

# **NORTHERN TERRITORY OF AUSTRALIA**

## **CRIMINAL CODE ACT**

As in force at 1 December 1998

### **Table of provisions**

1	Short title .....	1
2	Commencement .....	1
3	Repeal .....	1
4	Interpretation .....	1
5	Establishment of Code .....	1
6	Liability to trial .....	2
7	Civil remedies .....	2
8	Contempt of Court .....	2

### **Schedule I Criminal Code of the Northern Territory of Australia**

#### **Part I Introductory matters**

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

1	Definitions .....	3
2	Commission of offence .....	8
3	Division of offences .....	8
4	Attempts to commit offences .....	9

##### **Division 2 Presumptions**

5	Innocence .....	9
6	Normality of mind .....	9
7	Intoxication .....	9
8	Offences committed in prosecution of common purpose .....	10
9	Mode of execution different from that counselled .....	10
10	Death or grievous harm caused in the course of violence of 2 or more persons .....	10
11	Power to impose domestic discipline .....	11

##### **Division 3 Parties to offences**

12	Abettors and accessories before the fact .....	11
13	Accessories after the fact .....	11

##### **Division 4 Application of criminal law**

14	Effect of changes in law .....	12
----	--------------------------------	----

15	Application of criminal laws.....	12
16	Offences counselled or procured in the territory to be committed out of the territory .....	12

## **Division 5            Effect of previous finding of guilt or acquittal**

17	Definitions.....	13
18	Defence of previous finding of guilt or acquittal .....	13
19	Limitation of defence in relation to certain crimes.....	13
20	Finding of guilt or acquittal of regulatory offence no defence .....	13
21	Stay of vexatious, &c., proceedings.....	13

## **Part II                Criminal responsibility**

### **Division 1            General matters**

22	Exclusion of regulatory offences.....	14
23	Effect of authorization, justification or excuse.....	14
24	Authorization, justification or excuse of event.....	14
25	Lawful act, &c., to be authorized or justified and authorized or justified act to be lawful .....	14

### **Division 2            Authorization**

26	Execution of law, &c. ....	14
----	----------------------------	----

### **Division 3            Justification**

27	Circumstances in which force not being such force as is likely to cause death or grievous harm is justified.....	15
28	Circumstances in which force causing death or grievous harm is justified.....	17
29	Examination of person of accused in custody.....	18

### **Division 4            Excuse**

30	Ignorance of law: bona fide claim of right, &c. ....	19
31	Unwilled act, &c., and accident.....	20
32	Mistake of fact .....	20
33	Sudden and extraordinary emergency.....	20
34	Provocation, &c. ....	20
35	Insanity .....	21
36	Intoxication .....	22
37	Diminished responsibility .....	22
38	Immature age .....	22
39	Judicial officers .....	22
40	Duress .....	23
41	Coercion .....	23

---

42	Liability of husband or wife for offences committed by either with respect to the other's property .....	23
43	Damage to property .....	24

### **Part III                      Offences against public order**

#### **Division 1                  Sedition**

44	Definitions .....	24
45	Seditious enterprise .....	24
46	Seditious words .....	25
47	Procedure on prosecution for sedition .....	25
48	Acts done in good faith .....	25
49	Unlawful oaths to commit offences, &c. ....	26

#### **Division 2                  Terrorism**

50	Definitions .....	26
51	Membership of unlawful organization .....	27
52	Evidence of knowledge of unlawfulness .....	28
53	Display of support for unlawful organization .....	28
54	Terrorism .....	28
55	Contribution towards acts of terrorism .....	28

#### **Division 3                  Offences against the executive and legislative power**

56	Interference with Administrator or Minister .....	29
57	Interference with Legislative Assembly .....	29
58	Influencing Legislative Assembly member .....	29
59	Bribery of Legislative Assembly member .....	29
60	Legislative Assembly Member receiving bribe .....	29
61	Disturbing the Legislative Assembly .....	29
62	Going armed to Legislative Assembly .....	30

#### **Division 4                  Unlawful assemblies: breaches of the peace**

63	Interpretation .....	30
64	Punishment of unlawful assembly .....	30
65	Punishment of riot .....	30
66	Rioters remaining after proclamation ordering them to disperse .....	31
67	Rioters demolishing buildings, &c. ....	31
68	Rioters damaging property .....	32
69	Going armed in public .....	32
70	Challenge to a fight likely to cause death or grievous harm .....	32

---

**Division 5            Offences against political liberty**

71	Interfering with political liberty.....	32
----	---	----

**Division 6            Piracy**

72	Definitions.....	32
73	Punishment of piracy .....	33
74	Trading with pirates .....	33
75	Fitting out ship for piracy.....	33

**Part IV                Offences against the administration of law  
and justice and against public authority****Division 1            Disclosing official secrets**

76	Disclosure of official secrets .....	34
----	--------------------------------------	----

**Division 2            Corruption and abuse of office**

77	Official corruption.....	34
78	Extortion by public officers.....	34
79	Public officers interested in contracts .....	35
80	Officers charged with administration of property of a special character or with special duties .....	35
81	False claims by officials.....	35
82	Abuse of office.....	36
83	Corruption of surveyor or valuer .....	36
84	False certificates by public officers .....	36
85	False assumption of authority.....	36
86	Personating public officers.....	37

**Division 3            Corrupt and improper practices at elections**

87	Undue influence.....	37
88	Bribery .....	37
89	Further penalty for corrupt practices.....	38
90	Illegal practices.....	39
91	Placing false ballot-papers in ballot-boxes.....	39

**Division 4            Selling and trafficking in offices**

92	Bargaining for offices in public service .....	39
----	--	----

**Division 5            Offences relating to the administration of  
justice**

93	Judicial corruption.....	40
94	Official corruption not judicial but relating to offences.....	40

---

95	Corrupting or threatening jurors.....	41
96	Perjury .....	41
97	Punishment of perjury.....	42
98	Evidence on charge of perjury .....	42
99	Fabricating evidence .....	42
100	Corruption of witnesses .....	42
101	Deceiving witnesses .....	43
102	Destroying evidence .....	43
103	Preventing witnesses from attending.....	43
104	Compounding crimes.....	43
105	Compounding penal actions .....	44
106	Delay in taking person arrested before Court .....	44
107	Bringing fictitious action on penal statute .....	44
108	Inserting advertisement without authority of Court.....	44
109	Attempting to pervert justice .....	44

## **Division 6            Escapes: rescues: obstructing officers of courts**

110	Forcibly rescuing certain offenders.....	45
111	Aiding escape from lawful custody .....	45
112	Escape from lawful custody .....	45
113	Permitting escape.....	46
114	Harbouring escaped prisoners.....	46
115	Rescuing mentally ill persons .....	46
116	Removing, &c., property under lawful seizure .....	46
117	Obstructing officers of courts of justice.....	47

## **Division 7            Miscellaneous offences against public authority**

118	False statements in statements required to be under oath or solemn declaration .....	47
119	False declarations and statements .....	47
120	Evidence.....	47
121	Resisting public officers.....	47
122	Refusal by public officer to perform duty .....	48
123	Neglect to aid in suppressing riot.....	48
124	Neglect to aid in arresting offenders, &c.....	48

## **Part V                Acts injurious to the public in general**

### **Division 1            Offences relating to religious worship**

125	Offering violence to officiating ministers of religion.....	48
-----	---	----

---

## **Division 2        Offences against morality**

### **Subdivision 1    Child pornography**

125A	Interpretation .....	49
125B	Possession of child pornography and certain indecent articles .....	51
125C	Publishing indecent articles .....	52
125D	Offences by bodies corporate.....	53

### **Subdivision 2    Other offences against morality**

126	Definitions.....	53
127	Sexual intercourse or gross indecency between males in public .....	53
128	Sexual intercourse or gross indecency between males in private.....	54
129	Sexual intercourse or gross indecency involving females under 16 years.....	54
130	Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person .....	55
131	Attempts at procurement of young persons or mentally ill or handicapped persons .....	56
131A	Unlawful sexual relationship with child .....	56
132	Indecent dealing with child under 16 years.....	57
133	Gross indecency in public.....	58
134	Incest by male .....	58
135	Incest by adult female.....	58
138	Bestiality .....	59
139	Knowledge of age immaterial .....	59
139A	Consent no defence to crime defined by this Division .....	59
140	Misconduct with regard to corpses .....	59

## **Division 3        Offences against public health**

148	Selling, &c., things unfit for food or drink .....	59
-----	--	----

## **Part VI            Offences against the person and related matters**

### **Division 1        Duties relating to the preservation of human life**

149	Duty of person in charge of child or others .....	60
150	Duty of person engaging in dangerous conduct .....	60
151	Duty of person in charge of things applied to a dangerous purpose.....	60
152	Duty to do certain acts.....	60
153	Effect of breach of duty.....	61

---

**Division 2            Dangerous acts or omissions: failure to  
rescue**

154	Dangerous acts or omissions .....	61
155	Failure to rescue, provide help, &c. ....	61

**Division 3            Homicide: suicide: concealment of birth:  
abortion**

156	When a child becomes a human being.....	62
157	Killing .....	62
158	Death by acts done at childbirth .....	62
159	Causing death by threats, &c.....	62
160	Injuries causing death in consequence of subsequent treatment .....	62
161	Unlawful homicide .....	62
162	Murder .....	62
163	Manslaughter.....	63
164	Punishment of murder .....	63
165	Attempt to murder.....	64
166	Threats to kill .....	64
167	Punishment of manslaughter .....	64
168	Aiding suicide .....	64
170	Killing unborn child .....	64
171	Concealing the birth of child .....	65
172	Procuring abortion .....	65
173	Supplying drugs, &c., to cause abortion .....	65
174	Medical termination of pregnancy.....	65

**Division 4            Offences endangering life or health**

175	Disabling in order to commit crime .....	67
176	Stupefying in order to commit crime .....	67
177	Acts intended to cause grievous harm or prevent apprehension.....	67
178	Preventing escape from wreck .....	68
179	Intentionally endangering safety of persons travelling by railway or roadway.....	68
180	Intentionally endangering safety of persons travelling by aircraft or ship.....	68
181	Grievous harm .....	69
182	Attempting to injure by explosive substances .....	69
183	Failure to supply necessities .....	69
184	Endangering life of child by exposure.....	69
185	Setting man-traps .....	69
186	Bodily harm.....	70

---

**Division 4A      Female genital mutilation**

186A	Definitions.....	70
186B	Female genital mutilation.....	70
186C	Removal of child from territory for female genital mutilation .....	71
186D	Consent not relevant .....	71

**Division 5      Assaults**

187	Definition.....	72
188	Common assault.....	72
189A	Assaults on police.....	73
189	Unlawful stalking.....	74
190	Assaults on the Administrator or judges or magistrates.....	75
191	Assaults on member of crew of aircraft .....	75
192	Sexual intercourse and gross indecency without consent .....	75
192A	Direction to jury in certain sexual offence trials.....	76
192B	Coerced sexual self-manipulation.....	76
193	Assaults with intent to commit an offence.....	77

**Division 6      Offences Against Liberty: Kidnapping:  
Abduction**

194	Kidnapping for ransom .....	77
195	Kidnapping.....	77
196	Deprivation of liberty .....	77
197	False certificates by officers charged with duties relating to liberty .....	78
198	Concealment of matters affecting liberty .....	78
199	Wrongful custody of mentally ill person .....	79
200	Threats .....	79
201	Enticing away child under 16 years for immoral purposes.....	79
202	Abduction of children under 16 years .....	79

**Division 7      Criminal defamation**

203	Definitions.....	80
204	Unlawful publication of defamatory matter.....	80
205	Publishing or threatening to publish defamatory matter with intent to extort money .....	80
206	Further application of civil law.....	81
207	Burden of proof.....	81
208	Prosecutions to be sanctioned by crown law officer .....	81



---

## **Part VII                      Property offences and related matters**

### **Division 1                      Robbery: unlawful entry of buildings and use of vehicles and like offences**

209	Definition of <i>stealing</i> and interpretation .....	81
210	General punishment of stealing .....	82
211	Robbery .....	83
212	Assault with intent to steal .....	83
213	Unlawful entry of buildings .....	83
214	Uncertainty as to offender's intent, &c. ....	84
215	Persons found armed with intent to unlawfully enter buildings .....	84
216	Unlawfully taking control of aircraft .....	84
217	Unlawful use of aircraft .....	85
218	Unlawful use of vessel, motor vehicle, caravan or trailer .....	85
219	Removal of things from places open to public .....	85
220	Unlawful disposition of mortgaged goods .....	86
221	Unlawful appropriation of power .....	86
222	Unlawfully obtaining confidential information .....	86
223	Unlawfully disclosing trade secrets .....	86
224	Severing with intent to steal .....	86
225	Using registered brands with criminal intention .....	86
226	Dealing with minerals with criminal intention .....	86

### **Division 2                      Criminal deception: blackmail and extortion**

227	Criminal deception .....	87
228	Blackmail and extortion .....	87

### **Division 3                      Receiving property stolen or unlawfully obtained and like offences**

229	Receiving stolen property, &c. ....	87
230	Receiving after change of ownership .....	88
231	Taking reward for recovery of property obtained by means of a crime .....	88

