the Crown, or corporation representing the Crown, or of any local government, harbour board, water authority, or any other local or public body constituted by or under any Act, or of any such corporation, firm, or other person.

principal includes a corporation, firm, or other person for or on behalf of whom the agent acts, has acted, or is desirous or intending to act; the term also includes the Crown, a Minister of the Crown, or corporation representing the Crown, or any local government, harbour board, water authority, or any other local or public body constituted by or under any Act for or on behalf of whom the agent acts, has acted, or is desirous or intending to act.

solicit any valuable consideration and ***valuable consideration solicited***, and words to the like effect, shall be construed with the following directions, namely, that every agent who diverts, obstructs, gives untruthful reports, or interferes with the proper course of business or manufacture, or impedes or obstructs, or fails to use due diligence in the prosecution of any negotiation or business with the intent to obtain the gift of any valuable consideration from any other person interested in the said negotiation or business, or with intent to injure any such person, shall be deemed to have solicited a valuable consideration from a person having business relations with the principal of such agent.

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trustee includes the public trustee, an executor, administrator, liquidator, official assignee, or trustee in bankruptcy, receiver, administrator appointed under the *Guardianship and Administration Act 2000*, person having power to appoint a trustee, or person entitled to obtain probate of the will or letters of administration to the estate of a deceased person, or any other person occupying a fiduciary position.

valuable consideration includes any real or personal property; also money, loan, office, place, employment, agreement to give employment, benefit, or advantage whatsoever, and any commission or rebate, payment in excess of actual value of the goods or service, deduction or percentage, bonus or discount, or any forbearance to demand any moneys or moneys' worth or valuable thing; also some detriment, loss or responsibility given, suffered, or taken, or the refraining from carrying out or doing something which lawfully should be done; and the acceptance of any of the said things shall be deemed the receipt of a valuable consideration.

The offer of any valuable consideration includes any offer of any agreement or promise to give, and every holding out of any expectation of valuable consideration.

The receipt of any valuable consideration includes any acceptance of any agreement, promise, or offer to give, or of any holding out of any expectation of valuable consideration.

Prohibition of indirect acts

(2) Any act or thing prohibited by this chapter is prohibited whether done directly or indirectly by the person mentioned or by or through any other person.

442B Receipt or solicitation of secret commission by an agent

Any agent who corruptly receives or solicits from any person for himself or herself or for any other person any valuable consideration—

(a) as an inducement or reward for or otherwise on account of doing or forbearing to do, or having done or forborne

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to do, any act in relation to his or her principal's affairs or business; or

(b) the receipt or any expectation of which would in any way tend to influence the agent to show, or to forbear to show, favour or disfavour to any person in relation to his or her principal's affairs or business;

commits a crime.

442BA Gift or offer of secret commission to an agent

Any person who corruptly gives or offers to any agent any valuable consideration—

(a) as an inducement or reward for or otherwise on account of the agent doing or forbearing to do, or having done or forborne to do, any act in relation to his or her principal's affairs or business; or

(b) the receipt or any expectation of which would in any way tend to influence the agent to show, or to forbear to show, favour or disfavour to any person in relation to his or her principal's affairs or business;

commits a crime.

442C Secret gifts received by parent, spouse, child, partner etc. of agent

(1) Any valuable consideration received or solicited by any parent, spouse, or child of any agent, or by his or her partner, clerk, or employee, from any person having business relations with the principal of such agent, shall be deemed to have been received or solicited by the agent unless it be proved that the valuable consideration was so received or solicited without the consent, knowledge, or privity of the agent.

Secret gifts to parent, spouse, child, partner etc. of agent

(2) Any valuable consideration—

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(a) given or offered to any parent, spouse, or child of any agent, or to his or her partner, clerk, or employee, and so given or offered with the consent, knowledge, or privity of the agent; or

(b) given or offered, at the agent's request, to any person by any person having business relations with the principal of such agent;

shall be deemed to have been given or offered to the agent.

442D False or misleading receipt or account

Any person who with intent to deceive or defraud the principal gives to any agent, or any agent who receives or uses or gives to the principal any receipt, invoice, account, or document in respect of which or in relation to a dealing transaction or matter in which the principal is interested, and which—

(a) contains any statement which is false or erroneous or defective in any important particular, or contains an overcharge or is in any way likely to mislead the principal; or

(b) omits to state explicitly and fully the fact of any commission, percentage, bonus, discount, rebate, repayment, gratuity, or deduction having been made, given, or allowed, or agreed to be made, given, or allowed;

commits a crime.

442E Secret commission for advice given

Whenever any advice is given by one person to another, and such advice is in any way intended or likely to induce or influence the person advised—

(a) to enter into a contract with any third person; or

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(b) to appoint or join with another in the appointment, or to vote for or to aid in obtaining the election or appointment, or to authorise or join with another in authorising the appointment of any third person as trustee, director, manager, or official;

and any valuable consideration is, without the assent of the person advised, given by such third person to the person giving the advice, the gift or receipt of the valuable consideration is a crime; but this subsection shall not apply when the person giving the advice was, to the knowledge of the person advised, the agent of such third person, or when the valuable consideration was not given in respect of such advice.

442EA Offer or solicitation of secret commission in return for advice given or to be given

Any offer or solicitation of a valuable consideration in respect of any advice given, or to be given, by one person to another with a view to induce or influence the person advised—

(a) to enter into a contract with the person offering or solicited; or

(b) to appoint or join with another in appointing, or to vote for or to aid in obtaining the election or appointment, or to authorise or join with another in authorising the appointment of the person offering or solicited as trustee, director, manager, or official;

and with the intent that the gift or receipt of such valuable consideration is not to be made known to the person advised, is a crime; but this subsection shall not apply when such first mentioned person is the agent of the person offering or solicited.

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442F Secret commission to trustee in return for substituted appointment

Any person who offers or gives any valuable consideration to a trustee, or any trustee who receives or solicits any valuable consideration for himself or herself or for any other person, without the assent of the persons beneficially entitled to the estate or of a judge of the Supreme Court, as an inducement or reward for appointing or having appointed, or for joining or having joined with another in appointing, or for authorising or having authorised, or for joining or having joined with another in authorising, any person to be appointed in the person's stead or instead of the person and any other person as trustee, commits a crime.

442G Liability of director etc. acting without authority

Any director, manager, or officer of a company, or any officer or member of the crew of any vessel, or any person acting for another, who knowingly takes part in or is in any way privy to doing, or attempts to do, any act or thing without authority which, if authorised, would be in contravention of any of the provisions of this chapter, commits a crime.

442I Penalty on conviction

Any person guilty of a crime against any of the provisions of this chapter is—

(a) liable, if a corporation, to a penalty of 3,400 penalty units, and if an individual, to 7 years imprisonment; and

(b) in addition, liable to be ordered to pay to such person and in such manner as the court directs the amount or value, according to the estimation of the court, of any valuable consideration received or given by the person, or any part thereof, and such order shall be enforceable in the same manner as an order of the court.

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442J Court may order withdrawal of trifling or technical cases

If in any prosecution under this chapter it appears to the court that the offence charged is, in the particular case, of a trifling or merely technical nature, or that in the particular circumstances it is inexpedient to proceed to a conviction, the court may in its discretion, and for reason stated on the application of the accused, dismiss the case; but the court may, if it thinks fit, make the order mentioned in section 442I.

442K Witness giving answers criminating himself or herself

(1) A person who is called as a witness in any proceeding under this chapter shall not be excused from answering any question relating to any offence against this chapter on the ground that the answer thereto may criminate or tend to criminate the person.

(2) An answer to a question in any such proceeding shall not, except in the said proceeding or in the case of any prosecution for perjury in respect of such answer, be in any proceeding, civil or criminal, admissible in evidence against the person so answering.

442L Certificate to witness

(1) A witness in any proceeding under this chapter who, in the judgment of the court, answers truly all questions which the witness is required by the court to answer shall be entitled to receive a certificate from the court stating that such witness has so answered.

Stay of proceedings against such witness

(2) When a person has received a certificate as aforesaid, and any criminal proceeding is at any time instituted against the person in respect of the offence which was in question in the proceeding in which the said person was called as a witness, the court having cognisance of the case shall, on proof of the certificate and of the identity of the offence in question in the 2 cases, stay the proceedings.

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442M Custom of itself no defence

(1) In any prosecution under this chapter it does not amount to a defence to show that the receiving, soliciting, giving, or offering of any valuable consideration therein mentioned or referred to is customary in any trade, business, or calling.

Burden of proof that gift not secret commission

(2) If in any prosecution under this chapter it is proved that any valuable consideration has been received or solicited by an agent from or given or offered to an agent by any person having business relations with the principal, without the assent of the principal, the burden of proving that such valuable consideration was not received, solicited, given, or offered in contravention of any of the provisions of this chapter shall be on the accused.

Consent to prosecution

(3) No prosecution under this chapter shall be commenced without the consent of a Crown Law Officer.

Chapter 43 Match-fixing

443 Definitions for ch 43

In this chapter—

bet or ***make a bet*** includes—

(a) place, change, accept or withdraw a bet; and

(b) cause a bet to be placed, changed, accepted or withdrawn.

encourage includes ask, counsel, incite, induce, persuade, pressure (by threats or otherwise), procure or urge.

match-fixing arrangement, in relation to a sporting event or sporting contingency, means an agreement between 2 or more

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persons relating to any person engaging in match-fixing conduct in relation to the event or contingency for the purpose of—

(a) obtaining a pecuniary benefit for any person; or

(b) causing a pecuniary detriment to any person.

match-fixing conduct, in relation to a sporting event or the happening of a sporting contingency, means conduct that—

(a) affects, or if engaged in could reasonably be expected to affect, the outcome of the event or the happening of the contingency; and

(b) is contrary to the standards of integrity that an ordinary person would reasonably expect of persons in a position to affect or influence the outcome of the event or the happening of the contingency.

sporting contingency means a contingency—

(a) associated with a sporting event; and

(b) on the happening of which a person may make a bet under a law of the Commonwealth or a State.

sporting event means a sporting competition or activity, whether taking place in Queensland or elsewhere, on the outcome of which a person may make a bet under a law of the Commonwealth or a State.

443A Engaging in match-fixing conduct

(1) A person who engages in match-fixing conduct in relation to a sporting event or the happening of a sporting contingency for the purpose of—

(a) obtaining or receiving a pecuniary benefit for any person; or

(b) causing a pecuniary detriment to another person;

commits a crime.

Maximum penalty—10 years imprisonment.

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(2) For subsection (1), it does not matter whether any person—

(a) obtains or receives a pecuniary benefit; or

(b) causes or suffers a pecuniary detriment.

443B Facilitating match-fixing conduct or match-fixing arrangement

(1) A person who facilitates match-fixing conduct or a match-fixing arrangement in relation to a sporting event or the happening of a sporting contingency for the purpose of—

(a) obtaining or receiving a pecuniary benefit for any person; or

(b) causing a pecuniary detriment to any person;

commits a crime.

Maximum penalty—10 years imprisonment.

(2) For subsection (1), a person ***facilitates*** match-fixing conduct or a match-fixing arrangement if the person agrees or offers to—

(a) engage in the match-fixing conduct; or

(b) participate in the match-fixing arrangement; or

(c) encourage another person to—

(i) engage in the match-fixing conduct; or

(ii) participate in the match-fixing arrangement.

(3) For subsection (1), it does not matter whether any person—

(a) engages in the match-fixing conduct; or

(b) obtains or receives a pecuniary benefit; or

(c) causes or suffers a pecuniary detriment.

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443C Offering or giving benefit, or causing or threatening detriment, to engage in match-fixing conduct or match-fixing arrangement

(1) A person who, as an inducement for any person to engage in, or to procure any other person to engage in, match-fixing conduct or participate in a match-fixing arrangement in relation to a sporting event or the happening of a sporting contingency—

(a) offers or gives any person a pecuniary benefit; or

(b) causes, or offers or threatens to cause, a pecuniary detriment to any person;

commits a crime.

Maximum penalty—10 years imprisonment.

(2) For subsection (1), it does not matter whether any person engages in the match-fixing conduct.

443D Using or disclosing knowledge of match-fixing conduct or match-fixing arrangement for betting

(1) A person who has knowledge of match-fixing conduct or a match-fixing arrangement in relation to a sporting event or sporting contingency and—

(a) makes a relevant bet in relation to the event or contingency; or

(b) encourages another person to make a relevant bet in relation to the event or contingency; or

(c) discloses the knowledge to another person who the first person knows, or ought reasonably to know, would be likely to make a relevant bet in relation to the event or contingency;

commits a crime.

Maximum penalty—10 years imprisonment.

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(2) For subsection (1)(b) or (c), it does not matter whether a person mentioned in that paragraph makes a relevant bet in relation to the event or contingency.

(3) In this section—

relevant bet, in relation to a sporting event or a sporting contingency, means a bet on the outcome of the event or the happening of the sporting contingency on behalf of any person.

443E Encouraging person not to disclose match-fixing conduct or match-fixing arrangement

(1) A person who—

(a) encourages another person to conceal any information about match-fixing conduct or a match-fixing arrangement in relation to a sporting event or the happening of a sporting contingency from any of the following—

(i) a law enforcement agency;

(ii) a law enforcement officer;

(iii) the chief executive of the department in which the *Wagering Act 1998* is administered;

(iv) a responsible entity for the sporting event; and

(b) for encouraging the other person to conceal the information mentioned in subsection (1)(a)—

(i) receives or obtains, or offers to receive or obtain, a pecuniary benefit from any person; or

(ii) gives, or offers to give, a pecuniary benefit to any person; or

(iii) causes, or offers, threatens or agrees to cause, a pecuniary detriment to any person;

commits a crime.

Maximum penalty—10 years imprisonment.

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(2) In this section—

responsible entity, for a sporting event, means an entity responsible for the administration, conduct or management of the event.

443F Using or disclosing inside knowledge for betting

(1) For this section, information or knowledge that a person has about a sporting event or sporting contingency is ***inside knowledge*** if—

(a) a person possesses the information or knowledge because the person—

(i) is or was involved in, or connected to, the conduct, management or organisation of the sporting event or any part of the event; or

(ii) has or had a connection to an entity that is, or will be, a participant in the sporting event or any part of the event; and

(b) the information or knowledge is not publicly available information; and

(c) if the information or knowledge were publicly available information, would, or would be likely to, influence persons betting on the event or contingency in deciding whether to bet on the event or contingency; and

(d) use of the information by the person to make a relevant bet would be contrary to the standards of integrity that an ordinary person would reasonably expect of persons in possession of the knowledge or information.

(2) A person who has inside knowledge in relation to a sporting event or sporting contingency and—

(a) makes a relevant bet in relation to the event or contingency; or

(b) encourages another person to make a relevant bet in relation to the event or contingency;

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commits a crime.

Maximum penalty—2 years imprisonment.

(3) A person who—

(a) has inside knowledge in relation to a sporting event or sporting contingency; and

(b) discloses the inside knowledge to another person for the purpose of the other person making a relevant bet in relation to the event or contingency;

commits a crime.

Maximum penalty—2 years imprisonment.

(4) A person who—

(a) receives information in relation to a sporting event or sporting contingency from another person; and

(b) knows, or ought reasonably to know, the information is inside knowledge in relation to the event or contingency; and

(c) after receiving the inside knowledge—

(i) makes a relevant bet in relation to the event or contingency; or

(ii) encourages another person to make a relevant bet in relation to the event or contingency;

commits a crime.

Maximum penalty—2 years imprisonment.

(5) For subsection (2)(b), (3)(b) or (4)(c)(ii), it does not matter whether a person mentioned in that provision makes a relevant bet in relation to the event or contingency.

(6) In this section—

publicly available information means information that—

(a) is readily available to the public; or

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(b) has been made known in a manner that would, or would be likely to, bring it to the attention of the public; or

(c) consists of deductions, conclusions or inferences made or drawn from information mentioned in paragraph (a) or (b).

relevant bet, in relation to a sporting event or a sporting contingency, means a bet on the outcome of the event or the happening of the sporting contingency on behalf of any person.

443G Evidentiary provision

For a proceeding for an offence under this chapter, it does not matter whether any person is successful in affecting the outcome of the sporting event or the happening of the sporting contingency.

Chapter 44 Offences analogous to stealing relating to animals

Chapter division 1 Offences relating to animals generally

444A Killing animals with intent to steal

(1) Any person who kills any animal capable of being stolen with intent to steal the skin or carcass, or any part of the skin or carcass, is guilty of a crime, and is liable to the same punishment as if the person had stolen the animal.

(2) If the offender is sentenced to pay a fine in addition to, or instead of, imprisonment, the fine shall be not less than 10 penalty units or, where in respect of the animal in question a value is determined in accordance with the provisions of the

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regulations made pursuant to section 450F, not less than that value, whichever is the higher amount, for every animal killed.

(3) However, the fine imposed in respect of the offence shall not exceed 455 penalty units.

444B Using registered brands with criminal intention

(1) Any person who, with intent to facilitate the commission of a crime, brands or marks any animal with a registered brand or registered mark without the permission of the owner of the brand or mark is guilty of a misdemeanour, and is liable to imprisonment for 5 years.

(2) If the offender is sentenced to pay a fine in addition to, or instead of, imprisonment, the fine shall be not less than 4 penalty units or, where in respect of the animal in question a value is determined in accordance with the provisions of the regulations made pursuant to section 450F, not less than that value, whichever is the higher amount, for every animal branded or marked.

(3) However, the fine imposed in respect of the offence shall not exceed 455 penalty units.

Chapter division 2 Offences relating to stock

445 Unlawfully using stock

(1) Any person who unlawfully uses an animal that is stock, without the consent of the person in lawful possession thereof, is guilty of a misdemeanour and is liable to imprisonment for 5 years, or to a fine of not less than 4 penalty units or, where in respect of the animal in question a value is determined in accordance with the provisions of the regulations made pursuant to section 450F, of not less than that value, whichever is the higher amount, for every animal so used.

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(2) However, the fine imposed in respect of the offence shall not exceed 455 penalty units.

(3) Without in any wise limiting the meaning of the term ***unlawfully uses***, such term shall, for the purposes of this section, also mean and include the unlawful possession, by any person, of any animal that is stock, without the consent of the person in lawful possession thereof, and with intent to deprive the owner or person in lawful possession thereof of the use and/or possession of the animal, either temporarily or permanently.

(4) It is a defence to a charge of an offence defined in this section to prove that the accused person had the lawful consent of the owner to the use or possession by the person of the animal in question.

446 Suspicion of stealing stock

(1) When any animal that is stock is suspected, on reasonable grounds, to have been stolen, any person in whose possession or custody the animal or the skin or carcass, or any part of the skin or carcass, of the animal so suspected to have been stolen, is found, is guilty of a misdemeanour, unless the person proves that the person came lawfully by the thing in question; and the person is liable to imprisonment for 5 years or to a fine of not less than 4 penalty units or, where in respect of the animal in question a value is determined in accordance with the provisions of the regulations made pursuant to section 450F, of not less than that value, whichever is the higher amount, for every animal or skin or carcass or part of skin or carcass so found.

(2) However, the fine imposed in respect of the offence shall not exceed 455 penalty units.

(3) It is a defence to a charge of the offence defined in this section to prove that the accused person came lawfully by the thing in question.

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447 Illegal branding

(1) Any person who, knowing that the person is not the owner of an animal that is stock, brands or marks it, or knowingly permits it to be branded or marked, with the person's registered brand or the person's registered mark, is guilty of a misdemeanour, and is liable to imprisonment for 5 years or to a fine of not less than 4 penalty units or, where in respect of the animal in question a value is determined in accordance with the provisions of the regulations made pursuant to section 450F, of not less than that value, whichever is the higher amount, for every animal so branded or marked.

(2) However, the fine imposed in respect of the offence shall not exceed 455 penalty units.

448 Defacing brands

(1) Any person who—

(a) alters, defaces, or otherwise renders undistinguishable, any registered brand or registered mark on an animal that is stock; or

(b) knowingly permits any such act to be done by any person over whom the person has control;

is guilty of a misdemeanour, and is liable to imprisonment for 5 years or to a fine of not less than 4 penalty units or, where in respect of the animal in question a value is determined in accordance with the provisions of the regulations made pursuant to section 450F, of not less than that value, whichever is the higher amount, for every animal with respect to which the act is done.

(2) However, the fine imposed in respect of the offence shall not exceed 455 penalty units.

448A Having in possession stock with defaced brand

(1) Any person in whose possession or custody any animal that is stock on which any registered brand or registered mark has

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been altered, defaced, or otherwise rendered indistinguishable, or reasonably suspected to have been altered, defaced, or otherwise rendered indistinguishable, is found, is guilty of a misdemeanour, unless the person proves that the person came lawfully by the animal in question; and the person is liable to imprisonment for 5 years or to a fine of not less than 4 penalty units or, where in respect of the animal in question a value is determined in accordance with the provisions of the regulations made pursuant to section 450F, of not less than that value, whichever is the higher amount, for every animal so found.

(2) However, the fine imposed in respect of the offence shall not exceed 455 penalty units.

(3) It is a defence to a charge of the offence defined in this section to prove that the accused person came lawfully by the animal in question.

Chapter division 3 Arrest

450A Arrest without warrant

A person found committing any of the offences defined in chapter division 2 may be arrested without warrant by the owner of the property in question or the owner's servant or by any person authorised by such owner or servant.

450B Warrant in first instance

A justice may issue a warrant in the first instance for the arrest of any person charged with any of the offences defined in chapter division 2.

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Chapter 44A Special provisions in respect of offences relating to stock

Chapter division 1 Preliminary

450D Definitions for ch 44A

In this chapter—

adequate prescribed record, of an animal, means a prescribed record that is a true representation of the animal.

animal means any animal that is stock.

prescribed record, of an animal, means a record of the animal (including of any brands, permitted brand imprinting positions, ear marks, or tags on the animal) consisting of photographs, tapes, films, digital imagery or any other means of visual reproduction (or any combination of them).

stock disposal order see section 450EB(1).

Chapter division 2 Prescribed records

450E Duty of police officer who seizes an animal connected with a charge

(1) A police officer who seizes an animal connected with a charge—

(a) must as soon as reasonably practicable after the seizure cause an adequate prescribed record of the animal to be made; and

(b) if an adequate prescribed record of the animal is caused to be made by the police officer or is otherwise available to a police officer, may cause the animal to be returned to its owner if the defendant does not object to its return.

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(2) However, subsection (1)(a) does not apply if an adequate prescribed record of the animal is already available to a police officer.

450EA Admissibility of adequate prescribed record

(1) An adequate prescribed record of an animal is admissible in a proceeding on the charge in relation to which the prescribed record was made by, or made available to, a police officer or on a related charge, as evidence of the matters it depicts, including any of the following—

(a) the existence of the animal when the prescribed record was made;

(b) the condition of the animal at that time;

(c) a brand or other mark or feature of identification on the animal at that time.

(2) Subsection (3) applies if an adequate prescribed record of an animal connected with a charge and seized by a police officer is tendered as evidence of matters depicted by the record in a proceeding on the charge or a related charge.

(3) No objection can be taken or allowed to the admission as evidence of matters depicted by the adequate prescribed record.

(4) Subsections (1) and (3) apply in relation to a proceeding whether it is started before or after the commencement of this section.

(5) In this section—

related charge, for a charge, means a charge based on the same act or omission as the act or omission that charge is based on.

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Chapter division 3 Stock disposal orders

450EB Application for stock disposal order

(1) A police officer or Crown prosecutor may apply to the District Court or a Magistrates Court for an order (a ***stock disposal order***) for the sale of an animal that is—

(a) seized; and

(b) connected with a charge that has not finally been disposed of.

(2) An application for a stock disposal order for an animal may be made only if—

(a) a police officer has caused an adequate prescribed record of the animal to be made, or an adequate prescribed record of the animal is otherwise available to a police officer; and

(b) either—

(i) the defendant objects to the animal's return to its owner; or

(ii) all of the following apply—

(A) the defendant has indicated to a police officer that the defendant does not object to the animal's return to its owner;

(B) a police officer has offered the owner the return of the animal;

(C) the owner declined the offer.

(3) However, subsection (2)(b) does not apply if the defendant and the person claiming ownership of the animal can not reasonably be located.

(4) The applicant must, at least 28 days before the hearing of the application, give each person who has a legal or equitable interest in the animal a copy of the application, unless the person can not reasonably be located.

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(5) Each person who has a legal or equitable interest in the animal may be a party to the application.

450EC Affidavit to accompany application

An application for a stock disposal order for an animal must be accompanied by 1 or more affidavits stating the following—

(a) a description of the animal;

(b) the charge with which the animal is connected;

(c) the name of the defendant, the police officer or Crown prosecutor, and the person claiming to own the animal;

(d) details of the adequate prescribed record of the animal;

(e) the value of the animal as valued under section 450F;

(f) the number of animals connected with the charge;

(g) the date and place of the animal's seizure;

(h) the persons to whom the applicant gave a copy of the application under section 450EB(4);

(i) the persons to whom the applicant could not give a copy of the application under section 450EB(4) because the person could not reasonably be located.

450ED When order may be made if party disputes making of order

If a party to an application for a stock disposal order for an animal disputes the making of the order, the court may make the order only if it is satisfied of the following—

(a) section 450EB(2) is satisfied in relation to the application;

(b) the applicant gave each person who has a legal or equitable interest in the animal a copy of the application as required under section 450EB(4);

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(c) the animal has been valued under section 450F;

(d) the animal is not registered breeding stock;

(e) the defendant has had a reasonable time to conduct his or her own inquiries about the identification and value of the animal;

(f) there is no good reason for not making the order.

450EE Order if no dispute

If no party to an application for a stock disposal order for an animal disputes the making of the order, the court may make the order, unless there is a good reason for not making the order.

450EF Content of order

(1) A stock disposal order for an animal must—

(a) identify the animal; and

(b) direct the commissioner of the police service to sell the animal—

(i) by auction at market value; or

(ii) in another stated way; and

(c) direct that the net proceeds of the sale be paid into the court.

(2) Subsection (3) applies if—

(a) the defendant is acquitted or convicted of the charge with which the animal is connected; or

(b) the prosecution of the defendant in relation to the charge with which the animal is connected is discontinued.

(3) The prosecutor or the defendant may apply for, or the court in which the charge was heard or to be heard may on its own initiative make, an order that the net proceeds of the sale be

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paid out of the court, in which the proceeds are held, in a stated way.

(4) In deciding how the net proceeds of sale are to be paid out of the court, the court must give priority to any amount owing, immediately before the sale, to an entity under a security interest registered for the animal under the *Personal Property Securities Act 2009* (Cwlth).

(5) Payment out of court under an order under subsection (3) is stayed—

(a) for 1 month after the making of the order; or

(b) if an appeal against the defendant's conviction is started, until the end of the appeal.

(6) The appeal court may vary an order made under subsection (3).

450EG Security for costs of keeping animal

(1) Subsection (2) applies if—

(a) a party to an application for a stock disposal order for an animal disputes the making of the order; and

(b) no stock disposal order is made.

(2) The court may order the party to provide security, for the benefit of the person keeping the animal, for the amount of the costs decided by the court of keeping the animal for the relevant period.

(3) In this section—

relevant period means the period—

(a) starting on the day the hearing of the application starts; and

(b) ending on the later of the following—

(i) the day judgment is delivered in an appeal relating to the charge with which the animal is connected;

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(ii) the day on which any right to appeal relating to the charge with which the animal is connected expires.

450EH Clear title to animal for sale under order

A stock disposal order for an animal is sufficient authority for the commissioner of the police service to convey clear title to the animal to any buyer under the order.

Chapter division 4 Other provisions

450EI Unavailability of animal at trial

(1) An animal connected with a charge and seized by a police officer is not required to be made available at the defendant's trial if an adequate prescribed record of the animal is available to the prosecutor for the trial.

(2) A defendant's trial is not unfair merely because an animal is unavailable at trial because it has been—

(a) sold under a stock disposal order; or

(b) returned to its owner under section 450E(1)(b) after its seizure.

450EJ Effect of defendant not objecting to animal's return to its owner

(1) This section applies if a police officer seizes an animal connected with a charge and the defendant does not object to the return of the animal to its owner.

(2) In a proceeding on the charge the court can not draw an inference adverse to the defendant from the fact that the defendant does not object to the animal's return to its owner.

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450F Animal valuers and valuations

(1) This section is applicable in every case in which a provision of this Code relates the amount of a fine to the value of an animal determined in accordance with the provisions of the regulations made pursuant to this section.

(2) The chief executive may appoint a person as an animal valuer.

(3) The Governor in Council may make regulations, not inconsistent with the provisions of this Code, for or with respect to the following—

(a) terms and conditions of appointment of animal valuers;

(b) qualifications, eligibility and experience of persons to be animal valuers;

(c) fees and allowances payable to animal valuers;

(d) appointment of animal valuers;

(e) valuation of animals by animal valuers;

(f) the selection of panels of animal valuers;

(g) the constitution and operation of panels, including the number of animal valuers constituting a panel;

(h) functions and duties of animal valuers;

(i) the keeping of a register of animal valuers;

(j) method of determination of valuation of animals in cases where animals available for inspection and in cases where animals not available for inspection and, in the latter case, use of hides, skins, ears, photographs or tapes, films or any other means of visual reproduction, books, records and comparable prices for comparable animals;

(k) method of determination of valuation of animals where animal valuers constituting a panel are not in agreement as to value;

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(l) procedures in relation to meetings of panels and making of valuations of animals in conjunction with court proceedings and adjournments of proceedings;

(m) identification of animals by panels;

(n) issue and use of valuation certificates with respect to valuation of animals;

(o) form of valuation certificates;

(p) regulating matters and procedures relating to the initiation of the making of valuations of animals, times within which valuations are to be made in relation to any proceedings, adjournments of proceedings in connection with the making of animal valuations, use of valuation certificates in proceedings and receipt of valuation certificates as evidence in proceedings;

(q) sufficiency of evidence of value of animals by tender of valuation certificates in proceedings until contrary value is proved, determination of value where contrary value is so proved, and application of such determined value;

(r) facilitation of proof of—

(i) appointments of animal valuers; and

(ii) selection of animal valuers to panels; and

(iii) signatures of animal valuers;

(s) such other matters as may be convenient for the operation of this section and its application in accordance with subsection (1) or that may be necessary or expedient to achieve the objects and purposes with respect to such operation and application.

450H Licence disqualification where commission of offence facilitated by licence or use of vehicle

(1) Where a person is convicted of an offence under section 242, 398 (where the offence relates to the stealing of an animal), 444A, 444B, 445, 446, 447, 448, 448A or 468 and the court or

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magistrate is satisfied that the commission of the offence by that person was facilitated by the holding by the person of a driver licence or by the use by the person of a motor vehicle, the court or magistrate may order and direct in addition to any sentence that may be passed or penalty that may be imposed that the offender shall, from the date of conviction, be disqualified absolutely from holding or obtaining a driver licence to operate a motor vehicle or be so disqualified for such period as the court or magistrate shall specify in the order.

(2) A copy of the order shall be transmitted to the chief executive of the department in which the *Transport Operations (Road Use Management) Act 1995* is administered by the officer or clerk having custody of the records of the court wherein the conviction was recorded.

(3) In this section—

driver licence includes any driving licence or driving permit deemed to be equivalent in Queensland to and accepted in lieu of a driver licence for the purpose of authorising the holder thereof to drive in Queensland any vehicle of the type or class to the driving of which the driving licence or driving permit is applicable.

(4) Nothing contained in this section limits the operation of any other provision of any Act under which the court or magistrate is empowered to do any act or thing in respect of the driving, or the driver licence, of any offender.

450I Forfeiture in cases of conviction for offences under specified sections

(1) Where a person is convicted of an offence under section 242, 398 (where the offence relates to the stealing of an animal), 444A, 444B, 445, 446, 447, 448, 448A or 468, the court or magistrate may order to be forfeited to the Sovereign any vehicle, vessel, animal, equipment or other property or thing used in connection with or to facilitate the commission of the offence of which the person has been convicted.

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(2) Anything forfeited to the Sovereign pursuant to this section shall be dealt with or disposed of in such manner as the Attorney-General directs.

Division 2 Injuries to property

Chapter 45 Definitions

458 Unlawful acts

(1) An act which causes injury to the property of another, and which is done without the owner's consent, is unlawful unless it is authorised or justified or excused by law.

(2) For section 469, punishment in special cases, clause 11, the destruction or damage by a person of property fixed in a cemetery or at a crematorium is unlawful unless the person is acting—

(a) with the owner's consent; or

(b) with the lawful consent of the entity (if any) responsible for managing and administering the cemetery or crematorium; or

(c) in the reasonable belief that lawful consent mentioned in paragraph (b) has been given.

(3) It is immaterial that the person who does the injury is in possession of the property injured, or has a partial interest in it, or an interest in it as joint or part owner or owner in common.

(4) A person is not criminally responsible for an injury caused to property by the use of such force as is reasonably necessary for the purpose of defending or protecting himself, herself, or any other person, or any property, from injury which the person believes, on reasonable grounds, to be imminent.

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459 Acts done with intent to defraud

(1) When an act which causes injury to property, and which would be otherwise lawful, is done with intent to defraud any person, it is unlawful.

(2) When an act which causes injury to property is done with intent to defraud any person, it is immaterial that the property in question is the property of the offender.

Chapter 46 Offences

461 Arson

(1) Any person who wilfully and unlawfully sets fire to any of the things following, that is to say—

(a) a building or structure;

(b) a motor vehicle, train, aircraft or vessel;

(c) any stack of cultivated vegetable produce, or of mineral or vegetable fuel;

(d) a mine, or the workings, fittings, or appliances of a mine;

is guilty of a crime, and is liable to imprisonment for life.

(2) It is immaterial whether or not a thing mentioned in subsection (1)(a) or (b) is complete.

462 Endangering particular property by fire

A person who wilfully and unlawfully sets fire to anything situated so that a thing mentioned in section 461(1)(a) to (d) is likely to catch fire from it commits a crime.

Maximum penalty—14 years imprisonment.

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463 Setting fire to vegetation

Any person who wilfully and unlawfully sets fire to any of the things following, that is to say—

(a) a crop of cultivated vegetable produce, whether standing or cut;

(b) a crop of hay or grass, whether the natural or indigenous product of the soil or not, and whether under cultivation or not, and whether standing or cut;

(c) any standing trees, saplings, or shrubs, whether indigenous or cultivated;

(d) any grass, other than grass mentioned in paragraph (b);

(e) any other vegetation;

is guilty of a crime, and is liable to imprisonment for 14 years.

467 Endangering the safe use of vehicles and related transport infrastructure

(1) A person who, with intent to prejudice the safe use of a vehicle or related transport infrastructure or to injure property in a vehicle or related transport infrastructure, does anything that endangers, or is likely to endanger, the safe use of the vehicle or related transport infrastructure commits a crime.

Maximum penalty—life imprisonment.

(2) In this section—

do anything, for a person who has a duty to do the thing, includes omit to do the thing.

in includes on.

related transport infrastructure includes a road, railway, runway, station, airport, terminal, wharf, jetty or other structure used by a vehicle to travel or by persons using a vehicle to travel.

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468 Injuring animals

(1) Any person who wilfully and unlawfully kills, maims, or wounds, any animal capable of being stolen is guilty of an indictable offence.

(2) If the animal in question is stock, the offender is guilty of a crime, and is liable to imprisonment for 7 years.

(3) In any other case the offender is guilty of a misdemeanour, and is liable to imprisonment for 2 years, or, if the offence is committed by night, to imprisonment for 3 years.

(4) If the offender (whether guilty of a crime or a misdemeanour) kills or maims the animal and is sentenced to pay a fine in addition to, or instead of imprisonment, the fine shall be not less than the prescribed penalty units or, where in respect of the animal in question a value is determined in accordance with the provisions of the regulations made pursuant to section 450F, not less than that value, whichever is the higher amount, for every animal killed or maimed.

(5) However, the fine imposed in respect of the offence shall not exceed 500 penalty units.

(6) In this section—

prescribed penalty units means—

(a) for stock—10 penalty units; or

(b) otherwise—8 penalty units.

469 Wilful damage

(1) Any person who wilfully and unlawfully destroys or damages any property is guilty of an offence which, unless otherwise stated, is a misdemeanour, and the person is liable, if no other punishment is provided, to imprisonment for 5 years.

(2) If the offender commits the offence with the circumstance of aggravation stated in section 52B, the offender is liable, if no other punishment is provided, to imprisonment for 7 years.

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(3) For this section, other than punishment in special cases, clause 11, the destruction or damage of property that is a thing mentioned in section 566(11) is presumed to be done without the owner's consent until the contrary is proved.

(4) For this section, punishment in special cases, clause 11, the destruction or damage of property is, until the contrary is proved, presumed to be done—

(a) without the owner's consent; and

(b) if the property is fixed in a cemetery or at a crematorium—

(i) without the lawful consent of the entity (if any) responsible for managing and administering the cemetery or crematorium; and

(ii) not in the reasonable belief that lawful consent mentioned in subparagraph (i) has been given.

Punishment in special cases

1 Destroying or damaging premises by explosion

If—

(a) the property in question is premises; and

(b) the destruction or damage is caused by an explosion; and

(c) either—

(i) anyone is in or on the premises when the explosion happens; or

(ii) the destruction or damage actually endangers anyone's life;

the offender commits a crime.

Maximum penalty—life imprisonment.

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2 Sea walls and other property

If—

(a) the property in question is—

(i) a bank or wall of the sea or inland water; or

(ii) a work relating to a port or inland water; and

(b) the destruction or damage causes an actual danger of inundation or of damage to land or a building;

the offender commits a crime.

Maximum penalty—life imprisonment.

3 Wills and registers

If the property in question is a testamentary instrument, whether the testator is living or dead, or a register which is authorised or required by law to be kept for authenticating or recording the title to any property, or for recording births, baptisms, marriages, deaths, or burials, or a copy of any part of any such register which is required by law to be sent to any public officer, the offender is guilty of a crime, and is liable to imprisonment for 14 years.

4 Wrecks

If the property in question is a vessel in distress, or wrecked, or stranded, or anything which belongs to such a vessel, the offender is guilty of a crime, and is liable to imprisonment for 7 years.

5 Railways

If the property in question is any part of a railway, or any work connected with a railway, the offender is guilty of a crime, and is liable to imprisonment for 14 years.

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6 Aircraft

If the property in question is an aircraft or anything whatever either directly or indirectly connected with the guidance control or operation of an aircraft, the offender is guilty of a crime, and is liable to imprisonment for 14 years.

7 Other things of special value

If—

(a) the property in question—

(i) is a vessel, whether complete or not; and

(ii) is destroyed or rendered useless; or

(b) the property in question—

(i) is a light, beacon, buoy, mark or signal; and

(ii) is used for navigation or for the guidance of sailors; or

(c) the property in question is—

(i) a bank or wall of the sea or inland water; or

(ii) a work relating to a port or inland water; or

(d) the property in question—

(i) is a manufacturing or agricultural machine or another thing used, or intended for use, for manufacture or for performing a process connected with the preparation of agricultural produce; and

(ii) is destroyed or rendered useless; or

(e) the property in question is—

(i) a well or bore for water; or

(ii) the dam, bank, wall, or floodgate of a millpond or pool;

the offender commits a crime.

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Maximum penalty—7 years imprisonment.

8 Deeds and records

If the property in question is a document which is deposited or kept in a public office, or which is evidence of title to any land or estate in land, the offender is guilty of a crime, and is liable to imprisonment for 7 years.

9 Graffiti

(1) If the property in question is in a public place, or is visible from a public place, and the destruction or damage is caused by—

(a) spraying, writing, drawing, marking or otherwise applying paint or another marking substance; or

(b) scratching or etching;

the offender commits a crime and is liable to imprisonment for 7 years.

(2) The court may—

(a) whether or not it imposes any other penalty for the offence, order the offender to perform community service under the *Penalties and Sentences Act 1992*, part 5, division 2, including for example, removing graffiti from property; and

(b) whether or not it imposes any penalty for the offence, order the offender to pay compensation to any person under the *Penalties and Sentences Act 1992*, part 3, division 4.

Note—

1 For the requirement for the court to make a graffiti removal order see the *Penalties and Sentences Act 1992*, part 5A and the *Youth Justice Act 1992*, part 7, division 7A.

2 For the discretion of the court to order the forfeiture of a thing used to record, store or transmit an image of, or

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related to, the commission of the offence see section 469AA.

10 Educational institutions

(1) If the property in question is part of a school, education centre, college, university, or another educational institution, the offender commits a crime and is liable to imprisonment for 7 years.

(2) The court may—

(a) whether or not it imposes any other penalty for the offence, order the offender to perform community service work under the *Penalties and Sentences Act 1992*, part 5, division 2 including for example, cleaning or repairing any damaged property that is part of an educational institution; and

(b) whether or not it imposes any penalty for the offence, order the offender to pay compensation to any person under the *Penalties and Sentences Act 1992*, part 3, division 4.

11 Cemeteries etc.

(1) If the property in question is—

(a) a grave, vault, niche or memorial in a cemetery or at a crematorium; or

(b) a war memorial; or

(c) at a place of religious worship;

the offender commits a crime and is liable to imprisonment for 7 years.

(2) In this clause—

memorial, in a cemetery or at a crematorium, includes the following—

(a) a headstone;

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(b) an inscribed plaque or commemorative plate;

(c) a monumental, ornamental or other structure;

(d) another thing erected or placed—

(i) to mark the site where human remains have been buried or placed; or

(ii) to commemorate a deceased person.

12 Emergency vehicles

If—

(a) the property in question is an emergency vehicle; and

(b) the offender knows, or ought reasonably to know, the property is an emergency vehicle;

the offender commits a crime.

Maximum penalty—7 years imprisonment.

469AA Forfeiture of thing used to record, store or transmit image of graffiti

(1) This section applies if—

(a) a person is convicted, whether on indictment or summarily, of an offence against section 469 that is punishable under section 469, item 9; and

(b) the person was an adult at the time of the commission of the offence; and

(c) the court is satisfied that a thing owned or possessed by the person was used to record, store or transmit an image of, or related to, the commission of the offence.

Example of a thing used to record, store or transmit an image—

a camera, mobile phone or computer

(2) When the court is imposing a sentence on the person for the offence, the court may order the thing be forfeited to the State.

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(3) Subsection (2) applies whether the thing to be forfeited has been seized or is in its owner's possession.

(4) The court may also make any order that it considers appropriate to enforce the forfeiture.

(5) This section does not limit the court's powers under the *Penalties and Sentences Act 1992*, the *Criminal Proceeds Confiscation Act 2002* or another law.

(6) When forfeited to the State, the thing becomes the State's property and may be dealt with as directed by the chief executive.

469A Sabotage and threatening sabotage

(1) A person who wilfully and unlawfully destroys or damages a public facility with intent to cause—

(a) major disruption to government functions; or

(b) major disruption to the use of services by the public; or

(c) major economic loss;

is guilty of a crime.

Maximum penalty—25 years imprisonment.

(2) A person who threatens to commit sabotage is guilty of a crime.

Maximum penalty—14 years imprisonment.

(3) For subsection (2), a person threatens to commit sabotage if—

(a) the person threatens to unlawfully destroy or damage a public facility; and

(b) the threat is made with the intention of inducing in someone else a belief that the threat will be carried out; and

(c) if the threat were to be carried out, the threatened destruction or damage would be likely to cause—

(i) major disruption to government functions; or

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(ii) major disruption to the use of services by the public; or

(iii) major economic loss.

(4) A person can not be prosecuted for an offence against subsection (1) or (2) without a Crown Law Officer's consent.

(5) In this section—

damage, a public facility, includes disrupt the operation or use of the facility.

government entity means—

(a) the State; or

(b) a State instrumentality, agency, authority or entity; or

(c) a corporate entity established by an Act or that is of a description of a corporate entity provided for by an Act that, in either case, collects revenues or raises funds under the authority of an Act; or

(d) a government owned corporation; or

(e) another State, the Commonwealth, a local government or a local government of another State; or

(f) another entity performing a government function.

government functions means functions of the State, another State, the Commonwealth, a local government or a local government of another State.

public facility means any of the following, whether publicly or privately owned—

(a) premises or another place occupied by a government entity;

(b) a public infrastructure facility, including—

(i) infrastructure for a water or sewerage service; and

(ii) a facility for supplying energy or fuel to the public; and

(iii) a facility for a telecommunication system; and

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(iv) roads, railways, equipment, vehicles and other infrastructure for public transport; and

(v) other infrastructure for a community service;

(c) a public place.

470 Attempts to destroy property by explosives

Any person who, unlawfully, and with intent to destroy or damage any property, puts any explosive substance in any place whatever, is guilty of a crime, and is liable to imprisonment for 14 years.

470A Unlawful dealing with explosive or noxious substances

A person who, in circumstances that may cause injury to a person or damage to property, wilfully and unlawfully—

(a) throws, leaves down, or otherwise deposits an explosive or noxious substance; or

(b) makes, or has possession of, an explosive or noxious substance;

commits a crime.

Maximum penalty—7 years imprisonment.

471 Damaging mines

(1) A person who unlawfully and with intent to damage a mine—

(a) damages a mine; or

Example—

obstructing the working of a mine by running water into the mine or into an underground passage leading into the mine

(b) interferes with equipment or infrastructure, whether complete or not, connected or used with a mine;

commits a crime.

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Maximum penalty—7 years imprisonment.

(2) In this section—

damage, a mine, includes obstruct the working of the mine.

equipment includes machinery, appliance, cable and apparatus.

infrastructure means a road, building or other structure.

interfere, with equipment or infrastructure, means detrimentally interfere with its effective or efficient operation.

472 Interfering with marine signals

Any person who wilfully and unlawfully removes, defaces, or renders invisible, any light, beacon, buoy, mark, or signal, used for purposes of navigation, or for the guidance of sailors, or unlawfully attempts to remove, deface, or render invisible, any such thing, is guilty of a crime, and is liable to imprisonment for 7 years.

473 Interfering with navigation works

Any person who—

(a) wilfully and unlawfully removes or disturbs any fixed object or materials used for securing a bank or wall of the sea, or of a river, canal, aqueduct, reservoir, or inland water, or for securing any work which appertains to a port, harbour, dock, canal, aqueduct, reservoir, or inland water, or which is used for purposes of navigation or lading or unlading goods; or

(b) unlawfully does any act with intent to obstruct the carrying on, completion, or maintenance, of the navigation of a navigable river or canal, and thereby obstructs such carrying on, completion, or maintenance;

is guilty of a crime, and is liable to imprisonment for 7 years.

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474 Communicating infectious diseases to animals

Any person who wilfully and unlawfully causes, or is concerned in causing, or attempts to cause, any infectious or contagious disease to be communicated to or among any animal or animals capable of being stolen, is guilty of a crime, and is liable to imprisonment for life.

475 Travelling with infected animals

Any person who causes any animal which is infected with an infectious or contagious disease to travel, or, being the owner or 1 of 2 or more joint owners of any animal which is infected with an infectious or contagious disease, permits or connives at the travelling of any such animal, contrary to the provisions of any statute relating to infected animals of that kind, is guilty of a crime, and is liable to imprisonment for 7 years.

477 Obstructing railways

Any person who, by any unlawful act, or by any intentional omission to do any act which it is the person's duty to do, causes any engine or vehicle in use upon a railway to be obstructed in its passage on the railway, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

478 Sending letters threatening to burn or destroy

Any person who, knowing the contents of the document, causes any person to receive any document threatening that any building or vessel, whether complete or not, or any stack of cultivated vegetable produce, or any such produce that is in or under a building, shall be burnt or destroyed, is guilty of a crime, and is liable to imprisonment for 7 years.

479 Arrest without warrant

Any person found committing a misdemeanour defined in this chapter may be arrested without warrant by the owner of the

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property injured or the owner's employee or a person authorised by the owner or employee.

Division 3 Forgery and like offences—personation

Chapter 48 Forgery in general—definitions

484 Definitions

In this division—

bank note includes any negotiable instrument issued by or on behalf of any person or corporation in any part of the world, or issued by the authority of any state, prince, or government, and intended to be used as equivalent to money, either immediately on issue or at any time afterwards, and also includes a bank bill or bank post bill.

document does not include trademarks on articles of commerce.

seal includes any stamp, die, or other thing, of whatever material, from which an impression can be taken by means of pressure or of ink, or by any other means.

Chapter 49 Punishment of forgery and like offences

488 Forgery and uttering

(1) A person who, with intent to defraud—

(a) forges a document; or

(b) utters a forged document;

commits a crime.

Maximum penalty—

(a) if the document is a valuable security, insurance policy, testamentary instrument (whether the testator is living or dead) or registration document or is evidence of an interest in land—14 years imprisonment; or

(b) if the document is a power of attorney, contract or document kept or issued by lawful authority other than a document mentioned in paragraph (a)—7 years imprisonment; or

(c) otherwise—3 years imprisonment.

(2) Subsection (1) applies whether or not the document is complete and even though it is not, or does not purport to be, binding in law.

(3) In this section—

registration document means a document kept or issued by the registrar under the *Births, Deaths and Marriages Registration Act 2023* or an equivalent document kept or issued under a law of another jurisdiction, inside or outside Australia.

498 Falsifying warrants for money payable under public authority

Any person, who, being employed in the public service, knowingly and with intent to defraud makes out or delivers to any person a warrant for the payment of any money payable by public authority for a greater or less amount than that to which the person on whose behalf the warrant is made out is entitled is guilty of a crime, and is liable to imprisonment for 7 years.

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499 Falsification of registers

(1) Any person who, having the actual custody of any register or record kept by lawful authority, knowingly permits any entry which, in any material particular, is to the person's knowledge false, to be made in the register or record is guilty of a crime, and is liable to imprisonment for 7 years.

(2) The offender can not be arrested without warrant.

500 Sending false certificate of marriage to registrar

Any person who signs or transmits to a person authorised by law to register marriages a certificate of marriage, or any document purporting to be a certificate of marriage, which, in any material particular, is to the person's knowledge false, is guilty of a crime, and is liable to imprisonment for 7 years.

501 False statements for the purpose of registers of births, deaths, and marriages

Any person who knowingly, and with intent to procure the same to be inserted in a register of births, deaths, or marriages, makes any false statement touching any matter required by law to be registered in any such register, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

501A Contradictory statements

If, on the trial for a person under section 501, the jury is satisfied—

(a) the accused has made 2 statements and 1 is irreconcilably in conflict with the other; and

(b) the accused made 1 of the statements knowing it to be false;

but the jury is unable to say which statement was falsely made, the jury may make a special finding to that effect and find the accused guilty of the offence.

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502 Procuring or claiming unauthorised status

Any person who—

(a) by any false representation procures any authority authorised by any statute to issue certificates testifying that the holders thereof are entitled to any right or privilege, or to enjoy any rank or status, to issue to himself, herself or any other person any such certificate; or

(b) falsely represents to any person that the person has obtained any certificate issued by any such authority; or

(c) by any false representation procures himself, herself or any other person to be registered on any register kept by lawful authority as a person entitled to such a certificate, or as a person entitled to any right or privilege, or to enjoy any rank or status;

is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

Chapter 51 Preparation for forgery

510 Instruments and materials for forgery

Any person who unlawfully—

(a) makes, or starts or prepares to make, a thing with intent to use it to forge a document; or

(b) possesses a thing with intent to use it to forge a document; or

(c) uses a thing to forge a document; or

(d) disposes of a thing that has been used to forge a document;

commits a crime.

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Maximum penalty—14 years imprisonment.

Chapter 52 Personation

514 Personation in general

(1) Any person who, with intent to defraud any person, falsely represents himself or herself to be some other person, living or dead, real or fictitious, is guilty of an offence which, unless otherwise stated, is a misdemeanour, and the person is liable to imprisonment for 3 years.

(2) If the representation is that the offender is a person entitled by will or operation of law to any specific property, and the person commits the offence with intent to obtain such property or possession thereof, the person is guilty of a crime, and is liable to imprisonment for 14 years.

515 Falsely acknowledging deeds, recognisances etc.

Any person who, without lawful authority or excuse, the proof of which lies on the person, makes, in the name of any other person, before any court or person lawfully authorised to take such an acknowledgement, an acknowledgement of liability of any kind, or an acknowledgement of a deed or other instrument, is guilty of a crime, and is liable to imprisonment for 7 years.

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Division 4 Offences connected with trade and breach of contract

Chapter 54 Other offences

533 Mixing uncertified with certified articles

When a mark has been attached to any article, or a certificate has been given with respect to any article, under the authority of any statute, for the purpose of denoting the quality of the article, or the fact that it has been examined or approved by or under the authority of some public body or public officer, any person who mixes with the article so marked or certified any other article which has not been so examined or approved, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

Part 7 Preparation to commit offences—conspiracy— accessories after the fact

Chapter 55 Attempts and preparation to commit offences

535 Attempts to commit indictable offences

(1) If a person attempts to commit a crime, the person commits a crime.

(2) If a person attempts to commit a misdemeanour, the person commits a misdemeanour.

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536 Punishment of attempts to commit indictable offences

(1) A person who attempts to commit an indictable offence punishable by mandatory life imprisonment is liable, if no other punishment is provided, to life imprisonment.

(2) A person who attempts to commit an indictable offence punishable by life imprisonment but not mandatory life imprisonment is liable, if no other punishment is provided, to 14 years imprisonment.

(3) A person who attempts to commit any other indictable offence is liable, if no other punishment is provided, to a punishment equal to one-half of the greatest punishment to which an offender convicted of the offence is liable.

(4) In this section—

mandatory life imprisonment means a penalty of life imprisonment that can not be mitigated or varied under this Code or any other law.

538 Reduction of punishment

(1) When a person is convicted of attempting to commit an offence, if it is proved that the person desisted of the person's own motion from the further prosecution of the person's intention, without its fulfilment being prevented by circumstances independent of the person's will, the person is liable to one-half only of the punishment to which the person would otherwise be liable.

(2) If the punishment to which the person would otherwise be liable for the attempt is imprisonment for life, the greatest punishment to which the person is liable is imprisonment for 14 years.

539 Attempts to procure commission of criminal acts

(1) Any person who attempts to procure another—

(a) to do an act or make an omission in Queensland; or

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(b) to do an act or make an omission outside Queensland;

being an act or omission of such a nature that, if the act were done or the omission made, an offence would thereby be committed—

(c) in the case referred to in paragraph (a)—under the laws of Queensland; or

(d) in the case referred to in paragraph (b)—under the laws in force in the place where the act or omission is proposed to be done or made;

whether by himself, herself or by the other person, is guilty of an offence of the same kind and is liable to the same punishment as if the person had attempted to do the same act or make the same omission in Queensland.

(1A) However, in the case referred to in subsection (1)(b), the punishment can not exceed that which the person would have incurred under the laws in force where the act or omission was proposed to be done or made, if the person had attempted to do the proposed act or make the proposed omission.

(2) Any person who, while out of Queensland, attempts to procure another to do an act or make an omission in Queensland of such a nature that, if the person had done the act or made the omission in Queensland, the person would have been guilty of an offence is guilty of an offence of the same kind and is liable to the same punishment as if the person had attempted to do the act or make the omission in Queensland.

540 Preparation to commit crimes with dangerous things

A person who makes, or knowingly has possession of, an explosive substance or other dangerous or noxious thing—

(a) with intent to commit a crime by using the thing; or

(b) to enable anyone to commit a crime by using the thing;

commits a crime.

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Maximum penalty—7 years imprisonment.

Chapter 56 Conspiracy

541 Conspiracy to commit crime

(1) Any person who conspires with another to commit any crime, or to do any act in any part of the world which if done in Queensland would be a crime, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a crime, and is liable, if no other punishment is provided, to imprisonment for 7 years; or, if the greatest punishment to which a person convicted of the crime in question is liable is less than imprisonment for 7 years, then to such lesser punishment.

(2) A prosecution for an offence defined in this section shall not be instituted without the consent of the Attorney-General.

542 Conspiracy to commit other offences

(1) Any person who conspires with another to commit any offence which is not a crime, or to do any act in any part of the world which if done in Queensland would be an offence but not a crime, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

(2) A prosecution for an offence defined in this section shall not be instituted without the consent of the Attorney-General.

543 Other conspiracies

(1) Any person who conspires with another to effect any of the purposes following, that is to say—

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(a) to prevent or defeat the execution or enforcement of any statute law;

(b) to cause any injury to the person or reputation of any person, or to depreciate the value of any property of any person;

(c) to prevent or obstruct the free and lawful disposition of any property by the owner thereof for its fair value;

(d) to injure any person in the person's trade or profession;

(e) to prevent or obstruct, by means of any act or acts which if done by an individual person would constitute an offence on the person's part, the free and lawful exercise by any person of the person's trade, profession, or occupation;

(f) to effect any unlawful purpose;

(g) to effect any lawful purpose by any unlawful means;

is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

(2) A prosecution for an offence defined in this section shall not be instituted without the consent of the Attorney-General.

543A Industrial disputes

(1) Notwithstanding anything contained in section 543, no act done or omission made by any 2 or more persons in contemplation or furtherance of any industrial dispute, and no agreement or combination by any 2 or more persons to do any act or make any omission or to procure any act to be done or omission to be made in contemplation or furtherance of any industrial dispute, shall render any of such persons guilty of any offence if such act or omission when done or made by an individual person would not have rendered such person guilty of an offence.

(2) For the purposes of this section—

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industrial dispute has the same meaning as in the *Industrial Relations Act 2016*.

Chapter 57 Accessories after the fact

544 Accessories after the fact to offences

(1) If a person becomes an accessory after the fact to a crime, the person commits a crime.

(2) If a person becomes an accessory after the fact to a misdemeanour, the person commits a misdemeanour.

(3) If a person becomes an accessory after the fact to a simple offence, the person commits a simple offence.

545 Punishment of accessories after the fact to offences

(1) A person who becomes an accessory after the fact to an indictable offence punishable by mandatory life imprisonment is liable, if no other punishment is provided, to life imprisonment.

(2) A person who becomes an accessory after the fact to an indictable offence punishable by life imprisonment but not mandatory life imprisonment is liable, if no other punishment is provided, to 14 years imprisonment.

(3) A person who becomes an accessory after the fact to any other indictable offence or a simple offence is liable, if no other punishment is provided, to a punishment equal to one-half of the greatest punishment to which an offender convicted of the offence is liable.

(4) In this section—

mandatory life imprisonment means a penalty of life imprisonment that can not be mitigated or varied under this Code or any other law.

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Part 8 Procedure

Chapter 58 Arrest

545A Chapter does not apply to police officers

This chapter does not apply to a police officer.

546 Arrest without warrant generally

When an offence is such that the offender may be arrested without warrant generally—

(b) it is lawful for any person who is called upon to assist a police officer in the arrest of a person suspected of having committed the offence, and who knows that the person calling upon the person to assist is a police officer, to assist the officer, unless the person knows that there is no reasonable ground for the suspicion; and

(c) it is lawful for any person who finds another committing the offence to arrest the other person without warrant; and

(d) if the offence has been actually committed—it is lawful for any person who believes on reasonable ground that another person has committed the offence to arrest that person without warrant, whether that other person has committed the offence or not; and

(e) it is lawful for any person who finds another by night, under such circumstances as to afford reasonable grounds for believing that the other person is committing the offence, and who does in fact so believe, to arrest the other person without warrant.

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547 Arrest without warrant in special cases

Where it is provided with respect to an offence that the offender may be arrested without warrant subject to certain conditions, the provisions of section 546 apply to the offence in question, subject to those conditions.

547A Arrest of persons found committing offences on aircraft

It is lawful for the person in command of an aircraft, on board the aircraft, and for persons acting with the person's authority to arrest or cause to be arrested without warrant any person whom the person finds committing, or whom on reasonable grounds the person suspects of having committed, or of having attempted to commit, or of being about to commit, an offence on or in relation to or affecting the use of the aircraft and for that purpose to use such force as the person or the person arresting believes, on reasonable grounds, to be necessary and is reasonable under the circumstances.

548 Arrest of persons found committing offences

(1) It is lawful for a justice to arrest without warrant any person whom the justice finds committing any indictable offence or committing any simple offence with respect to which it is provided that a person found committing it may be arrested without warrant.

(2) When it is provided with respect to an offence that a person found committing the offence may be arrested without warrant generally, it is lawful for any person who finds another committing the offence to arrest the other person without warrant.

(3) When it is provided with respect to an offence that a person found committing the offence may be arrested without warrant by a specified person, or specified persons, it is lawful for any such person who finds another committing the offence to arrest the other person without warrant.

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549 Arrest of offender committing indictable offences by night

It is lawful for any person who finds another person by night committing any indictable offence to arrest the other person without warrant.

550 Arrest during flight

It is lawful for any person to arrest without warrant any other person whom the person believes, on reasonable grounds, to have committed an offence and to be escaping from, and to be freshly pursued by, some person whom, on reasonable grounds, the person believes to have authority to arrest the other person for that offence.

551 Arrest of persons offering stolen property for sale etc.

It is lawful for any person to whom another offers to sell, pawn, or deliver, any property, and who believes, on reasonable grounds, that the property has been acquired by means of an offence with respect to which it is provided that a person found committing it may be arrested without warrant, to arrest that other person without warrant.

552 Duty of persons arresting

(1) It is the duty of a person who has arrested another upon a charge of an offence to take the other person forthwith before a justice to be dealt with according to law.

(2) However, it is sufficient for subsection (1) if the person immediately delivers the arrested person into the custody of a police officer.

(3) The police officer may receive the arrested person into custody.

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Note—

See also section 137 for a relevant offence and the *Police Powers and Responsibilities Act 2000*, section 393 for the duties of the police officer.

Chapter 58A Indictable offences dealt with summarily

552A Charges of indictable offences that must be heard and decided summarily on prosecution election

(1) This section applies to a charge before a Magistrates Court of any of the following indictable offences—

(a) an offence against any of the following provisions—

- section 141
- section 142
- section 143
- section 205A
- section 334C, if the defendant has pleaded guilty
- section 340;

(b) any offence involving an assault, if—

(i) the assault is not of a sexual nature or accompanied by an attempt to commit a crime; and

(ii) the maximum term of imprisonment for which the defendant is liable is more than 3 years but not more than 5 years; and

(iii) the assault is without the circumstance of aggravation stated in section 335(3)(a);

(c) the offence of counselling or procuring the commission of an offence mentioned in paragraph (a) or (b);

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(d) the offence of attempting to commit an offence mentioned in paragraph (a);

(e) the offence of becoming an accessory after the fact to an offence mentioned in paragraph (a).

(2) A charge to which this section applies must be heard and decided summarily if the prosecution elects to have the charge heard and decided summarily.

(3) This section is subject to section 552D.

552B Charges of indictable offences that must be heard and decided summarily unless defendant elects for jury trial

(1) This section applies to a charge before a Magistrates Court of any of the following indictable offences—

(a) an offence of a sexual nature without a circumstance of aggravation if—

(i) the complainant was 14 years of age or over at the time of the alleged offence; and

(ii) the defendant has pleaded guilty; and

(iii) the maximum term of imprisonment for which the defendant is liable is more than 3 years;

(b) an offence against section 339(1);

(c) an offence involving an assault, other than an offence against section 339(1), if—

(i) the assault is—

(A) without a circumstance of aggravation; and

(B) not of a sexual nature; and

(ii) the maximum term of imprisonment for which the defendant is liable is more than 3 years but not more than 7 years; and

(iii) a charge of the offence is not a charge to which section 552A applies;

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(d) an offence against section 60A, 60B, 76 or 77B;

(e) an offence against section 229BB;

(f) an offence against section 316A;

(g) an offence against section 328A(2);

(ga) an offence against section 334E if the defendant is liable to the penalty mentioned in section 334E(11);

(h) an offence against section 359E if the maximum term of imprisonment for which the defendant is liable is not more than 5 years;

(i) an offence against section 359F if the defendant is liable to the penalty mentioned in section 359F(11);

(j) an offence against chapter 14, chapter division 2, if the maximum term of imprisonment for which the defendant is liable is more than 3 years;

(l) an offence against chapter 42A;

(m) the offence of counselling or procuring the commission of an offence mentioned in any of paragraphs (a) to (l);

(n) the offence of attempting to commit an offence mentioned in any of paragraphs (a) to (l), unless the offence is a relevant offence under section 552BA(4), definition *relevant offence*, paragraph (a);

(o) the offence of becoming an accessory after the fact to an offence mentioned in any of paragraphs (a) to (l), unless the offence is a relevant offence under section 552BA(4), definition *relevant offence*, paragraph (a).

(2) A charge to which this section applies must be heard and decided summarily unless the defendant informs the Magistrates Court that he or she wants to be tried by jury.

(3) This section is subject to section 552D.

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552BA Charges of indictable offences that must be heard and decided summarily

(1) This section applies to a charge before a Magistrates Court of any indictable offence against this Code if the offence is a relevant offence.

(2) A charge to which this section applies must be heard and decided summarily.

(3) This section is subject to section 552D.

(4) In this section—

relevant offence means—

(a) an offence against this Code, if the maximum term of imprisonment for which the defendant is liable is not more than 3 years; or

(aa) an offence against section 335 alleged to have been committed with the circumstance of aggravation stated in section 335(3)(a); or

(b) an offence against part 6, other than—

(i) an offence mentioned in paragraph (a); or

(ii) an offence against chapter 42A; or

(iii) an offence that, under section 552BB, is an excluded offence.

552BB Excluded offences

(1) An offence is an ***excluded offence*** if the offence is—

(a) an offence against a provision listed in column 1 of the following table and—

(i) no relevant circumstance is listed for the provision in column 3; or

(ii) both of the following apply—

(A) 1 or more relevant circumstances are listed for the provision in column 3;

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(B) at least 1 of the relevant circumstances, or the relevant circumstance if only 1 relevant circumstance is listed, applies in relation to the offence; or

(b) the offence of—

(i) counselling or procuring the commission of an offence that is an excluded offence under paragraph (a); or

(ii) attempting to commit an offence that is an excluded offence under paragraph (a), unless the offence is a relevant offence under section 552BA(4), definition *relevant offence*, paragraph (a); or

(iii) becoming an accessory after the fact to an offence that is an excluded offence under paragraph (a), unless the offence is a relevant offence under section 552BA(4), definition *relevant offence*, paragraph (a).

(2) Column 2 of the following table gives the headings of the provisions mentioned in column 1, and is for information only.

(3) In this section—

prescribed value means $30,000.

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Table of excluded offences

Column 1 Provision of Code	Column 2 Provision heading	Column 3 Relevant circumstance
section 398	Punishment of stealing	1 The offender is liable to 14 years imprisonment under clause 1, the value of the yield to the offender, or the detriment caused, because of the stealing of the testamentary instrument is equal to or more than the prescribed value and the offender does not plead guilty. 2 The total value of anything stolen, other than a testamentary instrument as mentioned in clause 1, and as provided for in the charge for the offence, is equal to or more than the prescribed value and the offender does not plead guilty. 3 The offender is liable to imprisonment under clause 14 and a charge for the indictable offence mentioned in clause 14(b) is to be heard and decided on indictment or would be required to be heard and decided on indictment if the charge were laid.
section 399	Fraudulent concealment of particular documents	The offender is liable to 14 years imprisonment, the value of the yield to the offender, or the detriment caused, because of the concealment is equal to or more than the prescribed value and the offender does not plead guilty.
section 403	Severing with intent to steal	The value of the thing made moveable is equal to or more than the prescribed value and the offender does not plead guilty.
section 406	Bringing stolen goods into Queensland	The value of the property is equal to or more than the prescribed value and the offender does not plead guilty.

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Column 1 Provision of Code	Column 2 Provision heading	Column 3 Relevant circumstance
section 408A	Unlawful use or possession of motor vehicles, aircraft or vessels	1 The value of the motor vehicle, aircraft or vessel is equal to or more than the prescribed value and the offender does not plead guilty. 2 The offender is liable to imprisonment for 12 years under section 408A(2) and a charge for the indictable offence mentioned in section 408A(2) is to be heard and decided on indictment or would be required to be heard and decided on indictment if the charge were laid. 3 The offender is liable to imprisonment for 14 years under section 408A(4)(b)(i) or (ii). 4 The offender is liable to imprisonment for 14 years under section 408A(4)(b)(iv), the value of any damage caused to property is equal to or more than the prescribed value and the offender does not plead guilty.
section 408C	Fraud	The value of the property, the yield to the offender or the detriment caused is equal to or more than the prescribed value and the offender does not plead guilty.
section 408E	Misuse of restricted computer	The offender is liable to imprisonment for 10 years, the value of the detriment or damage caused, or benefit obtained, is equal to or more than the prescribed value and the offender does not plead guilty.
chapter 38, other than sections 413 and 414	Stealing with violence—extortion by threats	

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Column 1 Provision of Code	Column 2 Provision heading	Column 3 Relevant circumstance
section 419(1)	Burglary	1 The offender is liable to imprisonment for life under section 419(3)(b)(i) or (ii). 2 The offender is liable to imprisonment for life under section 419(3)(b)(iv), the value of any damage caused to property is equal to or more than the prescribed value and the offender does not plead guilty.
section 419(5)	Burglary	A charge for the indictable offence mentioned in section 419(5) is to be heard and decided on indictment or would be required to be heard and decided on indictment if the charge were laid. For example, if the indictable offence committed in the dwelling entered by the offender is stealing, the total value of what is stolen is equal to or more than the prescribed value and the offender does not plead guilty to the stealing, a charge for the offence of stealing would be required to be heard and decided on indictment, and accordingly, the offence of entering the dwelling in contravention of section 419(4) would be an excluded offence.
section 421(2)	Entering or being in premises and committing indictable offences	A charge for the indictable offence mentioned in section 421(2) is to be heard and decided on indictment or would be required to be heard and decided on indictment if the charge were laid.

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Column 1 Provision of Code	Column 2 Provision heading	Column 3 Relevant circumstance
section 421(3)	Entering or being in premises and committing indictable offences	1 A charge for the indictable offence mentioned in section 421(3) is to be heard and decided on indictment or would be required to be heard and decided on indictment if the charge were laid. 2 The value of any damage caused by the break is equal to or more than the prescribed value and the offender does not plead guilty.
section 427	Unlawful entry of vehicle for committing indictable offence	1 The offender is liable to imprisonment for 14 years under section 427(2)(b)(i) or (ii). 2 The offender is liable to imprisonment for 14 years under section 427(2)(b)(iv), the value of any damage caused to property is equal to or more than the prescribed value and the offender does not plead guilty.
section 430	Fraudulent falsification of records	The value of the yield to the offender because of the act or omission mentioned in section 430(a), (b), (c), (d) or (e), or the value of the detriment caused by that act or omission, is equal to or more than the prescribed value and the offender does not plead guilty.
section 433	Receiving tainted property	The value of the tainted property is equal to or more than the prescribed value and the offender does not plead guilty.
section 435	Taking reward for recovery of property obtained by way of indictable offences	The value of the benefit mentioned in section 435(b) is equal to or more than the prescribed value and the offender does not plead guilty.

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Column 1 Provision of Code	Column 2 Provision heading	Column 3 Relevant circumstance
chapter 44	Offences analogous to stealing relating to animals	The value of the animal the subject of the offence is equal to or more than the prescribed value and the offender does not plead guilty.
section 461	Arson	
section 462	Endangering particular property by fire	
section 463	Setting fire to vegetation	
section 467	Endangering the safe use of vehicles and related transport infrastructure	
section 468	Injuring animals	The offender is liable to imprisonment for 7 years, the value of the animal the subject of the offence is equal to or more than the prescribed value and the offender does not plead guilty.
section 469	Wilful damage	The offender is liable to punishment under clause 1 (Destroying or damaging premises by explosion), 2 (Sea walls and other property), 5 (Railways), 6 (Aircraft) or 7 (Other things of special value).
section 469A	Sabotage and threatening sabotage	
section 470	Attempts to destroy property by explosives	
section 471	Damaging mines	The value of the damage or interference caused is equal to or more than the prescribed value and the offender does not plead guilty.

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Column 1 Provision of Code	Column 2 Provision heading	Column 3 Relevant circumstance
section 472	Interfering with marine signals	The value of any damage or detriment directly attributable to the commission of the offence, including, for example, economic loss arising from disruption to shipping, is equal to or more than the prescribed value and the offender does not plead guilty.
section 473	Interfering with navigation works	The value of any damage or detriment directly attributable to the commission of the offence, including, for example, economic loss arising from disruption to shipping, is equal to or more than the prescribed value and the offender does not plead guilty.
section 474	Communicating infectious diseases to animals	The value of the animal or animals the subject of the offence is equal to or more than the prescribed value and the offender does not plead guilty.
section 488	Forgery and uttering	The offender is liable to 7 years or 14 years imprisonment, the value of the yield to the offender, or the detriment caused, involved in the forgery or uttering is equal to or more than the prescribed value and the offender does not plead guilty.
section 498	Falsifying warrants for money payable under public authority	The value of the yield to the offender, or the detriment caused, involved in the making out or delivering of the warrant is equal to or more than the prescribed value and the offender does not plead guilty.

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Column 1 Provision of Code	Column 2 Provision heading	Column 3 Relevant circumstance
section 514	Personation in general	The offender is liable to imprisonment for 14 years, the value of the property mentioned in section 514(2) is equal to or more than the prescribed value and the offender does not plead guilty.