### **Division 4                      Frauds by Trustees, Officers of Corporations: False Accounting**

232	Trustees fraudulently disposing of trust property .....	89
233	False accounting .....	90
234	False statements by officers of corporations, &c. ....	90
235	Suppression, &c., of documents .....	90

### **Division 5                      Secret commissions**

236	Solicitation or receipt of secret commissions .....	91
237	Independent advisor accepting secret commission .....	91

---

**Division 6            Criminal damage to property**

238	Definition.....	92
239	Arson .....	92
240	Attempts to commit arson.....	92
241	Setting fire to crops and growing plants.....	92
242	Casting away, &c., ships .....	93
243	Attempts to cast away, &c., ships .....	93
244	Damaging aircraft .....	93
245	Attempts to damage aircraft, &c. ....	93
246	Damaging signals .....	94
247	Damaging railways, roadways and runways.....	94
248	Taking or sending goods likely to damage aircraft.....	94
249	Damaging mines.....	95
250	Damaging navigation works.....	95
251	Criminal damage in general.....	95
252	Attempts to destroy property by explosives .....	97
253	Unlawful deposition of explosives .....	97
254	Communicating infectious diseases to animals .....	97
255	Removing boundary marks.....	97
256	Obstructing railways or runways.....	97
257	Threatening to burn or destroy .....	97

**Division 7            Forgery and like offences**

258	Forgery .....	98
259	Counterfeiting tokens.....	99
260	Uttering forged documents or writings or counterfeit tokens.....	99
261	Uttering cancelled or exhausted documents.....	99
262	Uttering cancelled stamps .....	99
263	Procuring execution of documents by deception .....	99
264	Purchase of forged document or writing or counterfeit token, &c. ....	99
265	Falsification of registers.....	100
266	Sending false certificate of marriage to registrar .....	100
268	Attempts to procure unauthorized status .....	100
269	Circulating false copies of rules or lists of members of societies or corporations.....	100

**Division 8            Preparation for forgery**

270	Instruments and material for forgery.....	101
271	Counterfeit stamps .....	101

**Division 9            Personation**

272	Personation in general.....	102
273	Falsely acknowledging deeds, recognizances, &c.....	103
274	Personation of a person named in a certificate.....	103

---

275	Lending certificates for personation.....	103
-----	---	-----

**Division 10      Unlawful Interference with data processing systems**

276	Making false data processing material, &c. ....	103
-----	---	-----

**Part VIII            Attempts and preparation to commit offences: conspiracy: accessories after the fact**

**Division 1            Attempts and preparation to commit offences**

277	Attempts to commit offences .....	104
278	Punishment of attempts to commit offences.....	104
279	Reduction of punishment.....	104
280	Attempts to procure commission of criminal offences.....	104
281	Preparation to commit crimes with explosives, &c.....	105

**Division 2            Conspiracy: accessories after the fact**

282	Conspiracy to commit crimes.....	105
283	Conspiracy to commit simple offences .....	105
284	Conspiracy to deceive or defraud .....	106
285	Conspiracy to lay false charge.....	106
286	Conspiracy to pervert justice .....	106
287	Conspiring to murder .....	106
288	Conspiracy to carry out seditious enterprise.....	106
289	Other conspiracies.....	106
290	Industrial disputes.....	107
291	Conspiracy by husband and wife.....	107
292	Position of other conspirators no defence .....	107
293	Conspiracy to commit more than one offence .....	107
294	Punishment of accessories after the fact.....	108

**Part IX                Procedure**

**Division 1            Preliminary proceedings: change of place of trial: no true bill**

295	Jurisdiction.....	108
296	Preliminary proceedings on charges of crimes .....	108
297	Change of place of trial.....	108
297A	No true bill .....	109

**Division 2            Indictments**

298	Nature of indictments.....	109
299	Altering charges after committal .....	110

300	Ex officio information .....	110
301	Arrest of person charged in ex officio information.....	110
302	Nolle prosequi.....	110
303	General rule as to indictments .....	110
304	Commencement of indictment.....	110
305	Form of indictment.....	111
306	Description of property .....	111
307	Description of persons.....	111
308	Circumstances in which more than one person may be charged in the same indictment.....	112
309	Circumstances in which more than one charge may be joined against the one person .....	112
310	Circumstances where more than one offence may be charged as one offence .....	112
311	Formal defect.....	113
312	Order for amendment of indictment .....	113
313	Particulars.....	113
314	Being found guilty summarily.....	113

### **Division 3      Effect of indictment: alternative verdicts**

315	Offences involving circumstances of aggravation.....	113
316	Indictment containing count of murder or manslaughter .....	114
317	Charge of homicide of child .....	114
318	Charge of offence against the person where section 31 or intoxication is a defence .....	114
319	Charge of offence against morality, sexual intercourse or gross indecency without consent.....	114
320	Charge of causing event, &c.....	115
321	Charge of property offence .....	115
322	Charge of stealing and criminal deception.....	115
323	Charge of stealing or receiving .....	115
324	Charge of counselling or procuring commission of an offence ...	116
325	Finding of guilt for attempt to commit offence, &c.....	116
326	When evidence shows offence of similar nature.....	117
327	Charge of corrupt practices at elections .....	117
328	Charge of stealing animals .....	117
329	Charge of joint receiving .....	117
330	Court to determine availability of alternative charge .....	118

### **Division 4      Notice of alibi: trial adjournment: pleas: practice**

331	Notice of alibi.....	118
332	Right to be tried .....	119
333	Accelerating trial of persons not under committal .....	119
334	Adjournment of trial .....	119
335	Enlargement of notices to witnesses .....	120
336	Accused person to be called upon to plead to indictment.....	120

337	Presence in court and plea where accused is a corporation .....	121
338	Delivery of copy of indictment.....	122
339	Motion to quash indictment.....	122
340	Misnomer.....	122
341	Separate trials where 2 or more charges against the same person .....	122
342	Pleas .....	123
343	Defence of truth of defamatory matter to be specially pleaded....	124
344	Persons committed for sentence .....	124
345	Standing mute .....	124
346	Plea of autrefois convict, &c. ....	124
347	Trial on plea of autrefois convict, &c., royal pardon or to the jurisdiction.....	125
348	Trial by jury .....	125
348A	Procedure where accused pleads not guilty and crown adduces no evidence.....	125
349	Demurrer .....	125
350	Separate trials .....	126
351	Juries.....	126
352	Accused person to be informed of his right of challenge .....	126
353	Challenge to array .....	126
354	Challenges to individual jurors for cause .....	126
355	Time for challenging .....	126
356	Ascertainment of facts as to challenge .....	127
357	Want of understanding of accused person .....	127
358	Jury to be sworn and informed of charge .....	127
359	Discharge of juror by court.....	128
360	Defence by accused person .....	128
361	Presence of accused .....	128
362	Evidence in defence .....	128
363	Speeches and their order .....	128
364	Summing up .....	129
365	Jury not to separate.....	129
366	Confinement of jury .....	129
367	View.....	129
368	Majority verdict .....	130
369	Special verdict .....	130
370	General verdict on charge of defamation.....	130
371	Discharge of jury.....	130
372	Incapacity of judge.....	131
373	Incapacity of juror .....	131
374	Verdict on Sunday .....	131
375	Further pleas .....	131

## **Division 5            Evidence: admissions of fact**

376	Evidence on trials for perjury .....	132
377	Evidence of relationship on charge of incest .....	132
378	Evidence of authority .....	132

379	Admissions .....	133
380	Failure to make admission may, in certain circumstances, be taken into account when passing sentence .....	133

## **Division 6      Verdict: judgment**

381	Discharge of persons acquitted .....	133
382	Acquittal on ground of insanity.....	133
383	Acquittal on ground of intoxication.....	134
384	Finding of guilt of property offence with respect to some only of property in indictment .....	134
385	Finding of guilt of stealing or receiving .....	135
387	Arrest of judgment .....	135

## **Part X            Punishment: appeal: miscellaneous matters**

### **Division 2      Appeal: pardon**

406	Interpretation .....	135
407	Court of Criminal Appeal .....	136
408	Reservation of points of law.....	136
409	Appeal from arrest of judgment .....	137
410	Right of appeal .....	137
411	Determination of appeal in ordinary cases .....	138
412	Powers of court in special cases .....	138
413	Power to grant new trial.....	139
414	Appeal and reference by Crown Law Officer .....	139
415	Revesting and restitution of property on finding of guilt .....	140
416	Suspension of order with respect to driver's licence .....	141
417	Time for appealing.....	141
418	Judge's report may be furnished on appeal.....	141
419	Supplemental powers .....	141
420	Presence of appellant who is in custody.....	142
421	Presence of respondent who is in custody when appeal brought by Crown Law Officer .....	142
422	Appellant or respondent may be sentenced in his absence .....	142
423	Written argument .....	142
424	Costs of appeal.....	142
425	Admission of appellant to bail and custody when attending court .....	143
426	Duties of Registrar .....	143
427	Documents, exhibits, &c. ....	145
428	Record of trial .....	145
429	Powers exercisable by a judge .....	145
430	Appeals from the decisions of the court.....	145
431	Pardoning power preserved.....	146
432	Conditional remission of sentence by Administrator .....	146
433	Effect of pardon .....	146

---

433A	Reference by Attorney-General of certain findings of guilt .....	147
------	--	-----

### **Division 3            Miscellaneous provisions**

434	Names of jury to be given to accused persons .....	148
435	Court may direct certain persons to be prosecuted for perjury ....	148
435A	Treason, felony or other offences not to attract legal disability except under an act .....	148
436	Saving of civil remedies .....	149
437	No court fees in criminal cases .....	149
438	Copies of depositions to be allowed to persons committed for trial .....	149
439	Inspection of depositions at trial .....	149
440	Standard of proof .....	149
441	Arrest without warrant .....	150
442	Arrest on reasonable grounds not to be taken to be unlawful .....	151
443	Arrest on board aircraft .....	151

### **Schedule 4**

### **Schedule II**

### **ENDNOTES**





# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 December 1998

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## CRIMINAL CODE ACT

An Act to establish a Code of criminal law

### 1 Short title

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

### 2 Commencement

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

### 3 Repeal

- (1) Each Act of the State of South Australia specified in Part 1 of Schedule II is, in its application to the Territory, repealed.
- (2) The Acts specified in Part 2 of Schedule II are repealed.

### 4 Interpretation

- (1) In this Act, **the Code** means the Code of criminal law contained in Schedule I.
- (2) For the purposes of the *Interpretation Act*, the Code shall be construed as if it were a separate Act.

### 5 Establishment of Code

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

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**6 Liability to trial**

- (1) Subject to section 12 of the *Interpretation Act*, no person is liable to be tried or punished in the Territory in respect of a matter dealt with in the Code except in accordance with the Code or another law of the Territory.
- (2) Where an offender is punishable under the Code or another law of the Territory, a person may be prosecuted and found guilty either under the Code or that other law.

**7 Civil remedies**

- (1) Where an act is declared by the Code to be lawful, no action shall be brought in respect of that act.
- (2) Subject to subsection (1):
  - (a) this Act does not affect a right of action that a person would have had against another person if this Act had not been passed; and
  - (b) no omission from the Code of a penal provision in respect of an act or omission that before the commencement of this Act constituted an actionable wrong affects a right of action in respect of that act or omission.

**8 Contempt of Court**

- (1) Subject to subsection (2), this Act or the Code does not affect the authority of a court of record to punish a person summarily for the offence commonly known as "Contempt of Court".
- (2) A person shall not be punished under subsection (1) and under the Code for the same act or omission.

## **Schedule I            Criminal Code of the Northern Territory of                                  Australia**

section 4

### **Part I                    Introductory matters**

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

##### **1                        Definitions**

In this Code, unless the contrary intention appears:

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

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

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

***aircraft*** includes hovercraft.

***alters*** includes adds to.

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

***bodily harm*** means any physical injury that interferes with health.

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

***child*** means a person who is not an adult.

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

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

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

***committal for trial*** includes committal for sentence.

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

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

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

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

***data processing material*** means all information and programmes used in or with a data processing system.

***data processing response*** means any print-out, response or result obtained from the operation of a data processing system.

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

***document*** means any material on which there is writing.

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

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

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

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

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

***event*** means the result of an act or omission.

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

***gain*** means gain of property and includes temporary gain and a gain by keeping what one has.

***grievous harm*** means any physical or mental injury of such a nature as to endanger or be likely to endanger life or to cause or be likely to cause permanent injury to health.

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

***husband*** and ***wife*** and like terms include, in the case of Aborigines, persons living in a husband and wife relationship according to tribal custom.

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

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

***justice of the peace*** includes a magistrate.

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

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

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

**medical treatment** includes dental treatment and all forms of surgery.

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

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

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

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

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

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

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

**police officer** means a member of the Police Force.

**property** means every thing, animate or inanimate, capable of being the subject of ownership including:

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

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

**provocation** means 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 deprive him of the power of self-control.

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

**sexual intercourse** means:

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

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

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

**statutory instrument** means subordinate legislation made pursuant to an Act.

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

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

**trial** includes a proceeding upon a plea of guilty.

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

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

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

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

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

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

**vessel** means every kind of vessel used in navigation.

**writing** includes a seal, mark and sign that is capable of conveying meaning.

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

## **2 Commission of offence**

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

## **3 Division of offences**

- (1) Offences are of 3 kinds, namely, crimes, simple offences and regulatory offences.
- (2) A person charged with a crime cannot, unless otherwise stated, be prosecuted or found guilty except upon indictment.
- (3) Unless otherwise stated, a person guilty of a simple offence or a regulatory offence may be found guilty summarily.



- (4) 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 his intention into execution by means adapted to its fulfilment and manifests his intention by some overt act, but does not fulfil his intention to such an extent as to commit the offence, he is said to attempt to commit the offence.
- (2) It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfilment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from the further prosecution of his intention.
- (3) It is immaterial that, by reason of circumstances not known to the offender, it is impossible in fact to commit the offence.
- (4) The same facts may constitute one offence and an attempt to commit another offence.

**Division 2                      Presumptions**

**5                      Innocence**

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

**6                      Normality of mind**

Every accused person is presumed to be of normal mind and to have been of normal mind at any time that comes in question until the contrary is proved.

**7                      Intoxication**

- (1) In all cases where intoxication may be regarded for the purposes of determining whether a person is guilty or not guilty of an offence:
- (a) it shall be presumed that, until the contrary is proved, the intoxication was voluntary; and
- (b) unless the intoxication was involuntary, it shall be presumed evidentially that the accused person foresaw the natural and probable consequences of his conduct.
- (2) It is hereby declared that the amendment effected by subsection (1) applies to and in relation to all proceedings before a court in respect

of an offence committed on or after 1 January 1984, in which the question of guilt has not been determined before that court before the commencement of this Act, as if the amendment came into operation on 1 January 1984.

**8                      Offences committed in prosecution of common purpose**

- (1) When 2 or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another and in the prosecution of such purpose an offence is committed by one or some of them, the other or each of the others is presumed to have aided or procured the perpetrator or perpetrators of the offence to commit the offence unless he proves he did not foresee the commission of that offence was a possible consequence of prosecuting that unlawful purpose.
- (2) Two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another when they agree to engage in or concur in engaging in any conduct that, if engaged in, would involve them or some or one of them in the commission of an offence or a tort.

**9                      Mode of execution different from that counselled**

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

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

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

**11                      Power to impose domestic discipline**

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

**Division 3                      Parties to offences**

**12                      Abettors and accessories before the fact**

- (1) When an offence is committed, the following persons also are deemed to have taken part in committing the offence and may be charged with actually committing it:
  - (a) every person who aids another in committing the offence;
  - (b) every person who does or omits to do any act for the purpose of enabling or aiding another to commit the offence; and
  - (c) every person who counsels or procures another to commit the offence.
- (2) A person who counsels or procures another to commit an offence may be charged with committing the offence or counselling or procuring its commission.
- (3) A finding of guilt of counselling or procuring the commission of an offence entails the same consequences in all respects as a finding of guilt of committing the offence.

**13                      Accessories after the fact**

- (1) A person who receives or assists another who, to his knowledge, has committed an offence in order to enable him to escape prosecution becomes an accessory after the fact to the offence.
- (2) A wife may be an accessory after the fact to an offence committed by her husband.

## **Division 4                      Application of criminal law**

### **14                      Effect of changes in law**

- (1) A person cannot be found guilty of an offence unless the conduct impugned would have constituted an offence under the law in force when it occurred; nor unless that conduct also constitutes an offence under the law in force when he is proceeded against for that conduct.
- (2) If the law in force when the conduct impugned occurred differs from that in force at the time of the finding of guilt, the offender cannot be punished to any greater extent than was authorized by the former law or to any greater extent than is authorized by the latter law.

### **15                      Application of criminal laws**

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

### **16                      Offences counselled or procured in the territory to be committed out of the territory**

- (1) Any person who, in the Territory, counsels or procures another to commit, at a place not in the Territory, an offence of such a nature that the conduct giving rise to it is also an offence in the Territory and that offence is in fact committed, is guilty of an offence of the same kind and, subject to subsection (2), is liable to the same punishment as if he had counselled or procured that other person to engage in that conduct in the Territory and he had done so.
- (2) A person found guilty under subsection (1) is not liable to greater punishment than that to which the person who actually committed the offence was liable under the law in force in the place where the offence was committed.
- (3) A prosecution cannot be instituted under subsection (1) except at the request of the government of the state having jurisdiction in the place where the offence so counselled or procured was committed.

## **Division 5                Effect of previous finding of guilt or acquittal**

### **17                Definitions**

In this Division:

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

### **18                Defence of previous finding of guilt or acquittal**

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

- (a) the same offence;
- (b) a similar offence;
- (c) an offence of which he might be found guilty upon the trial of the offence charged; or
- (d) an offence upon the trial of which he could have been found guilty of the offence charged.

### **19                Limitation of defence in relation to certain crimes**

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

### **20                Finding of guilt or acquittal of regulatory offence no defence**

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

### **21                Stay of vexatious, &c., proceedings**

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

## **Part II                      Criminal responsibility**

### **Division 1                General matters**

#### **22                      Exclusion of regulatory offences**

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

#### **23                      Effect of authorization, justification or excuse**

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

#### **24                      Authorization, justification or excuse of event**

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

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

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

### **Division 2                Authorization**

#### **26                      Execution of law, &c.**

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

- (a) in the exercise of a right granted or recognized by law;
- (b) in execution of the law or in obedience to, or in conformity with, the law;
- (c) in obedience to the order of a competent authority whom the person doing, making or causing it is bound by law to obey, unless the order is manifestly unlawful; or
- (d) subject to subsection (3), pursuant to authority, permission or licence lawfully granted.

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

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

### **Division 3            Justification**

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

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

- (a) to lawfully execute any sentence, process or warrant or make any arrest;
- (b) to prevent a person who is being or who has been lawfully arrested from escaping or from being rescued;
- (c) to prevent the continuance of a breach of the peace or a renewal of it and to detain any person who is committing or about to join in or to renew the breach of the peace for such time as may be reasonably necessary in order to give him into the custody of a police officer;
- (d) to suppress a riot;
- (e) to prevent the commission of an offence;
- (f) in the case of a person who is in peaceable possession of a dwelling-house, or a person acting by his authority, to prevent any person forcibly entering such dwelling-house with intent to commit an offence therein;
- (g) to defend one's self or to defend another;
- (h) in the case of a person who is in peaceable possession of any moveable property, or a person acting by his authority, to resist the taking of such property by a trespasser or to retake it from him, provided he does not intentionally do him bodily harm;
- (j) in the case of a person who is in peaceable possession of any moveable property under a claim of right, or a person acting by his authority, to defend the possession of such property, even against a person who is entitled by law to possession of the property, provided he does not intentionally do him bodily harm;
- (k) in the case of a person who is entitled by law to the possession of moveable property, or a person acting by his

authority, and who attempts to take possession of it from a person who neither claims right to it nor acts by the authority of a person who claims right to it and the person in possession resists him, to obtain possession of the property, provided he does not intentionally do him bodily harm;

- (m) in the case of a person who is in peaceable possession of any land, structure, vehicle, vessel, aircraft or place or who is entitled to the control or management of any land, structure, vehicle, vessel, aircraft or place, or a person acting by his authority:
  - (i) to prevent any person from wrongfully entering on or into such land, structure, vehicle, vessel, aircraft or place (including any part of an enclosure or structure, whether separated from the rest of the enclosure or structure by any means or not), or to remove therefrom a person who wrongfully remains thereon or therein, provided he does not intentionally do him bodily harm; or
  - (ii) to remove therefrom any person who conducts himself in a disorderly manner thereon or therein, provided he does not intentionally do him bodily harm;
- (n) in the case of a person who is in peaceable possession of any land, structure, vehicle, vessel or aircraft with a claim of right, or a person acting by his authority, to defend the possession of such property even against a person who is entitled by law to the possession of the property, provided he does not intentionally do him bodily harm;
- (p) in the case of a parent or guardian of a child, or a person in the place of such parent or guardian, to discipline, manage or control such child;
- (pa) to prevent a person reasonably believed to be attempting to, or about to, kill himself, from killing himself;
- (q) in the case of the person in command of a ship on a voyage or an aircraft on a flight, or a person acting by his authority, to maintain good order and discipline on board the ship or aircraft;
- (r) to assist a person to do any of the things aforesaid.



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**28                    Circumstances in which force causing death or grievous harm is justified**

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

- (a) in the case of a police officer when lawfully attempting to arrest or to assist with the arrest of a person whom he reasonably believes to be a person who:
  - (i) unless arrested, may commit an offence punishable with imprisonment for life;
  - (ii) has taken flight to avoid arrest;
  - (iii) in a case where the police officer intends to use a firearm, he has if practicable first fired a warning shot or has reasonable grounds for believing that another police officer has fired a warning shot; and
  - (iv) in any case, the person has been called upon by the police officer or another police officer to surrender and has been allowed a reasonable opportunity to do so;
- (b) in the case of a police officer when attempting to prevent the escape or the rescue of a person from lawful custody whom he reasonably believes to be a person who, unless kept in lawful custody, may commit an offence punishable with imprisonment for life and provided such police officer, if intending to use a firearm, if practicable, first fires a warning shot and, in any case, calls upon the person attempting to escape or to rescue to surrender or to desist and allows him a reasonable opportunity to do so;
- (c) in the case of a prison officer when attempting to prevent the escape or the rescue of a person from lawful custody and provided such prison officer, if intending to use a firearm, if practicable, first fires a warning shot and, in any case, calls upon the person attempting to escape or to rescue to surrender or to desist and allows him a reasonable opportunity to do so;
- (d) in the case of a police officer when attempting to suppress a riot, provided the proclamation to disperse has been read or an attempt to read it has been made and it appears on reasonable grounds to such police officer that a person not participating in such riot is in danger of death or grievous harm because of such riot or that an offence in relation to property is being committed punishable with imprisonment for life and, in

either case, provided such police officer, if practicable, first calls upon the rioters to desist and allows them a reasonable opportunity to do so and, in any case, if intending to use a firearm, first causes, or has reasonable grounds for believing that another police officer has caused, a warning shot to be fired;

- (e) in the case of a police officer, or a person acting by his authority, when attempting to prevent a person committing or continuing the commission of an offence of such a nature as to cause the person using the force reasonable apprehension that death or grievous harm to another will result;
- (f) in the case of any person when acting in self-defence or in the defence of another, where the nature of the assault being defended is such as to cause the person using the force reasonable apprehension that death or grievous harm will result;
- (g) in the case of a person in command of a ship or an aircraft, or a person acting by his authority or any person on board such ship or aircraft, when attempting to prevent a person committing or continuing the commission of an offence of such a nature as to cause the person using the force reasonable apprehension that death or grievous harm will result.

## **29 Examination of person of accused in custody**

- (1) Subject to subsection (2), when a person is in lawful custody upon a charge of committing any offence, a police officer, or person acting by his authority, may search his person and may take from him anything found upon his person including clothing that the police officer believes may afford evidence as to the commission of the offence or that may be used in an attempt to escape or to injure any person.
- (2) Unless not reasonably practicable, such search shall be carried out by a member of the same sex as the person searched.
- (3) When a person is in lawful custody upon a charge of committing an offence of such a nature, and alleged to have been committed under such circumstances, that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of the offence:
  - (a) a legally qualified medical practitioner, acting at the request of a police officer, and any person acting in good faith in his aid and under his direction, may do any of the things following provided it is reasonably required in order to ascertain the

facts that may afford such evidence:

- (i) examine the person of the person in custody, including the orifices of his body;
    - (ii) take samples of his blood, saliva or hair; and
    - (iii) collect from his person and from the orifices of his body any substance or thing provided such collection is of such a nature that it would be unlikely to cause bodily harm to a person fully co-operating with the taking of it; and
  - (b) a dentist or dental specialist registered under the *Dental Act*, acting at the request of a police officer, and any person acting in good faith in his aid and under his direction, may do any of the things following provided it is reasonably required in order to ascertain the facts that may afford such evidence:
    - (i) examine the mouth of the person in custody;
    - (ii) take samples of his saliva; and
    - (iii) make dental impressions.
- (4) Any application of force used in the circumstances referred to in this section is justified provided it is not unnecessary force.

## **Division 4      Excuse**

### **30      Ignorance of law: bona fide claim of right, &c.**

- (1) Subject to subsections (2) and (3), ignorance of the law does not afford an excuse unless knowledge of the law by the offender is expressly declared to be an element of the offence.
- (2) A person is excused from criminal responsibility for an act or omission done or made with respect to, or for an event caused to, property in the exercise of an honest claim of right and without intention to defraud.
- (3) A person is excused from criminal responsibility for an act, omission or event done, made or caused in contravention of a statutory instrument if, at the time of doing, making or causing it, the statutory instrument was not known to him and had not been published or otherwise reasonably made available or known to the public or those persons likely to be affected by it.
- (4) For the purposes of subsection (3), **published** means published in the *Gazette* or notified in the *Gazette* as having been made.