552C Constitution of Magistrates Court

(1) A Magistrates Court that summarily deals with an indictable offence under this chapter must be constituted by—

(a) a magistrate; or

(b) justices appointed under subsection (3) for the place at which the Magistrates Court is being held.

(2) Jurisdiction of the justices mentioned in subsection (1)(b) is limited to an offence—

(a) that is dealt with on a plea of guilty; and

(b) that the justices consider they may adequately punish by the imposition of a penalty not more than the maximum penalty they may impose under section 552H; and

(c) for an offence involving property—that involves property, or property damage or destruction, of a value not more than $2,500.

(3) For subsection (1)(b), the Attorney-General may by gazette notice appoint a justice for a place specified in the gazette notice.

(4) A justice appointed under subsection (3) must be a justice of the peace (magistrates court) who the Attorney-General is satisfied has appropriate qualifications.

(5) A gazette notice may only specify a place appointed for holding a Magistrates Court—

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(a) that is within a local government area of an indigenous local government under the *Local Government Act 2009*; or

(b) that the Attorney-General considers is remote.

(6) The *Justices of the Peace and Commissioners for Declarations Act 1991*, section 29(4)(a) is subject to subsections (1) to (3).

552D When Magistrates Court must abstain from jurisdiction

(1) A Magistrates Court must abstain from dealing summarily with a charge under section 552A, 552B or 552BA if satisfied, at any stage, and after hearing any submissions by the prosecution and defence, that because of the nature or seriousness of the offence or any other relevant consideration the defendant, if convicted, may not be adequately punished on summary conviction.

(1A) A Magistrates Court must abstain from dealing summarily with a charge under section 552BA if—

(a) the charge has been laid against the defendant as an alternative to a charge for another offence (the ***main offence***); and

(b) the main offence is an indictable offence that is not required to be heard and decided summarily under this chapter.

(2) A Magistrates Court must abstain from dealing summarily with a charge under section 552BA if satisfied, on an application made by the defence, that because of exceptional circumstances the charge should not be heard and decided summarily.

Examples of exceptional circumstances—

1 There is sufficient connection between the offence the subject of the charge, and other offences allegedly committed by the defendant and to be tried on indictment, to allow all the offences to be tried together.

2 There is an important issue of law involved.

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3 An issue of general community importance or public interest is involved, or the holding of a trial by jury is justified in order to establish contemporary community standards.

(2A) A Magistrates Court must abstain from dealing summarily with a charge of a prescribed offence if the defendant is alleged to have committed the offence with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q.

(3) If the court abstains from jurisdiction, the proceeding for the charge must be conducted as a committal proceeding.

(4) In this section—

prescribed offence see the *Penalties and Sentences Act 1992*, section 161N.

552E Charge may be heard and decided where defendant arrested or served

Without limiting the places a charge may be heard summarily under section 552A, 552B or 552BA, the charge may also be heard and decided at a place appointed for holding magistrates courts within the district in which the accused person was arrested on the charge or served with the summons for the charge under the *Justices Act 1886*.

552F Time for prosecution

If a Magistrates Court hears and decides a charge summarily under section 552A, 552B or 552BA, the Magistrates Court has jurisdiction despite the time that has elapsed from the time when the matter of complaint of the charge arose.

552G Value of property affecting jurisdiction to be decided by Magistrates Court

For section 552BB, the value of property or of damage to property is the value as decided by the Magistrates Court.

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552H Maximum penalty for indictable offences dealt with summarily

(1) A person is liable on summary conviction under section 552A, 552B or 552BA to a maximum penalty of—

(a) if the Magistrates Court is a court constituted by a magistrate imposing a drug and alcohol treatment order under the *Penalties and Sentences Act 1992*, part 8A—100 penalty units or 4 years imprisonment; or

(b) if the Magistrates Court is constituted by a magistrate other than a magistrate mentioned in paragraph (a)—100 penalty units or 3 years imprisonment; or

(c) if the Magistrates Court is constituted by justices under section 552C(1)(b)—100 penalty units or 6 months imprisonment.

(2) However, in no case may the person be punished more than if the offence had been dealt with on indictment.

552I Procedure under s 552B

(1) This section applies to any charge for an offence to which section 552B applies.

(2) If the defendant is not legally represented, the Magistrates Court is required—

(a) to state the substance of the charge to the defendant; and

(b) to explain to the defendant that he or she is entitled to be tried by a jury and is not obliged to make any defence; and

(c) to ask the defendant whether he or she wants the charge to be dealt with summarily.

(3) Whether or not the defendant is legally represented, unless the defendant informs the Magistrates Court that he or she wants to be tried by a jury, the Magistrates Court must ask whether the defendant is guilty or not guilty of the offence.

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(4) If the defendant is legally represented and there is more than 1 charge before the Magistrates Court, a plea to any number of the charges may, with the consent of the defendant, be taken at the same time on the basis that the plea to 1 charge will be treated as a plea to any number of the charges if the court is satisfied—

(a) the defendant has obtained legal advice in relation to each of the charges; and

(b) the defendant is aware of the substance of each of the charges.

(5) If the Magistrates Court takes a plea under subsection (4), the court is not required to state the substance of any charge before the court to the defendant.

(6) If the defendant says 'guilty' the Magistrates Court must convict.

(7) If the defendant says 'not guilty' the Magistrates Court must hear the defence.

(8) After the defendant enters a plea, the Magistrates Court must then deal with the charge summarily.

(9) Unless a defendant's criminal history is admissible in evidence, the Magistrates Court must not have any regard to the defendant's criminal history—

(a) before receiving a plea of guilty or making any decision of guilt; or

(b) for deciding whether the defendant may be adequately punished on summary conviction.

552J Appeals against decision to decide charge summarily

(1) This section applies if a person is summarily convicted or sentenced under section 552A, 552B or 552BA.

(2) The grounds on which the person may appeal include that the Magistrates Court erred by deciding the conviction or sentence summarily.

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(3) The grounds on which the Attorney-General may appeal against sentence include that the Magistrates Court erred by deciding the sentence summarily.

(4) On an appeal against sentence relying on a ground that the Magistrates Court erred by proceeding summarily, the court deciding the appeal may, if it decides to vary the sentence, impose the sentence the court considers appropriate up to the maximum sentence that could have been imposed if the matter had been dealt with on indictment.

Chapter 59 Jurisdiction—preliminary proceedings—bail

553 Jurisdiction

The jurisdiction of courts of justice with respect to the trial of offenders is set forth in the laws relating to the constitution and jurisdiction of those courts respectively.

554 Preliminary proceedings on charges of indictable offences

The practice and procedure relating to the examination and committal for trial of persons charged with indictable offences are set forth in the laws relating to justices of the peace, their powers and authorities.

557 Place of trial

(1) A person charged with committing an offence may be tried in any jurisdiction within which any act or omission or event which is an element of the offence takes place.

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(2) A person charged with stealing any property may also be tried in any jurisdiction within which the person has the stolen property in the person's possession.

(3) A person charged with stealing anything while employed in the public service may also be tried in any jurisdiction within which the person is arrested or is in custody.

(4) A person charged with an offence which involves the receiving of any property by the person may also be tried in any jurisdiction within which the person has the property in the person's possession.

(5) A person charged with forging anything, or with uttering any false document or writing or anything counterfeit, may also be tried in any jurisdiction within which the person is arrested or is in custody.

(6) A person who is charged with counselling or procuring the commission of an offence, or with becoming an accessory after the fact to an offence, may also be tried in any jurisdiction within which the principal offender might be tried.

(7) A person who is charged with an offence committed out of Queensland, and who may lawfully be tried in Queensland, may be tried in any jurisdiction within which the person is arrested or is in custody.

(8) If a person is charged with committing an offence for which the person may lawfully be tried in Queensland and it is uncertain where the offence was committed, the person may be tried in any jurisdiction within which the person is arrested or is in custody.

(9) A person charged with committing an offence can be tried with the person's consent in any jurisdiction.

558 Persons brought before wrong court

(1) If on the trial of a person charged with any offence before any court it appears that the person is not properly triable before

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that court under any of the provisions of section 557, the person is not by reason thereof entitled to be acquitted, but the court may, at the request of the accused person, discharge the jury from giving a verdict, and direct that the person be tried before some proper court, and may remand the person for trial accordingly.

(2) If the person does not make such request, the trial is to proceed, and the verdict and judgment have the same effect in all respects as if the court had originally had jurisdiction to try the accused person.

(3) This section does not affect the right of an accused person to plead to the jurisdiction of a court.

559 Change of place of trial

(1) When a person has been committed for trial for an indictable offence at a court held at any place, whether the person has been granted bail or not, the Supreme Court or a judge thereof may, on the application of the Crown or of the accused person, and upon good cause shown order that the trial shall be held at some other place, either before the same court or before some other court of competent jurisdiction, at a time to be named in the order.

(2) When an indictment has been presented against any person in the Supreme Court, the court may, on the application of the Crown or the accused person, order that the trial shall be held at some place other than that named in the margin of the indictment and at a time to be named in the order.

(3) An application for a change of the place of trial for an indictable offence shall be granted if based upon the facts—

(a) that the accused person has been committed for trial for another indictable offence at a court held at any other place or that an indictment has been presented to a court held at any other place charging the accused person with another offence; and

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(b) that the charge for the offence in respect of which the application is made and the charge for the offence referred to in paragraph (a) could have been joined in the same indictment, had the offences been committed at the same place;

unless good cause is shown for not granting the application.

(4) When an order is made under the provisions of this section, the consequences are the same in all respects, and with regard to all persons, as if the accused person had been committed for trial at the place named in the order and at the sittings named therein; and, if the person has been granted bail, the undertakings as to bail are to be deemed to be enlarged to that time and place accordingly.

Chapter 60 Indictments

559A Definition for ch 60

In this chapter—

DPP presenter means a person, other than a Crown prosecutor, appointed or employed in, or engaged by, the Office of the Director of Public Prosecutions who is authorised in writing by the director of public prosecutions to present an indictment for the director.

560 Presenting indictments

(1) When a person charged with an indictable offence has been committed for trial and it is intended to put the person on trial for the offence, the charge is to be reduced to writing in a document which is called an indictment.

(2) The indictment is to be signed and presented to the court by a Crown Law Officer, a Crown prosecutor or some other person appointed in that behalf by the Governor in Council.

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(3) If a person has been committed for trial for an indictable offence that may be tried in the District Court, a Crown Law Officer or a Crown prosecutor may present the indictment to either the Supreme Court or District Court.

(4) In deciding the court to which the indictment is to be presented, the Crown Law Officer or Crown prosecutor must have regard to—

(a) the complexity of the case; and

(b) the seriousness of the alleged offence; and

(c) any particular importance attaching to the case; and

(d) any other relevant consideration.

(5) Also, if an indictment is signed by a person authorised to sign the indictment under this section, a DPP presenter may present the indictment to the court stated in the indictment.

560A Place where indictment is presented

(1) An indictment may be presented to the court at the place of trial named in the margin of the indictment (the ***place of trial***) or at another place.

(2) If an indictment is presented to the court at a place other than the place of trial—

(a) the indictment is taken to have been presented to the court at the place of trial; and

(b) anything that may be done by, or in relation to, the court at the place of trial may also be done by, or in relation to, the court at the other place; and

Example—

An application under section 590AA may be made to, and dealt with by, the court at the other place or at the place of trial.

(c) as soon as practicable after the indictment is presented, the proper officer of the court at the other place must transfer the indictment to the court at the place of trial.

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561 Ex officio indictments

(1) A Crown Law Officer may sign and present an indictment in any court of criminal jurisdiction against any person for any indictable offence, whether the accused person has been committed for trial or not.

(2) A Crown prosecutor or a person appointed by the Governor in Council to sign and present indictments in any court of criminal jurisdiction may sign and present an indictment in that court against any person for any indictable offence within the jurisdiction of the court, whether the accused person has been committed for trial or not and against any person for an indictable offence who with the person's prior consent has been committed for trial or for sentence for an offence before that court.

(3) Also, if an indictment is signed by a person authorised to sign the indictment under this section, a DPP presenter may present the indictment to the court stated in the indictment.

562 Arrest of person charged in ex officio indictment

When an indictment has been presented against a person who is not in custody, and has not been committed for trial or held to bail to attend to be tried upon the charge set forth in the indictment, or who does not appear to be tried upon the charge set forth in the indictment, a judge of the court in which the indictment is presented may issue a warrant under the judge's hand to arrest the accused person and bring the person before a justice of the peace; and the justice before whom the person is brought may commit the person to prison until the person can be tried on the indictment, or may, in a proper case, grant bail.

563 Nolle prosequi

(1) A Crown Law Officer may inform any court, by writing under the officer's hand, that the Crown will not further proceed

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upon any indictment, or in relation to any charge contained in any indictment, then pending in the court.

(2) A Crown prosecutor or a person appointed by the Governor in Council to present indictments in any court of criminal jurisdiction may inform that court, by signed writing, that the Crown will not further proceed upon any indictment, or in relation to any charge contained in any indictment, then pending in that court.

(3) When such information is given to the court the accused person is to be discharged from any further proceedings upon that indictment or charge.

564 Form of indictment

(1) An indictment is to be intituled with the name of the court in which it is presented, and must, subject to the provisions hereinafter contained, set forth the offence with which the accused person is charged in such a manner, and with such particulars as to the alleged time and place of committing the offence, and as to the person (if any) alleged to be aggrieved, and as to the property (if any) in question, as may be necessary to inform the accused person of the nature of the charge.

(2) If any circumstance of aggravation is intended to be relied upon, it must be charged in the indictment.

(2A) Despite subsection (2), a relevant circumstance of aggravation may be relied on for the purposes of sentencing an offender for the offence charged in the indictment despite the relevant circumstance of aggravation not being charged in the indictment for the offence.

(3) It is sufficient to describe an offence in the words of this Code or of the statute defining it.

(3A) An indictment for an offence may also state the offence is—

(a) a domestic violence offence; or

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(b) a domestic violence offence committed against a child; or

(c) a domestic violence offence that exposed a child to domestic violence.

Note—

See the *Penalties and Sentences Act 1992*, section 12A for when a conviction for the offence must also be recorded as a conviction for, or entered in the offender's criminal history as, a relevant domestic violence offence.

(3B) An indictment for an offence committed in relation to a pregnant person that allegedly resulted in destroying the life of the person's unborn child may also state the name, or a description, of the unborn child.

(4) The place of trial is to be named in the margin of the indictment.

(5) In this section—

relevant circumstance of aggravation means a circumstance of aggravation that is a previous conviction of the offender.

565 General rules applicable to indictments

The following rules are applicable to all indictments—

(a) any document or other thing may be described by any name or designation by which it is usually known, and any document may be described by its purport without setting out a copy or facsimile of the whole or any part of it;

(b) a trademark may be described by that name, and any other mark may be described in any way which will indicate its nature, without setting out a copy or facsimile of it;

(c) it is not necessary to set forth the value of anything mentioned in an indictment unless the value is an essential element of the offence;

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(d) it is not necessary to set forth the means or instrument by which any act is done, unless the means or instrument are an essential element of the offence;

(e) it is not necessary to set forth any particulars as to any person or thing which need not be proved, nor any other matter which need not be proved.

566 Particular indictments

(1) In an indictment for an offence relating to giving information or a document that a person knows is false or misleading, it is enough to state the information or document was 'false or misleading' to the person's knowledge, without specifying whether it was false or whether it was misleading.

(2) In an indictment for an offence which relates to taking or administering an oath or engagement, or to giving false testimony or to making a false statement on solemn declaration or otherwise, or to procuring the giving of false testimony or the making of a false statement, it is not necessary to set forth the words of the oath or engagement or testimony or statement, but it is sufficient to set forth the purport thereof, or so much of the purport as is material.

(3) In an indictment for an offence which relates to giving false testimony, or procuring or attempting to procure the giving of false testimony, it is not necessary to allege the jurisdiction of the court or tribunal before which the false testimony was given, or intended or proposed to be given.

(5) In an indictment in which it is necessary to mention money, such money may be described simply as money, without specifying any particular form of money.

(5A) Such an averment, so far as regards the description of the property, will be sustained by proof that the offender obtained or dealt with anything which is included in the term 'money', or any portion of the value, in such a manner as to constitute the offence, although the thing was delivered to the offender in order that some part of the value thereof should be returned

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to the person who delivered the same or to some other person, and has been returned accordingly.

(6) In an indictment in which it is necessary to mention any co-owners of property it is sufficient to name 1 of such persons, adding the words 'and another' or 'and others', as the case may be, and to state that the property belonged to the person so named and another or others, as the case may be.

(7) In an indictment against a man for an offence committed by him with respect to his wife's separate property, the property may be alleged to be the property of the wife.

(8) In an indictment for an offence relating to any property of a company which is authorised to sue and be sued in the name of a public officer, the property may be alleged to be the property of the public officer.

(9) In an indictment for an offence relating to any property which by any statute is to be deemed to be the property of any officer of any institution, the property in question may be alleged to be the property of the officer of the institution for the time being by the officer's name of office.

(10) In an indictment for an offence relating to a testamentary instrument, it is not necessary to allege that the instrument is the property of any person.

(11) In an indictment for an offence relating to anything fixed in a square, street or cemetery or at a crematorium, or in a place dedicated to public use or ornament, or to anything in or taken from a public office, it is not necessary to allege that the thing in respect of which the offence is committed is the property of any person.

(12) In an indictment for an offence relating to a document which is evidence of title to land or an estate in land, the document may be described as being evidence of the title of the person or some 1 of the persons having an estate in the land to which the document relates, the land or some part thereof being described in some manner sufficient to identify it.

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(13) In an indictment for stealing a chattel or fixture let to the offender, the chattel or fixture may be described as the property of the person who actually let it to hire.

(14) In an indictment against a person employed in the public service for an offence committed with respect to anything which came into the person's possession by virtue of the person's employment, the thing in question may be described as the property of the Sovereign.

(15) In an indictment for an offence respecting any property (whether within the meaning of section 1 or section 408C), if it is uncertain to which of 2 or more persons the property belonged at the time when the offence was committed, the property may be described as being the property of one or other of such persons, naming each of them, but without specifying which of them; and the indictment will be sustained, so far as regards the allegation of ownership, upon proof that at the time when the offence was committed the property belonged to one or other of such persons without ascertaining which of them.

(16) In an indictment for the offence of obtaining or inducing the delivery of anything dishonestly, or of attempting to commit, or to procure the commission of, any such offence, it is not necessary to mention the owner of the property in question.

(17) In an indictment for an offence which involves any fraud or fraudulent pretence, it is not necessary to set forth the details of the fraud or pretence or trick or device.

567 Joinder of charges

(1) Except as otherwise expressly provided, an indictment must charge 1 offence only and not 2 or more offences.

(2) Charges for more than 1 indictable offence may be joined in the same indictment against the same person if those charges are founded on the same facts or are, or form part of, a series of offences of the same or similar character or a series of offences committed in the prosecution of a single purpose.

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(3) Where more than 1 offence is charged in the same indictment, each offence charged shall be set out in the indictment in a separate paragraph called a ***count*** and the several statements of the offences may be made in the same form as in other cases without any allegation of connection between the offences.

(4) Counts shall be numbered consecutively.

568 Cases in which several charges may be joined

(1) In an indictment against a person for stealing property the person may be charged and proceeded against on 1 charge even though—

(a) the property belongs to the same person or to different persons; or

(b) the property was stolen over a space of time; or

(c) different acts of stealing took place at different times, whether or not the different acts can be identified.

(2) In an indictment against a trustee to whom the *Trust Accounts Act 1973* applies, for stealing money, the trustee may be charged and proceeded against for the amount of a general deficiency notwithstanding that such general deficiency is made up of any number of specific sums of money, such sums being the property of different persons, the taking, destruction or conversion of which extended over any space of time.

(2A) For subsection (2), the reference to a trustee to whom the *Trust Accounts Act 1973* applies includes a legal practitioner associate of a law practice, within the meaning of the *Legal Profession Act 2007*, if part 3.3 of the *Legal Profession Act 2007* applies to the law practice.

(3) In an indictment against a person for fraud the person may be charged and proceeded against on 1 charge even though—

(a) any number of specific frauds of the same type has been committed, whether or not each specific act of fraud can be identified; or

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(b) the frauds have extended over any space of time; or

(c) property applied belongs to different persons, and has come into the possession or control of the accused person at different times and subject to different trusts, directions, conditions, or duties to account; or

(d) the property, benefit, detriment or inducement belongs to or is caused to different persons.

(4) In an indictment against a person for receiving property the person may be charged and proceeded against on 1 charge even though—

(a) the property belongs to different persons; or

(b) the property was received over a space of time; or

(c) different acts of receiving took place at different times, whether or not the different acts can be identified.

(5) In an indictment against a person for forgery or uttering the person may be charged and proceeded against on 1 charge even though—

(a) any number of separate forgeries or utterings has been committed, whether or not the separate acts of forgery or uttering can be identified; or

(b) the forgeries or utterings have extended over any space of time; or

(c) there was an intent to defraud one or more than one person.

(5A) In an indictment against a person for obtaining or dealing with identification information under section 408D, the person may be charged and proceeded against on 1 charge even though—

(a) the identification information relates to different entities; or

(b) the identification information was obtained or dealt with over a space of time; or

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(c) different acts of obtaining or dealing with the identification information took place at different times, whether or not the different acts can be identified.

(6) Any 2 or all of the following charges may be joined in the same indictment (a ***subsection (6) indictment***)—

(a) entering or being in a dwelling or premises and stealing property in the dwelling or premises;

(b) stealing all or part of property the subject of the indictment;

(c) receiving all or part of property the subject of the indictment having reason to believe the property is stolen.

(7) If a subsection (6) indictment is preferred against a person, the person may, according to the evidence, be convicted of the offence mentioned in subsection (6)(a), the offence mentioned in subsection (6)(b) or the offence mentioned in subsection (6)(c).

(8) If a subsection (6) indictment is preferred against 2 or more persons—

(a) all or any of them may, according to the evidence, be convicted of the offence mentioned in subsection (6)(a), the offence mentioned in subsection (6)(b) or the offence mentioned in subsection (6)(c); or

(b) 1 or more of them may, according to the evidence, be convicted of 1 of the offences and the other or others of them may be convicted of another of the offences, or of 1 or the other of the other offences.

(9) However, if the jury finds specially—

(a) that a person charged on a subsection (6) indictment—

(i) entered or was in a dwelling or premises and stole property in the dwelling or premises; or

(ii) stole all or part of property the subject of the indictment; or

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(iii) received all or part of property the subject of the indictment having reason to believe the property to have been stolen; or

(b) that a person charged on a subsection (6) indictment committed 1 of any 2 of the offences mentioned in paragraph (a);

but can not say which of the offences (the ***alternative offences***) was committed by the person, the trial judge must enter a conviction against the person for 1 of the alternative offences in accordance with subsection (10).

(10) For subsection (9), the trial judge must enter a conviction for the following offence—

(a) if the same maximum penalty is provided for the alternative offences, the alternative offence decided by the trial judge;

(b) if a particular maximum penalty is provided for 1 of the alternative offences and the same lower maximum penalty is provided for the other alternative offences, 1 of the other alternative offences decided by the trial judge;

(c) otherwise, the alternative offence for which the lowest or lower maximum penalty is provided.

(10A) In an indictment against a person for an offence against section 228A, 228B, 228C or 228D, the person may be charged and proceeded against on 1 charge for the offence even though—

(a) any number of separate acts constituting the offence have been committed, whether or not the separate acts constituting the offence can be identified; or

(b) the separate acts constituting the offence have extended over any space of time; or

(c) different acts constituting the offence took place at different times, whether or not the different acts can be identified.

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(11) Any number of persons charged with committing or with procuring the commission of the same offence, although at different times, or of being accessories after the fact to the same offence, although at different times, and any number of persons charged with receiving, although at different times, any property which has been obtained by means of a crime or misdemeanour, or by means of an act which if it had been done in Queensland would be a crime or misdemeanour and which is an offence under the laws in force in the place where it was done, or any part of any property so obtained, may be charged with substantive offences in the same indictment, and may be tried together notwithstanding that the principal offender or the person who so obtained the property is not included in the same indictment, or is not amenable to justice.

(12) Any number of persons charged with committing different or separate offences arising substantially out of the same facts or out of closely related facts so that a substantial part of the facts is relevant to all the charges may be charged in the same indictment and tried together.

569 Accessories

A person who counsels or procures another person to commit an offence, or who aids another person in committing an offence, or who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence, or who becomes an accessory after the fact to an offence, may be charged in the same indictment with the principal offender, and may be tried with the principal offender or separately, or may be indicted and tried separately, whether the principal offender has or has not been convicted, or is or is not amenable to justice.

570 Statement of previous conviction

In an indictment for an offence charged to have been committed after a conviction for any offence, it is sufficient, after charging the subsequent offence, to state the substance

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and effect of the indictment or complaint, and the conviction, for the previous offence, and the time and place of such conviction.

571 Formal defects

(1) An indictment is not open to objection by reason of the designation of any person by a name of office or other descriptive appellation instead of by the person's proper name, nor for omitting to state the time at which the offence was committed, unless the time is an essential element of the offence, nor for stating imperfectly the time at which the offence was committed, nor for stating the offence to have been committed on an impossible day, or on a day that never happened or has not yet happened.

(2) An objection to an indictment for a formal defect apparent on its face must be taken by motion to quash the indictment before the jury is sworn, and not afterwards.

572 Amendment of indictments

(1) If, on the trial of a person charged with an indictable offence, there appears to be a variance between the indictment and the evidence, or it appears that any words that ought to have been inserted in the indictment have been omitted, or any count that ought to have been included in the indictment has been omitted, or that any words that ought to have been omitted have been inserted, the court may, if it considers that the variance, omission, or insertion, is not material to the merits of the case, and that the accused person will not be prejudiced thereby in the person's defence on the merits, order the indictment to be amended, so far as it is necessary, on such terms (if any) as to postponing the trial, and directing it to be had before the same jury or another jury, as the court may think reasonable.

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(1A) Subsection (1B) applies if the court considers the offence charged in the indictment is also 1 of the following offences (each a ***relevant domestic violence offence***)—

(a) a domestic violence offence;

(b) a domestic violence offence committed against a child;

(c) a domestic violence offence that exposed a child to domestic violence.

(1B) Without limiting subsection (1), the court may order that the indictment be amended to also state the offence is a relevant domestic violence offence.

(2) The indictment is thereupon to be amended in accordance with the order of the court.

(3) If the court is satisfied no injustice will be done by amending the indictment, the court may make the order at any time before, or at any stage of, the trial on the indictment, or after verdict.

(4) When an indictment has been amended, the trial is to proceed, at the appointed time, upon the amended indictment, and the same consequences ensue, in all respects and as to all persons, as if the indictment had been originally in its amended form.

(5) If it becomes necessary to draw up a formal record in any case in which an amendment has been made, the record is to be drawn up setting out the indictment as amended, and without taking any notice of the fact of the amendment having been made.

573 Particulars

The court may, in any case, if it thinks fit, direct particulars to be delivered to the accused person of any matter alleged in the indictment, and may adjourn the trial for the purpose of such delivery.

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574 Summary convictions

The provisions of this chapter relating to indictments apply to complaints preferred against offenders upon their trial before justices in order to their summary conviction of an indictable offence.

Chapter 61 Effect of indictment

575 Offences involving circumstances of aggravation

Except as hereinafter stated, upon an indictment charging a person with an offence committed with circumstances of aggravation, the person may be convicted of any offence which is established by the evidence, and which is constituted by any act or omission which is an element of the offence charged, with or without any of the circumstances of aggravation charged in the indictment.

575A Evidence at murder trial

(1) This section applies in relation to the trial of a person charged with murder under a paragraph of section 302(1).

(2) The person may be convicted of murder if the evidence at the trial establishes that the person is guilty of murder under any other paragraph of section 302(1).

576 Indictment containing count of murder or manslaughter

(1) Upon an indictment against a person containing a count of the crime of murder, the person may be convicted on that count of the crime of manslaughter if that crime is established by the evidence but not on that count of any other offence than that with which the person is charged except as otherwise expressly provided.

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(2) Upon an indictment against a person containing a count of the crime of manslaughter the person can not on that count be convicted of any other offence except as otherwise expressly provided.

577 Charge of homicide of child

However, upon an indictment charging a person with the murder of any person, or with unlawfully killing any person, if upon the evidence it appears that the person alleged to have been killed was a child of which a female had recently been delivered, the accused person may be convicted of an offence defined in section 313 or 314, if any offence under either of those sections is established by the evidence.

578 Charge of offence of a sexual nature

(1) Upon an indictment charging a person with the crime of rape, the person may be convicted of any offence, if established by the evidence, defined in section 210(1), 210A, 215, 216, 217(1), 218, 222 or 352.

(2) Upon an indictment charging a person with engaging in unlawful penile intercourse with a child under the age of 16 years, the person may be convicted of any offence, if established by the evidence, defined in section 210(1), 217 or 218.

(3) Upon an indictment charging a person with unlawfully and indecently assaulting another, the person may be convicted of any offence, if established by the evidence, defined in section 210(1) or 210A.

(4) Upon an indictment charging a person with incest or an attempt to commit incest, the person may be convicted of any offence, if established by the evidence, defined in section 210(1), 210A, 215, 216, 217, 218, 349, 350 or 352.

(5) A person convicted of any offence pursuant to this section may be convicted of that offence with any circumstance of aggravation established by the evidence.

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579 Charge of specific injury—charge of injury with specific intent

(1) Upon an indictment charging a person with an offence of which the causing of some specific result is an element, the person may be convicted of any offence which is established by the evidence, and of which an intent to cause that result, or a result of a similar but less injurious nature, is an element.

(2) Upon an indictment charging a person with an offence of which an intent to cause some specific result is an element, the person may be convicted of any offence which is established by the evidence and of which the unlawful causing of that result is an element.

580 Charge of injury to property

Upon an indictment charging a person with an offence of which destruction of property, or wilfully and unlawfully doing any specific damage to property, is an element, the person may be convicted of wilfully and unlawfully damaging the property, or of wilfully and unlawfully damaging the property in any lesser degree, if either of such offences is established by the evidence.

581 Offences of dishonesty

Upon an indictment charging a person with any of the offences following, that is to say—

(a) stealing, with or without a circumstance of aggravation;

(b) fraud, with or without a circumstance of aggravation;

(c) obtaining from any other person any chattel, money or valuable security by passing a cheque that is not paid on presentation for payment;

(d) unlawful use or possession of a vehicle, with or without a circumstance of aggravation;

(e) unlawfully receiving anything under section 433;

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(f) counselling or procuring any other person to commit any of such offences;

the person may be convicted of any other of such offences committed with respect to the same property, if such other offence is established by the evidence.

582 Charge of procuring commission of offence or wrongful act

(1) Upon an indictment charging a person with procuring the commission of any offence, the person may be convicted of procuring the commission of any other offence of such a nature that a person may be convicted of it upon an indictment charging the person with committing the offence of which the accused person is alleged to have procured the commission.

(2) Upon an indictment charging a person with procuring another to do an act or make an omission of such a nature that if the accused person had done the act or made the omission, the person would have been guilty of an offence, the person may be convicted of procuring that other person to do any other act or make any other omission which is established by the evidence, and which is of such a nature that if the accused person had done that act or made that omission the person would have been guilty of an offence, such last-named offence being itself of such a nature that a person may be convicted of it upon an indictment charging the person with committing the offence of which the accused person would have been guilty if the person had done the act or made the omission which the person is alleged to have procured to be done or made.

583 Conviction for attempt to commit offence

(1) Upon an indictment charging a person with committing any offence, the person may be convicted of attempting to commit that offence, or of attempting to commit any other offence of which the person might be convicted upon the indictment.

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(2) Upon an indictment charging a person with procuring the commission of any offence, the person may be convicted of attempting to procure the commission of that offence, or of attempting to procure the commission of any other offence of such a nature that a person may be convicted of it upon an indictment charging the person with committing the offence of which the accused person is alleged to have procured the commission.

(3) Upon an indictment charging a person with attempting to commit any offence, the person may be convicted of attempting to commit any other offence of such a nature that a person may be convicted of it upon an indictment charging the person with committing the offence which the accused person is alleged to have attempted to commit.

(4) Upon an indictment charging a person with attempting to procure the commission of any offence, the person may be convicted of attempting to procure the commission of any other offence of such a nature that a person may be convicted of it upon an indictment charging the person with committing the offence of which the accused person is alleged to have attempted to procure the commission.

(5) Upon an indictment charging a person with attempting to procure another to do an act or make an omission of such a nature that if the act had been done or the omission had been made, an offence would thereby have been committed the person may be convicted of attempting to procure that other person to do any other act or make any other omission of such a nature that if the act had been done or the omission had been made an offence would thereby have been committed, such last mentioned offence being itself of such a nature that a person may be convicted of it upon an indictment charging the person with doing the act or making the omission which the accused person is alleged in the indictment to have attempted to procure that other person to do or make.

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584 When evidence shows offence of similar nature

(1) If, on the trial of a person charged with any indictable offence, the evidence establishes that the person is guilty of another indictable offence of such a nature that upon an indictment charging the person with it the person might have been convicted of the offence with which the person is actually charged, the person may be convicted of the offence with which the person is so charged.

(2) A person so tried is not liable to be afterwards prosecuted for the offence so established by the evidence, unless the court before which the trial is had thinks fit to discharge the jury from giving any verdict, and to direct the accused person to be indicted for that offence; in which case the person may be dealt with in all respects as if the person had not been put upon trial for the offence with which the person is actually charged.

585 Effect of conviction

A person convicted under any of the provisions of sections 575 to 584 is liable to the same punishment as if the person had been convicted on an indictment charging the person with the offence of which the person is actually convicted.

586 Corrupt practices

If, on the trial of a person charged with an indictable offence relating to elections the evidence establishes that the person is not guilty of the offence charged, but is guilty of an offence relating to elections and punishable on summary conviction, the person may be convicted of such last mentioned offence, and is liable to the same punishment as if the person had been summarily convicted of that offence.

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587 Illegal practices

If, on the trial of a person charged with an offence relating to elections and punishable on summary conviction, the evidence establishes that the person is guilty of an indictable offence relating to elections, the person is not entitled to have the charge dismissed if the evidence also establishes that the person did any act or acts such as to constitute the offence with which the person is actually charged.

588 Charge of stealing stock

If, on the trial of a person charged with stealing an animal that is stock, the evidence establishes that the person is not guilty of the offence charged, but is guilty of any of the offences following, that is to say—

(a) unlawfully using the animal without the consent of the owner, or of the person in lawful possession thereof;

(b) branding or marking the animal, or knowingly permitting it to be branded or marked, with the person's registered brand or registered mark, knowing that the person is not the owner of the animal;

(c) altering or defacing, or otherwise rendering undistinguishable, any registered brand or registered mark upon the animal;

(d) knowingly permitting any act as mentioned in paragraph (c) to be done by any person over whom the person has control;

the person may be convicted of the offence so established by the evidence, and is liable to the same punishment as if the person had been convicted of that offence.

588A Charges of stealing certain animals and of killing certain animals with intent to steal

(1) If on the trial of a person charged with stealing an animal that is stock the evidence establishes that the person is not guilty

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of the offence charged but is guilty of the offence of killing an animal with intent to steal the skin or carcass or any part of the skin or carcass, the person may be convicted of the latter offence and is liable to the punishment prescribed in respect of that offence.

(2) If on the trial of a person charged with killing an animal with intent to steal the skin or carcass or any part of the skin or carcass the evidence establishes that the person is not guilty of the offence charged but is guilty of the offence of stealing an animal, the person may be convicted of the latter offence and is liable to the punishment prescribed in respect of that offence.

(3) A reference in this section to the offence of killing an animal with intent to steal the skin or carcass or any part of the skin or carcass is a reference to the offence of killing an animal with intent to steal the skin or, as the case may be, the carcass or, as the case may be, part of the skin or, as the case may be, part of the carcass.

589 Indictment for joint receiving

Upon an indictment charging 2 or more persons jointly with an offence of which the receiving of any property is an element, if the evidence establishes that 1 or more of them separately received any part or parts of the property under such circumstances as to constitute an offence, such 1 or more of the accused persons may be convicted of the offence or offences so established by the evidence.

589A Indictment for using or disclosing knowledge of match-fixing conduct or match-fixing arrangement for betting

If, on the trial of a person charged with an indictable offence under section 443D, the evidence establishes that the person is not guilty of the offence charged but is guilty of any offence under section 443F, the person may be convicted of the offence under section 443F.

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Chapter 62 Trial—adjournment—pleas—practice

Chapter division 1 Bringing accused person to trial

590 Bringing accused to trial

(1) Subject to section 561, when a person charged with an indictable offence has been committed for trial and it is intended to put the person upon his or her trial for the offence, the director of public prosecutions or a Crown prosecutor must present the indictment no later than 6 months after the date on which the person was committed for trial.

(2) If—

(a) an indictment is not so presented; or

(b) it becomes apparent that evidence necessary to establish the offence is not going to be available; or

(c) the accused has absconded and is not likely to be found before the expiry of the period; or

(d) for any other reason it is impracticable to present the indictment;

the director of public prosecutions or a Crown prosecutor may apply to the court at any time before or after the expiry of the period for an extension of time within which to present an indictment.

(3) The court hearing the application may, if satisfied that good cause is shown and no miscarriage of justice is likely to result, grant the extension of time the court considers just.

(4) If an indictment is not presented before the expiry of the period or any extension of the period, the person is entitled to be discharged from the consequences of his or her committal.

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Chapter division 2 Directions and rulings before trial

590AA Pre-trial directions and rulings

(1) If the Crown has presented an indictment before a court against a person, a party may apply for a direction or ruling, or a judge of the court may on his or her initiative direct the parties to attend before the court for directions or rulings, as to the conduct of the trial or any pre-trial hearing.

(2) Without limiting subsection (1) a direction or ruling may be given in relation to—

(a) the quashing or staying of the indictment; or

(b) the joinder of accused or joinder of charges; or

(ba) disclosure under chapter division 3 or 4; or

(c) the provision of a statement, report, proof of evidence or other information; or

(d) noting of admissions and issues the parties agree are relevant to the trial or sentence; or

(da) an application for trial by a judge sitting without a jury; or

(e) deciding questions of law including the admissibility of evidence and any step that must be taken if any evidence is not to be admitted; or

(f) ascertaining whether a defence of insanity or diminished responsibility or any other question of a psychiatric nature is to be raised; or

(g) the psychiatric or other medical examination of the accused; or

(h) the exchange of medical, psychiatric and other expert reports; or

(i) the reference of the accused to the Mental Health Court; or

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(j) the date of trial and directing that a date for trial is not to be fixed until it is known whether the accused proposes to rely on a defence of insanity or diminished responsibility or any other question of a psychiatric nature; or

(k) the return of subpoenas; or

(ka) matters relating to protected counselling communications under the *Evidence Act 1977*, part 2, division 2A: or

(l) the *Evidence Act 1977*, part 2, division 4, 4A, 4C or 6, part 6A, part 6B, or part 7A; or

(m) encouraging the parties to narrow the issues and any other administrative arrangement to assist the speedy disposition of the trial.

(3) A direction or ruling is binding unless the judge presiding at the trial or pre-trial hearing, for special reason, gives leave to reopen the direction or ruling.

(4) A direction or ruling must not be subject to interlocutory appeal but may be raised as a ground of appeal against conviction or sentence.

590AAA Noncompliance with direction about disclosure

(1) If it appears to the court that a person (the ***directed person***) has not complied with a direction given under section 590AA(2)(ba), the court may order the directed person to file an affidavit, or give evidence in court, explaining and justifying the failure to comply.

(2) If the court requires the directed person to file an affidavit, a copy of the affidavit must be served on the person for whose benefit the direction was given (the ***affected person***).

(3) An order under subsection (1) may be made—

(a) on the court's own initiative; or

(b) on the application of the affected person.

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(4) If the court is not satisfied the directed person's affidavit or evidence satisfactorily explains and justifies the noncompliance, the court may—

(a) adjourn the proceeding to allow enough time for—

(i) the directed person to comply with the direction; and

(ii) the affected person to consider anything disclosed under the direction and take any necessary further action; and

(b) if the court is satisfied that the noncompliance was unjustified, unreasonable or deliberate—make, in relation to the adjournment, an award in favour of the affected person of an amount of costs the court considers just and reasonable; and

(c) if an award of costs is made under paragraph (b)—fix a time for the amount to be paid.

(5) This section does not limit the court's power otherwise to deal with a failure to comply with a direction, including, for example, any power in the court to punish for contempt.

(6) The directed person is not excused from failing to file an affidavit or give evidence under this section on the ground that an affidavit or evidence explaining and justifying a failure to comply with the direction given under section 590AA(2)(ba) might tend to incriminate the directed person because the directed person would be required to admit to the failure to comply.

(7) However, the affidavit or evidence is not admissible against the directed person in a criminal proceeding or a proceeding for contempt.

(8) Subsection (7) does not stop the affidavit or evidence from being admissible against the person—

(a) in a perjury proceeding in relation to the affidavit or evidence; or

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(b) for the purposes of making an order under subsection (4).

(9) In this section—

direction includes ruling.

perjury proceeding, in relation to an affidavit or evidence, means a proceeding in which the falsity or misleading nature of the affidavit or evidence is relevant.

Chapter division 3 Disclosure by the prosecution

Chapter subdivision A Preliminary provisions

590AB Disclosure obligation

(1) This chapter division acknowledges that it is a fundamental obligation of the prosecution to ensure criminal proceedings are conducted fairly with the single aim of determining and establishing truth.

(2) Without limiting the scope of the obligation, in relation to disclosure in a relevant proceeding, the obligation includes an ongoing obligation for the prosecution to give an accused person full and early disclosure of—

(a) all evidence the prosecution proposes to rely on in the proceeding; and

(b) all things in the possession of the prosecution, other than things the disclosure of which would be unlawful or contrary to public interest, that would tend to help the case for the accused person.

590AC Chapter division does not have particular consequences

(1) Nothing in this chapter division—

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(a) requires disclosure that is unlawful under this or another law; or

(b) affects an accused person's right to anything under another law.

(2) Failure to comply with this chapter division in a proceeding does not affect the validity of the proceeding.

Chapter subdivision B Interpretation

590AD Definitions for ch div 3

In this chapter division—

affected child see the *Evidence Act 1977*, section 21AC.

arresting officer, for a person charged with an offence, means—

(a) the police officer who arrested the person or, if the person was not arrested, the police officer who brought the charge against the person; or

(b) at any time the person mentioned in paragraph (a) is unavailable, another police officer the police commissioner, or a delegate of the police commissioner, designates as the arresting officer for the person.

associate, of a lawyer, means an associate of the law practice of the lawyer as defined under the *Legal Profession Act 2007*, section 7(1)(a) or (c).

court means the court for the relevant proceeding.

criminal history of a person includes every finding of guilt, or acceptance of a plea of guilty, whether or not a conviction was recorded, other than a spent conviction.

end, of the proceedings for a relevant charge, means—

(a) if a trial that disposes of the charge is not conducted—the discharge, striking out, withdrawal,

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entry of nolle prosequi, quashing, staying or other event by which the proceedings end; or

(b) if a trial that disposes of the charge ends without a finding of guilt—the end of the trial; or

(c) if a trial that disposes of the charge ends with a finding of guilt and an appeal against the finding is not started during the period allowed for appeal, including an extension of the period granted by a court—the end of the period; or

(d) if a trial that disposes of the charge ends with a finding of guilt and an appeal is started against the finding—the end of the appeal and the end of any further proceedings.

Evidence Act section 93A device statement see section 590AFA.

exculpatory thing, in relation to an accused person, means reliable evidence of a nature to cause a jury to entertain a reasonable doubt as to the guilt of the accused person.

original evidence means a thing that may be tendered as an exhibit in a relevant proceeding.

possession of the prosecution see section 590AE.

prescribed summary trial means a summary trial of—

(a) a charge for an indictable offence that must be heard and decided summarily under section 552BA; or

(b) a charge for an indictable offence if, under section 552A, the prosecution has elected that the charge be heard and decided summarily; or

(c) a charge for an indictable offence to which section 552B applies unless the defendant has informed the Magistrates Court that he or she wants to be tried by jury; or

(d) a charge for an indictable offence against a provision of the *Drugs Misuse Act 1986*, if—

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(i) under that Act, proceedings for the charge may be taken summarily; and

(ii) the prosecution has elected that proceedings for the charge be taken summarily; or

(e) a charge for a domestic violence offence heard in a domestic violence proceeding within the meaning of the *Evidence Act 1977*, sections 103B and 103C; or

(f) a charge for an offence prescribed under a regulation for this definition.

prosecution means the person in charge of the prosecution or a person appearing for the prosecution.

recorded statement see the *Evidence Act 1977*, section 103A.

relevant charge means a charge against the accused person in a relevant proceeding, and includes any replacement or further charge arising out of the proceeding or the same, or same set of, circumstances.

relevant proceeding means—

(a) a committal proceeding; or

(b) a prescribed summary trial; or

(c) a trial on indictment.

sensitive evidence see section 590AF.

statement of a person means—

(a) a statement signed by the person; or

(b) a statement of the person that is potentially admissible under the *Evidence Act 1977*, section 93A; or

(c) any other representation of fact, whether in words or otherwise, made by the person.

view includes listen to.

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590AE Meaning of *possession of the prosecution*

(1) For a relevant proceeding, a thing is in the ***possession of the prosecution*** only if the thing is in the possession of the prosecution under subsection (2) or (3).

(2) A thing is in the possession of the prosecution if it is in the possession of the arresting officer or a person appearing for the prosecution.

(3) A thing is also in the possession of the prosecution if—

(a) the thing is in the possession of—

(i) for a prosecution conducted by the director of public prosecutions—the director; or

(ii) for a prosecution conducted by the police service—the police service; and

(b) the arresting officer or a person appearing for the prosecution—

(i) is aware of the existence of the thing; and

(ii) is, or would be, able to locate the thing without unreasonable effort.

590AF Meaning of *sensitive evidence*

(1) ***Sensitive evidence*** means anything containing or displaying an image of a person (the ***imaged person***)—

(a) that, disregarding the fact the thing was brought into existence, or is in the possession of the prosecution, for the purpose of providing evidence of an offence, is obscene or indecent; or

(b) the disclosure of which to another person, without the imaged person's consent, would interfere with the imaged person's privacy.

Examples—

- a computer hard drive containing obscene or indecent images

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- a photo of a naked rape victim taken to preserve evidence of the victim's condition at a particular time

(2) Child exploitation material under chapter 22, or material alleged to be child exploitation material, is ***sensitive evidence***.

590AFA Meaning of *Evidence Act section 93A device statement*

An ***Evidence Act section 93A device statement*** means a statement—

(a) made to a person investigating an alleged offence; and

(b) contained in—

(i) any disc, tape, sound track or other device mentioned in paragraph (e) of the definition *document* in the *Evidence Act 1977*, schedule 3 capable of reproducing sounds; or

(ii) any film, negative, tape or other device mentioned in paragraph (f) of the definition *document* in the *Evidence Act 1977*, schedule 3; and

(c) given in, or in anticipation of, a criminal proceeding about the alleged offence; and

(d) that is potentially admissible under the *Evidence Act 1977*, section 93A.

590AG Particular references to an accused person include references to a lawyer acting for the accused person

(1) A reference in this chapter division to giving or disclosing a thing to an accused person includes a reference to giving or disclosing the thing to a lawyer acting for the accused person.

(2) A reference in this chapter division to an accused person viewing a thing includes a reference to a lawyer acting for the accused person viewing the thing.

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Chapter subdivision C Disclosure

590AH Disclosure that must always be made

(1) This section applies—

(a) without limiting the prosecution's obligation mentioned in section 590AB(1); and

(b) subject to section 590AC(1)(a) and chapter subdivision D.

(2) For a relevant proceeding, the prosecution must give the accused person each of the following—

(a) a copy of the bench charge sheet, complaint or indictment containing the charge against the person;

(b) a copy of the accused person's criminal history, and the accused person's childhood criminal history information, in the possession of the prosecution;

(c) a copy of any statement of the accused person in the possession of the prosecution;

(d) for each proposed witness for the prosecution who is, or may be, an affected child—a written notice naming the witness and describing why the proposed witness is, or may be, an affected child;

(e) for each proposed witness for the prosecution other than a proposed witness mentioned in paragraph (d)—

(i) a copy of any statement of the witness in the possession of the prosecution; or

Example—

a statement made by a proposed witness for the prosecution in an audio recording of an interview

(ii) if there is no statement of the witness in the possession of the prosecution—a written notice naming the witness;

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(f) if the prosecution intends to adduce evidence of a representation under the *Evidence Act 1977*, section 93B, a written notice stating that intention and the matters mentioned in section 590C(2)(b) to (d);

(g) a copy of any report of any test or forensic procedure relevant to the proceeding in the possession of the prosecution;

Examples of a forensic procedure—

DNA, fingerprint or another scientific identification procedure

(h) a written notice describing any test or forensic procedure, including a test or forensic procedure that is not yet completed, on which the prosecution intends to rely at the proceeding;

(i) a written notice describing any original evidence on which the prosecution intends to rely at the proceeding;

(j) a copy of anything else on which the prosecution intends to rely at the proceeding;

(k) a written notice or copy of anything else in possession of the prosecution prescribed under a regulation.

(3) Also, for a relevant proceeding or a summary proceeding under the *Justices Act 1886* for an accused person who is charged with a domestic violence offence, the prosecution must give the accused person a copy of the person's domestic violence history in the possession of the prosecution.

(4) In this section—

childhood criminal history information, of an accused person, means a document containing any evidence the prosecution intends to adduce under the *Youth Justice Act 1992*, section 148A or 148B in relation to the accused person's criminal history as a child.

domestic violence history, of a person, means a document that states—

(a) each of the following, within the meaning of the *Domestic and Family Violence Protection Act 2012*—

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(i) a domestic violence order or recognised interstate order made against the person;

(ii) a police protection notice issued against the person; and

(b) each domestic violence order made against the person under the repealed *Domestic and Family Violence Protection Act 1989*.

domestic violence offence includes an offence against the *Domestic and Family Violence Protection Act 2012*, part 7.

Note—

See also the definition of *domestic violence offence* in section 1.

590AI When mandatory disclosure must be made

(1) This section applies if—

(a) the prosecution must give an accused person a written notice or copy of a thing under section 590AH(2); or

(b) the prosecution must give an accused person a written notice of a thing under section 590AO(2), 590AOA(2) or 590AOB(3) and, apart from sections 590AO, 590AOA and 590AOB, the prosecution would have to give the accused person a copy of the thing under section 590AH(2).

(2) The prosecution must give the accused person the written notice or copy—

(a) for a committal proceeding or prescribed summary trial—at least 14 days before the date set by the court for the commencement of the hearing of evidence; or

(b) for a trial on indictment—no more than 28 days after presentation of the indictment, or if the trial starts less than 28 days after presentation of the indictment, before evidence starts to be heard at the trial.

(3) Subsection (2) is not intended to discourage the prosecution from voluntarily giving the accused person the written notice

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or copy at a time before the latest time the subsection may be complied with.

Note—

An administrative arrangement made under section 706A (Development of administrative arrangements) might provide for the prosecution's agreement to a form of staged disclosure that will ensure an accused person is provided with at least part of the material that must be disclosed under section 590AH within a period stated in the arrangement that is shorter than the period stated in subsection (2).

(4) The court may, at any time, shorten the period mentioned in subsection (2)(a) or extend the period mentioned in subsection (2)(b).

(5) If the relevant proceeding is a committal proceeding, the court may set a date to have effect under subsection (2)(a) as the date for the commencement of hearing of evidence in the proceeding even if, having regard to the *Justices Act 1886*, section 110A, it will or may be the case that no witness will appear at the proceeding to give oral evidence.

590AJ Disclosure that must be made on request

(1) This section applies—

(a) without limiting the prosecution's obligation mentioned in section 590AB(1); and

(b) subject to section 590AC(1)(a) and chapter subdivision D.

(2) For a relevant proceeding, the prosecution must, on request, give the accused person—

(a) particulars if a proposed witness for the prosecution is, or may be, an affected child; and

(b) a copy of the criminal history of a proposed witness for the prosecution in the possession of the prosecution; and

(c) a copy or notice of any thing in the possession of the prosecution that may reasonably be considered to be

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adverse to the reliability or credibility of a proposed witness for the prosecution; and

(d) notice of any thing in the possession of the prosecution that may tend to raise an issue about the competence of a proposed witness for the prosecution to give evidence in the proceeding; and

(e) a copy of any statement of any person relevant to the proceeding and in the possession of the prosecution but on which the prosecution does not intend to rely at the proceeding; and

(f) a copy or notice of any other thing in the possession of the prosecution that is relevant to the proceeding but on which the prosecution does not intend to rely at the proceeding.

Example of any other thing—

a transcript of a recorded statement

(3) If the prosecution gives notice of a thing under subsection (2) that is not original evidence, the prosecution must advise the accused person that the thing may be viewed on request by the accused person at a stated place.

(4) In this section—

particulars means particulars of a matter alleged in the bench charge sheet, complaint or indictment containing the charge against the accused person.

590AK When requested disclosure must be made

(1) This section applies if—

(a) an accused person requests particulars or a copy or notice of a thing under section 590AJ(2); and

(b) either—

(i) the prosecution must give the accused person particulars or a copy or notice of the thing under section 590AJ(2); or

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(ii) the prosecution must give the accused person written notice of the thing under section 590AO(2), 590AOA(2) or 590AOB(3) and, apart from sections 590AO, 590AOA and 590AOB, the prosecution would have to give the accused person a copy of the thing under section 590AJ(2).

(2) The prosecution must give the accused person the particulars, copy or notice as soon as practicable after the request is made.

590AL Ongoing obligation to disclose

(1) If the prosecution can not comply with a time requirement because the thing to be disclosed was not in the possession of the prosecution in sufficient time, including, for example, because the thing did not exist at the time, the prosecution must disclose the thing to the accused person as soon as practicable after it comes into the possession of the prosecution.

(2) The obligation to disclose a thing, other than an exculpatory thing, to the accused person continues despite a failure to comply with a time requirement or subsection (1) until the prosecution ends, whether by the accused person being discharged, acquitted or convicted, or in another way.

(3) If a thing is an exculpatory thing, the obligation to disclose it to the accused person continues despite a failure to comply with a time requirement or subsection (1) until 1 of the following happens—

(a) the accused person is discharged or acquitted;

(b) the accused person dies.

(4) In this section—

time requirement means a requirement under section 590AI or 590AK.

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590AM How disclosure may be made

(1) If a written notice or copy of a thing must or may be given to the accused person under this chapter division, it is sufficient for—

(a) a document advising that the written notice or copy of the thing is available for collection at a stated place to be served on the accused person—

(i) if a lawyer acts for the accused person—at the lawyer's address for service; or

(ii) otherwise—at the accused person's place of business, or residential address, last known to the prosecution; and

(b) the written notice or copy of the thing to be available for collection at the stated place.

(2) If notice of a thing must or may be given to the accused person under this chapter division, it is sufficient for notice to be given in a way the prosecution considers appropriate.

Example—

If the prosecution considers it appropriate, notice may be given by phone to the lawyer acting for the accused person or in writing made available under subsection (1).

Chapter subdivision D Limitations on disclosure

590AN Limit on disclosure of things accused person already has

The prosecution is not, for a relevant proceeding, required under this chapter division to give the accused person anything the accused person or a lawyer acting for the accused person already possesses or has already been given by the prosecution.

Example—

The prosecution is not required to give the accused person a copy of a complaint or indictment already given to the accused person or a copy of depositions already given to the accused person under section 705.

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590AO Limit on disclosure of sensitive evidence

(1AA) This section does not apply to an Evidence Act section 93A device statement or a recorded statement.

(1) The prosecution is not, for a relevant proceeding, required under this chapter division to give the accused person a copy of a thing the prosecution reasonably considers to be sensitive evidence other than as required under this section.

(2) If—

(a) apart from this section, the prosecution would have to give the accused person a copy of the thing; and

(b) the prosecution does not give the accused person a copy of the thing;

then the prosecution must give the accused person a written notice—

(c) describing the thing; and

(d) stating that the prosecution—

(i) considers the thing to be sensitive evidence; and

(ii) is not required to give the accused person a copy of the thing other than as required under this section; and

(e) if the thing is not original evidence, stating the place where the accused person may, on request, view the thing for the purposes of the relevant proceeding; and

(f) if the thing is original evidence, stating that the prosecution may, on request, allow an appropriate person to view and examine the thing for the purposes of the relevant proceeding at a stated place—

(i) under the supervision of the prosecution; and

(ii) subject to any other conditions the prosecution considers appropriate to ensure—

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(A) the thing will only be viewed and examined for a legitimate purpose connected with the relevant proceeding; and

(B) there is no unauthorised reproduction or circulation of the thing; and

(C) the integrity of the thing is protected.

(3) If the thing is original evidence, the court may direct that the prosecution allow an appropriate person to view and examine the thing for the purposes of the proceeding subject to the conditions the court considers appropriate.

(4) The court may make the direction under subsection (3) only if the court is satisfied the terms of the direction can ensure—

(a) the thing will only be viewed and examined for a legitimate purpose connected with the relevant proceeding; and

(b) there is no unauthorised reproduction or circulation of the thing; and

(c) the integrity of the thing is protected.

(5) Also, the court may direct that the prosecution give the accused person a copy of the thing (whether or not the thing is original evidence).

(6) The court may make the direction under subsection (5) only if—

(a) the accused person satisfies the court a legitimate purpose is achieved by the accused person being given a copy of the thing; and

(b) the court is satisfied the terms of the direction can ensure there is no unauthorised reproduction or circulation of the thing.

(7) If, under subsection (5), the court directs the prosecution to give the accused person a copy of the thing, the court may also direct that the accused person return the copy of the thing to

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the prosecution within the period stated in the direction to the accused person.

(8) In this section—

appropriate person means—

(a) the accused person; or

(b) a lawyer acting for the accused person; or

(c) another person engaged by the accused person if the prosecution or court considers it is appropriate for the other person to view or examine the thing.

590AOA Evidence Act section 93A device statement

(1) The prosecution is not, for a relevant proceeding, required under this chapter division to give the accused person a copy of an Evidence Act section 93A device statement (the ***statement***) other than as required under this section.

(2) If—

(a) apart from this section, the prosecution would have to give the accused person a copy of the statement; and

(b) the prosecution does not give the accused person a copy of the statement;

then the prosecution must give the accused person a written notice—

(c) describing the statement; and

(d) stating that the prosecution—

(i) considers the statement to be an Evidence Act section 93A device statement; and

(ii) is not required to give the accused person a copy of the statement other than as required under this section; and

(e) stating the matters mentioned in subsection (3) or (6), whichever is applicable.

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(3) If the accused person has a lawyer acting for him or her, the notice must state that the prosecution will give a lawyer acting for the accused person a copy of the statement (the ***copy***) on the following conditions—

(a) that the lawyer must not give the copy to the accused person or anyone else other than the following—

(i) a lawyer acting for the accused person or to whom the copy is referred for particular advice;

(ii) a person, other than a lawyer, to whom the copy is referred for particular expert advice;

(iii) an associate of the lawyer to the extent necessary for work to be done for the lawyer in relation to the relevant proceeding or a proceeding for a relevant charge in the ordinary practice of the law;

(b) that any lawyer acting for the accused person, other than the lawyer to whom the prosecution gives the copy, must not give the copy to the accused person or anyone else other than the persons mentioned in paragraph (a)(ii) or (a)(iii);

(c) that a person who is given the copy under paragraph (a) or (b), other than a lawyer mentioned in the paragraph, must not give the copy to the accused person or anyone else who is not a lawyer acting for the accused person;

(d) that the copy held by the lawyer to whom it was given by the prosecution, or held by anyone else to whom the copy has been given under this section—

(i) must not be copied; and

(ii) must be returned to the prosecution within 14 days after—

(A) the lawyer or other person stops being someone who may be given the copy under this section; or

Example—

A lawyer may stop acting for the accused person.

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(B) the end of the proceedings for the relevant charge;

(e) that the copy may only be given to another person in accordance with the conditions mentioned in paragraphs (a) to (d) for a legitimate purpose connected with the relevant proceeding or a proceeding for a relevant charge.

(4) If the original statement is a visual image device and the copy to be given by the prosecution under the notice is only a sound device, the court may direct the prosecution to give a copy that is a visual image device.

(5) The court may make a direction under subsection (4) only if it is satisfied the terms of the direction can ensure—

(a) the copy will only be viewed for a legitimate purpose connected with the relevant proceeding; and

(b) there is no unauthorised copying or circulation of the copy.

(6) If the accused person does not have a lawyer acting for him or her, the notice must state that—

(a) the prosecution will not give the statement (whether the original or copy) to the accused person; and

(b) the prosecution will, on request, allow an appropriate person to view the statement, either the original or a copy as stated in the notice for the purposes of the relevant proceeding at a stated place.

(7) If the prosecution refuses to accept a person, nominated by the accused person under paragraph (c) of the definition *appropriate person*, as an appropriate person for subsection (6)(b), the court may direct the prosecution to accept the person as an appropriate person for subsection (6)(b), subject to the conditions the court considers appropriate.

(8) The court may make the direction under subsection (7) only if the court is satisfied the terms of the direction can ensure—

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(a) the statement will only be viewed for a legitimate purpose connected with the relevant proceeding; and

(b) there is no unauthorised copying or circulation of the statement; and

(c) if the original statement is to be viewed—the integrity of the statement is protected.

(9) For the *Evidence Act 1977*, section 93AA(2)(a), it is declared that an act done in contravention of a condition imposed by a notice under subsection (3) or a direction under subsection (5) or (7) is not done for a legitimate purpose related to the relevant proceeding.

(10) For subsection (3)(d)(i) or (8)(b), it is declared that the making of a transcript of the contents of the statement is not the making of a copy of the statement to which the *Evidence Act 1977*, section 93AA(1)(c) applies.

(11) In this section—

appropriate person means—

(a) the accused person; or

(b) a lawyer mentioned in the *Evidence Act 1977*, section 21O(4); or

(c) another person engaged by the accused person if the prosecution or court considers it is appropriate for the other person to view the thing.

Examples of persons prosecution may consider appropriate—

- interpreter
- expert

copy, of the statement, in subsections (3) and (6) means a copy of the original statement in the form of—

(a) a device of similar function to the original device containing a copy of the statement; or

(b) if the original statement is in the form of a visual image device—any sound device capable of reproducing a soundtrack of the visual image device;

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and includes any additional copy provided by the prosecution for convenience.

sound device means a device mentioned in section 590AFA(b)(i).

visual image device means a device mentioned in section 590AFA(b)(ii).

590AOB Disclosure of recorded statement

(1) The prosecution is not, for a relevant proceeding, required under this chapter division to give the accused person a copy of a recorded statement other than as required under this section.

(2) Subsection (3) applies if—

(a) other than for this section, the prosecution would have to give the accused person a copy of a recorded statement; and

(b) the prosecution does not give the accused person a copy of the statement.

(3) The prosecution must give the accused person a written notice—

(a) describing the recorded statement; and

(b) stating that the prosecution—

(i) considers the statement to be a recorded statement; and

(ii) is not required to give the accused person a copy of the statement other than as required under this section; and

(c) stating the matters mentioned in subsection (4) or (5), whichever is applicable.

(4) If the accused person has a lawyer acting for the person, the notice must state that the prosecution will give a lawyer acting

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for the accused person a copy of the recorded statement on the following conditions—

(a) that the lawyer must not give the copy to the accused person or anyone else other than the following—

(i) a lawyer acting for the accused person or to whom the copy is referred for particular advice;

(ii) a person, other than a lawyer, to whom the copy is referred for particular expert advice;

(iii) an associate of the lawyer to the extent necessary for work to be done for the lawyer in relation to the relevant proceeding or a proceeding for a relevant charge in the ordinary practice of the law;

(b) that any lawyer acting for the accused person, other than the lawyer to whom the prosecution gives the copy, must not give the copy to the accused person or anyone else other than the persons mentioned in paragraph (a)(ii) or (iii);

(c) that a person who is given the copy under paragraph (a) or (b), other than a lawyer mentioned in the paragraph, must not give the copy to the accused person or anyone else who is not a lawyer acting for the accused person;

(d) that the copy held by the lawyer to whom it was given by the prosecution, or held by anyone else to whom the copy has been given under this section—

(i) must not be copied; and

(ii) must be returned to the prosecution within 14 days after—

(A) the lawyer or other person stops being someone who may be given the copy under this section; or

Example—

A lawyer may stop acting for the accused person.

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(B) the end of the proceedings for the relevant charge;

(e) that the copy may only be given to another person in accordance with the conditions mentioned in paragraphs (a) to (d) for a legitimate purpose connected with the relevant proceeding or a proceeding for a relevant charge.

(5) If the accused person does not have a lawyer acting for the person, the notice must state that—

(a) the prosecution will not give the recorded statement (whether the original or a copy) to the accused person; and

(b) the prosecution will, on request, allow an appropriate person to view the statement, either the original or a copy as stated in the notice, for the purposes of the relevant proceeding at a stated place; and

(c) the prosecution must, on request, give the accused person a transcript of the recorded statement that is in the possession of the prosecution.

(6) If the prosecution refuses to accept a person nominated by the accused person as an appropriate person for subsection (5)(b), the court may direct the prosecution to accept the person as an appropriate person for subsection (5)(b), subject to the conditions the court considers appropriate.

(7) The court may make the direction under subsection (6) only if the court is satisfied the terms of the direction can ensure—

(a) the recorded statement will only be viewed for a legitimate purpose connected with the relevant proceeding; and

(b) an offence against the *Evidence Act 1977*, section 103Q or 103S will not be committed; and

(c) if the original recorded statement is to be viewed—the integrity of the statement is protected.

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(8) For the *Evidence Act 1977*, section 103Q(2)(a), it is declared that an act done in contravention of a condition imposed by a notice under subsection (4) or a direction under subsection (6) is not done for a legitimate purpose related to the domestic violence proceeding.

(9) For subsection (4)(d)(i) or (7)(b), it is declared that making a transcript of the contents of the recorded statement is not making a copy of the statement for the *Evidence Act 1977*, section 103Q(1)(c).

(10) In this section, a reference to a recorded statement includes, if the context permits, a reference to a lawfully edited copy of a recorded statement under the *Evidence Act 1977*, schedule 3.

(11) In this section—

appropriate person, to view a recorded statement, means—

(a) the accused person; or

(b) a lawyer mentioned in the *Evidence Act 1977*, section 21O(4) or another lawyer who is providing legal advice or assistance to the accused person; or

(c) another person engaged by the accused person if the prosecution or court considers it is appropriate for the other person to view the recorded statement.

Examples of persons the prosecution may consider appropriate—

- an interpreter
- an expert

copy, of a recorded statement, for subsections (4) and (5)—

(a) means a copy of the original recorded statement in the form of a videorecording under the *Evidence Act 1977*; and

(b) includes any additional copy of the recorded statement provided by the prosecution for convenience but does not include a transcript of the recorded statement.

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590AP Limit on disclosure of witness contact details

(1) The prosecution is not, for a relevant proceeding, required under this chapter division to give the accused person a witness contact detail other than as required under this section.

(2) The prosecution must give the accused person a witness contact detail that is materially relevant as part of the evidence for the relevant proceeding.

Example 1—

If the alleged offence is breaking and entering a dwelling and a proposed witness was the occupant of the dwelling when the offence allegedly happened, the address of the proposed witness when the offence allegedly happened would be materially relevant as part of the evidence.

Example 2—

If the alleged offence is unlawful stalking, intimidation, harassment or abuse involving contacting the stalked person by telephone, the telephone number of the stalked person when the offence allegedly happened would be materially relevant as part of the evidence.

(3) However, the court may direct that another witness contact detail be given to the accused person.

(4) The court may make the direction only if—

(a) the accused person satisfies the court a legitimate purpose is achieved by the witness contact detail being given to the accused person; and

(b) the court is satisfied that giving the detail is not likely to present a reasonably ascertainable risk to the welfare or protection of any person.

(5) A witness contact detail the prosecution is not required to give the accused person may be deleted from, or rendered illegible in, a thing that is to be disclosed to, or may be viewed by, the accused person.

(6) Although it is acknowledged that a person is not obliged to have contact with the defence, nothing in this section is intended to discourage the prosecution, at the request of the

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defence, from voluntarily passing on to a person a request from the defence that the person contact the defence.

(7) In this section—

witness contact details include details of the address and telephone and facsimile number of a proposed witness for the prosecution or a person a copy of whose statement may be given to the accused person under section 590AJ(2)(e).

590APA Protected counselling communications

(1) The prosecution is not, for a relevant proceeding, required under this chapter division to give the accused person a copy of a document if the prosecution reasonably considers the document is a protected counselling communication.

(2) Subsection (1) does not apply if—

(a) for a relevant proceeding to which the *Evidence Act 1977*, part 2, division 2A, subdivision 3 applies—the document is produced by leave of the court under that subdivision; or

(b) the counselled person to whom the protected counselling communication relates has consented to the production of the document in the proceeding under the *Evidence Act 1977*, section 14I; or

(c) the document may be produced under the *Evidence Act 1977*, section 14J.

(3) If the prosecution reasonably considers subsection (1) applies to a document and, apart from this section, the prosecution would have to give the accused person a copy of the document, the prosecution must give the accused person a written notice stating—

(a) that the prosecution is in possession of a document that it considers is a protected counselling communication the disclosure of which is prevented by the *Evidence Act 1977*, part 2, division 2A; and

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(b) a description of the nature and particulars of the document (other than particulars disclosing the content of the protected counselling communication); and

Example of particulars—

the fact the document contains a counsellor's notes, the identity of the counsellor and the date the notes were made

(c) that the counselled person to whom the document relates has not consented to the production of the document; and

(d) if the relevant proceeding is a proceeding to which the *Evidence Act 1977*, part 2, division 2A, subdivision 3 applies—that the accused person may apply to the court for leave under that subdivision enabling the document to be produced.

(4) In this section—

counselled person see the *Evidence Act 1977*, section 14B.

protected counselling communication see the *Evidence Act 1977*, section 14A.

590AQ Limit on disclosure contrary to the public interest

(1) The prosecution is not, for a relevant proceeding, required under this chapter division to disclose to the accused person a thing, other than as required under this section, if the prosecution—

(a) considers the disclosure would be contrary to the public interest; and

(b) gives the accused person a written notice stating that the prosecution—

(i) considers the disclosure would be contrary to the public interest; and

(ii) is not required to disclose the thing to the accused person other than as required under this section.

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(2) Without limiting subsection (1)(a), the prosecution is not required to disclose the thing to the accused person if—

(a) there are reasonable grounds for considering disclosure of the thing would—

(i) prejudice the security, defence or international relations of Australia; or

(ii) damage relations between the Commonwealth and a State or between 2 or more States; or

(iii) facilitate the commission of another offence; or

(iv) prejudice the prevention, investigation or prosecution of an offence; or

(v) prejudice the usefulness of surveillance or other detection methods; or

(vi) disclose, or enable a person to find out, the existence or identity of a confidential source of information relating to the enforcement or administration of a law of the Commonwealth or a State; or

(vii) cause unlawful or dishonest interference with potential witnesses; or

(viii) prejudice the proper functioning of the government of the Commonwealth or a State; or

(b) disclosure of the thing to the accused person is prohibited by law.

Example for paragraph (b)—

disclosure of an informer's identity under the *Drugs Misuse Act 1986*, section 119

(3) However, unless disclosure to the accused person of the thing is prohibited by law, the court may direct that the thing be disclosed to the accused person.

(4) The court may make a direction only if the court is satisfied, on balance, that disclosing the thing to the accused person is not contrary to the public interest.

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(5) In deciding whether to make a direction, the court may inform itself in any way it considers appropriate.

(6) Without limiting the matters the court may take into account in deciding whether to make a direction, the court must take into account the following matters—

(a) the importance of the thing in the relevant proceeding, including, for example, whether the thing is an exculpatory thing;

(b) the nature of the offence;

(c) the likely effect of disclosing the thing and how publication of the thing may be limited;

(d) whether the substance of the thing has already been published.

(7) In this section—

State includes a Territory.

Chapter subdivision E Viewing

590AR Viewing evidence that is not original evidence

If—

(a) advice is given under section 590AJ(3); or

(b) notice is given under section 590AO(2)(e) or 590AOA(6);

of a place where the accused person or appropriate person may, on request, view a thing, the prosecution must allow the accused person or appropriate person, on request, to view the thing at the place for the purposes of the relevant proceeding.

590AS Viewing particular original evidence—generally

(1) This section applies if a thing that is original evidence, and is not the body of a deceased person, sensitive evidence, an

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Evidence Act section 93A device statement or a recorded statement, is disclosed to an accused person under section 590AH(2)(i) or 590AJ.

Notes—

1 For the viewing of original evidence that is the body of a deceased person, see section 590ASA.

2 For the viewing of original evidence that is sensitive evidence, see section 590AO(2)(f), (3) and (4).

(2) The prosecution is not required to allow the accused person to view or examine the thing for the relevant proceeding other than as required under this section.