**31                      Unwilled act, &c., and accident**

- (1) A person is excused from criminal responsibility for an act, omission or event unless it was intended or foreseen by him as a possible consequence of his conduct.
- (2) A person who does not intend a particular act, omission or event, but foresees it as a possible consequence of his conduct, and that particular act, omission or event occurs, is excused from criminal responsibility for it if, in all the circumstances, including the chance of it occurring and its nature, an ordinary person similarly circumstanced and having such foresight would have proceeded with that conduct.
- (3) This section does not apply to the offences defined by Division 2 of Part VI.

**32                      Mistake of fact**

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

**33                      Sudden and extraordinary emergency**

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

**34                      Provocation, &c.**

- (1) A person is excused from criminal responsibility for an act or its event if the act was committed because of provocation upon the person or the property of the person who gave him that provocation provided:
  - (a) he had not incited the provocation;
  - (b) he was deprived by the provocation of the power of self-control;
  - (c) he acted on the sudden and before there was time for his passion to cool;

- (d) an ordinary person similarly circumstanced would have acted in the same or a similar way;
  - (e) the act was not intended and was not such as was likely to cause death or grievous harm; and
  - (f) the act did not cause death or grievous harm.
- (2) When a person who has unlawfully killed another under circumstances that, but for this subsection, would have constituted murder, did the act that caused death because of provocation and to the person who gave him that provocation, he is excused from criminal responsibility for murder and is guilty of manslaughter only provided:
- (a) he had not incited the provocation;
  - (b) he was deprived by the provocation of the power of self-control;
  - (c) he acted on the sudden and before there was time for his passion to cool; and
  - (d) an ordinary person similarly circumstanced would have acted in the same or a similar way.
- (3) A person is excused from criminal responsibility for the use of such force as was reasonably necessary to prevent the repetition of a wrongful act or insult as to be provocation for him provided:
- (a) he had not incited the wrongful act or insult;
  - (b) an ordinary person similarly circumstanced would have acted in the same or a similar way;
  - (c) the force used was not intended and was not such as was likely to cause death or grievous harm; and
  - (d) the force used did not cause death or grievous harm.

## **35                  Insanity**

- (1) A person is excused from criminal responsibility for an act, omission or event if, at the time of doing the act, making the omission or causing the event he was in such a state of abnormality of mind as to deprive him of capacity to understand what he was doing or of capacity to control his actions or of capacity to know that he ought not do the act, make the omission or cause the event.

- (2) A person whose mind, at the time of his doing, making or causing an act, omission or event, was affected by delusions on some specific matter or matters, but who is not otherwise entitled to the benefit of the foregoing provisions of this section, is criminally responsible for the act, omission or event to the same extent as if the real state of things had been such as he was induced by the delusions to believe to exist.

**36                      Intoxication**

Section 35 applies also to a person who was in a state of abnormality of mind caused by involuntary intoxication.

**37                      Diminished responsibility**

When a person who has unlawfully killed another under circumstances that, but for this section, would have constituted murder, was at the time of doing the act or making the omission that caused death, in such a state of abnormality of mind as substantially to impair his capacity to understand what he was doing or his capacity to control his actions or his capacity to know that he ought not do the act, make the omission or cause that event, he is excused from criminal responsibility for murder and is guilty of manslaughter only.

**38                      Immature age**

- (1) A person under the age of 10 years is excused from criminal responsibility for an act, omission or event.
- (2) A person under the age of 14 years is excused from criminal responsibility for an act, omission or event unless it is proved that at the time of doing the act, making the omission or causing the event he had capacity to know that he ought not to do the act, make the omission or cause the event.

**39                      Judicial officers**

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

**40                      Duress**

- (1) A person is excused from criminal responsibility for an act, omission or event if it was done, made or caused because of duress provided:
  - (a) he believed the person making the threat was in a position to execute the threat;
  - (b) he believed there was no other way he could ensure the threat was not executed;
  - (c) an ordinary person similarly circumstanced would have acted in the same or a similar way; and
  - (d) he reported the threat to a police officer as soon as was reasonably practicable, unless the nature of the threat was such that an ordinary person similarly circumstanced would not have reported that threat.
- (2) The excuse referred to in subsection (1) does not extend to an act, omission or event that would constitute murder, manslaughter or a crime of which grievous harm or an intention to cause such harm is an element; nor to a person who has rendered himself liable to have such a threat made to him by having entered into an association or conspiracy that has as any of its objects the doing of a wrongful act.

**41                      Coercion**

- (1) When a person who has unlawfully killed another under circumstances that, but for this subsection, would have constituted murder, did the act or made the omission that caused death because of coercion of such a nature that it would have caused an ordinary person similarly circumstanced to have acted in the same or a similar way, he is excused from criminal responsibility for murder and is guilty of manslaughter only.
- (2) The excuse referred to in subsection (1) does not extend to a person who has rendered himself liable to have such coercion applied to him by having entered into an association or conspiracy that has as any of its objects the doing of a wrongful act.

**42                      Liability of husband or wife for offences committed by either with respect to the other's property**

When a husband and wife are living together, each of them is excused from criminal responsibility for an act or omission done or made with respect to, or for an event caused to, the property of the other, except in the case of an offence where an intention to injure

or defraud some other person is an element and except when leaving or deserting, or when about to leave or desert, the other.

**43            Damage to property**

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

**Part III            Offences against public order**

**Division 1        Sedition**

**44            Definitions**

In this Division:

***sedition enterprise*** means an enterprise undertaken in order to carry out a seditious intention.

***sedition intention*** means an intention:

- (a) to excite disaffection against the government or the Legislative Assembly or the administration of justice of or in the Territory;
- (b) to excite any person to attempt to procure the alteration, otherwise than by lawful means, of any matter in the Territory established by a law in force in the Territory; or
- (c) to promote feelings of ill-will and hostility between different classes of persons so as to endanger the peace, order or good government of the Territory.

***sedition words*** means words expressing a seditious intention.

**45            Seditious enterprise**

Subject to section 48, any person who engages in or agrees or undertakes to engage in a seditious enterprise is guilty of a crime and is liable to imprisonment for 3 years or, upon being found guilty summarily, to imprisonment for one year.



**46        Seditious words**

Subject to section 48, any person who writes, prints, utters or publishes seditious words is guilty of a crime and is liable to imprisonment for 3 years or, upon being found guilty summarily, to imprisonment for one year.

**47        Procedure on prosecution for sedition**

- (1) A crime defined by section 45 or 46 may be prosecuted either on indictment or, with the consent of the Director of Public Prosecutions and the accused person, summarily.
- (2) A person cannot be found guilty of committing or of counselling or procuring the commission of a crime defined by section 45 or 46 upon the uncorroborated testimony of one witness.

**48        Acts done in good faith**

A person shall not be guilty of a crime defined by section 45 or 46:

- (a) for endeavouring in good faith to show that the Administrator is, or his advisors are, mistaken in any of his or their counsels, policies or actions;
- (b) for pointing out in good faith errors or defects in the government, the legislation or the administration of justice of or in the Territory with a view to the reformation of those errors or defects;
- (c) for exciting in good faith another person to attempt to procure by lawful means the alteration of any matter established by law in the Territory;
- (d) for pointing out in good faith, in order to bring about its removal, a matter that is producing, or has a tendency to produce, feelings of ill-will or hostility between different classes of persons; or
- (e) for doing anything in good faith in connection with an industrial dispute or an industrial matter.

**49            Unlawful oaths to commit offences, &c.**

Any person who:

- (a) administers, or is present at and consents to the administering of, an oath or engagement in the nature of an oath purporting to bind the person who takes it:
  - (i) to commit an offence;
  - (ii) to be a member of an association, society or confederacy formed or maintained for the purpose of committing an offence;
  - (iii) to obey the orders or commands of a committee or body not lawfully constituted, or of a person not having authority by law, to give such orders or commands;
  - (iv) not to inform or give evidence against a person; or
  - (v) not to reveal or discover an association, society or confederacy formed or maintained for the purpose of committing an offence, or an offence that has been or is to be committed, or an unlawful oath or engagement that may have been administered or tendered to or taken by himself or any other person, or the import of any such oath or engagement; or
- (b) takes such an oath or engagement, not being compelled to do so,

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

**Division 2            Terrorism**

**50            Definitions**

In this Division:

***act of terrorism*** means the use or threatened use of violence:

- (a) to procure or attempt to procure:
  - (i) the alteration of;
  - (ii) the cessation of; or
  - (iii) the doing of,

any matter or thing established by a law of, or within the competence or power of, a legally constituted government or other political body (whether or not legally constituted) in the Territory, the Commonwealth or any other place;

- (b) for the purpose of putting the public or a section of the public in fear; or
- (c) for the purpose of preventing or dissuading the public or a section of the public from carrying out, either generally or at a particular place, an activity it is entitled to carry out;

**organization** means an association, society or confederacy.

**unlawful organization** means an organization that uses, threatens to use or advocates the use of unlawful violence in the Territory to achieve its ends.

**violence** means violence of a kind that causes, or is likely to cause, the death of, or grievous harm to, a person.

## 51 Membership of unlawful organization

- (1) Any person who, knowing an organization to be an unlawful organization:
  - (a) belongs or professes to belong to it;
  - (b) solicits or invites financial or other support for it or knowingly makes or receives a contribution of money or other property to or for its resources; or
  - (c) arranges or assists in the arrangement or management of or addresses a meeting of 3 or more persons knowing that the meeting is to support or further the activities of that unlawful organization or is to be addressed by a person belonging or professing to belong to that unlawful organization,

is guilty of a crime and is liable to imprisonment for 2 years.

- (2) The court by or before which a person is found guilty of a crime defined by this section may order the forfeiture to the Crown of any money or other property that, at the time of the offence, he had in his possession or under his control for the use or benefit of the unlawful organization.

**52 Evidence of knowledge of unlawfulness**

Proof of the fact that a person has belonged to an unlawful organization for 28 days or was a member of any committee of it is evidence that he knew it to be an unlawful organization.

**53 Display of support for unlawful organization**

Any person who, knowing an organization to be an unlawful organization, in a public place, or in any other place with the intention that it can be seen by persons in a public place:

- (a) wears an item of dress; or
- (b) wears, carries or displays a sign or article,

in such a way or in such circumstances that it can reasonably be inferred he is a member or supporter of an unlawful organization, is guilty of an offence and is liable to imprisonment for 6 months.

**54 Terrorism**

Any person who commits an act of terrorism is guilty of a crime and is liable to imprisonment for life.

**55 Contribution towards acts of terrorism**

- (1) Any person who obtains for himself or another or supplies anything with the intention that it be used, or knowing that it is intended to be used, for or in connection with the preparation or commission of an act of terrorism is guilty of a crime and is liable to imprisonment for 10 years.
- (2) Any court by or before which a person is found guilty of a crime defined by this section may order the forfeiture to the Crown of any property that, at the time of the crime:
  - (a) he had in his possession or under his control; and
  - (b) he intended should be used for or in connection with the preparation or commission of an act of terrorism.

### **Division 3            Offences against the executive and legislative power**

#### **56            Interference with Administrator or Minister**

Any person who does an act with the intention of interfering with the free exercise by the Administrator or a Minister of the Crown of a duty or an authority of his office is guilty of a crime and is liable to imprisonment for 7 years.

#### **57            Interference with Legislative Assembly**

Any person who, by force or deception, or by threat or intimidation of any kind, interferes with the free exercise by the Legislative Assembly of its authority is guilty of a crime and is liable to imprisonment for 7 years.

#### **58            Influencing Legislative Assembly member**

Any person who, directly or indirectly, by force, deception, threat or intimidation of any kind, influences a member of the Legislative Assembly in the exercise of his duty or authority as a member of, or induces him to absent himself from, the Legislative Assembly or a committee of the Legislative Assembly, is guilty of a crime and is liable to imprisonment for 7 years.

#### **59            Bribery of Legislative Assembly member**

Any person who, in order to influence a member of the Legislative Assembly in the exercise of his duty or authority as a member, or in order to induce him to absent himself from the Legislative Assembly or a committee of the Legislative Assembly, gives, confers or procures, or promises or offers to give, confer or procure, property or a benefit of any kind to, upon or for the member or another, is guilty of a crime and is liable to imprisonment for 7 years.

#### **60            Legislative Assembly Member receiving bribe**

Any person who, being a member of the Legislative Assembly, solicits, receives or obtains, or agrees to receive or obtain, property or a benefit of any kind for himself or another, upon the understanding that the exercise by the member of his duty or authority as a member shall be in any way influenced or affected, is guilty of a crime and is liable to imprisonment for 7 years.

#### **61            Disturbing the Legislative Assembly**

Any person who intentionally:

- (a) disturbs the Legislative Assembly while it is in session; or

- (b) engages in conduct in the immediate view and presence of the Legislative Assembly while it is in session with the intention of interrupting its proceedings or impairing the respect due to its authority,

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

## **62      Going armed to Legislative Assembly**

Any person who, without lawful excuse, being armed with a firearm or other dangerous or offensive weapon, enters or is found within the precincts of the Legislative Assembly is guilty of a crime and is liable to imprisonment for 3 years.

## **Division 4      Unlawful assemblies: breaches of the peace**

### **63      Interpretation**

- (1) When 3 or more persons, with intent to carry out some common purpose, assemble in such a manner or, being assembled, conduct themselves in such a manner as to cause persons in the neighbourhood to fear on reasonable grounds that the persons so assembled will tumultuously disturb the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons tumultuously to disturb the peace, they are an unlawful assembly.
- (2) It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in such a manner as aforesaid.
- (3) An assembly of 3 or more persons who assemble for the purpose of protecting the dwelling-house of any one of them against persons threatening to enter it in order to commit an offence therein is not an unlawful assembly.
- (4) When an unlawful assembly has begun to act in so tumultuous a manner as to disturb the peace, the assembly is called a riot and the persons assembled are said to be riotously assembled.

### **64      Punishment of unlawful assembly**

Any person who takes part in an unlawful assembly is guilty of a crime and is liable to imprisonment for one year.

### **65      Punishment of riot**

Any person who takes part in a riot is guilty of a crime and is liable to imprisonment for 3 years.

**66        Rioters remaining after proclamation ordering them to disperse**

- (1) When 12 or more persons are riotously assembled together, it is the duty of a police officer to go amongst them or as near as he can safely go and to command with a loud voice that silence be kept while the following proclamation is made and then openly and with a loud voice to make the proclamation in these words or to the like effect:

I am a police officer and by the authority of the law I command you all who are assembled here immediately to leave. If you do not leave within a period of 15 minutes you will be guilty of a crime and you will be liable to imprisonment for 14 years.

- (2) Any person who knowingly and by force opposes, obstructs or hurts any police officer who goes to make, or begins to make, any such proclamation and thereby prevents the proclamation being made is guilty of a crime.
- (3) Any persons who, being so assembled, continue together to the number of 12 or more and do not disperse themselves within 15 minutes after the making of the proclamation are guilty of a crime.
- (4) When the making of the proclamation is prevented, any persons who being so assembled and to whom the proclamation would or ought to have been made if the making thereof had not been so prevented and who, knowing of such prevention, continue together to the number of 12 or more and do not disperse themselves within 15 minutes after the time of such prevention are guilty of a crime.
- (5) Any person who commits any of the crimes defined by this section is liable to imprisonment for 14 years.
- (6) A prosecution for any of the crimes defined by this section must be begun within one year after the crime is committed.

**67        Rioters demolishing buildings, &c.**

Any persons who, being riotously assembled together, unlawfully pull down or destroy, or begin to pull down or destroy:

- (a) any building, ship, aircraft, motor vehicle, railway engine or railway carriage;
- (b) any machinery, whether fixed or moveable; or
- (c) any bridge, road or railway or conveyor for conveying materials from a mine,

are guilty of a crime and each of them is liable to imprisonment for 20 years.

**68      Rioters damaging property**

Any persons who, being riotously assembled together, unlawfully damage any of the things mentioned in section 67 are guilty of a crime and each of them is liable to imprisonment for 7 years.

**69      Going armed in public**

Any person who goes armed in public without lawful occasion in such a manner as to cause fear to a person of reasonable firmness and courage is guilty of a crime and is liable to imprisonment for 3 years.

**70      Challenge to a fight likely to cause death or grievous harm**

Any person who challenges another to a fight of such a nature that, if it should occur, death or grievous harm is likely to result or attempts to provoke another to such a fight or attempts to provoke any person to challenge another to such a fight, is guilty of a crime and is liable to imprisonment for 3 years.

**Division 5      Offences against political liberty**

**71      Interfering with political liberty**

- (1) Any person who by violence, or by threats or intimidation of any kind, hinders or interferes with the free exercise of any political right by another person is guilty of a crime and is liable to imprisonment for 2 years.
- (2) If the offender is a public officer and commits the crime in abuse of his authority as such an officer he is liable to imprisonment for 3 years.

**Division 6      Piracy**

**72      Definitions**

In this Division:

***act of piracy*** means an act on the high seas (other than an act of war committed under the authority of the Commonwealth or the lawful government of a foreign state):

- (a) that, if committed in the Territory, would constitute robbery;



- (b) of boarding a ship against the wishes or without the knowledge of the master for the purpose of committing thereon, or in fact committing thereon, an act that, if committed in the Territory, would constitute a crime defined by section 162, 181, 192, 194, 195, 202 or 239 or referred to in section 251(3) or (4);
- (c) of stealing a ship or directly or indirectly taking control of a ship against the wishes of the master;
- (d) of confining the master of a ship against his will; or
- (e) of a person on board a ship intentionally disobeying a lawful direction of the master given for the purpose of ensuring the safety of the ship, the crew or the passengers,

provided, however, a person shall not be regarded as having committed an act of piracy by reason only of his having taken control of a ship against the wishes of the master where the master himself had control of the ship as a result of an act of piracy and where the person is a member of the armed forces of, or is acting with the authority of, the Commonwealth or the lawful government of a foreign state.

**master** means the person for the time being in control of the ship, whether or not that control was lawfully obtained.

**pirate** means a person who commits an act of piracy.

### **73 Punishment of piracy**

Any person who commits an act of piracy is guilty of a crime and is liable to imprisonment for 20 years; and a person who has committed an act of piracy out of the Territory and who comes into the Territory is, by so coming into the Territory, guilty of a crime and is liable to imprisonment for 20 years.

### **74 Trading with pirates**

Any person who trades with or supplies ammunition, provisions or stores to a pirate knowing him to be a pirate is guilty of a crime and is liable to imprisonment for 5 years.

### **75 Fitting out ship for piracy**

Any person who builds or fits out a ship with the intention that it shall be used or with the knowledge that it is intended to be used for or in connection with an act of piracy is guilty of a crime and is liable to imprisonment for 5 years.

## **Part IV                      Offences against the administration of law and justice and against public authority**

### **Division 1                Disclosing official secrets**

#### **76                      Disclosure of official secrets**

- (1) Any person who, being employed in the public service or engaged to do any work for or render any service to the government of the Territory or any department or statutory body thereof, unlawfully communicates confidential information coming to his knowledge because of such position is guilty of a crime and is liable to imprisonment for 3 years.
- (2) If he does so for purposes of gain he is liable to imprisonment for 5 years.

### **Division 2                Corruption and abuse of office**

#### **77                      Official corruption**

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 or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in the discharge of the duties of his 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.

#### **78                      Extortion by public officers**

Any person who, being employed in the public service, takes or accepts from any person for the performance of his duty as such officer any reward beyond his proper pay and emoluments, or any

promise of such reward, is guilty of a crime and is liable to imprisonment for 3 years.

## **79 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 company consisting of more than 25 persons, a private interest in any contract or agreement that is made on account of the Public Sector with respect to any matter concerning the Agency within the Public Sector in which he is employed, is guilty of a crime and is liable to imprisonment for 3 years.
- (2) For the purposes of subsection (1), **private** means undisclosed to the Chief Executive Officer of the Agency within the Public Sector in which he is employed or to the minister responsible therefor.

## **80 Officers charged with administration of property of a special character or with special duties**

- (1) Any person who, being employed in the public service and being charged by virtue of his 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 he has such interest, or with respect to the conduct of any person in relation thereto, is guilty of a crime and is liable to imprisonment for one year.
- (2) For the purposes of subsection (1), **private** means undisclosed to the head of the department of the service in which he is employed or to the minister responsible therefor.

## **81 False claims by officials**

Any person who, being employed in the public service in such a capacity as to require him or to enable him to furnish returns or statements touching any remuneration payable or claimed to be payable to himself 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 that is, to his knowledge, false in any material particular, is guilty of a crime and is liable to imprisonment for 3 years.

**82 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 his office, any arbitrary act prejudicial to the rights of another is guilty of a crime and is liable to imprisonment for 2 years.
- (2) If the act is done or directed to be done for purposes of gain he is liable to imprisonment for 3 years.

**83 Corruption of surveyor or valuer**

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

- (a) acts as such surveyor or valuer while he has, to his knowledge, an interest in the land in question; or
- (b) executes unfaithfully, dishonestly or with partiality the duty of surveying the land or making a valuation of the land or of the extent of the injury,

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

**84 False certificates by public officers**

Any person who, being authorized 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 that is, to his knowledge, false in any material particular is guilty of a crime and is liable to imprisonment for 3 years.

**85 False assumption of authority**

Any person who:

- (a) not being a justice of the peace, assumes to act as a justice of the peace;
- (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 that can only be done by persons authorized by law to do so; or

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

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

## **86 Personating public officers**

Any person who:

- (a) personates any person employed in the public service on an occasion when the latter is required to do any act or attend in any place by virtue of his employment; or
- (b) falsely represents himself to be a person employed in the public service and assumes to do any act or to attend in any place for the purpose of doing any act by virtue of such employment,

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

## **Division 3 Corrupt and improper practices at elections**

### **87 Undue influence**

Any person who:

- (a) uses or threatens to use any force or restraint, or does or threatens to do any temporal or spiritual injury, or causes or threatens to cause any detriment of any kind, to an elector in order to induce him to vote in a particular manner or to refrain from voting at an election or on account of his having voted at an election; or
- (b) by force or fraud prevents or obstructs the free exercise of the franchise of an elector, or by any such means compels or induces an elector to vote in a particular manner or to refrain from voting at an election,

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

### **88 Bribery**

Any person who:

- (a) gives, confers or procures, or promises or offers to give or confer or to procure or attempt to procure, to, upon or for any

person any property or benefit of any kind on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by an elector at an election in the capacity of an elector or in order to induce any person to endeavour to procure the return of any person at an election, or the vote of any elector at an election;

- (b) being an elector, asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him at an election in the capacity of an elector;
- (c) asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of a promise made by him or any other person to endeavour to procure the return of any person at an election, or the vote of any person at an election; or
- (d) advances or pays any money to or for the benefit of any other person with the intent that such money shall be applied for any of the purposes mentioned in paragraph (a), (b) or (c), or in discharge or repayment of money wholly or in part applied for any such purpose,

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

## **89 Further penalty for corrupt practices**

- (1) Any person found guilty of any of the crimes defined by section 87 or 88 with respect to an election of the Legislative Assembly becomes incapable for 3 years from the date of the finding of guilt of voting at any such election or of holding any judicial office and, if he holds any such office, the office is vacated.
- (2) He also becomes incapable for the like period of being elected to or of sitting in the Legislative Assembly; and, if at the time of the finding of guilt he is a member of it, his seat is vacated.
- (3) Any person found guilty of such a crime committed with respect to a local government election becomes incapable, for 2 years from the date of the finding of guilt, of holding any local government office and, if he holds any such office, the office is vacated.

## **90        Illegal practices**

Any person who:

- (a) being prohibited by law from voting at an election and knowing that he is so prohibited votes at the election;
- (b) procures any person who is, and whom he knows to be, prohibited from voting at an election to vote at the election;
- (c) before or during an election, and for the purpose of promoting or procuring the choice of any candidate at the election, knowingly publishes a false statement of the withdrawal of another candidate at the election;
- (d) before or during an election, and for the purpose of affecting the return of a candidate at the election, knowingly publishes a false statement of fact respecting the personal character or conduct of the candidate;
- (e) being a candidate at an election withdraws from being a candidate in consideration of a payment or promise of payment; or
- (f) being a candidate or the agent of a candidate at an election corruptly procures any other person to withdraw from being a candidate at the election in consideration of any payment or promise of payment,

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

## **91        Placing false ballot-papers in ballot-boxes**

Any person who places in a ballot-box a ballot-paper that has not been lawfully handed to and marked by an elector is guilty of a crime and is liable to imprisonment for 7 years.

## **Division 4        Selling and trafficking in offices**

### **92        Bargaining for offices in public service**

Any person who:

- (a) corruptly asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him or any other person with regard to the appointment or contemplated appointment of any person

to any office or employment in the Public Sector, or with regard to any application by any person for employment in the Public Sector; or

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

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

## **Division 5      Offences relating to the administration of justice**

### **93      Judicial corruption**

(1) Any person who:

- (a) being the holder of a judicial office, corruptly asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in his judicial capacity; or
- (b) corruptly gives, confers or procures, or promises or offers to give or confer or to procure or attempt to procure, to, upon or for any person holding a judicial office, or to, upon or for any other person, any property or benefit of any kind on account of any such act or omission on the part of the person holding the judicial office,

is guilty of a crime and is liable to imprisonment for 14 years.

- (2) In subsection (1), **holder of a judicial office** means a person who by himself or with another or others conducts a judicial proceeding.
- (3) A prosecution for any of the crimes defined by subsection (1) cannot be begun except by the direction of a Crown Law Officer.