(3) The prosecution may, on request, allow an appropriate person to view or examine the thing for the purposes of the relevant proceeding—

(a) under the supervision of the prosecution; and

(b) subject to any other conditions the prosecution considers appropriate to protect the integrity of the thing.

(4) Also, the court may direct that the prosecution allow an appropriate person to view and examine the thing for the purposes of the proceeding subject to the conditions the court considers appropriate to protect the integrity of the thing.

(5) The court may make the direction only if the court is satisfied the terms of the direction can ensure the integrity of the thing is protected.

(6) In this section—

appropriate person means—

(a) the accused person; or

(b) a lawyer acting for the accused person; or

(c) another person engaged by the accused person if the prosecution or court considers it is appropriate for the other person to view or examine the thing.

body see the *Coroners Act 2003*, schedule 2.

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590ASA Viewing bodies of deceased persons

(1) This section applies if the body of a deceased person that is original evidence is disclosed to an accused person under section 590AH(2)(i) or 590AJ.

(2) The prosecution is not required to allow the accused person to view or examine the body for the relevant proceeding other than as required under this section.

(3) The prosecution may, on request, allow a permitted person to view, or an appropriate person to view or examine, the body for the purposes of the relevant proceeding—

(a) under the supervision of the prosecution; and

(b) subject to any other conditions the prosecution considers appropriate—

(i) to protect the integrity of the body; and

(ii) to ensure the release of the body for burial under the *Coroners Act 2003*, section 26 is not unnecessarily delayed.

(4) The court may direct that the prosecution allow a permitted person to view, or an appropriate person to view or examine, the body for the purposes of the relevant proceeding subject to the conditions the court considers appropriate—

(a) to protect the integrity of the body; and

(b) to ensure the release of the body for burial under the *Coroners Act 2003*, section 26 is not unnecessarily delayed.

(5) The court may make the direction only if satisfied the terms of the direction can ensure—

(a) the integrity of the body is protected; and

(b) the release of the body for burial under the *Coroners Act 2003*, section 26 is not unnecessarily delayed.

(6) In this section—

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appropriate person means a person engaged by the accused person, other than a lawyer acting for the accused person, if the prosecution or court considers it is appropriate for the person to view or examine the body.

Examples of an appropriate person—

- a person appointed as a DNA analyst under the *Evidence Act 1977*, section 133A
- a person employed by an accredited laboratory, as defined under the *Police Powers and Responsibilities Act 2000*, section 488B, who has appropriate qualifications and experience in DNA analysis

body see the *Coroners Act 2003*, schedule 2.

permitted person means—

(a) if a lawyer is acting for the accused person—the lawyer; or

(b) otherwise—the accused person.

Chapter subdivision F Miscellaneous provisions

590AT Accused person may waive entitlement

(1) An accused person may waive any or all entitlements the accused person would otherwise have under this chapter division.

(2) The waiver must be in writing and be given to the prosecution.

590AU Court may waive requirement

A court may waive any requirement imposed by this chapter division in relation to a relevant proceeding if it is satisfied there is a good reason for waiving the requirement and that waiving the requirement will not result in a miscarriage of justice.

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590AV Disclosure directions under particular provisions

(1) The court may make a disclosure direction on the court's own initiative or on an application made by the accused person.

(2) The court may make a disclosure direction on the conditions, whether about the circumstances of disclosure or otherwise, it considers appropriate.

(3) Without limiting subsection (2), the court may make a disclosure direction on condition that—

(a) partial disclosure only be made; or

(b) disclosure only be made to a lawyer acting for the accused person; or

(c) particular persons are excluded from the room in which the court is sitting for all or part of the proceedings; or

(d) reporting of the proceedings be limited in a particular way.

(4) In this section—

disclosure direction means a direction for a relevant proceeding under section 590AO, 590AOA, 590AOB, 590AP, 590AQ, 590AS or 590ASA.

590AW When issues about disclosure must be resolved

Any issue about compliance with this chapter division must, if possible, be resolved before evidence starts to be heard at the relevant proceeding.

590AX Unauthorised copying of sensitive evidence

(1) A person in possession of sensitive evidence for the purposes of a relevant proceeding commits an offence if, without authority, the person copies or permits a person to copy the sensitive evidence.

Maximum penalty—100 penalty units or 2 years imprisonment.

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(2) A person has possession of sensitive evidence for the purposes of a relevant proceeding only if—

(a) the sensitive evidence was given to the person under this chapter division; or

(b) the sensitive evidence came into the person's possession directly or incidentally, including by an opportunity given, because the person is a public official.

(3) A person has authority only if the person copies or permits a person to copy sensitive evidence for a legitimate purpose connected with a proceeding.

(4) In this section—

public official includes—

(a) a police officer; and

(b) a person appointed, engaged or employed under the *Director of Public Prosecutions Act 1984*.

Chapter division 4 Disclosure by an accused person

590A Notice of alibi

(1) An accused person shall not upon the person's trial on indictment, without the leave of the court, adduce evidence in support of an alibi unless, before the expiration of the prescribed period, the person gives notice of particulars of the alibi.

(2) An accused person shall not upon the person's trial on indictment, without the leave of the court, call any other person to give evidence in support of an alibi unless—

(a) the notice under subsection (1) includes the name and address of the person or, if the name or address is not known to the accused person at the time the accused person gives the notice, any information in the accused

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person's possession that may be of material assistance in locating the person; or

(b) where the name or address is not included in the notice, the court is satisfied that the accused person, before giving the notice, took and thereafter continued to take all reasonable steps to secure that the name or address would be ascertained; or

(c) where the name or address is not included in the notice and the accused person subsequently discovers the name or address or receives other information that may be of material assistance in locating the person, the accused person gives notice forthwith of the name, address or, as the case may be, other information; or

(d) where the accused person is notified by or on behalf of the director of public prosecutions that the person has not been traced by the name or located at the address given, the accused person gives notice forthwith of any information then in the accused person's possession or subsequently received by the accused person that may be of material assistance in locating the person.

(3) The court shall not refuse leave under this section if it appears to the court that the accused person was not, upon the accused person's committal for trial, informed by the justices of the requirements of this section.

(4) Evidence tendered to disprove an alibi may, subject to a direction by the court, be given before or after evidence is given in support of the alibi.

(5) A notice purporting to be given under this section on behalf of the accused person by the person's solicitor shall, until the contrary is proved, be deemed to be given with the authority of the accused person.

(6) A notice under this section—

(a) shall be in writing; and

(b) shall be given to the director of public prosecutions; and

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(c) shall be duly given if it is delivered to or left at the Office of the Director of Public Prosecutions or sent by certified mail addressed to the director of public prosecutions at the director's office.

(7) In this section—

evidence in support of an alibi means evidence tending to show that by reason of the presence of the accused person at a particular place or in a particular area at a particular time the accused person was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission.

the prescribed period means the period of 14 days after the date of the committal for trial of the accused person.

590B Advance notice of expert evidence

(1) If an accused person intends to adduce expert evidence in relation to an issue in the person's trial, the person must—

(a) as soon as practicable—give the other parties to the trial written notice of the name of the expert, and any finding or opinion he or she proposes to adduce; and

(b) as soon as practicable before the trial date—give the other parties to the proceeding a copy of the expert report on which the finding or opinion is based.

(2) The directions judge under section 590AA or trial judge may fix times for compliance with subsection (1).

590BA Advance notice of intention to rely on expert evidence under s 348A

(1) If an accused person intends to adduce expert evidence under section 348A(6) in the person's trial, the accused person must, within the prescribed period, give notice of that intention.

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(2) If the accused person does not give notice as required by subsection (1), the accused person may not, without the leave of the court, adduce the expert evidence.

(3) A notice under this section—

(a) must be in writing; and

(b) must be given to the director of public prosecutions; and

(c) is taken to be given if it is delivered to or left at the Office of the Director of Public Prosecutions or sent by certified mail addressed to the director of public prosecutions at the director's office.

(4) In this section—

prescribed period means the period of 14 days after the date of the committal for trial of the accused person.

590C Advance notice of representation if person who made it is unavailable

(1) If an accused person intends to adduce evidence of a representation under the *Evidence Act 1977*, section 93B, the accused person must, as soon as practicable before the person's trial date, give each of the other parties to the trial written notice of the person's intention.

(2) The notice must state—

(a) the accused person intends to adduce evidence of a representation under the *Evidence Act 1977*, section 93B; and

(b) the name of the person with personal knowledge of an asserted fact who made a representation and the reason the person is unavailable to give evidence about the asserted fact; and

(c) the name of the person who saw, heard or otherwise perceived the representation; and

(d) details of the representation and the circumstances in which it was made.

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(3) The directions judge under section 590AA or trial judge may fix a time for compliance with subsection (1).

Chapter division 4A Disclosure obligation directions

590D Purpose and scope of ch div 4A

(1) This chapter division makes particular provision for disclosure obligation directions.

(2) This chapter division does not affect—

(a) any other power a court has in relation to a failure to comply with a disclosure obligation, including, for example, to exclude evidence if it would be unfair to an accused person to admit the evidence; or

(b) any other action that may be taken against a party in relation to a failure to comply with a disclosure obligation.

(3) This chapter division does not limit the making of practice directions by the Chief Justice or Chief Judge about disclosure in a proceeding.

590E Definitions for ch div 4A

In this chapter division—

arresting officer has the same meaning it has in chapter division 3.

disclosure obligation means—

(a) the obligation of the prosecution, for the purposes of a relevant proceeding under chapter division 3, to comply with the requirements of that chapter division for disclosure, other than the obligation to comply with a disclosure direction as defined in section 590AV; or

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(b) the obligation of an accused person to comply with requirements of chapter division 4 for disclosure.

disclosure obligation direction means a direction or ruling under section 590AA(2)(ba), to the extent it relates to compliance with a disclosure obligation.

party, to a proceeding, means—

(a) an accused person who is charged with an offence the subject of the proceeding; or

(b) the prosecution in relation to an offence the subject of the proceeding.

prosecution has the same meaning it has in chapter division 3.

590F Subject matter for disclosure obligation direction

(1) A disclosure obligation direction may provide for any of the following—

(a) whether a party to a proceeding has a disclosure obligation in relation to another party to the proceeding;

(b) requiring that a particular thing must be disclosed;

(c) allowing the court to inspect a particular thing to decide whether the court should further direct that a party has a disclosure obligation in relation to the thing;

(d) allowing the court to examine the arresting officer to decide whether the prosecution has a disclosure obligation in relation to a particular thing;

(e) requiring that the arresting officer file an affidavit to allow the court to decide whether the prosecution has a disclosure obligation in relation to a particular thing;

(f) allowing the accused person or a lawyer acting for the accused person to cross-examine the arresting officer on an affidavit mentioned in paragraph (e) to allow the court to decide whether the prosecution has a disclosure obligation in relation to a particular thing;

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(g) how a disclosure obligation is to be complied with in a particular case;

(h) setting a timetable for compliance with a disclosure obligation.

(2) Subsection (1) does not limit section 590AA(2)(ba).

(3) The court may make a disclosure obligation direction on the conditions, whether about the circumstances of disclosure or otherwise, it considers appropriate.

(4) If a date is set for the commencement of the hearing of evidence in the proceeding, any examination or cross-examination allowed for in a disclosure obligation direction must be conducted before that date.

(5) If a person is examined by the court as provided for in subsection (1)(d), required to file an affidavit as provided for in subsection (1)(e) or cross-examined as provided for in subsection (1)(f), the person is not excused from failing to answer a question or file an affidavit on the ground that the answer or affidavit might tend to incriminate the person because the person would be required to admit to a failure to comply with a disclosure obligation.

(6) However, the answer or affidavit is not admissible against the person in a criminal proceeding, other than a perjury proceeding in relation to the answer or affidavit.

(7) In this section—

perjury proceeding, in relation to an answer or affidavit, means a proceeding in which the falsity or misleading nature of the answer or affidavit is relevant.

590G Application for disclosure obligation direction

(1) The procedures applying in relation to an application under section 590AA(1) by a party to a proceeding for a disclosure obligation direction are stated in the *Criminal Practice Rules 1999*, chapter 9A.

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(2) To the greatest practicable extent, the procedures apply in addition to, and do not limit, the procedures applying under the *Criminal Practice Rules 1999*, chapter 9.

(3) The existence of the procedures mentioned in subsection (1) is not intended to stop either party to a proceeding from writing to, or otherwise communicating information to, the other party to resolve issues arising over a disclosure obligation.

Chapter division 5 Bringing on trial and ordering adjournment

591 Accelerating trial of persons not under committal

When an indictment is presented in any court against any person who has not been committed for trial or held to bail upon the charge set forth in the indictment, and the accused person is not brought to trial within a year after the indictment is presented, the court may, upon the application of the accused person or any of the accused persons, if more than 1, authorise the accused person to bring on the trial, and the accused person may bring on the trial accordingly, unless in the meantime the court is informed that the Crown will not further proceed upon the indictment.

592 Adjournment of trial

(1) The court to which a person has been committed or remanded for trial on indictment or before which an indictment is presented may, if it thinks fit, adjourn the trial and may remand the accused person accordingly.

(1A) A trial may be adjourned whether or not—

(a) the accused person is present; or

(b) the accused person has been called upon to plead to the indictment; or

(c) a jury has been sworn; or

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(d) evidence has been given.

(2) The Crown shall, where it is proposed to make application for an adjournment in the absence of an accused person who is detained in a place of legal detention, notify in writing that accused person—

(a) that the application is to be made and the nature, date, time and place thereof; and

(b) that the accused person may furnish to the court a statement in writing in relation to the application; and

(c) that the accused person may be represented by counsel on the hearing of the application.

(3) For the purposes of this section—

adjourn the trial includes postpone the trial in a case where the accused person has not been called upon to plead to the indictment.

593 Directions as to trial upon adjournment

(1) Where the trial of a person charged or to be charged with an offence on indictment is adjourned, the court in open court may direct the trial to be held at a later sittings of the same court or before some other court of competent jurisdiction.

(1A) Upon a direction in the latter case, the indictment and other proceedings shall be transmitted by the proper officer of the court giving the direction to the proper officer of the court to which the accused person is remanded and the latter court has the same jurisdiction to try the accused person as if the person had been committed originally to be tried before it.

(2) Where the court directs a trial to be held at a later sittings of the same court, it shall at the same time pronounce the time and place for the commencement of the sittings to which the trial is adjourned.

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593A Warrant to bring witness before court

(1) This section applies if an indictment has been presented against a person before a court.

(2) If the court is satisfied by evidence on oath that—

(a) a witness has evaded service of a subpoena; or

(b) a witness is likely to evade service of a subpoena;

the court may make an order for the issue of a warrant to bring the witness before the court at a time and place stated in the warrant.

Chapter division 6 Corporation as accused person

594A Presence in court and plea where accused person is a corporation

(1) Where an indictment is presented against a corporation in respect of an indictable offence, the corporation may be present in court by its representative and it may, on arraignment, enter a plea in writing by its representative.

(1A) Any plea so entered by the representative shall for all purposes be taken to be a plea entered by the corporation.

(2) If the corporation is not present in court by its representative or if, though it is so present, it does not enter a plea in writing by its representative, the court shall order a plea of not guilty to be entered on behalf of the corporation.

(2A) A plea so entered has the same effect as if it had been actually pleaded, and the trial of the corporation may proceed accordingly.

(3) In respect of a trial, any requirement by law that anything shall be done in the presence of the accused person or shall be read or said to or asked of the accused person shall, in the case of a corporation present in court by its representative, be

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construed as a requirement that that thing shall be done in the presence of the representative or read or said to or asked of the representative.

(3A) If the corporation is not present in court by its representative, it shall not be necessary for the thing to be done or read or said or asked.

(4) Where, in respect of a trial, anything is required to be done or said by the accused person personally, it may, in the case of a corporation present in court by its representative, be done or said by the representative, and anything so done or said shall for all purposes be taken to be done or said by the corporation.

(4A) Nothing contained in subsection (4) limits the provisions of subsection (1) or (1A) or the provisions of section 616.

(5) In this section—

representative means a person appointed by the corporation to represent it for the purposes of this section; but a person so appointed is not, by virtue only of being so appointed, qualified to act on behalf of the corporation before the court for any other purpose.

(6) A representative need not be appointed under the seal of the corporation; and a statement in writing purporting to be signed by a managing director of the corporation or by any other person (by whatever name called) having, or being one of the persons having, the management of the affairs of the corporation to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section shall be admissible without further proof as prima facie evidence that that person has been so appointed.

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Chapter division 7 Applications by accused person about indictment

595 Delivery of copy of indictment

When an indictment is presented against any person, the court is required, upon the person's application, to order a copy of the indictment to be delivered to the person without fee.

596 Motion to quash indictment

(1) The accused person may before pleading apply to the court to quash the indictment on the ground that it is calculated to prejudice or embarrass the person in the person's defence to the charge, or that it is formally defective.

(2) Upon such motion the court may quash the indictment, or may order it to be amended in such manner as the court thinks just, or may refuse the motion.

597 Misnomer

If the accused person says that the person is wrongly named in the indictment, the court may, on being satisfied by affidavit or otherwise of the error, order the indictment to be amended.

Chapter division 8 Separate trials

597A Separate trials where 2 or more charges against the same person

(1) Where before a trial or at any time during a trial the court is of opinion that the accused person may be prejudiced or embarrassed in the person's defence by reason of the person's being charged with more than 1 offence in the same indictment or that for any other reason it is desirable to direct that the person should be tried separately for any 1 or more

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than 1 offence charged in an indictment the court may order a separate trial of any count or counts in the indictment.

(1AA) In considering potential prejudice, embarrassment or other reason for ordering separate trials under this provision in relation to alleged offences of a sexual nature, the court must not have regard to the possibility that similar fact evidence, the probative value of which outweighs its potentially prejudicial effect, may be the result of collusion or suggestion.

(1A) The court may discharge a jury sworn from giving a verdict on the count or counts directed to be tried separately.

(2) The procedure on the separate trial of a count shall be the same in all respects as if the count had been set out in a separate indictment.

(3) The court may adjourn a separate trial, remand the accused person and make such orders as to bail and otherwise as the court thinks fit.

(4) For the purposes of this section—

adjourn a separate trial includes postpone a separate trial in a case where the accused person has not been called upon to plead to a count in an indictment.

597B Separate trials

When 2 or more persons are charged in the same indictment, whether with the same offence or with different offences, the court may, at any time during the trial, on the application of any of the accused persons, direct that the trial of the accused persons or any of them shall be had separately from the trial of the other or others of them, and for that purpose may, if a jury has been sworn, discharge the jury from giving a verdict as to any of the accused persons.

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Chapter division 9 Pleas

597C Accused person to be called on to plead to indictment

(1) On the presentation of the indictment or at any later time, the accused person is to be informed in open court of the offence with which he or she is charged, as set forth in the indictment, and is to be called upon to plead to the indictment, and to say whether he or she is guilty or not guilty of the charge.

(2) If the indictment contains more than one count, a plea to any number of counts may, with the consent of the accused person, be taken at one and the same time on the basis that the plea to one count will be treated as a plea to any number of similar counts on the same indictment.

(3) The trial is deemed to begin and the accused person is deemed to be brought to trial when the person is so called upon.

(4) The court may allow anything that must or may be done in relation to the arraignment of the accused person to be done over an audiovisual link or audio link, if the court considers use of the link is in the interests of justice.

(4A) However, the court may not allow the use of an audiovisual link or audio link under subsection (4) if facilities mentioned in subsection (5A)(a) are not available at the court or the place where the accused person is present.

(4B) For subsection (4), in deciding whether use of an audio link is in the interests of justice, the court must have regard to the desirability of an accused person's arraignment being done over an audiovisual link, rather than an audio link, if an audiovisual link is available.

(5) For subsection (4), anything done, for the accused person's arraignment, over an audiovisual link or audio link between the person and the court sitting in open court is taken to be done in open court.

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(5A) If an accused person's arraignment is done over an audiovisual link or audio link and the person's representative in the proceeding is at the place where the court is sitting—

(a) the court and the place where the person is present must make facilities available for private communication between the person and the person's representative; and

(b) a communication between the person and the person's representative is as confidential and inadmissible in any proceeding as it would be if it took place between the person and the person's representative while in each other's presence.

(5B) Subsection (5A)(b) does not limit any other protection applying to the communication.

(6) The provisions of the *Evidence Act 1977* relating to the use of an audiovisual link or audio link in criminal proceedings apply for, and are not limited by, subsection (4).

598 Pleas

(1) If the accused person does not apply to quash the indictment or move for a separate trial of any count or counts of the indictment, the person must either plead to it, or demur to it on the ground that it does not disclose any offence cognisable by the court.

(2) If the accused person pleads, the person may plead either—

(a) that the person is guilty of the offence charged in the indictment, or, with the consent of the Crown, of any other offence of which the person might be convicted upon the indictment; or

(b) that the person is not guilty; or

(c) that the person has already been convicted upon an indictment on which the person might have been convicted of the offence with which the person is charged, or has already been convicted of an offence of

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which the person might be convicted upon the indictment; or

(d) that the person has already been acquitted upon an indictment on which the person might have been convicted of the offence with which the person is charged, or has already been acquitted upon indictment of an offence of which the person might be convicted upon the indictment; or

(e) that the person has already been tried and convicted or acquitted of an offence committed or alleged to be committed under such circumstances that the person can not under the provisions of this Code be tried for the offence charged in the indictment; or

(f) that the person has received the Royal pardon for the offence charged in the indictment; or

(g) that the court has no jurisdiction to try the person for the offence.

(3) Two or more pleas may be pleaded together, except that the plea of guilty can not be pleaded with any other plea to the same charge.

(4) An accused person may plead and demur together.

599 Defence of justification for defamation to be specially pleaded

A person charged with the offence defined in section 365, who sets up as a defence the modified statutory defence of justification within the meaning of that section, must plead that defence specially, and may plead it with any other plea, except the plea of guilty.

600 Persons committed for sentence

(1) When a person has been committed by a justice for sentence for an offence, the person is to be called upon to plead to the indictment in the same manner as other persons, and may

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plead either that the person is guilty of the offence charged in the indictment or, with the consent of the Crown, of any other offence of which the person might be convicted upon the indictment.

(2) If the person pleads not guilty, the court, upon being satisfied that the person duly admitted before the justice that the person was guilty of the offence charged in the indictment, is to direct a plea of guilty to be entered, notwithstanding the person's plea of not guilty.

(3) A plea so entered has the same effect as if it had been actually pleaded.

(4) If the court is not so satisfied, or if, notwithstanding that the accused person pleads guilty, it appears to the court upon examination of the depositions of the witnesses that the person has not in fact committed the offence charged in the indictment or any other offence of which the person might be convicted upon the indictment, the plea of not guilty is to be entered, and the trial is to proceed as in other cases when that plea is pleaded.

(5) A person who has been committed for sentence may plead any of the other pleas mentioned in section 598.

601 Standing mute

(1) If an accused person, on being called upon to plead to an indictment, will not plead or answer directly to the indictment, the court may, if it thinks fit, order a plea of not guilty to be entered on behalf of the accused person.

(2) A plea so entered has the same effect as if it had been actually pleaded.

602 Plea of autrefois convict or autrefois acquit

In a plea that the accused person has already been convicted or acquitted, it is sufficient to state that the accused person has been lawfully convicted or acquitted, as the case may be, of

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the offence charged in the indictment, or of the other offence of which the person alleges that the person has been convicted or acquitted, and, in the latter case, to describe the offence by any term by which it is commonly known.

603 Trial on plea to the jurisdiction

Upon a plea to the jurisdiction of the court, the court is to proceed to satisfy itself in such manner and upon such evidence as it thinks fit, whether it has jurisdiction or not, and may ascertain the fact by the verdict of a jury or otherwise.

604 Trial by jury

(1) Subject to chapter division 9A and subsection (2), if the accused person pleads any plea or pleas other than the plea of guilty, a plea of autrefois acquit or autrefois convict or a plea to the jurisdiction of the court, the person is by such plea, without any further form, deemed to have demanded that the issues raised by such plea or pleas shall be tried by a jury, and is entitled to have them tried accordingly.

(2) Issues raised by a plea of autrefois acquit or autrefois convict must be tried by the court.

605 Demurrer

(1) When an accused person demurs only and does not plead any plea, the court is to proceed to hear and determine the matter forthwith.

(2) If the demurrer is overruled, the accused person is to be called upon to plead to the indictment.

(3) When an accused person pleads and demurs together, it is in the discretion of the court whether the plea or demurrer shall be first disposed of.

(4) No joinder in demurrer is necessary.

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613 Want of understanding of accused person

(1) If, when the accused person is called upon to plead to the indictment, it appears to be uncertain, for any reason, whether the person is capable of understanding the proceedings at the trial, so as to be able to make a proper defence, a jury of 12 persons, to be chosen from the panel of jurors, are to be empanelled forthwith, who are to be sworn to find whether the person is so capable or no.

(2) If the jury find that the accused person is capable of understanding the proceedings, the trial is to proceed as in other cases.

(3) If the jury find that the person is not so capable they are to say whether the person is so found by them for the reason that the accused person is of unsound mind or for some other reason which they shall specify, and the finding is to be recorded, and the court may order the accused person to be discharged, or may order the person to be admitted to an authorised mental health service to be dealt with under the *Mental Health Act 2016*.

(4) A person so found to be incapable of understanding the proceedings at the trial may be again indicted and tried for the offence.

Chapter division 9A Trial by judge alone

614 Application for order

(1) If an accused person is committed for trial on a charge of an offence or charged on indictment of an offence, the prosecutor or the accused person may apply to the court for an order (***no jury order***) that the accused person be tried by a judge sitting without a jury.

(2) The application must be made under section 590AA before the trial begins.

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(3) If the identity of the trial judge is known to the parties when the application is decided, a no jury order may be made only if the court is satisfied there are special reasons for making it.

(4) Subsection (3) does not limit section 615 or any other restriction on making a no jury order imposed by this chapter division.

(5) The court may inform itself in any way it considers appropriate in relation to the application.

(6) For subsection (2), the trial begins when the jury panel attends before the court.

615 Making a no jury order

(1) The court may make a no jury order if it considers it is in the interests of justice to do so.

(2) However, if the prosecutor applies for the no jury order, the court may only make the no jury order if the accused person consents to it.

(3) If the accused person is not represented by a lawyer, the court must be satisfied that the accused person properly understands the nature of the application.

(4) Without limiting subsection (1), (2) or (3), the court may make a no jury order if it considers that any of the following apply—

(a) the trial, because of its complexity or length or both, is likely to be unreasonably burdensome to a jury;

(b) there is a real possibility that acts that may constitute an offence under section 119B would be committed in relation to a member of a jury;

(c) there has been significant pre-trial publicity that may affect jury deliberations.

(5) Without limiting subsection (1), the court may refuse to make a no jury order if it considers the trial will involve a factual issue that requires the application of objective community

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standards including, for example, an issue of reasonableness, negligence, indecency, obscenity or dangerousness.

615A More than 1 charge or accused person

(1) If an accused person is charged with 2 or more charges that are to be tried together, the court must not make a no jury order in relation to 1 of the charges unless the court also makes a no jury order in relation to each other charge.

(2) If 2 or more accused persons are to be tried together, the court must not make a no jury order in relation to 1 of the accused persons unless the court also makes a no jury order in relation to each other accused person.

(3) To remove any doubt, it is declared that—

(a) each of the accused persons must consent to the making of the no jury order; and

(b) the making of an order for a separate trial under section 597A or the giving of a direction about the separate trial of an accused person under section 597B does not prevent the making of a no jury order.

615B Law and procedure to be applied

(1) In a trial by a judge sitting without a jury, the judge must apply, so far as is practicable, the same principles of law and procedure as would be applied in a trial before a jury.

(2) In a trial by a judge sitting without a jury, the judge may view a place or thing.

(3) If an Act or the common law—

(a) requires information or a warning or instruction to be given to the jury in particular circumstances; or

(b) prohibits a warning from being given to a jury in particular circumstances;

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the judge in a trial by a judge sitting without a jury must take the requirement or prohibition into account if the circumstances arise in the course of the trial.

615C Judge's verdict and judgment

(1) In a trial by a judge sitting without a jury—

(a) the judge may make any findings and give any verdict that a jury could have made or given if the trial had been before a jury; and

(b) any finding or verdict of the judge has, for all purposes, the same effect as a finding or verdict of a jury.

(2) Without limiting subsection (1), chapter 67 applies with all necessary changes in relation to a person to be tried, being tried, or tried by a judge sitting without a jury in the same way as it applies to persons tried by a judge sitting with a jury.

(3) The judgment of the judge in a trial by a judge sitting without a jury must include the principles of law that he or she has applied and the findings of fact on which he or she has relied.

(4) The validity of the proceeding is not affected by a trial judge's failure to comply with subsection (3).

615D Particular proceedings excluded from application

This chapter division does not apply to—

(a) a trial on indictment before a Childrens Court judge; or

Note—

See also *Youth Justice Act 1992*, part 6.

(b) a trial on indictment of any offence against a law of the Commonwealth.

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615E References to trial by jury

(1) In an Act, a reference to the trial of a person by jury, however expressed, includes, unless the contrary intention appears, a reference to the trial of the person by a judge sitting without a jury under this chapter division.

(2) In an Act, a reference to a jury in the trial of a person, however expressed, includes, unless the contrary intention appears, a reference to a judge sitting without a jury under this chapter division.

Chapter division 10 Appearances and fair conduct

616 Defence by counsel

(1) Every person charged with an offence is entitled to make the person's defence at the person's trial and to have the witnesses examined and cross-examined by the person's counsel.

(2) In this section—

counsel includes any person entitled to audience as an advocate.

617 Presence of accused

(1) Subject to this section the trial must take place in the presence of the accused person.

(2) If an accused person so conducts himself or herself as to render the continuance of the proceedings in the person's presence impracticable, the court may order the person to be removed and may direct the trial to proceed in the person's absence.

(3) Where 2 or more accused persons are charged in the 1 indictment, if it is made to appear to the court that any of them is unable to be present by reason of the person's illness or

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infirmity, the court may permit the person to be absent during the whole or any part of the trial if it is satisfied—

(a) that the interests of the accused person will not be prejudiced by the trial proceeding in the person's absence; and

(b) that the interests of justice require that the trial should proceed in the person's absence.

(4) The court may in any case permit a person charged with a misdemeanour to be absent during the whole or any part of the trial on such conditions as it thinks fit.

(5) If an accused person absents himself or herself during the trial without leave, the court may direct a warrant to be issued to arrest the person and bring the person before the court forthwith.

617A Juries

The law respecting the qualifications of jurors and the summoning of jurors to attend for the trial of persons charged with indictable offences, and the challenges allowed to such persons, is set forth in the laws relating to juries and jurors.

Chapter division 11 Trial of issues

618 Evidence in defence

At the close of the evidence for the prosecution the proper officer of the court shall ask the accused person whether the person intends to adduce evidence in the person's defence.

619 Speeches by counsel

(1) Before any evidence is given at the trial of an accused person the counsel for the Crown is entitled to address the jury for the

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purpose of opening the evidence intended to be adduced for the prosecution.

(2) If the accused person or any of the accused persons, if more than 1, is defended by counsel, and if such counsel or any of such counsel says that the accused person does not intend to adduce evidence, the counsel for the Crown is entitled to address the jury a second time for the purpose of summing up the evidence already given against such accused person or persons for whom evidence is not intended to be adduced.

(3) At the close of the evidence for the prosecution the accused person, and each of the accused persons, if more than 1, may by himself, herself or the person's counsel address the jury for the purpose of opening the evidence (if any) intended to be adduced for the defence, and after the whole of the evidence is given may again address the jury upon the whole case.

(4) If evidence is adduced for an accused person, the counsel for the Crown is entitled to reply.

(5) If evidence is adduced for 1 or more of several accused persons, but not for all of them, the counsel for the Crown is entitled to reply with respect to the person or persons by whom evidence is so adduced, but not with respect to the other or others of them.

(6) However, a Crown Law Officer is entitled to reply in all cases, whether evidence is adduced by any accused person or not.

620 Summing up

(1) After the evidence is concluded and the counsel or the accused person or persons, as the case may be, have addressed the jury, it is the duty of the court to instruct the jury as to the law applicable to the case, with such observations upon the evidence as the court thinks fit to make.

(2) After the court has instructed the jury they are to consider their verdict.

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624 Special verdict

In any case in which it appears to the court that the question whether an accused person ought or ought not to be convicted of an offence may depend upon some specific fact, or that the proper punishment to be awarded upon conviction may depend upon some specific fact, the court may require the jury to find that fact specially.

625 General verdict on charge of defamation

Notwithstanding the provisions of section 624, the jury, on the trial of a person charged with the offence defined in section 365, may give a general verdict of guilty or not guilty upon the whole matter in issue, in like manner as in other cases.

Chapter division 12 Other provisions

630 Procedure on charge of an offence committed after previous conviction

(1) The proceedings upon an indictment for committing an offence after a previous conviction or convictions are required to be as follows, that is to say—

(a) the accused person is in the first instance to be called upon to plead to so much only of the indictment as charges the subsequent offence;

(b) if the accused person pleads any plea which raises an issue to be tried by a jury, the jury are to be charged in the first instance to inquire concerning the subsequent offence only;

(c) if the accused person pleads guilty, or if upon trial the accused person is convicted of the subsequent offence, the person is then, and not before, to be asked whether the person had been previously convicted as alleged in the indictment;

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(d) if the accused person answers that the person had been so previously convicted, the court may proceed to pass sentence upon the person accordingly;

(e) if the accused person denies that the person had been so previously convicted, or will not answer directly to the question, the jury are then to be charged to inquire concerning the previous conviction or convictions; and in that case it is not necessary that the jury should be sworn afresh, but the oath already taken by them is deemed to extend to such last mentioned inquiry.

(2) However, if on the trial of a person charged with a subsequent offence, the person offers evidence of the person's good character, the Crown may, in answer thereto, and before any verdict is given, offer evidence of the person's conviction of the previous offence or offences, and in that case the jury are required to inquire concerning the previous conviction or convictions at the same time that they inquire concerning the subsequent offence.

631 Further pleas

(1) When the issues raised by any plea or pleas, except the plea of not guilty, have been found against an accused person who has not pleaded the plea of not guilty, the person is to be called upon to plead afresh, and, if those issues have been tried by a jury, the court may direct the issues raised by any fresh plea to be tried by the same jury or by another jury.

(2) If the court directs them to be tried by the same jury, it is not necessary that the jury should be sworn afresh, but the oath already taken by them is to be deemed to extend to the trial of such fresh issues.

631A Plea of guilty during trial

(1) If, at any time before the jury returns its verdict, the accused person informs the court that—

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(a) he or she wishes to change his or her plea to one of guilty of the offence charged in the indictment; or

(b) he or she wishes to plead guilty to any other offence of which he or she might be convicted upon the indictment;

the court—

(c) in the case referred to in paragraph (a)—may direct that the accused person be again called upon in open court to plead to the indictment, and to say whether he or she is guilty or not guilty of the offence charged; or

(d) in the case referred to in paragraph (b)—may direct, with the consent of the Crown, that the accused person be called upon in open court to plead to any other offence of which he or she might be convicted upon the indictment, and to say whether he or she is guilty or not guilty of that offence.

(1A) It is not necessary for the plea to be taken in the jury's presence.

(2) If the accused person does not plead guilty to the offence charged in the indictment or, in the circumstances described in subsection (1)(d), to another offence, the trial shall proceed.

(3) If the accused person pleads guilty to the offence charged in the indictment or, in the circumstances described in subsection (1)(d), to another offence, the jury shall be discharged from giving their verdict in respect of the offence charged in the indictment.

(4) A plea of guilty to an offence made by the accused person in the circumstances described in this section shall have effect as if made by him or her when called upon at the beginning of a trial to plead to an indictment charging him or her with that offence.

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Chapter 63 Evidence—presumptions of fact

632 Corroboration

(1) A person may be convicted of an offence on the uncorroborated testimony of 1 witness, unless this Code expressly provides to the contrary.

Note—

See sections 52 (Sedition), 125 (Evidence on charge of perjury) and 195 (Evidence).

(2) On the trial of a person for an offence, a judge must not direct, warn or suggest to the jury—

(a) that the law regards any class of persons as unreliable witnesses; or

(b) in relation to the uncorroborated evidence of a witness—

(i) that it would be dangerous or unsafe to convict the defendant on the evidence; or

(ii) that the evidence should be scrutinised with great care.

Note—

See also the *Evidence Act 1977*, sections 94A, 103ZZB, 132BAA and 132BA.

(3) Subsection (1) or (2) does not prevent a judge from making a comment on the evidence given in the trial that it is appropriate to make in the interests of justice.

634 Evidence on trials for perjury and subornation

On the trial of a person charged with an offence of which the giving of false testimony by any person at the trial of a person charged with an offence is an element, a certificate setting out the substance and effect only, without the formal parts, of the

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indictment or complaint, and the proceedings at the trial, and purporting to be signed by the officer having the custody of the records of the court where the indictment or complaint was tried, or by the officer's deputy, is sufficient evidence of the trial, without proof of the signature or official character of the person who appears to have signed the certificate.

635 Evidence of previous conviction

(1) On the trial of a person charged with an offence alleged to have been committed after a previous conviction, a certificate setting out the substance and effect only, without the formal parts, of the indictment, verdict, and judgment, or of the complaint and conviction, purporting to be signed by the officer having the custody of the records of the court where the accused person was first convicted, or by the officer's deputy is, upon proof of the identity of the person of the offender, sufficient evidence of the conviction, without proof of the signature or official character of the person who appears to have signed the certificate.

(2) If the previous conviction was a summary conviction, the conviction is presumed not to have been appealed against until the contrary is shown.

636 Evidence of blood relationship

(1) In this section—

blood relationship means the blood relationship existing between a person charged with a prescribed offence and the person in respect of whom or, as the case may be, with whom a prescribed offence is alleged to have been committed.

prescribed offence means an offence—

(a) defined in section 222; or

(b) defined in section 210 or 216(2) where it is alleged as a circumstance of aggravation that the offence was

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committed in respect of a child under the age of 16 years who is the lineal descendant of the person charged.

(2) On the trial of a person charged with a prescribed offence—

(a) blood relationship is sufficiently proved by proof that the relationship is reputed to exist and it is not necessary to prove that the person charged or the person in respect of whom or with whom the prescribed offence is alleged to have been committed or any person (living or dead) upon whom the blood relationship depends was born in lawful wedlock; and

(b) the person charged is, until the contrary is proved, presumed to have had knowledge at the time the prescribed offence is alleged to have been committed of the blood relationship.

638 Evidence of authority

The averment in an indictment that the prosecution is instituted by the direction of or with the consent of a Crown Law Officer, or with the consent of the Attorney-General, or with the consent of the director of public prosecutions, or at the request of the Government of any State, is sufficient evidence of the fact, until the contrary is shown.

639 Averments about public officers and public service officers or employees

On the trial of a person charged with any offence of which the fact that some person was at some particular time a public officer or public service officer or employee is an element, the averment in the indictment or complaint that any person therein mentioned was a public officer or public service officer or employee at any time therein stated is sufficient evidence of the fact, until the contrary is shown.

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641 Evidence on certain charges of stealing money

(1) On the trial of a person charged with stealing, while employed in the public service, money which was the property of the Sovereign, or which came into the person's possession by virtue of the person's employment, or charged with stealing, while a clerk or servant, money which was the property of the person's employer or which came into the person's possession on account of the person's employer or being a trustee within the meaning of the *Trust Accounts Act 1973* charged with stealing money of which the person is a trustee on behalf of any other person, an entry in any book of account kept by the accused person, or kept in, under, or subject to, the person's charge or supervision, purporting to be an entry of the receipt of any money, is evidence that the money so purporting to have been received was so received by the person.

(2) On the trial of a person charged with any such offence, it is not necessary to prove the stealing by the accused person of any specific sum of money, if, on examination of the books of account or entries kept or made by the person, or kept or made in, under, or subject to, the person's charge or supervision, or by any other evidence, there is proof of a general deficiency, and if the jury are satisfied that the accused person stole the deficient money or any part of it.

(3) And on the trial of a person charged with any offence as a trustee referred to in subsection (1), the ownership of or the right, title, use or benefit in, to or of the money the subject matter of the charge may be laid in the indictment in the name of any one or other of the persons (the ***beneficiaries***) of whose money the person charged is the trustee as aforesaid specifying any one of the beneficiaries by name with the addition of the words 'and others', and it is immaterial whether or not the evidence establishes that the said money was the property of any specific one of the beneficiaries, or that the right, title, use or benefit in, to or of the said money was in any specific one of the beneficiaries and the indictment will be sustained so far as regards that allegation upon proof that the property in, or the right, title, use or benefit in, to or of

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the money was in one or other of the beneficiaries without ascertaining which of them.

(4) For subsection (1) or (3), the reference to a trustee within the meaning of the *Trust Accounts Act 1973* includes a legal practitioner associate of a law practice, within the meaning of the *Legal Profession Act 2007*, if part 3.3 of the *Legal Profession Act 2007* applies to the law practice.

642 Evidence on charges relating to seals and stamps

On the trial of a person charged with any offence relating to any seal or stamp used for the purposes of the public revenue, or of the post office, in any part of the Sovereign's dominions or in any foreign state, a dispatch from 1 of the Sovereign's Principal Secretaries of State, transmitting to the Governor any stamp, mark, or impression, and stating it to be a genuine stamp, mark, or impression, of a die, plate, or other instrument, provided, made, or used, by or under the direction of the proper authority of the country in question for the purpose of expressing or denoting any stamp duty or postal charge, is admissible as evidence of the facts stated in the dispatch; and the stamp, mark, or impression, so transmitted may be used by the court and jury and by witnesses for the purposes of comparison.

643 Intention to injure, deceive or defraud

On the trial of a person charged with any offence of which an intent to injure or deceive or defraud, or an intent to enable another person to deceive or defraud, is an element, it is not necessary to prove an intent to injure or deceive or defraud any particular person, or an intent to enable any particular person to deceive or defraud any particular person.

644 Admissions

(1) An accused person may by himself, herself or the person's counsel admit on the trial any fact alleged against the person,

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and such admission is sufficient proof of the fact without other evidence.

(2) The Crown may by its counsel admit on the trial of an accused any fact relevant to the trial where the accused is in agreement with this being done, and such admission is sufficient proof of the fact without other evidence.

(3) In this section—

trial also includes, and it is hereby declared to have always included, proceedings before justices dealing summarily with an indictable offence.

644A Witness giving incriminating answers

(1) A person who is called as a witness in any proceeding for an offence against section 59, 60, 87, 98C, 101, 118, 120, 121, 122, 127 or 133, must not be excused from answering any question relating to the offence on the ground that the answer to the question may incriminate or tend to incriminate himself or herself.

(2) An answer to a question in a proceeding to which this section applies is not admissible in evidence against the person giving the answer other than in the proceeding or in a prosecution for perjury in respect of the answer.

Chapter 63A Non-attendance of witness

644B Non-attendance of individual

(1) This section applies if an individual fails to comply with a subpoena or order of a court requiring attendance to give evidence or produce a document or thing to the court or a person having authority to take evidence for the court.

(2) The court may make an order for the issue of a warrant for—

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(a) the arrest of the individual; and

(b) the production of the individual as required by the subpoena or order for the purpose of the proceeding; and

(c) the detention in custody of the individual until released by the court.

(3) The court may order an individual who did not attend as required by the subpoena or order to pay the costs and expenses wasted by, or resulting from, noncompliance with the subpoena or order.

644C Non-attendance of corporation

(1) This section applies if a corporation or an officer of the corporation fails to comply with a subpoena or order of a court requiring attendance to give evidence or produce a document or thing to the court or a person having authority to take evidence for the court.

(2) The court may make an order for the issue of a warrant for—

(a) the arrest of the officer of the corporation to whom the subpoena or order was directed; and

(b) the production of the officer as required by the subpoena or order for the purpose of the proceeding; and

(c) the detention in custody of the officer until released by the court.

(3) However, if the subpoena or order was directed to the 'proper officer' of the corporation, the court may make an order for the issue of a warrant for the arrest of a particular officer only if it is proved the officer had received the subpoena or order, or otherwise had actual knowledge of it.

(4) The court may order a corporation that did not attend as required by the subpoena or order to pay the costs and expenses wasted by, or resulting from, noncompliance with the subpoena or order.

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644D Noncompliance is contempt of court

(1) Failure to comply with a subpoena without lawful excuse is contempt of court and a person who fails to comply may be dealt with for contempt of court.

(2) Nothing in section 644B or 644C affects a court's power to punish for contempt.

Chapter 64 Verdict—judgment

645 Accused person insane during trial

(1) If on the trial of any person charged with an indictable offence it is alleged or appears that the person is not of sound mind, the jury are to be required to consider the matter, and if the jury find that the person is not of sound mind, the finding is to be recorded, and thereupon the court is required to order the person to be admitted to an authorised mental health service to be dealt with under the *Mental Health Act 2016*.

(2) A person so found to be not of sound mind may be again indicted and tried for the offence.

646 Discharge of persons acquitted

If the jury find that the accused person is not guilty, or give any other verdict which shows that the person is not liable to punishment, the person is entitled to be discharged from the charge of which the person is so acquitted.

647 Acquittal on ground of insanity

(1) However, if, on the trial of a person charged with any indictable offence, it is alleged or appears that the person was not of sound mind at the time when the act or omission alleged to constitute the offence occurred, the jury are to be

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required to find specially, if they find that the person is not guilty, whether the person was of unsound mind at the time when such act or omission took place, and to say whether the person is acquitted by them on account of such unsoundness of mind; and if they find that the person was of unsound mind at the time when such act or omission took place, and say that the person is acquitted by them on account of such unsoundness of mind, the court is required to order the person to be admitted to an authorised mental health service to be dealt with under the *Mental Health Act 2016*.

(2) In any such case the Governor, in the name of the Sovereign, may give such order for the safe custody of such person during the Governor's pleasure, in such place of confinement, and in such manner, as the Governor in Council may think fit.

648 Convicted person to be called on to show cause

When an accused person pleads that the person is guilty of any offence, and when, upon trial, an accused person is convicted of any offence, the proper officer is required to ask the person whether the person has anything to say why sentence should not be passed upon the person, but an omission to do so does not invalidate the judgment.

649 Arrest of judgment

(1) A person convicted of an indictable offence, whether on the person's plea of guilty or otherwise, may at any time before sentence move that judgment be arrested on the ground that the indictment does not disclose any offence.

(2) Upon the hearing of the motion the court may allow any such amendments of the indictment as it might have allowed before verdict.

(3) The court may either hear and determine the motion forthwith or may reserve the question of law for the consideration of the Court of Appeal as hereinafter provided.

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650 Sentence

If a motion to arrest the judgment is not made or is dismissed, the court may pass sentence upon the offender forthwith or make any other order it may make by law instead of passing sentence.

651 Court may decide summary offences if a person is charged on indictment

(1) If an indictment has been presented against a person before a court, the court may also, subject to section 652(2) to (4) and subsection (2), hear and decide summarily any charge of a summary offence that has been laid against the person.

(2) The court must not hear and decide the summary offence unless—

(a) the court considers it appropriate to do so; and

(b) the accused person is represented by a lawyer; and

(c) the Crown and the accused consent to the court so doing; and

(d) the accused person states his or her intention of entering a plea of guilty to the charge; and

(e) the complaint or bench charge sheet for the offence, or a copy, is before the court, whether or not returnable before another court.

(3) Subject to this section, the practices of the court and the express provisions of this Code relating to taking a plea on an indictment apply to the taking of a plea to the charge in a complaint or bench charge sheet.

(4) On convicting the person of the summary offence, the court may make any orders in relation to the conviction a Magistrates Court may make.

(5) The power to make rules for the court extends to the making of rules in relation to the practice and procedure to be applied

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in the hearing and decision summarily of summary offences by the court.

(6) If the court hears and decides a charge summarily, the court has jurisdiction despite the time that has elapsed from the time when the matter of complaint of the charge arose.

(7) In this section—

summary offence means—

(a) a simple or regulatory offence; or

(b) an offence for which—

(i) proceedings for a charge of the offence may be taken summarily under the *Drugs Misuse Act 1986*; and

(ii) the prosecution has made an election under section 118 of that Act; or

(c) an indictable offence against this Code if, under section 552A, the prosecution has elected to have a charge for the offence heard and decided summarily; or

(d) an indictable offence against this Code if, under section 552BA, the charge for the offence must be heard and decided summarily.

652 Proceedings to transmit charge for summary offence

(1) A charge for a summary offence may be transmitted to the registry of a court for the purpose of the charge being dealt with under section 651 at any time despite any limitation in any Act as to the time for commencing proceedings for a summary offence.

(2) If a person charged with committing a summary offence wishes to have the offence heard and decided under section 651, the person must make written application to the clerk of the relevant court of summary jurisdiction to take any necessary steps to transmit the relevant complaint or bench

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charge sheet to the registrar of the court that is to deal with the charge under section 651 (the ***receiving court***).

(3) An application under subsection (2) must be a written statement containing at least the following information—

(a) the charge to be transmitted;

(b) the defendant's intention to plead guilty to the offence charged;

(c) that the defendant wishes to have the charge transmitted for no other reason than to plead guilty to the charge before the receiving court.

(4) On being satisfied that the application fulfils the requirements of this section the clerk of the relevant court of summary jurisdiction must transmit, by any secure and expeditious means, the relevant complaint or bench charge sheet, or a copy, to the registrar of the receiving court.

(5) On the final decision of the transmitted charge by the receiving court, the registrar of the court must, within 1 calendar month, notify the result of the decision to the clerk of the relevant court of summary jurisdiction from which the charge was transmitted and no further appearance is required in that court by any party to the proceeding.

653 Remission of proceedings to court exercising summary jurisdiction

(1) This section applies if a charge against a person for a summary offence has been transmitted to the registry of a court for the purpose of the charge being dealt with under section 651.

(2) If—

(a) the person states an intention of entering a plea of not guilty before the court to the charge or enters a plea of not guilty before the court to the charge; or

(b) any of the conditions mentioned in section 651(2) are not satisfied; or

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(c) the person has been dealt with on the indictment mentioned in section 651(1) before the charge for the summary offence is brought before the court; or

(d) for any other reason the court decides not to deal with the charge;

the court must direct that the charge must be heard by a court exercising summary jurisdiction and order the court registrar to send the relevant court record to the registrar of the court exercising summary jurisdiction.

659 Effect of summary conviction for indictable offences

When a person has been summarily convicted of an indictable offence, the conviction is to be deemed a conviction of a simple offence only, and not of an indictable offence.

Chapter 65 Costs

660 Costs of prosecution in certain cases

(1) When a person is convicted on indictment of any indictable offence relating to the person of any person, the court, on the application of the person aggrieved by the offence, may, in addition to any sentence which is passed upon the offender, adjudge the offender to pay to the person aggrieved the person's costs of prosecution, together with a sum by way of compensation for any loss of time suffered by the person by reason of the offence of which the offender is convicted.

(2) An order for the payment of such costs, or of any sum so awarded by way of compensation, may be enforced in the same manner as a judgment of the court given in an action.

(3) If any money was found on the person of the offender on the offender's arrest, the court may order it to be applied towards

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the payment of any money so ordered to be paid by the offender.

(4) When an order is made under the provisions of this section for the payment of money by way of compensation to an aggrieved person, the offender is not liable to any civil proceedings for the same cause at the suit of that person.

662 Taxation

(1) Costs of a prosecution or defence must be taxed by the proper officer of the court in which the indictment is presented.

(2) In this section—

costs of defence includes costs incurred by the accused person both before and after the person's committal.

costs of prosecution includes costs incurred by the person aggrieved in order to the committal of the offender, and costs incurred by the person with the consent of the Crown for the purposes of the trial.

Chapter 67 Appeals, subsequent appeals and pardons

Chapter division 1 Preliminary

668 Definitions for chapter

(1) In this chapter—

appellant includes a person who has been convicted and desires to appeal, or to make a subsequent appeal, under this chapter.

Court means the Court of Appeal.

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court of trial means any court from whose finding, sentence, or other determination a person is by this Act entitled—

(a) to appeal or to apply for leave to appeal; or

(b) to apply for leave to make a subsequent appeal.

registrar means the registrar of the Court.

sentence includes any order made by the court of trial on conviction of a person with reference to the person's person or property whether or not the person is adversely affected thereby and whether or not the order is made instead of passing sentence.

subsequent appeal means an appeal under section 671AC(2).

(2) The power of the Court to pass any sentence includes a power to make any such order.

(3) For the purposes of this chapter a person acquitted on the ground of insanity, where such insanity was not set up as a defence by the person, shall be deemed to be a person convicted, and any order to keep the person in custody shall be deemed to be a sentence.

Chapter division 2 References, reservations and appeals

668AA Application of chapter division

This chapter division does not apply to a subsequent appeal.

668A Reference by Crown Law Officer of pre-trial direction or ruling

(1) A Crown Law Officer may refer to the Court for its consideration and opinion a point of law that has arisen in relation to a direction or ruling under section 590AA given by another court as to the conduct of a trial or pre-trial hearing.

(2) If a reference is made—

(a) the Crown Law Officer must give notice of the reference to the other court and the accused person; and

(b) the other court—

(i) must adjourn the trial until the Court has given its opinion on the point; and

(ii) may make the other orders it considers appropriate, including an order about remanding the accused person; and

(c) the Court must hear argument on the reference—

(i) by the Crown Law Officer; and

(ii) by the accused person if the accused person wishes; and

(d) after hearing argument on the reference, the Court—

(i) must consider the point referred and give the Crown Law Officer its opinion on the point; and

(ii) may make the orders it considers appropriate, including the directions or rulings it considers appropriate to give effect to its opinion.

(3) In this section—

adjourn, for a trial where the accused person has not been called on to plead to the indictment, includes postpone the trial.

668B Reservation of points of law

(1) When any person is indicted for any indictable offence, the court of trial must, on the application of counsel for the accused person made before verdict, and may in its discretion, either before or after judgment, without such application, reserve any question of law which arises on the trial for the consideration of the Court.

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(2) If the accused person is convicted, and a question of law has been so reserved before judgment, the court of trial may either pronounce judgment on the conviction and respite execution of the judgment, or postpone the judgment until the question has been considered and decided, and may either commit the person convicted to prison or grant bail to the person conditioned to appear at such time and place as the court of trial may direct, and to attend in execution of, or to receive judgment, as the case may be.

(3) The judge of the court of trial is thereupon required to state, in a case signed by the judge, the question of law so reserved, with the special circumstances upon which it arose; and the case is to be transmitted to the Court.

(4) Any question so reserved is to be heard and determined as an appeal by the Court.

(5) The Court may send the case back to be amended or restated if it thinks it necessary so to do.

668C Appeal from arrest of judgment

(1) When the court of trial before which a person is convicted on indictment arrests judgment, the court is required, on the application of counsel for the prosecution, to reserve a case for the consideration of the Court as hereinbefore provided.

(2) On the hearing of the case the Court may affirm or reverse the order arresting judgment.

(3) If the order is reversed, the Court is to direct that judgment be pronounced upon the offender, and the offender is to be ordered to appear at such time and place as the Court may direct to receive judgment, and any justice may issue a warrant for the arrest of the offender.

(4) An offender so arrested may be granted bail by order of the Court or a judge thereof, which may be made at the time when the order directing judgment to be pronounced is made, or afterwards.

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668D Right of appeal

(1) A person convicted on indictment, or a person convicted of a summary offence by a court under section 651, may appeal to the Court—

(a) against the person's conviction on any ground which involves a question of law alone; and

(b) with the leave of the Court, or upon the certificate of the judge of the court of trial that it is a fit case for appeal, against the person's conviction on any ground of appeal which involves a question of fact alone, or question of mixed law and fact, or any other ground which appears to the Court to be a sufficient ground of appeal; and

(c) with the leave of the Court, against the sentence passed on the person's conviction.

(2) A person summarily convicted under section 651 may appeal to the court, with the leave of the court, against the sentence passed on conviction, including any order made under that section.

668E Determination of appeal in ordinary cases

(1) The Court on any such appeal against conviction shall allow the appeal if it is of opinion that the verdict of the jury should be set aside on the ground that it is unreasonable, or can not be supported having regard to the evidence, or that the judgment of the court of trial should be set aside on the ground of the wrong decision of any question of law, or that on any ground whatsoever there was a miscarriage of justice, and in any other case shall dismiss the appeal.

(1A) However, the Court may, notwithstanding that it is of the opinion that the point or points raised by the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

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(2) Subject to the special provisions of this chapter, the Court shall, if it allows an appeal against conviction, quash the conviction and direct a judgment and verdict of acquittal to be entered.

(3) On an appeal against a sentence, the Court, if it is of opinion that some other sentence, whether more or less severe, is warranted in law and should have been passed, shall quash the sentence and pass such other sentence in substitution therefor, and in any other case shall dismiss the appeal.

(4) In subsection (1), if an appellant has been convicted of an offence in the court of trial by a judge sitting without a jury, a reference to the jury is taken to be a reference to the judge.

668F Powers of Court in special cases

(1) If it appears to the Court that an appellant, though not properly convicted on some count or part of the indictment, has been properly convicted on some other count or part of the indictment, the Court may either affirm the sentence passed at the trial or pass such sentence, whether more or less severe, in substitution therefor, as it thinks proper, and as may be warranted in law by the conviction on the count or part of the indictment on which it considers the appellant has been properly convicted.

(2) Where an appellant has been convicted of an offence, and the jury could on the indictment have found the appellant guilty of some other offence, and on the finding of the jury it appears to the Court that the jury must have been satisfied of facts which proved the appellant guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.

(3) Where, on the conviction of the appellant, the jury have found a special verdict, and the Court considers that a wrong conclusion has been arrived at by the court of trial on the

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effect of that verdict, the Court may, instead of allowing the appeal, order such conclusion to be recorded as appears to the Court to be in law required by the verdict, and pass such sentence, whether more or less severe, in substitution for the sentence passed at the trial, as may be warranted in law.

(4) If on any appeal it appears to the Court that, although the appellant committed the act or made the omission charged against the appellant, the appellant was not of sound mind at the time when the act or omission alleged to constitute the offence occurred, so as not to be responsible therefor according to law, the Court may quash the sentence passed at the trial, and order the appellant to be admitted to an authorised mental health service to be dealt with under the *Mental Health Act 2016* in the same manner as if a jury had found that fact specially under section 647.

(5) In subsection (2), if an appellant has been convicted of an offence in the court of trial by a judge sitting without a jury, a reference to the jury is taken to be a reference to the judge.

669 Power to grant new trial

(1) On an appeal against a conviction on indictment, the Court may, either of its own motion or on the application of the appellant, order a new trial in such manner as it thinks fit, if the Court considers that a miscarriage of justice has occurred, and that, having regard to all the circumstances, such miscarriage of justice can be more adequately remedied by an order for a new trial than by any other order which the Court is empowered to make.

(2) If the Court makes an order for a new trial and the appellant is not granted bail, the order is taken to be a warrant for the appellant's detention under the *Corrective Services Act 2006*, section 9(1)(a).

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669A Appeal by Attorney-General or Crown Law Officer

(1) The Attorney-General may appeal to the Court against any sentence pronounced by—

(a) the court of trial; or

(b) a court of summary jurisdiction in a case where an indictable offence is dealt with summarily by that court;

and the Court may in its unfettered discretion vary the sentence and impose such sentence as to the Court seems proper.

(1A) A Crown Law Officer may appeal to the Court against an order staying proceedings or further proceedings on an indictment.

(2) The Attorney-General may refer any point of law that has arisen at the trial upon indictment of a person in relation to any charge contained therein to the Court for its consideration and opinion thereon if the person charged has been—

(a) acquitted of the charge; or

(b) discharged in respect of that charge after counsel for the Crown, as a result of a determination of the court of trial on that point of law, has duly informed the court that the Crown will not further proceed upon the indictment in relation to that charge; or

(c) convicted, following a determination of the court of trial on that point of law—

(i) of a charge other than the charge that was under consideration when the point of law arose; or

(ii) of the same charge with or without a circumstance of aggravation.

(2A) The Attorney-General may refer to the Court for its consideration and opinion a point of law that has arisen at the summary trial of a charge of an indictable offence, if the person charged has been—

(a) acquitted of the charge at the summary trial; or

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(b) discharged on the charge after the prosecution, because of a decision on the point of law by the court of trial, indicates to the court that it will not further proceed on the charge in the proceeding before the court; or

(c) convicted, following a determination of the court of trial on that point of law—

(i) of a charge other than the charge that was under consideration when the point of law arose; or

(ii) of the same charge with or without a circumstance of aggravation.

(3) Notice of the reference shall be given to the person acquitted or, as the case may be, discharged.

(4) Upon the reference the Court shall hear argument—

(a) by the Attorney-General or by counsel on the Attorney-General's behalf; and

(b) if the person so desires, by the person acquitted or discharged or by counsel on his or her behalf;

and thereupon shall consider the point referred and furnish to the Attorney-General its opinion thereon.

(5) Where the reference relates to a trial in which the person charged has been acquitted or convicted, the reference shall not affect the trial of nor the acquittal or conviction of the person.

(6) If a person convicted summarily of an indictable offence appeals to a District Court judge under the *Justices Act 1886*, section 222 or the *Youth Justice Act 1992*, part 6, division 9, subdivision 3, and, in relation to the same conviction, the Attorney-General appeals under this section—

(a) the convicted person's appeal is, by force of this section, removed to the Court of Appeal; and

(b) both appeals must be heard together by the Court of Appeal.

(7) In this section—

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discharged includes the dismissal or striking out of a charge at a summary trial.

670 Revesting and restitution of property on conviction

(1) Subject to section 134 of the *Penalties and Sentences Act 1992*, the operation of any order for the restitution of any property, or for the payment of compensation to an aggrieved person, made by the court of trial, and the operation of the provisions of section 26(1) of the *Sale of Goods Act 1896* as to the revesting of the property in stolen goods on conviction, shall (unless such court directs to the contrary in any case in which in its opinion the title to the property is not in dispute) be suspended—

(a) until the expiration of the time provided for appealing to the Court; and

(b) where notice of appeal or of application for leave to appeal is given within the time provided, until the determination of the appeal or refusal of the application or, where the appeal is by the Attorney-General against sentence within the time provided, until the determination of that appeal;

and in cases where the operation of any such order or the operation of the said provisions is suspended until the determination of the appeal, the order or provisions, as the case may be, shall not take effect as to the property in question if the conviction is quashed on appeal, except by the special order of the Court.

(2) The Court may annul or vary any such order, although the conviction is not quashed.

(3) Where any matter arises before the Court in relation to the operation or suspension of the operation of any such order as aforesaid or the operation or suspension of the operation of such provisions as aforesaid, the person in whose favour the order is made or the person benefiting from the operation of the said provisions, as the case may be, may appear in person,

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or by the person's counsel or solicitor, before the Court and there make submissions in connection with such matter.

671 Time for appealing

(1) Any person convicted desiring to appeal to the Court, or to obtain the leave of the Court to appeal from any conviction or sentence, shall give notice of appeal or notice of application for leave to appeal, in the prescribed manner, within 1 calendar month of the date of such conviction or sentence.

(2) An appeal to the Court by the Attorney-General against sentence shall be made within 1 calendar month of the date of such sentence.

(3) The time within which notice of appeal, or notice of an application for leave to appeal, may be given or within which the Attorney-General may appeal against sentence may be extended at any time by the Court.

Chapter division 3 Subsequent appeals

671AA Definitions for chapter division

In this chapter division—

fresh and compelling evidence see section 671AB.

new and compelling evidence see section 671AB.

671AB Fresh and compelling evidence and new and compelling evidence—meanings

(1) This section applies for the purpose of deciding under this chapter division whether there is fresh and compelling evidence or new and compelling evidence.

(2) Evidence is ***fresh*** if—

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(a) the evidence was not adduced in the proceedings in the court of trial before which the appellant was convicted; and

(b) either—

(i) the evidence could not have been adduced in the proceedings in the court of trial with the exercise of reasonable diligence by the defence; or

(ii) the evidence could have been adduced in the proceedings in the court of trial with the exercise of reasonable diligence by the defence but was not because of the incompetence or negligence of a lawyer acting for the appellant in those proceedings.

(3) For subsection (2)(b)(i), the defence is taken not to have failed to exercise reasonable diligence in relation to the evidence if—

(a) the prosecution failed to comply with the prosecution's obligation mentioned in section 590AB(1) in relation to the evidence; and

(b) the defence did not discover the evidence only because of the failure to comply with that obligation.

(4) Evidence is ***new*** if—

(a) the evidence was not adduced in the proceedings in the court of trial before which the appellant was convicted; and

(b) the evidence could have been adduced in the proceedings in the court of trial with the exercise of reasonable diligence by the defence.

(5) Under this chapter division, evidence that is both fresh evidence and new evidence is taken to only be fresh evidence.

(6) Evidence is ***compelling*** if—

(a) the evidence is reliable; and

(b) the evidence is substantial; and

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(c) the evidence—

(i) is highly probative in the context of the issues that were in dispute in the proceedings in the court of trial before which the appellant was convicted; or

(ii) would have substantially weakened the case for the prosecution in the proceedings in the court of trial.

(7) Evidence that would be admissible under this chapter division is not precluded from being fresh and compelling evidence or new and compelling evidence merely because it would have been inadmissible—

(a) in the proceedings in the court of trial before which the appellant was convicted; or

(b) in earlier proceedings in the Court for an appeal or subsequent appeal against the appellant's conviction.

(8) In this section, the ***defence*** is the appellant or a lawyer acting for the appellant in proceedings in the court of trial before which the appellant was convicted.

671AC Right of subsequent appeal

(1) This section applies if—

(a) a person appealed, or applied for leave to appeal, against a conviction of the person under section 668D; and

(b) the Court, under chapter division 2—

(i) refused to grant leave to appeal; or

(ii) dismissed the appeal in whole or in part; or

(iii) determined the appeal and dealt with the person under section 668F.

(2) The person may make a subsequent appeal to the Court, with the leave of the Court, against the person's conviction on a ground that there is fresh and compelling evidence or new and compelling evidence.

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(3) Also, the person may make a subsequent appeal under subsection (2) if—

(a) the Court has, under this chapter division, refused to grant an earlier application for leave to make a subsequent appeal; or

(b) the Court has, under this chapter division, dismissed an earlier subsequent appeal in whole or in part.

(4) The Court may give its leave to make a subsequent appeal at any time it considers necessary or desirable.

671AD Evidence in proceedings for subsequent appeal

(1) This section applies in relation to proceedings in the Court for a subsequent appeal, or leave to make a subsequent appeal, against an appellant's conviction.

(2) Evidence is not inadmissible in the proceedings merely because it would have been inadmissible—

(a) in the proceedings in the court of trial before which the appellant was convicted; or

(b) in earlier proceedings in the Court for an appeal or subsequent appeal against the appellant's conviction.

671AE Determination of subsequent appeal

(1) For a subsequent appeal against an appellant's conviction on a ground of fresh and compelling evidence, the Court must allow the subsequent appeal if it is of the opinion that there was a miscarriage of justice.

(2) However, the Court may, even if it is of the opinion that the point or points raised by a subsequent appeal on a ground of fresh and compelling evidence might be decided in favour of the appellant, dismiss the subsequent appeal if it considers that no substantial miscarriage of justice has actually occurred.

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(3) For a subsequent appeal against an appellant's conviction on a ground of new and compelling evidence, the Court must allow the subsequent appeal if, on the balance of probabilities, it is of the opinion that, in considering all of the evidence, the appellant was not guilty of the offence of which the appellant was convicted.

(4) Also, if for any subsequent appeal the Court considers the subsequent appeal to be a special case under section 668F, the Court may deal with the appellant under section 668F, despite section 668AA, as if the subsequent appeal were an appeal against conviction under chapter division 2.

(5) The Court must, if a subsequent appeal is not determined under subsection (1), (3) or (4), dismiss the subsequent appeal.

671AF Directions, orders etc. on allowed subsequent appeal

(1) If the Court allows a subsequent appeal under section 671AE, the Court must quash the appellant's conviction and direct a judgment and verdict of acquittal to be entered.

(2) However, if the Court considers, for a subsequent appeal allowed under section 671AE(1), that there is a miscarriage of justice that can be more adequately remedied by an order for a new trial than by any other order, the Court may order a new trial in the way the Court considers appropriate.

(3) If the Court makes an order for a new trial and the appellant is not granted bail, the order is taken to be a warrant for the appellant's detention under the *Corrective Services Act 2006*, section 9(1)(a).

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Chapter division 4 Other provisions for appeals and subsequent appeals

671A Judge's notes and report to be furnished on appeal

(1) The judge of the court of trial shall, in the case of any appeal or application for leave to appeal, furnish to the registrar the judge's notes of the trial, and also a report giving the judge's opinion upon the case or upon any point arising in the case.

(2) However, where shorthand notes have been taken in accordance with this chapter, a transcript of such notes may be furnished in lieu of such judge's notes.

(3) This section does not apply to a subsequent appeal.

671B Supplemental powers

(1) The Court may, if it thinks it necessary or expedient in the interests of justice—

(a) order the production of any document, exhibit, or other thing connected with the proceedings of the Court; and

(b) order any persons who would have been compellable witnesses at the trial to attend and be examined before the Court, whether they were or were not called at the trial, or order any such persons to be examined before any judge of the Court, or before any officer of the Court, or justice, or other person appointed by the Court for the purpose, and admit any depositions so taken as evidence; and

(c) receive the evidence, if tendered, of any witness (including the appellant) who is a competent, but not a compellable, witness; and

(d) receive any other evidence; and

(e) where any question arising on the appeal or subsequent appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which

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can not, in the opinion of the Court, be conveniently conducted before the Court, refer the question for inquiry and report to a commissioner appointed by the Court, and act upon the report of such commissioner so far as the Court thinks fit; and

(f) appoint any person with special expert knowledge to act as assessor to the Court in any case in which it appears to the Court that such special knowledge is required for the determination of the case; and

(g) order the appellant or Crown Law Officer to give further particulars for a ground of the appeal or subsequent appeal; and

(h) strike out a ground of the appeal or subsequent appeal in which the Court considers the particulars are inadequate and not consider the matters in relation to the ground for the proceedings; and

(i) amend or add a ground of appeal or subsequent appeal against a conviction;

and exercise in relation to the proceedings of the Court any other powers which may for the time being be exercised by the Supreme Court on appeals or applications in civil matters, and issue any warrant or other process necessary for enforcing the orders or sentences of the Court.

(2) However, in no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial.

(3) Subject to this chapter, the general rules may provide that any application under subsection (1)(a), (b), (e) or (f) may be heard and determined by a judge of the Court.

671D Right of appellant to be present

(1) An appellant, notwithstanding that the appellant is in custody, shall be entitled to be present if the appellant desires it, on the hearing of the appellant's appeal or subsequent appeal.

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(1A) However, the appellant is not entitled to be present, without leave of the Court, for any of the following—

(a) an appeal on some ground involving a question of law alone;

(b) an application for leave to appeal or leave to make a subsequent appeal;

(c) any proceedings preliminary or incidental to an appeal or subsequent appeal.

(2) The power of the Court to pass any sentence may be exercised notwithstanding that the appellant is not present.

671E Appeals and subsequent appeals permitted in writing

An appellant shall be entitled to present the appellant's case and argument to the Court in writing if the appellant so desires.

671F Costs of appeal or subsequent appeal

(1) On the hearing or determination of an appeal or subsequent appeal, or any proceedings preliminary or incidental thereto, no costs shall be allowed on either side.

(2) The expenses of any assessor appointed, and of any witnesses attending on the order of the Court or examined, and of and incidental to any examination or reference, and of the appearance of an appellant on the hearing of the appeal or subsequent appeal or on any proceedings preliminary or incidental to the appeal or subsequent appeal, shall be defrayed out of the Consolidated Fund up to an amount allowed by the registrar; but, subject to any regulations as to rates of payment made by the Crown Law Officer, the decision of the registrar may be reviewed by the Court or a judge thereof.

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671G Grant of bail to appellant and custody when attending Court

(1) An appellant who is not granted bail shall, pending the determination of the appeal or subsequent appeal, be treated in such manner as may be directed under the laws relating to prisons.

(2) The period the appellant is in custody pending the determination of the appeal or subsequent appeal counts as part of any term of imprisonment under the appellant's sentence.

(3) If an appellant is released on bail pending the determination of the appeal or subsequent appeal—

(a) the period the appellant is released on bail does not count as part of any term of imprisonment under the appellant's sentence, whether passed by the court of trial or the Court; and

(b) the appellant's imprisonment under the appellant's sentence resumes or begins to run, as the case requires, on the day the appellant is received into prison under the appellant's sentence.

(4) Provision shall be made under the laws relating to prisons for the manner in which an appellant, when in custody, is to be brought to any place where the appellant is entitled to be present, or ordered to be taken, for the purposes of this chapter, and for the manner in which the appellant is to be kept in custody whilst absent from prison for the purpose; and an appellant whilst in custody in accordance with those laws shall be deemed to be in legal custody.