### **94      Official corruption not judicial but relating to offences**

Any person who:

- (a) being a justice of the peace not acting judicially, or being a person employed in the public service in any capacity not judicial for the prosecution, detention or punishment of offenders, corruptly asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything



already done or omitted to be done, or to be afterwards done or omitted to be done, by him with a view to corrupt or improper interference with the due administration of justice, or the procurement or facilitation of the commission of any offence, or the protection of any offender or intending offender from detection or punishment; or

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

is guilty of a crime and is liable to imprisonment for 14 years.

## **95 Corrupting or threatening jurors**

Any person who:

- (a) attempts by menaces of any kind, or benefits or promises of benefit of any kind, or by other corrupt means, to influence any person, whether a particular person or not, in his conduct as a juror in any judicial proceeding, whether he has been sworn as a juror or not;
- (b) threatens to do any injury or cause any detriment of any kind to any person on account of anything done by him as a juror in any judicial proceeding; or
- (c) accepts any benefit or promise of benefit on account of anything to be done by him as a juror in any judicial proceeding, whether he has been sworn as a juror or not, or on account of anything already done by him as a juror in any judicial proceeding,

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

## **96 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 that is material to any question then depending in that proceeding, or intended to be raised in that proceeding, is guilty of a crime that is called perjury.
- (2) It is immaterial whether the testimony is given on oath or under any other sanction authorized by law.

- (3) The forms and ceremonies used in administering the oath or in otherwise binding the person giving the testimony to speak the truth are immaterial if he assents to the forms and ceremonies actually used.
- (4) It is immaterial whether the false testimony is given orally or in writing.
- (5) It is immaterial whether the court or tribunal is properly constituted, or is held in the proper place or not, if it actually acts as a court or tribunal in the 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.

## **97 Punishment of perjury**

- (1) Any person who commits perjury is guilty of a crime and is liable to imprisonment for 14 years.
- (2) If the offender commits the crime in order to procure the finding of guilt of another person for a crime punishable with imprisonment for life, he is liable to imprisonment for life.

## **98 Evidence on charge of perjury**

A person cannot be found guilty of committing perjury or of counselling or procuring the commission of perjury upon the uncorroborated testimony of one witness.

## **99 Fabricating evidence**

Any person who, with intent to mislead in any judicial 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.

## **100 Corruption of witnesses**

Any person who:

- (a) gives, confers or procures, or promises or offers to give or confer or to procure or attempt to procure, any property or benefit of any kind to, upon or for any person upon any agreement or understanding that any person called or to be

called as a witness in any judicial proceeding shall give false testimony or withhold true testimony;

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

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

#### **101 Deceiving witnesses**

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

#### **102 Destroying evidence**

Any person who, knowing that any book, document, tape recording, photograph or other thing of any kind is or may be required in evidence in a judicial proceeding, destroys it or renders it illegible or undecipherable or incapable of identification with intent thereby to prevent it from being used in evidence, is guilty of a crime and is liable to imprisonment for 3 years.

#### **103 Preventing witnesses from attending**

Any person who prevents or attempts to prevent any person whom he knows has been duly summoned to attend as a witness before any court or tribunal from attending as a witness, or from producing anything in evidence pursuant to a subpoena or summons, is guilty of a crime and is liable to imprisonment for 3 years.

#### **104 Compounding crimes**

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

- (2) If the crime is such that a person found guilty of it is liable to be sentenced to imprisonment for life, the offender is liable to imprisonment for 7 years.
- (3) In any other case, the offender is liable to imprisonment for 3 years.

#### **105      Compounding penal actions**

Any person who, having brought, or under pretence of bringing, an action against another person upon a penal statute in order to obtain from him a penalty for any offence committed or alleged to have been committed by him, compounds the action without the order or consent of the court in which the action is brought or is to be brought is guilty of a crime and is liable to imprisonment for one year.

#### **106      Delay in taking person arrested before Court**

Any person who, except as permitted by law, having arrested another, deliberately delays bringing him before a court to be dealt with according to law is guilty of a crime and is liable to imprisonment for 2 years.

#### **107      Bringing fictitious action on penal statute**

Any person who, in the name of a fictitious plaintiff, or in the name of a real person, but without his authority, brings an action against another person upon a penal statute for the recovery of a penalty for any offence committed or alleged to have been committed by him is guilty of a crime and is liable to imprisonment for 2 years.

#### **108      Inserting advertisement without authority of Court**

Any person who, without authority, or knowing the advertisement to be false in any material particular, inserts or causes to be inserted in the *Gazette* or in any newspaper an advertisement purporting to be published under the authority of any court or tribunal is guilty of a crime and is liable to imprisonment for 2 years.

#### **109      Attempting to pervert justice**

Any person who attempts, in any way not specially defined by this Code, to obstruct, prevent, pervert or defeat the course of justice is guilty of a crime and is liable to imprisonment for 2 years.

## **Division 6          Escapes: rescues: obstructing officers of courts**

### **110          Forcibly rescuing certain offenders**

Any person who by force rescues or attempts to rescue from lawful custody an offender under sentence for the crime of murder or terrorism, or a person committed to prison on such a charge, is guilty of a crime and is liable to imprisonment for life.

### **111          Aiding escape from lawful custody**

Any person who:

- (a) aids a person in escaping or attempting to escape from lawful custody, confinement or detention; or
- (b) conveys anything or causes anything to be conveyed into a prison or police prison within the meaning of the *Prisons (Correctional Services) Act* with intent to facilitate the escape of a prisoner,

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

### **112          Escape from lawful custody**

(1) Any person who:

- (a) being a prisoner in lawful custody following his arrest or conviction for an offence; or
- (b) is lawfully confined or detained otherwise than as referred to in paragraph (a) and who,

escapes from such custody, confinement or detention, is guilty of an offence.

(2) If the offence upon which a person referred to in subsection (1)(a) has been arrested or convicted is a crime, he is guilty of a crime and is liable to imprisonment for 3 years; if it is a simple or regulatory offence, he is guilty of a simple offence and is liable to imprisonment for one year.

(2A) A person who commits an offence against subsection (1)(b) is liable to imprisonment for 12 months.

(3) The offender may be tried, found guilty and punished notwithstanding that at the time of his apprehension or trial the term of his original sentence has expired.

**113      Permitting escape**

Any person who, being an officer of a prison or a police officer and being charged with the custody of a prisoner or a person under arrest upon a charge of an offence, permits him to escape from custody is guilty of a crime and is liable to imprisonment for 3 years.

**114      Harboursing escaped prisoners**

Any person who harbours, maintains or employs a person who is, to his knowledge, an offender under sentence by any court of the Territory, the Commonwealth or a State or another Territory of the Commonwealth involving deprivation of liberty and unlawfully at large, is guilty of a crime and is liable to imprisonment for 2 years.

**115      Rescuing mentally ill persons**

Any person who:

- (a) rescues any person during his conveyance as a mentally ill person to a hospital or other institution for the mentally ill or to a prison, or rescues any person during his confinement as a mentally ill person in any such place;
- (b) being in charge of a person during his conveyance as a mentally ill person to any such place permits him to escape from custody;
- (c) being a superintendent of, or person employed in, any such place permits a person confined therein as a mentally ill person to escape therefrom; or
- (d) conceals any such person as aforesaid who has, to his knowledge, been rescued during such conveyance or confinement or has, to his knowledge, escaped during such conveyance or from such confinement,

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

**116      Removing, &c., property under lawful seizure**

Any person who, when any property has been attached or taken under the process or authority of any court of justice, knowingly and with intent to hinder or defeat the attachment or process, receives, removes, retains, conceals or disposes of such property is guilty of a crime and is liable to imprisonment for 3 years.

**117      Obstructing officers of courts of justice**

Any person who obstructs or resists any person lawfully charged with the execution of an order or warrant of any court of justice is guilty of a crime and is liable to imprisonment for 3 years.

**Division 7      Miscellaneous offences against public authority**

**118      False statements in statements required to be under oath or solemn declaration**

Any person who, on any occasion on which a person making a statement touching any matter is required by law to make it on oath or under some sanction that may by law be substituted for an oath, or is required to verify it by solemn declaration or affirmation, makes a statement touching such matter that, in any material particular, is to his knowledge false and verifies it on oath or under such other sanction or by solemn declaration or affirmation, is guilty of a crime and is liable to imprisonment for 7 years.

**119      False declarations and statements**

Any person who, on any occasion on which he is permitted or required by law to make a statement or declaration before any person authorized by law to permit it to be made before him, makes a statement or declaration before that person that, in any material particular, is to his knowledge false, is guilty of a crime and is liable to imprisonment for 3 years.

**120      Evidence**

A person cannot be found guilty of committing or counselling or procuring the commission of any of the crimes defined by sections 118 and 119 upon the uncorroborated testimony of one witness.

**121      Resisting public officers**

Any person who in any manner obstructs or resists any public officer while engaged in the discharge or attempted discharge of the duties of his office under any statute, or obstructs or resists any person while engaged in the discharge or attempted discharge of any duty imposed on him by any statute, is guilty of a crime and is liable to imprisonment for 2 years.

**122                    Refusal by public officer to perform duty**

Any person who, being employed in the public service or as an officer of any court or tribunal, perversely and without reasonable excuse omits or refuses to do any act that it is his duty to do by virtue of his employment is guilty of a crime and is liable to imprisonment for 2 years.

**123                    Neglect to aid in suppressing riot**

Any person who, having reasonable notice that he is required to assist any police officer in suppressing a riot, without reasonable excuse omits to do so, is guilty of a crime and is liable to imprisonment for one year.

**124                    Neglect to aid in arresting offenders, &c.**

Any person who, having reasonable notice that he is required to assist any police officer in arresting any person, or in preserving the peace, without reasonable excuse omits to do so, is guilty of a crime and is liable to imprisonment for one year.

**Part V                    Acts injurious to the public in general**

**Division 1               Offences relating to religious worship**

**125                    Offering violence to officiating ministers of religion**

Any person who:

- (a) by threats or force prevents or attempts to prevent any minister of religion from lawfully officiating in any place of religious worship, or from performing his duty in the lawful burial or cremation of the dead in any cemetery or crematorium;
- (b) by threats or force obstructs or attempts to obstruct any minister of religion while so officiating or performing his duty; or
- (c) assaults or, upon or under the pretence of executing any civil process, arrests any minister of religion who is engaged in or is, to the knowledge of the offender, about to engage in any of the offices or duties referred to in paragraph (a) or who is, to the knowledge of the offender, going to perform the same or returning from the performance thereof,

is guilty of a crime and is liable to imprisonment for 2 years.



## Division 2           Offences against morality

### Subdivision 1      Child pornography

#### 125A           Interpretation

(1) In this Subdivision:

**article** includes any thing:

- (a) that contains or embodies matter to be read or looked at;
- (b) that is to be looked at;
- (c) that is a record; or
- (d) that can be used, either alone or as one of a set, for the production or manufacture of any thing referred to in paragraphs (a), (b) or (c),

but does not include:

- (e) a film that is classified (other than as RC) under the Commonwealth Act;
- (f) a publication that is classified Unrestricted, Category 1 restricted or Category 2 restricted under the Commonwealth Act;
- (g) a computer game that is classified (other than as RC) under the Commonwealth Act; or
- (h) a film, publication or computer game that is the subject of an exemption under Part X of the *Classification of Publications, Films and Computer Games Act*.

**child pornography** means a film, publication or computer game classified RC, or an unclassified film, publication or computer game that would, if classified, be classified RC, on the basis that it describes or depicts, in a way that is likely to cause offence to a reasonable adult, a person (whether or not engaged in sexual activity) who is a child who has not attained the age of 16 years or who looks like a child who has not attained that age.

**Classification Board** means the Classification Board established under the Commonwealth Act.

**classified** means classified under the Commonwealth Act.

**Commonwealth Act** means the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth.

**computer game, film** and **publication** have the same meaning as in the Commonwealth Act.

**indecent article** means an article that:

- (a) promotes crime or violence, or incites or instructs in matters of crime or violence; or
- (b) describes or depicts, in a manner that is likely to cause offence to a reasonable adult:
  - (i) the use of violence or coercion to compel a person to participate in, or submit to, sexual conduct;
  - (ii) sexual conduct with or on the body of a dead person;
  - (iii) the use of urine or excrement in association with degrading or dehumanising conduct or sexual conduct;
  - (iv) bestiality;
  - (v) acts of torture or the infliction of extreme violence or extreme cruelty; or
  - (vi) a person (whether or not engaged in sexual activity) who is a child who has not attained the age of 16 years or who looks like a child who has not attained that age.

**law enforcement agency** has the same meaning as in the *Criminal Records (Spent Convictions) Act*.

**publish** includes:

- (a) distribute, disseminate, circulate, deliver, exhibit, lend for gain, exchange, barter, sell, offer for sale, let on hire or offer to let on hire;
- (b) have in possession or custody, or under control, for the purpose of doing an act referred to in paragraph (a); or
- (c) print, photograph or make in any other manner (whether of the same or of a different kind or nature): for the purpose of doing such an act.