(5) Where pursuant to an appeal to the Court by the Attorney-General against sentence the Court varies the sentence—

(a) by imposing a term of imprisonment; or

(b) in a case where the court of trial imposed a term of imprisonment—by increasing the term of imprisonment imposed;

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then, subject to any order the Court may make or any direction it may give to the contrary in the circumstances—

(c) the term of imprisonment referred to in paragraph (a) shall commence from the time the person in question is received into prison pursuant to the decision of the Court or, where that person is already in prison in respect of imprisonment arising out of another matter, from the date of the decision of the Court;

(d) in the service of the increased term of imprisonment referred to in paragraph (b) by the person in question, any part of the sentence already served by the person shall be taken into account.

671H Duties of registrar

(1) The registrar must, if notice is given to the registrar, take all necessary steps for obtaining a hearing of any appeal, subsequent appeal or application.

(2) The registrar must obtain and give the Court, in the appropriate form, all documents, exhibits and other things relating to the proceedings in the court of trial that appear necessary for the proper determination of the appeal, subsequent appeal or application.

(3) Also, for a subsequent appeal or application for leave to make a subsequent appeal, the registrar must obtain and give the Court—

(a) the judge's notes and report under section 671A that relate to the proceedings in the court of trial given to the registrar in relation to any appeal or application for leave to appeal against the appellant's conviction; and

(b) in the appropriate form, all documents, exhibits and other things relating to the proceedings in the Court for—

(i) an appeal or application for leave to appeal against the appellant's conviction; and

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(ii) an earlier subsequent appeal or application for leave to make a subsequent appeal against the appellant's conviction.

(4) The registrar may refer any appeal, subsequent appeal or application to the Court for summary determination if it appears to the registrar that the notice of appeal, subsequent appeal or application does not show any substantial ground of appeal or subsequent appeal.

(5) The Court may, if it considers that the appeal, subsequent appeal or application is frivolous or vexatious, dismiss the appeal, subsequent appeal or application summarily without calling upon any person to attend the hearing.

(6) The registrar must give forms and instructions in relation to notices of appeals, subsequent appeals or applications to—

(a) any person who asks for the same; and

(b) officers of courts; and

(c) the chief executive (corrective services); and

(d) any other officers or persons as the registrar considers appropriate.

(7) The chief executive (corrective services) must cause the forms and instructions mentioned in subsection (6) to be placed at the disposal of prisoners desiring to appeal, to make a subsequent appeal or to make an application.

(8) Also, the chief executive (corrective services) must cause any notice given by a prisoner for whom the chief executive (corrective services) has responsibility to be forwarded for the prisoner to the registrar.

671J Documents, exhibits etc.

(1) Any documents, exhibits, or other things connected with any proceedings before a court of trial, in respect of which any person is entitled or may be authorised to appeal, shall be kept in the custody of the court of trial for such time as may be

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prescribed, subject to such power as may be prescribed for the conditional release of any such documents, exhibits, or other things from that custody.

(2) This section does not apply to a subsequent appeal.

671K Records of proceedings

(1) If the registrar directs in relation to any notice of appeal, subsequent appeal or application for leave to appeal or leave to make a subsequent appeal, the following must be given to the registrar for the use of the Court or a judge of the Court—

(a) a record or part of the record of the proceedings in the court of trial;

(b) for a subsequent appeal—a record or part of the record of earlier proceedings in the Court for an appeal or subsequent appeal against the appellant's conviction.

Note—

See the *Recording of Evidence Act 1962*, section 5 which provides for recording all relevant matter in a legal proceeding.

(2) A copy of a record of proceedings or of any part thereof may be furnished to any party interested in accordance with provisions of the *Criminal Practice Rules 1999* and the *Criminal Practice Rules 1999*, without limiting the generality of the foregoing, may prescribe, for a trial, an appeal or a subsequent appeal—

(a) charges for the copy of the record or part thereof; or

(b) circumstances in which such charges may be varied or waived and on whose or by what authority they may be varied or waived; or

(c) who is a 'party interested' for the purpose of having furnished to the person a copy of the record or part thereof; or

(d) the authorisation of the furnishing of a copy of a record of proceedings or of any part thereof to any other person on the ground that such person has a sufficient interest

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therein, and by whom any such authorisation may be made.

(3) In addition to the foregoing, the Attorney-General may cause a copy of a record of proceedings or of any part thereof to be furnished to any person in such circumstances and subject to such conditions as the Attorney-General thinks fit.

(4) The Crown is entitled to receive a copy of any record of proceedings or of any part thereof without payment of any charge.

(5) The furnishing in accordance with this section and, in an appropriate case, the *Criminal Practice Rules 1999* of a copy of any record of proceedings or of any part thereof shall not render the Crown, a Crown Law Officer, the registrar, a recorder under the *Recording of Evidence Act 1962* or other person responsible for or associated with that furnishing liable in any way in law in respect thereof.

671L Powers exercisable by a judge

The powers of the Court to give leave to appeal, to extend the time in which notice of appeal or of an application for leave to appeal may be given, to give leave to make a subsequent appeal and to allow the appellant to be present at any proceedings in cases where the appellant is not entitled to be present without leave may be exercised by any judge of the Court in the same manner as they may be exercised by the Court, and subject to the same provisions; but if the judge refuses an application on the part of the appellant to exercise any such power in the appellant's favour, the appellant shall be entitled to have the application determined by the Court.

672 Appeals from the decisions of the Court

(1) Where an appeal or subsequent appeal to the Court is upheld, and the appellant is entitled to have the conviction against the appellant quashed by order of the Court, the Court may, upon application on behalf of the Crown, at any time before the

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release of such appellant, either by the same or by a separate order, direct that execution of the order quashing the appellant's conviction be stayed for such time (not exceeding 7 days) as the Court thinks fit; and the Court or a judge thereof shall thereupon make such order for the detention of the appellant or the appellant's return to any former custody, or for granting bail to the appellant, as the Court or judge thinks fit, for the time during which such stay has been directed.

(2) The Court or a judge thereof may, upon application by or on behalf of the Crown Law Officer, make such order for the detention of the appellant or for granting bail to the appellant pending the hearing of an appeal to the High Court of Australia as the Court or a judge may think fit, and may at any time vary or rescind such order.

(3) On the application of any appellant who considers they were wronged by any failure to diligently prosecute such appeal, the Court or a judge thereof may order the immediate execution of the original order of the Court quashing the conviction, and may order the appellant's immediate release, and the Court may further, if it thinks fit, award the appellant such compensation as appears just.

Chapter division 5 Pardons

672A Pardoning power preserved

Nothing in sections 668 to 672 shall affect the pardoning power of the Governor on behalf of the Sovereign, but the Crown Law Officer, on the consideration of any petition for the exercise of the pardoning power having reference to the conviction of any person or to any sentence passed on a convicted person, may—

(a) refer the whole case to the Court, and the case shall be heard and determined by the Court as in the case of an appeal by a person convicted; or

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(b) if the Crown Law Officer desires the assistance of the Court on any point arising in the case with a view to the determination of the petition, refer that point to the Court for its opinion thereon, and the Court shall consider the point so referred and furnish the Crown Law Officer with its opinion thereon accordingly.

675 Conditional remission of sentence by Governor

(1) In any case in which the Governor is authorised, on behalf of the Sovereign, to extend the Royal mercy to an offender under sentence of imprisonment, the Governor may extend mercy upon condition of the offender entering into a recognisance conditioned as in the case of offenders discharged by the Court upon suspension of the execution of a sentence.

(2) The offender is thereupon liable to the same obligations, and is liable to be dealt with in all respects in the same manner, as a person discharged by the Court on recognisance upon such suspension.

676 Pardon in case of imprisonment for non-payment of money

The Governor may extend the Royal mercy to any person imprisoned upon conviction of any of the offences defined in chapter 44, although the person is imprisoned for non-payment of money which is payable to some private person.

677 Effect of pardon

A pardon by the Governor, on behalf of the Sovereign, has the effect of discharging the convicted person from the consequences of the conviction.

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Chapter 68 Exceptions to double jeopardy rules

678 Definitions for chapter

(1) In this chapter—

25 year offence means an offence punishable by imprisonment for life or for a period of 25 years or more.

***acquittal*—**

(a) includes—

(i) an acquittal in appeal proceedings in relation to an offence; and

(ii) an acquittal at the direction of a court; and

(iii) a dismissal under section 700 or the *Justices Act 1886*, section 149; but

(b) does not include—

(i) an acquittal on account of unsoundness of mind under section 647; or

(ii) a discontinuance of proceedings under the *Mental Health Act 2016*, section 119.

administration of justice offence means an offence under chapter 16.

Court means the Court of Appeal.

fresh and compelling evidence see section 678D.

interests of justice see section 678F.

prescribed offence means an offence, punishable by imprisonment for life, defined in—

(a) section 215(1) to which section 215(3), (4) or (4A) applies; or

(b) section 216(1) to which section 216(3)(a) or (b) applies; or

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(c) section 217A(1) to which section 217A(3) applies; or

(d) section 222(1); or

(e) section 229B; or

(f) section 303; or

(g) section 306; or

(h) section 313; or

(i) section 314A; or

(j) section 349; or

(k) section 352(1) to which section 352(3)(a), (b) or (c) applies.

tainted acquittal see section 678E.

(2) For the purposes of this chapter, the retrial of an acquitted person for an offence includes a trial if the offence is not the same as the offence of which the person was acquitted.

(3) In this chapter, a reference to the proceedings in which a person was acquitted includes, if they were appeal proceedings, a reference to the earlier proceedings to which the appeal related.

678A Application of ch 68

(1) This chapter applies if a person has been acquitted of an offence, whether before, on or after the commencement of this section.

(2) However, this chapter does not apply if, in relation to a charge of an offence, a person was acquitted of the offence as charged and convicted instead of another offence of which the person might have been convicted as an alternative to the offence as charged.

Examples where this chapter does not apply—

- in relation to a charge of the offence of murder, a person was acquitted of murder and convicted instead of manslaughter

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- in relation to a charge of an offence committed with circumstances of aggravation, a person was acquitted of the offence committed with circumstances of aggravation and convicted instead of the offence without any of the circumstances of aggravation
- in relation to a charge of the offence of rape, a person was acquitted of rape and convicted instead of incest

(3) This section extends to a person acquitted in proceedings outside this State of an offence under the law of the place where the proceedings were held.

(4) However, this section does not extend as mentioned in subsection (3) if the law of the place where the proceedings were held does not permit the person to be retried and the application of this chapter to the retrial is inconsistent with the Commonwealth Constitution or a law of the Commonwealth.

678B Court may order retrial for murder—fresh and compelling evidence

(1) The Court may, on the application of the director of public prosecutions, order an acquitted person to be retried for the offence of murder if satisfied that—

(a) there is fresh and compelling evidence against the acquitted person in relation to the offence; and

(b) in all the circumstances it is in the interests of justice for the order to be made.

(2) The Court may order a person to be retried for the offence of murder under this section even if the person had been charged with and acquitted of a lesser offence relating to the unlawful killing of another person.

(3) If the Court orders an acquitted person to be retried for the offence of murder, the Court must quash the person's acquittal or remove the acquittal as a bar to the person being retried.

(4) On the retrial, section 17 does not apply in relation to the charge of the offence of murder.

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678BA Court may order retrial for prescribed offence—fresh and compelling evidence

(1) The Court may, on the application of the director of public prosecutions, order an acquitted person to be retried for a prescribed offence if satisfied that—

(a) there is fresh and compelling evidence against the acquitted person in relation to the prescribed offence; and

(b) in all the circumstances it is in the interests of justice for the order to be made.

(2) The Court may order a person to be retried for a prescribed offence (the ***relevant offence***) under this section even if—

(a) the person had been charged with and acquitted of another prescribed offence; and

(b) the relevant offence is an offence of which the person might have been convicted as an alternative to the other prescribed offence.

(3) Also, the Court may order a person to be retried for a prescribed offence (also the ***relevant offence***) under this section even if—

(a) the person had been charged with and acquitted of the offence of murder; and

(b) the relevant offence is an offence of which the person might have been convicted as an alternative to the offence of murder.

(4) If the Court orders an acquitted person to be retried for the prescribed offence, the Court must quash the person's acquittal or remove the acquittal as a bar to the person being retried.

(5) On the retrial, section 17 does not apply in relation to the charge of the prescribed offence.

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678C Court may order retrial for 25 year offence—tainted acquittal

(1) The Court may, on the application of the director of public prosecutions, order an acquitted person to be retried for a 25 year offence if satisfied that—

(a) the acquittal is a tainted acquittal; and

(b) in all the circumstances it is in the interests of justice for the order to be made.

(2) The Court may order a person to be retried for a 25 year offence under this section even if the person had been charged with and acquitted of another offence of which the person might have been convicted as an alternative to the 25 year offence.

(3) If the Court orders an acquitted person to be retried for a 25 year offence, the Court must quash the person's acquittal or remove the acquittal as a bar to the person being retried.

(4) On the retrial, section 17 does not apply in relation to the charge of the 25 year offence.

678D Fresh and compelling evidence—meaning

(1) This section applies for the purpose of deciding under this chapter whether there is fresh and compelling evidence against an acquitted person in relation to the offence of murder or a prescribed offence.

(2) Evidence is ***fresh*** if—

(a) it was not adduced in the proceedings in which the person was acquitted; and

(b) it could not have been adduced in those proceedings with the exercise of reasonable diligence by—

(i) a police officer in relation to the investigation of the commission of the offence; or

(ii) a prosecutor in relation to the prosecution of the offence.

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(3) For subsection (2)(b), a police officer or prosecutor is taken not to have failed to exercise reasonable diligence merely because the police officer or prosecutor relied on advice or forensic services provided by—

(a) Forensic Science Queensland under the *Forensic Science Queensland Act 2024*; or

(b) the part of Queensland Health that was known as Forensic and Scientific Services before the commencement of the *Forensic Science Queensland Act 2024*.

(4) Evidence is ***compelling*** if—

(a) it is reliable; and

(b) it is substantial; and

(c) in the context of the issues in dispute in the proceedings in which the person was acquitted, it is highly probative of the case against the acquitted person.

(5) Evidence that would be admissible on a retrial under this chapter is not precluded from being fresh and compelling evidence merely because it would have been inadmissible in the earlier proceedings against the acquitted person.

(6) In this section—

forensic services means any type of testing and analysis or scientific interpretation.

Queensland Health means the department administering the *Hospital and Health Boards Act 2011*.

678E Tainted acquittal—meaning

(1) This section applies for the purpose of deciding under this chapter whether the acquittal of an accused person is a tainted acquittal.

(2) An acquittal is ***tainted*** if—

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(a) the accused person or another person has been convicted in this State or elsewhere of an administration of justice offence in relation to the proceedings in which the accused person was acquitted; and

(b) it is more likely than not that, but for the commission of the administration of justice offence, the accused person would have been convicted.

(3) An acquittal is not a tainted acquittal during any of the following periods—

(a) the period provided under section 671(1) for the person convicted of the administration of justice offence (the ***convicted person***) to appeal, or obtain leave to appeal, from the conviction;

(b) if, within the period mentioned in paragraph (a), the convicted person gives notice of an appeal—the period ending when the appeal is decided;

(c) if, within the period mentioned in paragraph (a), the convicted person gives notice of an application for leave to appeal, the period ending—

(i) if the application is refused—when the decision refusing the application is made; or

(ii) if the application is granted—when the appeal is decided.

Note—

Section 668D provides the right of appeal.

(4) If the conviction for the administration of justice offence is, on appeal, quashed after the Court has ordered the acquitted person to be retried under this chapter because of the conviction, the person may apply to the Court to set aside the order and—

(a) restore the acquittal that was quashed; or

(b) restore the acquittal as a bar to the person being retried for the offence.

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678F Interests of justice—matters for consideration

(1) This section applies for the purpose of deciding under this chapter whether it is in the interests of justice for an order to be made for the retrial of an acquitted person.

(2) It is not in the interests of justice to make an order for the retrial of an acquitted person unless the Court is satisfied that a fair retrial is likely in the circumstances.

(3) The Court must have regard in particular to—

(a) the length of time since the acquitted person allegedly committed the offence; and

(b) whether any police officer or prosecutor has failed to act with reasonable diligence or expedition in relation to—

(i) the investigation of the commission of the offence of which the person was acquitted and the prosecution of the proceedings in which the person was acquitted; and

(ii) the application for the retrial of the acquitted person.

678G Application for retrial—procedure

(1) If a person has been acquitted, not more than 1 application for the retrial of the person may be made under this chapter in relation to the acquittal.

(2) If the acquittal results from a retrial under this chapter—

(a) an application may not be made for an order under section 678B or 678BA in relation to the acquittal; but

(b) an application may be made for an order under section 678C in relation to the acquittal.

(3) An application for the retrial of an acquitted person may not be made under this chapter unless—

(a) the person has been charged with the offence for which the retrial is sought (the ***relevant offence***); or

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(b) a warrant has been issued for the person's arrest in relation to the relevant offence.

(4) The application must be made not later than 28 days after the person is charged with the relevant offence or the warrant is issued for the person's arrest in relation to the relevant offence.

(5) The Court may extend the period mentioned in subsection (4) for good cause.

(6) The Court must consider the application at a hearing.

(7) The person to whom the application relates is entitled to be present and heard at the hearing, whether or not the person is in custody.

(8) However, if the person has been given a reasonable opportunity to be present, the application may be decided even if the person is not present.

(9) The powers of the Court mentioned in section 671B(1) may be exercised in relation to the hearing of the application.

(10) The Court may at 1 hearing consider more than 1 application under this chapter for a retrial (whether or not relating to the same person), but only if the offences concerned may be tried on the same indictment.

(11) If the Court decides in proceedings on an application under this chapter that the acquittal is not a bar to the person being retried for the offence concerned, it must make a declaration to that effect.

678H Retrial

(1) An indictment for the retrial of a person that has been ordered under this chapter may not, without the leave of the Court, be presented after the end of the period of 2 months after the order was made.

(2) The Court may give leave only if it is satisfied that—

(a) the prosecutor has acted with reasonable expedition; and

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(b) there is good and sufficient reason for the retrial despite the lapse of time since the order was made.

(3) If, after the end of the period of 2 months after an order for the retrial of an accused person was made under this chapter, an indictment for the retrial of the person has not been presented or has been withdrawn or quashed, the person may apply to the Court to set aside the order for the retrial and—

(a) restore the acquittal that was quashed; or

(b) restore the acquittal as a bar to the person being tried for the offence.

(4) If the order is set aside, a further application may not be made under this chapter for the retrial of the accused person in relation to—

(a) the offence concerned; or

(b) another offence of which the person might have been convicted as an alternative to the offence concerned.

(5) At the retrial of an accused person, the prosecution is not entitled to refer to the fact that the Court has found that it appears that—

(a) there is fresh and compelling evidence against the acquitted person; or

(b) more likely than not, but for the commission of the administration of justice offence, the accused person would have been convicted.

678I Authorisation of police investigations

(1) This section applies to any police investigation of the commission of an offence by an acquitted person in relation to the possible retrial of the person for the offence under this chapter.

(2) For the purposes of this section, a police investigation is an investigation that involves, whether with or without the consent of the acquitted person—

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(a) any arrest, questioning or search of the acquitted person, or the issue of a warrant for the arrest of the person; or

(b) any forensic procedure carried out on the person or any search or seizure of premises or property of or occupied by the person.

(3) A police officer may carry out or authorise a police investigation to which this section applies only if the director of public prosecutions—

(a) has advised that, in the opinion of the director of public prosecutions, the acquittal would not be a bar to the retrial of the acquitted person in this State for the offence; or

(b) has given written consent to the police investigation on the application in writing of the commissioner, or a deputy commissioner, of the police service.

(4) The commissioner, or a deputy commissioner, of the police service may make an application for the police investigation only if satisfied that relevant evidence for the purposes of an application for a retrial under this chapter—

(a) has been obtained; or

(b) is likely to be obtained as a result of the investigation.

(5) The director of public prosecutions may give consent to the police investigation only if satisfied that—

(a) there is, or there is likely as a result of the investigation to be, sufficient new evidence to warrant the conduct of the investigation; and

(b) it is in the public interest for the investigation to proceed.

(6) Despite the *Police Service Administration Act 1990*, section 4.10, the commissioner of the police service may not delegate powers of the commissioner under this section to a police officer or staff member.

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678J Bail

(1) This section has effect despite anything to the contrary in the *Bail Act 1980*.

(2) There is a presumption in favour of bail for a person who is charged with an offence for which a retrial is sought under this chapter until the application for the retrial is dealt with.

678K Restrictions on publication

(1) A person must not publish any matter for the purpose of identifying or having the effect of identifying an acquitted person who is being retried under this chapter or who is the subject of—

(a) a police investigation, or an application for a police investigation, mentioned in section 678I; or

(b) an application for a retrial, or an order for retrial, under this chapter.

(2) Subsection (1) does not apply if the publication is authorised by order of the Court or of the court before which the acquitted person is being retried.

(3) The relevant court may make an order authorising publication only if the court is satisfied that it is in the interests of justice to make the order.

(4) Before making an order under this section, the relevant court must give the acquitted person a reasonable opportunity to be heard on the application for the order.

(5) The relevant court may at any time vary or revoke an order under this section.

(6) The prohibition on publication under this section ceases to have effect, subject to any order under this section, when the first of the following paragraphs apply—

(a) there is no longer any step that could be taken which would lead to the acquitted person being retried under this chapter;

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(b) if the acquitted person is retried under this chapter—the trial ends.

(7) Nothing in this section affects any prohibition of the publication of any matter under any other Act or law.

(8) A contravention of a prohibition on publication under this section is punishable as contempt of the Supreme Court.

Chapter 69 Seizure and detention of property connected with offences—restitution of property unlawfully acquired

679A Search of aircraft

(1) If it appears to the person in command of an aircraft that there are reasonable grounds for suspecting that any offence involving the safety of the aircraft has been, is being, is about to be, or may be, committed on board or in relation to the aircraft it shall be lawful for the person and for any person acting by the person's authority with such assistance as the person or such person may think necessary to search or cause to be searched—

(a) the aircraft and any person luggage and freight on board the aircraft; and

(b) any person who is about to board the aircraft and any luggage or freight that is about to be placed on board the aircraft;

and seize—

(c) anything whether animate or inanimate and whether living or dead as to which there are reasonable grounds for believing that it will of itself or by or on scientific

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examination, afford evidence as to the commission of any offence; or

(d) anything as to which there are reasonable grounds for believing that it is intended to be used for the purpose of committing any offence;

and take it before a justice to be dealt with according to law.

(2) A female shall not be searched under this section except by a female.

680 Property found on offenders on arrest

When, on the arrest of any person on a charge of an offence relating to property, the property in respect of which the offence is alleged to be committed is found in the person's possession, the person arresting the person may take such property before a justice to be dealt with according to law.

682 Disposal of property seized

(1) When anything is seized or taken under the provisions of this Code, the person seizing or taking it is required forthwith to carry it before a justice.

(2) The justice may cause the thing so seized or taken to be detained in such custody as the justice may direct, taking reasonable care for its preservation, until the conclusion of any investigation that may be held with respect to it; and, if any person is committed for trial for any offence committed with respect to the thing so seized or taken, or committed under such circumstances that the thing so seized or taken is likely to afford evidence at the trial, the justice may cause it to be further detained in like manner for the purpose of being produced in evidence at such trial.

(3) If no person is so committed, the justice is required to direct that the thing be returned to the person from whom it was taken, unless the justice is authorised or required by law to dispose of it otherwise.

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(4) If the thing so seized or taken is anything forged or counterfeit, or is of such a nature that a person who has it in the person's possession without lawful authority or excuse is guilty of an offence, then, if any person is committed for trial for any offence committed with respect to it or committed under such circumstances as aforesaid and is convicted, the court before which the person is convicted, or, in any other case, any justice, may cause it to be defaced or destroyed.

(5) If the thing so seized or taken is of such a nature that a person who has it in his or her possession, knowing its nature and without lawful authority or excuse, is guilty of an offence, then, as soon as it appears that it will not be required, or further required, in evidence against the person who had it in his or her possession, it is to be delivered to the Treasurer, or some person authorised by the Treasurer to receive it.

683 Explosives

If the thing seized or taken is an explosive substance found in a vessel or vehicle, the person acting in the execution of the warrant may for 24 hours after seizure, and for such longer time as is necessary for the purpose of removal to a safe place of deposit, use the vessel or the vehicle, with the tackle and furniture thereof, or the beasts, and accoutrements belonging thereto as the case may be, paying afterwards to the owner of the vessel or vehicle a sufficient recompense for its use, which is to be assessed by the justice or justices before whom the suspected offender is brought, and, in case of non-payment immediately after such assessment, may be recovered before 2 justices in a summary way.

685B Orders for delivery of certain property

(1) Where any property has come into the custody or possession of a court or justices in connection with any charge, the court or justices, on the conclusion of the trial and on the application of the prosecutor, may make an order for the delivery of the property to the person appearing to the court or

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justices to be the person lawfully entitled thereto or, if that person can not be ascertained, may make such order with respect to the property as to the court or justices seems just.

(2) An order so made shall not be a bar to the right of any person to recover the property by action from the person to whom it is delivered by virtue of the order.

Chapter 70 Informations by private persons for indictable offences—ex officio indictments

686 Information by leave of the court by private prosecutors

(1) Any person may by leave of the Supreme Court present an information against any other person for any indictable offence, alleged to have been committed by such other person.

(2) An information presented by leave of the court is to be signed by the person on whose application the leave is granted, or some other person appointed by the court in that behalf, and filed in the Supreme Court.

(3) The person who signs the information is called the prosecutor.

(4) The information is to be intituled 'The Queen on the prosecution of the prosecutor (naming the person) against the accused person (naming the person)', and must state that the prosecutor informs the court by leave of the court.

(5) Except as otherwise expressly provided, the information and the proceedings upon it are subject to the same rules and incidents in all respects as an indictment presented by a Crown Law Officer and the proceedings upon such an indictment as hereinbefore set forth.

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687 Security to be given by prosecutor for costs of defence

Before the information is presented the prosecutor is to be required to give security, in such amount and in such manner as the court on giving leave to present the information may direct, that the prosecutor will prosecute the information without delay, and will pay to the accused person such costs incurred by the accused person in respect of the person's defence to the charge as the court may order the prosecutor to pay.

688 Service of information

An office copy of the information is to be served upon the accused person, upon which copy there must be endorsed a summons, under the hand of the registrar and seal of the court, requiring the person to appear and plead to the information within the same time after service within which the person would be required to enter an appearance after service of a writ in a civil action.

689 Plea

The accused person is required within the time so limited to enter an appearance and file the person's plea in writing in the Supreme Court, and to deliver a copy thereof forthwith to the prosecutor.

690 Default of plea

(1) If the accused person does not plead to the information according to the exigency of the summons endorsed on the copy served on the person, the prosecutor may serve the accused person with a notice to the effect that unless the person pleads or demurs within 8 days a plea of not guilty will be filed in the person's name.

(2) Upon filing an affidavit setting forth the service of the information and of such notice, and of default of pleading in

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accordance with the exigency of the notice, the prosecutor may cause a plea of not guilty to be filed for the accused person, and thereupon the same proceedings may be had as if the accused person had filed a plea of not guilty.

(3) Or, in the case of a misdemeanour, judgment of conviction may, by leave of the court or a judge, be entered against the accused person for want of a plea.

(4) But the court or a judge may, either before or after the time so prescribed, allow further time for the accused person to plead or demur to the information.

691 Time and place of trial

When the accused person pleads any plea, or when a plea of not guilty is filed for the person by the prosecutor, either party may apply to a judge to appoint the time and place of trial, of which notice is to be given to the accused person.

692 Effect of judgment for prosecutor on demurrer

(1) If the accused person demurs only, and does not plead any plea, and judgment is given against the person on demurrer, the person is required to plead to the information within such time as the court or a judge may allow.

(2) If the accused person makes default in doing so, the same proceedings may be taken as if the person had made default in pleading in the first instance.

693 Effect of judgment by default

(1) If judgment of conviction is entered against the accused person for want of a plea, the person is required to attend to receive the judgment of the court at a time and place to be appointed by a judge.

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(2) If the accused person does not so attend, any justice may issue a warrant to arrest the person and bring him or her before the court to receive judgment.

694 Costs of defence

In any of the following cases, that is to say—

(a) if an application for leave to present an information against a person (the ***accused person***) ends without the application being granted;

(b) if the accused person pleads to the information, and is not brought to trial within a year after filing the person's plea;

(c) if a Crown Law Officer informs the court that the Crown Law Officer will not further proceed on the information;

(d) if the accused person is acquitted upon trial;

the court, or the judge before whom the trial (if any) is had, may award costs to the accused person.

695 Practice to be applied on ex officio indictment

When an indictment is presented in the Supreme Court by a Crown Law Officer against any person who has not been committed for trial for the offence charged in the indictment, the Crown may proceed thereon in the manner prescribed in this chapter with respect to informations filed by private prosecutors, except that no security shall be required.

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Chapter 71 Miscellaneous provisions

695A Power to protect victim of violence by prohibiting publication of information about proceedings

(1) This section applies to—

(a) a judge of a court—

(i) to which someone has been committed for trial or sentence for an indictable offence involving personal violence; or

(ii) before which an indictment has been presented for an offence involving personal violence; or

(iii) hearing and deciding a proceeding for a COVA application relating to an offence involving personal violence; and

(b) a magistrate summarily hearing and deciding a proceeding for an indictable offence involving personal violence, including a committal proceeding.

(2) The judge or magistrate may make an order prohibiting, indefinitely or for a specified time, the publication of information about the address of a person against whom the violence is alleged to have been committed.

(3) The order may be made on application by the person, or by the prosecution acting in the person's interests.

(4) The order may be made only if the information is not relevant to the guilt or innocence of the charged person.

(5) An application for an order under this division may be made—

(a) in chambers; and

(b) only in the presence of persons the judge or magistrate allows.

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(6) On the hearing of the application the judge or magistrate may receive and act on information the judge or magistrate considers appropriate.

(7) In this section—

address, of a person, means the address of the person's residence, school, place of employment or other address.

COVA application means an application under the repealed *Criminal Offence Victims Act 1995*, part 3, as applying under the *Victims of Crime Assistance Act 2009*, chapter 6, part 2.

696 Warrant for release of person detained in custody

(1) This section applies if—

(a) a person (the ***accused***) is detained in custody on a charge of an indictable offence; and

(b) a decision has been made not to proceed with the charge.

(2) The Attorney-General may issue a warrant for the accused's release from custody in relation to the charge.

(3) The warrant must be—

(a) signed by the Attorney-General; and

(b) addressed to the person having custody of the accused.

(4) The warrant authorises the person having custody of the accused to release the accused from custody immediately in relation to the charge stated in the warrant.

(5) However, the accused must not be released from custody if the accused is otherwise lawfully detained.

697 Court may direct certain persons to be prosecuted for perjury

(1) If it appears to any court that any person has been guilty of perjury in any testimony given before it, the court may

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commit the person to take the person's trial for such perjury before any court of competent jurisdiction in the same manner as if the person had been charged before a justice with the same perjury, and sufficient evidence had been given against the person.

(2) A person so committed may be granted bail in the same manner as if the person had been committed for trial by a justice.

(3) The court may order that any person be given a notice to appear and give evidence at the trial of a person so directed to be prosecuted.

(4) In this section—

court includes any person before whom a writ of inquiry is executed, but does not include a Magistrates Court.

699 Staying prosecution for publication of parliamentary paper

(1) A person prosecuted on a charge of the unlawful publication of defamatory matter which is contained in any paper published by the person, or by the person's servant, by order or under the authority of the Legislative Assembly, may, at any stage of the proceedings, apply to the Supreme Court or a judge thereof or to the court in which the proceedings are pending, for an order staying the prosecution, first giving 24 hours notice of intention so to do to the prosecutor; and upon production to the court or judge of a certificate under the hand of the Speaker of the Legislative Assembly or clerk of the Parliament stating that the paper in respect of which the prosecution is instituted was published by the defendant, or by the defendant's servant, by order or under the authority of the Assembly, together with an affidavit verifying such certificate, the court or judge is required immediately to stay the prosecution, and may order the prosecutor to pay to the defendant the defendant's costs of defence.

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(2) A person prosecuted on a charge of the unlawful publication of defamatory matter which is contained in a copy of, or an extract from or abstract of, any such paper, may, at any stage of the proceedings, apply to the Supreme Court or a judge thereof, or to the court in which the proceedings are pending, for an order staying the prosecution; and upon production to the court or judge of an original of such paper, together with such a certificate as aforesaid, and an affidavit verifying the same, the court or judge may stay the prosecution, and may order the prosecutor to pay to the defendant the defendant's costs of defence.

700 Certificate of dismissal by justices

(1) When justices dismiss a complaint of an offence punishable on summary conviction, whether an indictable offence or not, they may, if required and if they think fit, give the accused person a certificate of dismissal.

(2) Such a certificate is a bar to any further prosecution of the accused person for the same cause.

702 Saving of civil remedies

Except when expressly so provided, the prosecution or conviction of a person for an offence does not affect any civil remedy which any person aggrieved by the offence may have against the offender.

704 No court fees in criminal cases

(1) No fees can be taken in any court of criminal jurisdiction or before any justice from any person who is charged with an indictable offence for any proceeding had or taken in the court or before the justice with respect to the charge.

(2) To remove any doubt, it is declared that the offender levy imposed under the *Penalties and Sentences Act 1992*, section 179C is not a fee mentioned in subsection (1).

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705 Copies of depositions to be allowed to persons committed for trial

(1) Any person who is committed for trial or granted bail for any indictable offence is entitled to have on demand from the person who has the lawful custody thereof copies of the depositions of the witnesses on whose depositions the person has been so committed or granted bail.

(2) However, if the demand is not made before the day appointed for the commencement of the sittings of the court at which the trial of the person on whose behalf the demand is made is to take place, the person is not entitled to have any such copy unless the judge is of opinion that the copy may be made and delivered without delay or inconvenience to the trial.

(3) The court may postpone a trial on account of the accused person not having previously had a copy of the depositions.

706 Inspection of depositions at trial

Any person who is tried for any offence is entitled at the time of the person's trial to inspect without fee all depositions, or copies of depositions, which have been taken against the person and returned into the court before which the trial is had.

706A Development of administrative arrangements

(1) An administrative arrangement can not affect—

(a) any power of a court, including any inherent power, to give a direction or make an order in a particular case, or generally; or

(b) the judicial independence of any court or judicial officer.

(2) However, a practice direction may be made to give effect to an administrative arrangement.

(3) In this section—

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administrative arrangement means an arrangement entered into between 2 or more relevant agencies for the development of compatible business and operating processes to facilitate the efficient and timely resolution of proceedings under relevant laws.

relevant agency means any of the following—

(a) the chief executive;

(b) the chief executive (corrective services);

(c) the chief executive of the department in which the *Youth Justice Act 1992* is administered;

(d) the commissioner of the police service;

(e) the director of public prosecutions;

(f) the Chief Magistrate under the *Magistrates Act 1991*;

(g) the Chief Judge of the District Court of Queensland under the *District Court of Queensland Act 1967*;

(h) the Chief Justice of Queensland;

(i) the chief executive officer, Legal Aid Queensland;

(j) the president of the Queensland Law Society Incorporated;

(k) the president of the Bar Association of Queensland;

(l) if nominated by the chief executive—the chief executive officer of a publicly funded, non-profit corporation whose primary purpose as a corporation is to provide legal services to Aboriginal and Torres Strait Islander people.

relevant law means any of the following—

(a) any law that includes provisions relating to criminal procedure, including in particular this Code and the *Justices Act 1886*;

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(b) any other law that operates in conjunction with, or whose operation is otherwise associated with, the operation of a law mentioned in paragraph (a);

(c) practice directions relating to criminal practice and procedure for the purposes of the operation of a law mentioned in paragraph (a).

707 Forms of criminal proceedings

A form prescribed under a rule of court for a criminal proceeding is taken to be—

(a) sufficient for the purpose for which it is to be used; and

(b) if used, a sufficient statement of the relevant offence or matter.

708 Regulation-making power

The Governor in Council may make regulations under this Code.

Part 9 Transitional and validation provisions

Chapter 72 Transitional provision for Act No. 18 of 1999

709 Transitional provision for Act No. 18 of 1999

On a charge of unlawful stalking committed after the commencement of the *Criminal Code (Stalking) Amendment Act 1999* (the ***commencement***), evidence of an act described in section 359B(c) done before the commencement may be

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admitted for the purpose of deciding whether an act done after the commencement constituted unlawful stalking.

Chapter 73 Transitional provision for Justice Legislation (Miscellaneous Provisions) Act (No. 2) 1999

710 Transitional provision for Justice Legislation (Miscellaneous Provisions) Act (No. 2) 1999

(1) This section applies if, after the commencement of the *Justice Legislation (Miscellaneous Provisions) Act (No. 2) 1999*, section 11—

(a) a charge of an offence against section 339(1) is before the Supreme or District Court; and

(b) the person charged with the offence informs the court that he or she does not want to be tried by jury; and

(c) the prosecutor agrees to the charge being dealt with summarily.

(2) The court may order that—

(a) the matter be remitted to a court of summary jurisdiction for the charge to be dealt with summarily; and

(b) the court registrar send the relevant court record to the registrar of the relevant court of summary jurisdiction.

(3) The court may not make an order under subsection (2) if satisfied that because of the nature or seriousness of the offence or any other relevant consideration the defendant, if convicted, may not be adequately punished on summary conviction.

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Chapter 74 Transitional provision for Criminal Law Amendment Act 2000

711 Transitional provision for Criminal Law Amendment Act 2000

(1) In relation to an indictment mentioned in section 578(1), (1A) or (4) charging a person with an offence that was committed before the commencement of this section, the reference in those provisions to section 352 is a reference to section 337 as in force at any time before the commencement of this section.

(2) In relation to an indictment presented before the commencement of this section, the person charged in the indictment may be convicted of an offence because of section 578 only if the person could have been convicted of the offence because of section 578 as in force immediately before the commencement of this section.

Chapter 75 Transitional provision for Criminal Law Amendment Act 2002

712 Transitional provision for Criminal Law Amendment Act 2002

Section 568(6) to (8), as in force at any time before the commencement of this section, continues to apply in relation to an indictment under section 568(6) presented before the commencement of this section as if the *Criminal Law Amendment Act 2002*, section 29 had not been enacted.

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Chapter 76 Transitional provision for Sexual Offences (Protection of Children) Amendment Act 2003

713 Transitional provision for Sexual Offences (Protection of Children) Amendment Act 2003—unlawful sexual relationship

On a charge of an offence as defined in section 229B, evidence of an unlawful sexual act or acts done before the commencement of this section may be admitted for the purpose of deciding whether unlawful sexual acts done after the commencement of this section establish the existence of an unlawful sexual relationship.

Chapter 77 Validation provision for Criminal Proceeds Confiscation Act 2002

714 Validation provision for Criminal Proceeds Confiscation Act 2002—presentation of indictment

(1) This section applies to an indictment presented before the commencement of this section by a person, appointed or employed in, or engaged by, the Office of the Director of Public Prosecutions, who was not authorised under an Act to present the indictment.

(2) The indictment is taken to have been presented by the director of public prosecutions.

(3) Any proceedings taken, or other thing done, in relation to the indictment is taken to be as valid as if the proceedings were taken, or other thing done, in relation to an indictment presented by the director of public prosecutions.

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Chapter 78 Transitional provision for Evidence (Protection of Children) Amendment Act 2003

715 Transitional provision for disclosure by the prosecution

Chapter 62, chapter division 3 applies to the following types of relevant proceeding, even if the offence concerned was committed before the commencement of this section—

(a) a relevant proceeding started in relation to an offence if the charge against the accused person for the offence was brought after the commencement of this section;

(b) a relevant proceeding in relation to an indictment presented after the commencement of this section;

(c) a relevant proceeding that is a new trial ordered by the court if the order is made after the commencement of this section.

Chapter 79 Transitional provision for Defamation Act 2005

716 Defence of truth of defamatory matter still to be specially pleaded

Section 599, as in force at any time before the commencement of this section, continues to apply in relation to a person charged with the unlawful publication of defamatory matter under the *Defamation Act 1889* as if the *Defamation Act 2005*, schedule 4, amendments of the Criminal Code, item 2 had not been enacted.

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Chapter 80 Transitional provision for Criminal Code Amendment Act 2006

717 Effect of repeal of ss 56, 57 and 58

(1) After the commencement of the *Criminal Code Amendment Act 2006*, a person can not be charged with, prosecuted for or further prosecuted for, or convicted of, an offence against section 56, 57 or 58 or punished for doing or omitting to do an act that constituted that offence.

(2) However, subsection (1) does not prevent a person being punished by the Legislative Assembly for contempt of the Legislative Assembly as defined under the *Parliament of Queensland Act 2001*.

Chapter 81 Transitional provision for Justice and Other Legislation Amendment Act 2007

718 Appointment of animal valuers

A person appointed as an animal valuer under section 450F, as in force immediately before the commencement of this section, continues to hold the appointment after the commencement, as if the appointment had been made by the chief executive.

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Chapter 82 Transitional provision for Criminal Code and Other Acts Amendment Act 2008

719 References to particular offences

(1) The following provisions apply as if a reference to section 208 included a reference to section 209 as in force at any time before its repeal by the amending Act—

- section 229B(10), definitions *offence of a sexual nature* and *prescribed age*
- section 578(1), (1A) and (4)
- section 636(1), definition *prescribed offence*.

(2) Section 568(2) applies as if it included a reference to an indictment against a trustee to whom the *Trust Accounts Act 1973* applies for an offence under section 436 as in force at any time before its repeal by the amending Act.

(3) Section 641(1) applies as if it included a reference to a trustee within the meaning of the *Trust Accounts Act 1973* charged with an offence under section 436 as in force at any time before its repeal by the amending Act and, for that purpose, section 641(2), as in force immediately before the commencement of this section, continues to apply.

(4) Section 644A applies as if the reference to section 101 included a reference to section 103 as in force at any time before its repeal by the amending Act.

(5) In this section—

amending Act means the *Criminal Code and Other Acts Amendment Act 2008*.

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Chapter 83 Transitional provision for Criminal Code and Jury and Another Act Amendment Act 2008

720 Trial by judge alone

(1) Chapter 62, chapter division 9A applies in relation to a trial begun after the commencement whether the offence was committed before or after the commencement.

(2) For subsection (1), the trial has begun when the jury panel attends before the court.

(3) In this section—

commencement means the commencement of the *Criminal Code and Jury and Another Act Amendment Act 2008*, part 2.

Chapter 84 Transitional provision for Justice and Other Legislation Amendment Act 2008, part 8

721 Notices to witnesses

(1) This section applies if, before the commencement of this section, a witness is given a notice to witness in relation to the trial of a person.

(2) Sections 559, 590AA, 593A and 597A, as in force immediately before the commencement of this section, continue to have effect in relation to the notice to witness until—

(a) the trial of the person is concluded; or

(b) the court otherwise directs; or

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(c) 3 years after the commencement of this section;

whichever happens first.

Chapter 85 Transitional provision for the Criminal Code (Medical Treatment) Amendment Act 2009

722 Retrospective application of amendment

(1) This Code as amended by the *Criminal Code (Medical Treatment) Amendment Act 2009*, section 3 applies to proceedings for an offence—

(a) started but not finished before 19 August 2009; or

(b) started after 19 August 2009, whether the act or omission constituting the offence happened before or after 19 August 2009.

(2) Subsection (1) does not apply to proceedings for an appeal against a conviction or sentence that happened before 19 August 2009.

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Chapter 86 Transitional provisions for Criminal Code (Abusive Domestic Relationship Defence and Another Matter) Amendment Act 2010

723 Retrospective application of amendment

(1) This Code, as amended by the *Criminal Code (Abusive Domestic Relationship Defence and Another Matter) Amendment Act 2010*, section 3, applies to proceedings for an offence—

(a) started but not finished before the commencement; or

(b) started after the commencement, whether the act or omission constituting the offence happened before or after the commencement.

(2) Subsection (1) does not apply to proceedings for an appeal from a conviction or sentence that happened before the commencement.

(3) In this section—

commencement means the commencement of the *Criminal Code (Abusive Domestic Relationship Defence and Another Matter) Amendment Act 2010*, section 3.

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Chapter 87 Transitional provision for members of QR Group

724 Employees of members of QR Group taken to be persons employed in public service during interim period

(1) During the interim period, the chief executive officer of QR Limited and persons employed by a member of QR Group are taken to be persons employed in the public service.

(2) In this section—

change of ownership means the beginning of the day notified by the Treasurer by gazette notice for this chapter.

commencement means the commencement of this chapter.

interim period means the period from the commencement to the change of ownership.

member of QR Group means QR Limited or a related body corporate of QR Limited.

QR Limited means QR Limited ACN 124 649 967.

related body corporate has the meaning given in the Corporations Act.

Treasurer means the Minister who administers the *Financial Accountability Act 2009*.

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Chapter 88 Transitional provisions for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010

725 Definitions for ch 88

In this chapter—

amending Act means the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*.

originating step, for a proceeding, means—

(a) the arrest of the defendant in the proceeding; or

(b) the making of a complaint under the *Justices Act 1886*, section 42 in relation to the defendant in the proceeding; or

(c) the serving of a notice to appear on the defendant in the proceeding under the *Police Powers and Responsibilities Act 2000*, section 382.

726 New disclosure provisions apply only to prosecutions commenced after commencement

(1) Chapter 62, chapter divisions 2, 3, 4 and 4A, as amended or inserted by the amending Act, apply to a proceeding for an offence only if an originating step for the proceeding is taken on or after the commencement of this section.

(2) For subsection (1), it does not matter when the offence was committed.

727 New summary disposition provisions apply only to prosecutions commenced after commencement

(1) Chapter 58A, as amended by the amending Act, applies in relation to a charge for an offence only if an originating step

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for the proceeding for the charge is taken on or after the commencement of this section.

(2) For subsection (1), it does not matter when the offence was committed.

(3) Subsection (4) applies if—

(a) an originating step for a proceeding for a charge for an old offence is taken against a person on or after the commencement of this section in relation to circumstances that happened before the repeal of the provision providing for the old offence; and

(b) the proceeding for the old offence is not prevented under section 11(1).

(4) The issue of whether the charge for the old offence must be heard and decided summarily must, to the greatest practicable extent, be decided according to whether a charge for the new offence could be, or would be required to be, heard and decided summarily.

(5) In this section—

new offence means the offence that, for the purposes of section 11(1), is the offence under the law in force at the time when the person is charged with the old offence.

old offence means an offence against a provision of this Code that was repealed at any time before the commencement of this section.

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Chapter 89 Transitional provision for Criminal Code and Other Legislation Amendment Act 2011

728 Application of amendment Act

(1) This Code, as amended by the amendment Act, sections 4 and 6, applies to proceedings for an offence started after the commencement of the sections, whether the act or omission constituting the offence happened before or after the commencement of the sections.

(2) Subsection (1) does not apply to proceedings for an appeal from a conviction or sentence that happened before the commencement of the amendment Act, sections 4 and 6.

(3) This Code, as amended by the amendment Act, sections 5, 7 and 8, applies to proceedings for an offence only if the act or omission constituting the offence happened after the commencement of the sections.

(4) In this section—

amendment Act means the *Criminal Code and Other Legislation Amendment Act 2011*.

Chapter 90 Transitional provision for Criminal Law Amendment Act 2012

729 Application of amendment Act

(1) Section 305, as amended by the amendment Act, section 3, to the extent the amendment Act increases the minimum number of years of imprisonment to be served, applies only if—

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(a) for section 305(2)(a), at least 1 conviction of murder is for an offence committed after the commencement, even if the other offence or offences were committed before the commencement; or

(b) for section 305(2)(b), either the conviction of murder is for, or the other offence of murder taken into account is for, an offence committed after the commencement, even if one of those offences was committed before the commencement; or

(c) for section 305(2)(c), either the conviction of murder is for, or the other offence of murder for which the person has previously been sentenced is for, an offence committed after the commencement, even if one of those offences was committed before the commencement; or

(d) for section 305(4), the conviction of murder is for an offence committed after the commencement.

(2) For an offence mentioned in subsection (1) as having been committed before the commencement, for which there was a conviction, it does not matter whether the conviction was recorded before or after the commencement.

(3) This section applies despite section 11 and the *Acts Interpretation Act 1954*, section 20C(3).

(4) In this section—

amendment Act means the *Criminal Law Amendment Act 2012*.

commencement means the commencement of the amendment Act, section 3.

minimum number of years of imprisonment to be served means the minimum number of years of imprisonment a person must serve before the person may be released from imprisonment under an order made under section 305 by the court sentencing the person.

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Chapter 91 Transitional provisions for Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Act 2013

730 Indictments for offences

This Code, as amended by the *Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Act 2013*, section 26, applies to an indictment against a person for an offence against section 228A, 228B, 228C or 228D whether the act or omission constituting the offence happened before, on or after the commencement of this section.

Chapter 92 Transitional provision for Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013

731 Application of amended s 597C

Section 597C as amended by the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* applies to the arraignment of an accused person in a proceeding for an offence, whether the proceeding was started before, on or after the commencement of this section.

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Chapter 93 Transitional provision for Criminal Code and Another Act (Stock) Amendment Act 2014

732 Tendering, return or disposal of stock

(1) If an undertaking under former section 450E was given for an animal before the commencement, the section continues to apply to the animal as if the amendment Act had not been enacted.

(2) If an undertaking under former section 450G was given for an animal before the commencement, the section continues to apply to the animal as if the amendment Act had not been enacted.

(3) The prescribed provisions apply to an animal seized before the commencement, other than an animal for which an undertaking mentioned in subsection (1) or (2) was given before the commencement.

(4) In this section—

amendment Act means the *Criminal Code and Another Act (Stock) Amendment Act 2014*.

animal see section 450D.

commencement means the commencement of this section.

former, in relation to a provision, means the provision as in force before the commencement.

prescribed provisions means the following—

(a) chapter 44A, chapter division 1;

(b) sections 450E(1)(b) and 450EA;

(c) chapter 44A, chapter division 3;

(d) sections 450EI and 450EJ.

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Chapter 94 Transitional provisions for Criminal Law Amendment Act 2014

733 Extended application of ch 68

Chapter 68 applies to a person acquitted of an offence—

(a) whether the person has been acquitted of the offence before, on or after the commencement of—

(i) chapter 68 on 25 October 2007; or

(ii) the *Criminal Law Amendment Act 2014*, section 35; and

(b) whether the circumstances supporting an order for a retrial of the person arose before, on or after the commencement of a provision mentioned in paragraph (a)(i) or (ii).

734 Application of s 564

Section 564(2A) applies to the sentencing of an offender for an offence whether the proceeding for the offence was started before, on or after the commencement of this section.

Chapter 95 Transitional provision for Health and Other Legislation Amendment Act 2016

735 References to particular offences

(1) An amended provision applies as if a reference to section 215 in the amended provision included a reference to—

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(a) the Criminal Code, section 208 as in force at any time before its repeal by the *Health and Other Legislation Amendment Act 2016*; and

(b) the Criminal Code, section 209 as in force at any time before its repeal by the *Criminal Code and Other Acts Amendment Act 2008*.

(2) The definition *prescribed offence* in section 636(1) applies as if it included a reference to an offence defined in a provision mentioned in subsection (1)(a) or (b).

(3) In this section—

amended provision means any of the following provisions as in force on or after the commencement—

(a) section 229B(10), definition *offence of a sexual nature*;

(b) section 578(1) and (4).

Chapter 96 Transitional provisions for Serious and Organised Crime Legislation Amendment Act 2016

736 Review of consorting provisions

(1) The Minister must, as soon as practicable after the day that is 5 years after the commencement of the consorting provisions, appoint a retired judge (the ***reviewer***) to—

(a) review the operation of the consorting provisions; and

(b) prepare, and give the Minister, a written report on the outcome of the review.

(2) The terms of reference for the review are the terms decided by the Minister.

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(3) Without limiting subsection (2), the terms of reference for the review must state the following matters—

(a) the object of the review is for the reviewer to decide whether the consorting provisions have been effective in disrupting serious and organised crime;

(b) if the reviewer decides the consorting provisions have not been effective in disrupting serious and organised crime, the reviewer must recommend any amendments of the provisions the reviewer considers necessary to improve the effectiveness of the provisions;

(c) in conducting the review, the reviewer must consider whether any demographic has been disproportionately or adversely affected by the consorting provisions.

Examples of a demographic—

Aboriginal people, Torres Strait Islanders, homeless people, drug dependent people

(4) The Minister must, within 14 sitting days after receiving the reviewer's report for the review, table a copy of the report in the Legislative Assembly.

(5) In this section—

consorting provisions means—

(a) part 2, chapter 9A; and

(b) the following provisions of the *Police Powers and Responsibilities Act 2000*—

- section 30(i)
- section 32(2)(b)
- section 41(p)
- section 41A
- section 43B
- chapter 2, part 6A
- section 60(3)(k).

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retired judge means—

(a) a retired Supreme Court judge; or

(b) a retired District Court judge.

737 Regulation made by the Serious and Organised Crime Legislation Amendment Act 2016

(1) This section applies to the regulation made by the *Serious and Organised Crime Legislation Amendment Act 2016*, section 494 and schedule 2.

(2) The regulation is subordinate legislation.

(3) The *Statutory Instruments Act 1992*, part 6 does not apply to the regulation.

738 Offences against ss 60A and 60B charged before repeal

(1) This section applies if—

(a) a person was charged with an offence against section 60A or 60B before the section was repealed; and

(b) at the time of the repeal, the proceeding for the offence had not been finally decided.

(2) The proceeding for the offence may be continued, and the person may be punished for the offence, as if the section had not been repealed.

(3) To remove any doubt, it is declared that section 11 does not limit subsection (2).

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Chapter 97 Transitional provision for Criminal Law Amendment Act 2017

739 Application of amendment Act

(1) This Code, as amended by the amendment Act, section 10, applies to a proceeding for an offence only if the offence was committed after the commencement of that section.

(2) In this section—

amendment Act means the *Criminal Law Amendment Act 2017*.

Chapter 98 Transitional provision for Victims of Crime Assistance and Other Legislation Amendment Act 2017

740 Protected counselling communications

(1) Section 590APA applies to a proceeding for an offence only if an originating step for the proceeding is taken on or after the commencement, whether the act or omission constituting the offence happened before or after the commencement.

(2) In this section—

originating step, for a proceeding, means—

(a) the arrest of the defendant in the proceeding; or

(b) the making of a complaint under the *Justices Act 1886*, section 42 in relation to the defendant in the proceeding; or

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(c) the serving of a notice to appear on the defendant in the proceeding under the *Police Powers and Responsibilities Act 2000*, section 382.

Chapter 99 Transitional provision for Penalties and Sentences (Drug and Alcohol Treatment Orders) and Other Legislation Amendment Act 2017

741 Application of s 552H

A court may impose the penalty mentioned in section 552H(1)(a) for an offence committed before the commencement.

Chapter 100 Transitional provision for Criminal Code (Non-consensual Sharing of Intimate Images) Amendment Act 2019

742 Application of s 229AA

Section 229AA applies to an offender convicted of an offence against section 227A(1) or (2) or 227B(1) after the commencement, even if the offence was committed, or the offender was charged with the offence, before the commencement.

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Chapter 101 Transitional provision for Police Powers and Responsibilities and Other Legislation Amendment Act 2020

743 Saving of former s 205A

(1) Former section 205A continues to apply, as if part 4 of the amending Act had not commenced, in relation to an offence against the section committed before the commencement.

(2) In this section—

amending Act means the *Police Powers and Responsibilities and Other Legislation Amendment Act 2020*.

former section 205A means section 205A as in force from time to time before it was amended by part 4 of the amending Act.

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Chapter 102 Transitional and declaratory provisions for Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020

Chapter division 1 Provisions commencing on day after assent

744 Application of repealed s 212

(1) Repealed section 212 is taken always to have applied as if the limitation provision of the section were not, and had never been, in force.

(2) To remove any doubt, it is declared that any immunity from prosecution acquired because of the limitation provision of repealed section 212 is abolished.

(3) In this section—

1989 amendment means the *Criminal Code, Evidence Act and Other Acts Amendment Act 1989*, section 13.

limitation provision, of repealed section 212, means the provision of repealed section 212 that limited the period within which a prosecution for either of the offences defined in the section must be begun.

repealed section 212 means section 212 as in force from time to time before the commencement of the 1989 amendment.

745 Application of former s 215

(1) Former section 215 is taken always to have applied as if the limitation provision of the section were not, and had never been, in force.

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(2) To remove any doubt, it is declared that any immunity from prosecution acquired because of the limitation provision of former section 215 is abolished.

(3) However, subsections (1) and (2) do not apply in relation to the limitation provision of former section 215 to the extent it applied, from time to time before the commencement of the 1976 amendment, to a prosecution for an offence in relation to a girl of 16 years.

(4) In this section—

1976 amendment means the *Criminal Code Amendment Act 1976*, section 19.

1989 amendment means the *Criminal Code, Evidence Act and Other Acts Amendment Act 1989*, section 14.

former section 215 means section 215 as in force from time to time before the commencement of the 1989 amendment.

limitation provision, of former section 215, means the provision of former section 215 that limited the period within which a prosecution for either of the offences firstly defined in the section must be begun.

746 Application of s 229B to acts done before 3 July 1989

(1) Section 229B as in force on the commencement of this section applies, and is taken always to have applied, in relation to acts done before the commencement of the 1989 amendment.

(2) For applying section 229B under subsection (1), the section applies, and is taken always to have applied, as if—

(a) the maximum penalty under section 229B(1) were—

(i) if in the course of the unlawful sexual relationship the adult committed an unlawful sexual act for which the adult is liable to imprisonment for 14 years or more—life imprisonment; or

(ii) if in the course of the unlawful sexual relationship the adult committed an unlawful sexual act for

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which the adult is liable to imprisonment for 5 years or more but less than 14 years—14 years imprisonment; or

(iii) otherwise—7 years imprisonment; and

(b) the reference in section 229B(10), definition *offence of a sexual nature* to an offence defined in section 210 (other than section 210(1)(e) or (f)), 215, 222, 349, 350 or 352 included a reference to an offence—

(i) defined in a provision of this Code as in force from time to time before the commencement of the 1989 amendment; and

(ii) constituted by an act that would, if committed on the commencement of this section, constitute an offence defined in a section mentioned in that definition.

(3) Subsection (1) does not apply in relation to an act done before the commencement of the 1989 amendment if, before the commencement of this section, the act was the subject of a charge of an offence, whether or not the charge was finally dealt with.

(4) In this section—

1989 amendment means the *Criminal Code, Evidence Act and Other Acts Amendment Act 1989*, section 23.

747 Application of s 229B during period 3 July 1989 to 30 April 2003

(1) Section 229B as in force on the commencement of this section applies, and is taken always to have applied, during the following periods—

(a) the period starting on the commencement of the 1989 amendment and ending immediately before the commencement of the 1997 amendment;

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(b) the period starting on the commencement of the 1997 amendment and ending immediately before the commencement of the 2003 amendment.

(2) For applying section 229B under subsection (1)(a), the section applies, and is taken always to have applied, as if—

(a) the maximum penalty under section 229B(1) were—

(i) if in the course of the unlawful sexual relationship the adult committed an unlawful sexual act for which the adult is liable to imprisonment for 14 years or more—life imprisonment; or

(ii) if in the course of the unlawful sexual relationship the adult committed an unlawful sexual act for which the adult is liable to imprisonment for 5 years or more but less than 14 years—14 years imprisonment; or

(iii) otherwise—7 years imprisonment; and

(b) the reference in section 229B(10), definition *offence of a sexual nature* to an offence defined in section 210 (other than section 210(1)(e) or (f)), 215, 222, 349, 350 or 352 included a reference to an offence—

(i) defined in a provision of this Code as in force from time to time before the commencement of the 1997 amendment; and

(ii) constituted by an act that would, if committed on the commencement of this section, constitute an offence defined in a section mentioned in that definition.

(3) For applying section 229B under subsection (1)(b), the section applies, and is taken always to have applied, as if—

(a) the maximum penalty under section 229B(1) were—

(i) if in the course of the unlawful sexual relationship the adult committed an unlawful sexual act for which the adult is liable to imprisonment for 14 years or more—life imprisonment; or

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(ii) otherwise—14 years imprisonment; and

(b) the reference in section 229B(10), definition *offence of a sexual nature* to an offence defined in section 210 (other than section 210(1)(e) or (f)), 215, 222, 349, 350 or 352 included a reference to an offence—

(i) defined in a provision of this Code as in force from time to time before the commencement of the 2003 amendment; and

(ii) constituted by an act that would, if committed on the commencement of this section, constitute an offence defined in a section mentioned in that definition.

(4) If an adult has been charged, before the commencement of this section, with committing an offence against section 229B over a period that includes any part of a period mentioned in subsection (1)(a) or (b), subsection (1) does not apply in relation to the period the subject of the charge for—

(a) the proceeding for the offence; or

(b) any appeal against a conviction or sentence for the offence.

(5) Also, section 229B as applied under subsection (1) does not apply in relation to an act done during a period mentioned in subsection (1)(a) or (b) if, before the commencement of this section, the act was the subject of a charge of an offence, whether or not the charge was finally dealt with.

(6) In this section—

1989 amendment means the *Criminal Code, Evidence Act and Other Acts Amendment Act 1989*, section 23.

1997 amendment means the *Criminal Law Amendment Act 1997*, section 33.

2003 amendment means the *Sexual Offences (Protection of Children) Amendment Act 2003*, section 18.

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748 Proceedings for offences against s 229B

(1) This section applies in relation to an offence committed by a person against section 229B as applied under section 746 or 747.

(2) A proceeding for the offence may be started, and the person may be convicted of and punished for the offence, as if section 229B had always applied in the way provided for under section 746 or 747.

(3) This section applies despite section 11 and the *Acts Interpretation Act 1954*, section 20C.

749 Application of former s 218B to certain conduct

(1) If conduct constituting an offence against former section 218B started before the commencement and continues after the commencement, former section 218B continues to apply in relation to all of the conduct constituting the offence.

(2) In this section—

former section 218B means section 218B as in force from time to time before the commencement.

750 Application of amended ss 668A and 669A

(1) Section 668A, as amended by the amending Act, applies in relation to the referral, after the commencement, of a point of law mentioned in section 668A(1), whether the direction or ruling in relation to which the point of law has arisen was given before, or is given after, the commencement.

(2) Section 669A, as amended by the amending Act, applies in relation to the making of an appeal, after the commencement, against an order staying proceedings or further proceedings on an indictment, whether the order was made before, or is made after, the commencement.

(3) In this section—

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amending Act means the *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020*.

Chapter division 2 Provision commencing by proclamation

751 Application of s 229BC

Section 229BC applies to an adult in relation to information gained on or after the commencement whether the information relates to an alleged offence believed to have been committed by an alleged offender before or after the commencement.

Chapter 103 Transitional provisions for Justice and Other Legislation Amendment Act 2020

752 Application of s 359E(4)

(1) Section 359E(4), as amended under the *Justice and Other Legislation Amendment Act 2020*, applies to the crime of unlawful stalking whether any of the acts constituting the unlawful stalking have been done before or after the commencement.

(2) This section applies despite section 11(2) and the *Acts Interpretation Act 1954*, section 20C(3).

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753 Application of ch 58A before and after amendment to particular charges

(1) Chapter 58A, as in force immediately before the commencement, continues to apply in relation to a charge for an offence if an originating step for the proceeding for the charge was taken before the commencement.

(2) Chapter 58A, as amended under the *Justice and Other Legislation Amendment Act 2020*, applies in relation to a charge for an offence if—

(a) no originating step for the proceeding for the charge was taken before the commencement; and

(b) an originating step for the proceeding for the charge is taken on or after the commencement.

(3) For subsection (2), it does not matter when the offence was committed.

(4) In this section—

originating step, for a proceeding, means—

(a) the arrest of the defendant in the proceeding; or

(b) the making of a complaint under the *Justices Act 1886*, section 42 in relation to the defendant in the proceeding; or

(c) the serving of a notice to appear on the defendant in the proceeding under the *Police Powers and Responsibilities Act 2000*, section 382.

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Chapter 104 Transitional provision for Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021

754 Offences charged before or after the commencement

(1) Despite the *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021*, the former provisions continue to apply in relation to a person charged with an offence before the commencement.

(2) The new provisions apply in relation to a person charged with an offence after the commencement, whether the charge is for an offence committed before or after the commencement.

(3) In this section—

former provisions means the provisions of this Code as in force from time to time before the commencement.

new provisions means the provisions of this Code as in force from the commencement.

Chapter 105 Transitional provision for Evidence and Other Legislation Amendment Act 2022

755 Existing relevant proceedings

(1) This section applies in relation to a relevant proceeding started, but not finally decided, before the commencement.

(2) Subsection (3) applies in relation to the relevant proceeding if, before the commencement—

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(a) a request was made to the prosecution under section 590AS(3) to allow an appropriate person to view or examine original evidence that is the body of a deceased person; or

(b) the court hearing the proceeding made a direction under section 590AS(4) in relation to viewing and examining original evidence that is the body of a deceased person; or

(c) the accused person applied to the court for a direction mentioned in paragraph (b).

(3) Section 590AS, as in force from time to time before the commencement, continues to apply in relation to the relevant proceeding as if the *Evidence and Other Legislation Amendment Act 2022* had not been enacted.

(4) If subsection (3) does not apply in relation to the relevant proceeding, section 590ASA applies in relation to the proceeding.

(5) In this section—

appropriate person see section 590AS(6).

body see the *Coroners Act 2003*, schedule 2.

original evidence see section 590AD.

relevant proceeding see section 590AD.

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Chapter 106 Transitional provisions for Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023

756 Offences charged before or after the commencement

(1) Despite the *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023*, the former provisions continue to apply in relation to a person charged with an offence before the commencement.

(2) The new provisions apply in relation to a person charged with an offence after the commencement, whether the charge is for an offence committed before or after the commencement.

(3) In this section—

former provisions means the provisions of this Code as in force from time to time before the commencement.

new provisions means the provisions of this Code as in force from the commencement.

757 Conviction for domestic violence offence before commencement

(1) This section applies if a person commits an offence against new section 359F(10) after the commencement and the penalty mentioned in new section 359F(11) applies to the person.

(2) New section 359F(11) applies regardless of whether any of the acts constituting the domestic violence offence mentioned in new section 359F(11) were done before or after the commencement.

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(3) This section applies despite section 11(2) and the *Acts Interpretation Act 1954*, section 20C(3).

(4) In this section—

new, in relation to section 359F or a subsection of section 359F, means section 359F or a subsection of section 359F as amended by the *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023*.

Chapter 107 Transitional provisions for Strengthening Community Safety Act 2023

758 Proceedings for charge for offence against former s 408A(1B)

(1) This section applies in relation to an offence against section 408A(1) to which section 408A(3) (as in force immediately before the commencement) applied, committed by a person before the commencement.

(2) Without limiting the *Acts Interpretation Act 1954*, section 20, a proceeding for the offence may be continued or started, and the person may be convicted of and punished for the offence, as if the *Strengthening Community Safety Act 2023*, section 8 had not commenced.

(3) Subsection (2) applies despite section 11.

759 Application of particular provisions to charge for offence against former s 408A(3)

(1) Section 408A(6) and (7) apply in relation to a charge for an offence against section 408(1) to which section 408A(3) (as in force immediately before the commencement) applied,

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whether an originating step for the proceeding for the charge was taken before or after the commencement.

(2) Section 552BB, table, entry for section 408A, column 3, section 3, as in force immediately before the commencement, continues to apply in relation to a charge for an offence against section 408A(1) to which section 408A(3) (as in force immediately before the commencement) applied, whether an originating step for the proceeding for the charge was taken before or after the commencement.

Chapter 108 Transitional provision for Information Privacy and Other Legislation Amendment Act 2023

760 Application of s 408E

(1) This section applies if an act or omission constituting an offence against section 408E happened before the commencement, whether the proceeding for the offence is started before or after the commencement.

(2) Section 408E as in force before the commencement continues to apply in relation to the act or omission as if the *Information Privacy and Other Legislation Amendment Act 2023*, section 4 had not commenced.

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Chapter 109 Transitional provisions for Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024

761 Application of ch 32 to proceedings

(1) Despite the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*, the former provisions continue to apply to a proceeding for an offence committed wholly or partly before the commencement.

(2) The new provisions apply to a proceeding for an offence committed wholly after the commencement.

(3) In this section—

former provisions means the provisions of chapter 32 as in force from time to time before the commencement.

new provisions means the provisions of chapter 32 as in force from the commencement.

762 Application of s 334C to acts of domestic violence constituting coercive control

(1) Section 334C applies only to acts of domestic violence constituting the course of conduct under that section that were done after the commencement.

(2) This section does not limit the *Evidence Act 1977*, part 6A, division 1A.

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763 Conviction for domestic violence offence before commencement

(1) This section applies if a person commits an offence against section 334E(10) after the commencement and the penalty in section 334E(11) applies to the person.

(2) Section 334E(11) applies regardless of whether the conviction mentioned in that subsection was recorded before or after the commencement.

(3) This section applies despite section 11(2) and the *Acts Interpretation Act 1954*, section 20C(3).

Chapter 110 Transitional provision for Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals) Amendment Act 2024

764 Subsequent appeals—appeals or applications for leave to appeal before commencement

(1) This section applies if, before the commencement, a person appealed, or applied for leave to appeal, against a conviction of the person under section 668D.

(2) The person may apply for leave to make a subsequent appeal under section 671AC against the person's conviction whether the person's appeal or application for leave to appeal was determined before or after the commencement.

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Chapter 111 Transitional provisions for Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024

763 Definitions for chapter

In this chapter—

amendment Act means the *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024*.

former, for a provision of this Act, means the provision as in force from time to time before the commencement.

764 Proceedings for offences against former ch 22A generally

(1) This section applies in relation to an offence against former chapter 22A committed by a person before the commencement, other than an offence against a relevant chapter 22A provision under section 765.

(2) The person may not be convicted of or punished for the offence unless the person was charged with the offence before the commencement.

(3) If the person was charged with the offence before the commencement, a proceeding for the offence may be continued, and the person may be convicted of and punished for the offence, as if the amendment Act, sections 15 and 31 had not commenced.

765 Proceedings for particular offences against former ch 22A

(1) This section applies in relation to an offence against a relevant chapter 22A provision committed by a person before the commencement.

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(2) Without limiting the *Acts Interpretation Act 1954*, section 20, a proceeding for the offence may be continued or started, and the person may be convicted of and punished for the offence, as if the amendment Act, sections 15 and 31 had not commenced.

(3) Subsection (2) applies despite section 11.

(4) In this section—

relevant chapter 22A provision means each of the following provisions as in force from time to time before the commencement—

(a) section 229FA;

(b) section 229G;

(c) section 229H, if the offence is alleged to have been committed with the circumstance of aggravation mentioned in section 229H(2);

(d) section 229HB, if the offence is alleged to have been committed with the circumstance of aggravation mentioned in section 229HB(2);

(e) section 229I, if the offence is alleged to have been committed with the circumstance of aggravation mentioned in section 229I(2);

(f) section 229K, if—

(i) the offence is alleged to have been committed with the circumstance of aggravation mentioned in section 229K(3); or

(ii) section 229K(2) applies because of section 229K(3B).

766 Continuation of s 229J—certificate of discharge for particular offences

(1) On the commencement, former section 229J continues to apply in relation to an application made but not decided under

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that section before the commencement, as if the amendment Act, section 15 had not commenced.

(2) If an order is made under former section 229J(8), whether before or after the commencement—

(a) the order continues in effect indefinitely or until further order under that section; and

(b) without limiting the *Acts Interpretation Act 1954*, section 20, a proceeding for an offence against former section 229J(10) may be continued or started, and a person may be convicted of and punished for the offence, as if the amendment Act, section 15 had not commenced.

(3) Subsection (2) applies despite section 11.

Chapter 112 Transitional provision for the Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Act 2024

767 Repeated sexual conduct with a child of or above 16 by a person who has the child under their care, supervision or authority

To remove any doubt, it is declared that on a charge of an offence against section 229B(1A), evidence of an unlawful sexual act or acts done before the commencement may not be admitted in evidence for the purpose of deciding whether unlawful sexual acts done after the commencement establish the existence of an unlawful sexual relationship.

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Chapter 113 Transitional provisions for Defamation and Other Legislation Amendment Act 2025

768 Proceedings for criminal defamation

(1) Former section 365 continues to apply to a proceeding for an offence in relation to defamatory matter published before the commencement.

(2) New section 365 applies to a proceeding for an offence in relation to defamatory matter published after the commencement.

(3) Subsection (1) applies despite section 11.

(4) In this section—

former section 365 means section 365 as in force immediately before the commencement.

new section 365 means section 365 as in force from the commencement.

769 Application of new section 678D

(1) New section 678D applies, and is taken always to have applied, to evidence against a person to whom chapter 68 applies under section 678A.

(2) In this section—

new section 678D means section 678D as in force from the commencement.

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