**record** means a gramophone record or a wire or tape, or a film, and any other thing of the same or of a different kind or nature, on which is recorded a sound or picture and from which, with the aid of

a suitable apparatus, the sound or picture can be produced (whether or not it is in a distorted or altered form).

**sell** has the same meaning as in the *Classification of Publications, Films and Computer Games Act*.

- (2) A reference in this subdivision to a classification in relation to a film, publication or computer game is a reference to its classification (or, as the case may be, that it is unclassified) under the Commonwealth Act.
- (3) In the definitions of **child pornography** and **indecent article** the phrase **is likely to cause offence to a reasonable adult** has the meaning given to that phrase in the Commonwealth Act.

## **125B Possession of child pornography and certain indecent articles**

- (1) A person who has in his or her possession:
  - (a) child pornography; or
  - (b) an article that is an indecent article by virtue of paragraph (b)(vi) of the definition **indecent article**,is guilty of an offence and is liable:
  - (c) in the case of an individual to imprisonment for 2 years; and
  - (d) in the case of a corporation to a fine of \$20,000.
- (2) A person who sells or offers or advertises for distribution (whether or not for reward) child pornography is guilty of an offence and is liable:
  - (a) in the case of an individual to imprisonment for 10 years; and
  - (b) in the case of a corporation to a fine of \$100,000.
- (3) Nothing in this section makes it an offence:
  - (a) for a member or officer of a law enforcement agency to have any child pornography in his or her possession in the exercise or performance of a power, function or duty conferred or imposed on the member or officer by or under an Act or law; or
  - (b) for a person to have child pornography in his or her possession in the exercise or performance of a power, function or duty relating to the classification of such material conferred or imposed on the person by or under an Act or law.

- (4) Proceedings for an offence against this section in relation to a film, publication or computer game that is unclassified at the time of the alleged offence, shall not be commenced until the film, publication or computer game concerned has been classified.
- (5) It is a defence to a prosecution for an offence against this section to prove that:
  - (a) the defendant did not know, or could not reasonably be expected to have known, that the film, publication or computer game concerned is classified RC or would be classified RC; or
  - (b) the person depicted in the material had attained the age of 16 years at the time when the film, computer game or publication was made, taken, produced or published.
- (6) In proceedings for an offence against this section, a certificate issued under section 87 of the Commonwealth Act purporting to be signed by the Director of the Classification Board (or by the Deputy Director of the Classification Board) and stating that the film, publication or computer game concerned is classified RC on the basis that it describes or depicts, in a way that is likely to cause offence to a reasonable adult, a person (whether or not engaged in sexual activity) who is a child who has not attained the age of 16 years or who looks like a child who has not attained that age is admissible in any court of law and is prima facie evidence of the matter stated in the certificate.
- (7) A court that convicts a person of an offence against this section may order that any child pornography in respect of which the offence was committed is to be destroyed or otherwise disposed of as the court thinks fit.

### **125C      Publishing indecent articles**

- (1) A person who publishes an indecent article is guilty of an offence and is liable:
  - (a) in the case of an individual to imprisonment for 2 years; and
  - (b) in the case of a corporation to a fine of \$20,000.
- (2) Nothing in this section makes it an offence for:
  - (a) a person to publish an indecent article for the purposes of an application for classification under a Commonwealth Act; or

- (b) a member or officer of a law enforcement agency to publish an indecent article in the exercise or performance of a power, function or duty conferred or imposed on the member or officer by or under an Act or law.
- (3) For the purposes of this section, an article may be indecent even though part of it is not indecent.

#### **125D Offences by bodies corporate**

- (1) Where a body corporate is convicted of an offence under this Subdivision, each person who is a director of the body corporate or otherwise concerned in its management shall be deemed to have committed that offence, and is liable to be proceeded against accordingly and punished as an individual.
- (2) In proceedings brought against a person by virtue of subsection (1), it is a defence for that person to prove that he or she could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the body corporate.

### **Subdivision 2 Other offences against morality**

#### **126 Definitions**

In this Division:

***in private*** means with only one other person present and not within the view of a person not a party to the act and ***in public*** means with more than one other person present or within the view of a person not a party to the act.

***mentally ill or handicapped person*** means a person who, because of abnormality of mind, is unable to manage himself or herself or to exercise responsible behaviour.

***unlawful*** or ***unlawfully*** means that the parties to the act are not husband and wife.

#### **127 Sexual intercourse or gross indecency between males in public**

- (1) Any male who in public or in any public place:
  - (a) has sexual intercourse with a male; or
  - (b) commits any act of gross indecency with a male,is guilty of a crime and is liable to imprisonment for 7 years.

- (2) If one of the male persons involved in the crime is under the age of 14 years, any other offender who is an adult is liable to imprisonment for 14 years.

**128       Sexual intercourse or gross indecency between males in private**

- (1) Any male who in private:
- (a) has sexual intercourse with a male who is not an adult; or
  - (b) commits any act of gross indecency with a male who is not an adult,

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

- (2) If one of the males involved in the crime is under the age of 14 years, any other offender who is an adult is liable to imprisonment for 14 years.
- (3) It is a defence to a charge of a crime defined by this section to prove that the accused person believed, on reasonable grounds, that the other male was an adult.

**129       Sexual intercourse or gross indecency involving females under 16 years**

- (1) Any person who with respect to a female who is under the age of 16 years:
- (a) has unlawful sexual intercourse with her; or
  - (b) unlawfully commits any act of gross indecency,

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

- (2) If the female is under the age of 14 years and the offender is an adult, he is liable to imprisonment for 14 years.
- (3) It is a defence to a charge of a crime defined by this section to prove that the accused person believed, on reasonable grounds, that the female was of or above the age of 16 years.
- (4) Section 12 does not apply to the female with whom an act herein proscribed is done.

**130 Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person**

(1) In this section:

***de facto spouse*** means:

- (a) in relation to a man, a woman living with the man as his wife on a bona fide domestic basis although not married to him; and
- (b) in relation to a woman, a man living with the woman as her husband on a bona fide domestic basis although not married to her.

***disability support service*** means a medical or therapeutic service provided to a mentally ill or handicapped person and related to the mental illness or handicap.

***provider of disability support services*** means a person who provides a disability support service, whether or not he or she does so for remuneration or on a voluntary basis, but does not include such a person who himself or herself at the time of providing a disability support service is a mentally ill or handicapped person.

(2) Any person who, being a provider of disability support services to a mentally ill or handicapped person:

- (a) has sexual intercourse with; or
- (b) commits any act of gross indecency upon,

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

(3) It is a defence to a charge of a crime defined by this section to prove that the accused person:

- (a) was, at the time of the alleged crime, the husband or wife of, or a de facto spouse of, the mentally ill or handicapped person; or
- (b) did not know that the person was a mentally ill or handicapped person.

(4) Section 12 does not apply to the person with whom an act herein proscribed is done.

**131            Attempts at procurement of young persons or mentally ill or handicapped persons**

- (1) Any person who attempts to procure a child who is under the age of 16 years to:
  - (a) have unlawful sexual intercourse either in the Territory or elsewhere; or
  - (b) unlawfully commit, perform or engage in any act of gross indecency,is guilty of a crime and is liable to imprisonment for 3 years.
- (2) If the offender is an adult he is liable to imprisonment for 5 years.
- (3) It is a defence to a charge of a crime defined by this section to prove that the accused person believed, on reasonable grounds, that the other person was of or above the age of 16 years.

**131A        Unlawful sexual relationship with child**

- (1) For the purposes of this section, ***offence of a sexual nature*** means an offence defined by section 128, 129, 132, 134, 135, 188(1) and (2)(k), 192 or 192B.
- (2) Any adult who maintains an unlawful relationship of a sexual nature with a child under the age of 16 years is guilty of a crime and is liable to imprisonment for 7 years.
- (3) A person shall not be convicted of the crime defined by this section unless it is shown that the offender, as an adult, has, during the period in which it is alleged that he maintained the relationship in issue with the child, done an act defined to constitute an offence of a sexual nature in relation to the child on 3 or more occasions, and evidence of the doing of any such act shall be admissible and probative of the maintenance of the relationship notwithstanding that the evidence does not disclose the dates or the exact circumstances of those occasions.
- (4) If in the course of the relationship of a sexual nature the offender has committed an offence of a sexual nature for which he is liable to imprisonment for 5 years or more or 14 years or less, the offender is liable in respect of maintaining the relationship to imprisonment for 14 years.
- (5) If in the course of the relationship of a sexual nature the offender has committed an offence of a sexual nature for which he is liable to imprisonment for more than 14 years, the offender is liable in respect of maintaining the relationship to imprisonment for life.



- (6) It is a defence to a charge of a crime defined by this section to prove that the accused person believed, on reasonable grounds, that the other person was of or above the age of 16 years.
- (7) A person may be charged in one indictment with an offence defined by this section and with any other offence of a sexual nature alleged to have been committed by him in the course of the relationship in issue in the first-mentioned offence and he may be convicted of and punished for any or all of the offences so charged.
- (8) Where the offender is sentenced to a term of imprisonment for the offence defined by this section and a term of imprisonment for an offence of a sexual nature, an order shall not be made directing that one of those sentences take effect from the expiration of deprivation of liberty for the other offence.
- (9) An indictment for an offence against this section shall be signed by the Director of Public Prosecutions.
- (10) Section 12 does not apply to the child with whom an act herein proscribed is done.

### **132                Indecent dealing with child under 16 years**

- (1) In this section, ***deals with*** includes the doing of any act which, if done without consent, would constitute an assault within the meaning of sections 187 and 188.
- (2) Any person who:
  - (a) unlawfully and indecently deals with a child under the age of 16 years;
  - (b) unlawfully exposes a child under the age of 16 years to an indecent act by the offender or any other person;
  - (c) unlawfully permits himself to be indecently dealt with by a child under the age of 16 years;
  - (d) unlawfully procures a child under the age of 16 years to perform an indecent act;
  - (e) without legitimate reason, intentionally and unlawfully exposes a child under the age of 16 years to an indecent object or indecent film, video tape, audio tape, photograph or book; or
  - (f) without legitimate reason, intentionally and unlawfully takes or records, by means of any device, an indecent visual image of a child under the age of 16 years,

is guilty of a crime and is liable to imprisonment for 5 years.

- (3) If the child is under the age of 12 years and the offender is an adult, the offender is liable to imprisonment for 10 years.
- (4) If the child is, to the knowledge of the offender, a lineal descendant of the offender or if the offender, had, at the time of the offence, the child under his care, the offender is guilty of a crime and liable to imprisonment for 10 years.
- (5) It is a defence to a charge of a crime defined by this section to prove that the accused person believed, on reasonable grounds, that the other person was of or above the age of 16 years.
- (6) Subsection (5) does not apply if the child is the lineal descendant of the accused.

### **133        Gross indecency in public**

Any person who in public and in a public place knowingly commits any act of gross indecency is guilty of a crime and is liable to imprisonment for 2 years.

### **134        Incest by male**

- (1) Any person who has sexual intercourse with a female who is, to his knowledge, his daughter or other lineal descendant or his sister or his mother is guilty of a crime and is liable to imprisonment for 14 years.
- (2) It is immaterial that the sexual intercourse was had with the consent of the female.
- (3) Section 12 does not apply with respect to the female with whom an act herein proscribed is done.

### **135        Incest by adult female**

- (1) Any adult female who permits her father or other lineal ancestor or her brother or her son to have sexual intercourse with her, knowing him to be her father or other lineal ancestor or her brother or her son is guilty of a crime and is liable to imprisonment for 7 years.
- (2) It is a defence to a charge of the crime defined by this section to prove that the female was, at the time when she permitted her father or other lineal ancestor or her brother or her son to have sexual intercourse with her, acting under his coercion.

**138      Bestiality**

Any person who inserts, to any extent, the person's penis into the genital passage or anus of an animal or permits an animal to insert its penis into the person's vagina or anus is guilty of a crime and is liable to imprisonment for 3 years.

**139      Knowledge of age immaterial**

Except as otherwise expressly stated, it is immaterial in the case of the crimes defined by this Division committed with respect to a child under a specified age that the accused person did not know that that child was under that age or believed that the child was not under that age.

**139A     Consent no defence to crime defined by this Division**

It is not a defence to a charge of a crime defined by a section in this Division for the accused to prove that the person in respect of whom the crime was committed consented to the act constituting the crime.

**140      Misconduct with regard to corpses**

Any person who, without authorization or excuse, the proof of which lies on him:

- (a) neglects to perform any duty imposed upon him by law or undertaken by him, whether for reward or otherwise, touching the burial or other disposition of a human body or human remains; or
- (b) improperly or indecently interferes with or offers any indignity to any dead human body or human remains whether buried or not,

is guilty of a crime and is liable to imprisonment for 2 years.

**Division 3      Offences against public health**

**148      Selling, &c., things unfit for food or drink**

Any person who sells or exposes for sale for the food or drink of man, or has in his possession with intent to sell it for the food or drink of man, anything that he knows to be unfit for the food or drink of man is guilty of a crime and is liable to imprisonment for 3 years.

## **Part VI                      Offences against the person and related matters**

### **Division 1                Duties relating to the preservation of human life**

#### **149                      Duty of person in charge of child or others**

It is the duty of every person having charge of a child under the age of 16 years or having charge of any person who is unable to withdraw himself from such charge by reason of age, sickness, unsoundness of mind, detention or other cause and who is unable to provide himself with the necessities of life:

- (a) to provide the necessities of life for that child or other person; and
- (b) to use reasonable care and take reasonable precautions to avoid or prevent danger to the life, safety or health of the child or other person and to take all reasonable action to rescue such child or other person from such danger.

#### **150                      Duty of person engaging in dangerous conduct**

It is the duty of every person who, except in the case of necessity, undertakes to administer medical treatment to another or to engage in any other conduct that is or may be dangerous to health and that requires special knowledge, skill, attention or caution to have the requisite knowledge or skill and to employ such knowledge, skill, attention and caution as is reasonable in the circumstances.

#### **151                      Duty of person in charge of things applied to a dangerous purpose**

It is the duty of every person who manages, uses or has in his possession anything that when so managed, used or had in possession may, in the absence of reasonable care and reasonable precautions, endanger the life, safety or health of another to use reasonable care and take reasonable precautions to avoid such danger.

#### **152                      Duty to do certain acts**

When a person undertakes to do any act, the omission of which is dangerous to human life or health, it is his duty to do that act.

**153            Effect of breach of duty**

A person who omits to perform any duty imposed upon him by this Division is held to have caused any consequences to the life or health of any person to whom he owes the duty by reason of such omission, but whether or not he is criminally responsible therefor is to be determined by the other provisions of this Code.

**Division 2            Dangerous acts or omissions: failure to rescue**

**154            Dangerous acts or omissions**

- (1) Any person who does or makes any act or omission that causes serious danger, actual or potential, to the lives, health or safety of the public or to any person (whether or not a member of the public) in circumstances where an ordinary person similarly circumstanced would have clearly foreseen such danger and not have done or made that act or omission is guilty of a crime and is liable to imprisonment for 5 years.
- (2) If he thereby causes grievous harm to any person he is liable to imprisonment for 7 years.
- (3) If he thereby causes death to any person he is liable to imprisonment for 10 years.
- (4) If at the time of doing or making such act or omission he is under the influence of an intoxicating substance he is liable to further imprisonment for 4 years.
- (5) Voluntary intoxication may not be regarded for the purposes of determining whether a person is not guilty of the crime defined by this section.

**155            Failure to rescue, provide help, &c.**

Any person who, being able to provide rescue, resuscitation, medical treatment, first aid or succour of any kind to a person urgently in need of it and whose life may be endangered if it is not provided, callously fails to do so is guilty of a crime and is liable to imprisonment for 7 years.

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**Division 3                      Homicide: suicide: concealment of birth: abortion**

**156                      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 the umbilical cord is severed or not.

**157                      Killing**

Any person who causes the death of another directly or indirectly by any means is deemed to have killed that other person.

**158                      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 who did or omitted to do such act is deemed to have killed the child.

**159                      Causing death by threats, &c.**

Any person who, by threats or intimidation of any kind, or by deceit, causes another to do an act or make an omission that results in the death of that other person is deemed to have killed him.

**160                      Injuries causing death in consequence of subsequent treatment**

When a person does grievous harm to another and such other person has recourse to medical treatment and death results either from the injury or the treatment, he is deemed to have killed that other person although the immediate cause of death was the medical treatment, provided that the treatment was reasonably proper under the circumstances and was applied in good faith.

**161                      Unlawful homicide**

Any person who unlawfully kills another is guilty of a crime that is called murder or manslaughter according to the circumstances of the case.

**162                      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 of some other person or if the offender intends to do to the person killed or to some other person grievous harm;

- (b) if death is caused by means of an act done when committing or attempting to commit an offence referred to in subsection (2) which act is of such a nature as to be likely to endanger human life;
- (c) if death is caused by administering any stupefying or overpowering substance for the purpose of facilitating the commission of an offence referred to in subsection (2) or for the purpose of facilitating the flight of an offender who has committed or attempted to commit such an offence; or
- (d) if death is caused by stopping the breath of any person for either of the purposes referred to in paragraph (c),

is guilty of murder.

- (2) The offences to which subsection (1) refers are:
  - (a) any crime for which the offender may be sentenced to imprisonment for 14 years or longer;
  - (b) any crime of which an assault or an intention to do or cause any injury or damage is an element and for which the offender may be sentenced to imprisonment for 7 years or longer; and
  - (c) an offence defined by section 112.
- (3) In the circumstances referred to in subsection (1)(a) it is immaterial that the offender did not intend to hurt the particular person who is killed.
- (4) In the circumstances referred to in subsection (1)(b), notwithstanding section 31, it is immaterial that the offender did not intend to hurt any person or did not foresee the death of the deceased as a possible consequence of the act causing death.
- (5) In the circumstances referred to in subsection (1)(c) or (d) it is immaterial that the offender did not intend to cause death or did not know that death was likely to result.

### **163      Manslaughter**

A person who unlawfully kills another under such circumstances as not to constitute murder is guilty of manslaughter.

### **164      Punishment of murder**

Any person who commits the crime of murder is liable to imprisonment for life which cannot be mitigated or varied under this Code or any other law in force in the Territory.

**165      Attempt to murder**

Any person who:

- (a) attempts unlawfully to kill another; or
- (b) with intent unlawfully to kill another, does any act, or omits to do any act that it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life,

is guilty of a crime and is liable to imprisonment for life.

**166      Threats to kill**

- (1) Any person who, with intent to cause fear, makes, or causes any person to receive, a threat to kill any person which threat is of such a nature as to cause fear to any person of reasonable firmness and courage, is guilty of a crime and liable to imprisonment for 7 years.
- (2) It is a defence to a charge of a crime defined by this section to prove that making such a threat or causing it to be received was reasonable by the standards of an ordinary person similarly circumstanced to the accused person.

**167      Punishment of manslaughter**

Any person who commits the crime of manslaughter is liable to imprisonment for life.

**168      Aiding suicide**

Any person who:

- (a) procures another to kill or attempt to kill himself;
- (b) induces another to kill or attempt to kill himself by counselling him to kill or attempt to kill himself; or
- (c) aids another in killing or attempting to kill himself,

is guilty of a crime and is liable to imprisonment for life.

**170      Killing unborn child**

Any person who, when a woman or girl is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child, is guilty of a crime and is liable to imprisonment for life.



**171      Concealing the birth of child**

Any person who, when a woman or girl 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 crime and is liable to imprisonment for 2 years.

**172      Procuring abortion**

Subject to section 174, any person who, with the intention of procuring the miscarriage of a woman or girl, whether or not the woman or girl is pregnant, administers to her, or causes to be taken by her, a poison or other noxious thing, or uses an instrument or other means is guilty of a crime and is liable to imprisonment for 7 years.

**173      Supplying drugs, &c., to cause abortion**

Subject to section 174, any person who unlawfully supplies or obtains a poison or other noxious thing, or instrument or other thing, knowing that it is intended to be used or employed with the intention of procuring the miscarriage of a woman or girl, whether or not the woman or girl is pregnant, is guilty of a crime and is liable to imprisonment for 7 years.

**174      Medical termination of pregnancy**

(1) It is lawful:

- (a) for a medical practitioner who is a gynaecologist or obstetrician to give medical treatment with the intention of procuring the miscarriage of a woman or girl who, he has reasonable cause to believe after medically examining her, has been pregnant for not more than 14 weeks if the medical treatment is given in hospital and the medical practitioner and another medical practitioner are of the opinion, formed in good faith after medical examination of the woman or girl by them, that:
  - (i) the continuance of the pregnancy would involve greater risk to her life or greater risk of injury to her physical or mental health than if the pregnancy were terminated; or
  - (ii) there is a substantial risk that, if the pregnancy were not terminated and the child were to be born, the child would have or suffer from such physical or mental abnormalities as to be seriously handicapped;
- (b) for a medical practitioner to give medical treatment with the intention of procuring the miscarriage of a woman or girl who,

he has reasonable cause to believe after medically examining her, has been pregnant for not more than 23 weeks if the medical practitioner is of the opinion, formed in good faith after his medical examination of her, that termination of the pregnancy is immediately necessary to prevent grave injury to her physical or mental health; or

- (c) for a medical practitioner to give medical treatment with the intention of procuring the miscarriage of a woman or girl if the treatment is given in good faith for the purpose only of preserving her life.
- (2) No person is under a duty, whether by contract or otherwise, to procure or to assist in procuring the miscarriage of a woman or girl or to dispose of or to assist in disposing of an aborted foetus if he has a conscientious objection thereto, but, in any legal proceedings, the burden of proving such a conscientious objection shall rest upon the person claiming to have it.
- (3) Nothing in this section relieves a medical practitioner from his liability, in carrying out medical treatment or performing an operation with the intention of procuring the miscarriage of a woman or girl, to carry out or perform it:
- (a) if the consent of a person is required by law to the carrying out of the medical treatment or the performance of the operation – with that consent;
  - (b) with professional care; and
  - (c) otherwise according to law.
- (4) A medical practitioner shall be deemed to have met his liability under subsection (3)(a) in carrying out the medical treatment or performing the operation if he carries it out or performs it:
- (a) except where the woman or girl is incapable in law (otherwise than by being an infant) of giving the consent – with the consent of the woman or girl; and
  - (b) if the girl is under the age of 16 years or is otherwise incapable in law of giving the consent – with the consent of each person having authority in law, apart from this subsection, to give the consent.

## **Division 4            Offences endangering life or health**

### **175            Disabling in order to commit crime**

Any person who, by any means calculated to choke, suffocate or strangle and with intent to commit or to facilitate the commission of a crime, or to facilitate the flight of an offender after the commission or attempted commission of a crime, renders or attempts to render any person incapable of resistance is guilty of a crime and is liable to imprisonment for life.

### **176            Stupefying in order to commit crime**

Any person who, with intent to commit or to facilitate the commission of a crime, or to facilitate the flight of an offender after the commission or attempted commission of a crime, 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.

### **177            Acts intended to cause grievous harm or prevent apprehension**

Any person who, with intent to disfigure or disable any person, or to cause grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person:

- (a) causes grievous harm or bodily harm to any person by any means;
- (b) attempts in any manner to strike any person with any kind of projectile;
- (c) causes any explosive substance to explode;
- (d) sends or delivers any explosive substance or other dangerous or noxious thing to any person;
- (e) causes any such substance or thing to be taken or received by any person;
- (f) puts any corrosive fluid or any destructive or explosive substance in any place; or
- (g) casts or throws any such fluid or substance at or upon any person or otherwise applies any such fluid or substance to the person of any person,

is guilty of a crime and is liable to imprisonment for life.

**178 Preventing escape from wreck**

Any person who:

- (a) prevents or obstructs any person who is on board or is escaping from a ship or aircraft that is in distress or wrecked in his endeavours to save his life; or
- (b) obstructs any person in his endeavours to save the life of any person so situated,

is guilty of a crime and is liable to imprisonment for life.

**179 Intentionally endangering safety of persons travelling by railway or roadway**

Any person who, with intent to injure or to endanger the safety of any person travelling by railway or roadway, whether a particular person or not:

- (a) deals with the railway or roadway, any railway engine or carriage or motor vehicle or with anything upon or near the railway or roadway in such a manner as to affect or endanger or be likely to affect or endanger the free and safe use of the railway or roadway or the safety of any such person;
- (b) shows any light or signal or sign, or in any way deals with any existing light or signal or sign, upon or near the railway or roadway; or
- (c) by an omission to do any act that it is his duty to do causes the safety of any such person to be endangered,

is guilty of a crime and is liable to imprisonment for life.

**180 Intentionally endangering safety of persons travelling by aircraft or ship**

Any person who, with intent to injure or to endanger the safety of any person whilst he is on board any aircraft or ship, whether a particular person or not:

- (a) deals with the aircraft or ship or with anything upon or near the aircraft or ship or with anything either directly or indirectly connected with the guidance, control or operation of the aircraft or ship, in such a manner as to affect or endanger or be likely to affect or endanger the free and safe use of the aircraft or ship or the safety of any such person; or

- (b) by any omission to do any act that it is his duty to do causes the safety of any such person to be endangered,

is guilty of a crime and is liable to imprisonment for life.

**181 Grievous harm**

Any person who unlawfully causes grievous harm to another is guilty of a crime and is liable to imprisonment for 14 years.

**182 Attempting to injure by explosive substances**

Any person who, with intent to cause any bodily harm to another, puts any explosive substance in any place is guilty of a crime and is liable to imprisonment for 14 years.

**183 Failure to supply necessities**

Any person who, being charged with the duty of providing for another the necessities of life, unlawfully fails to do so whereby the life of that other person is or is likely to be endangered or his health is or is likely to be permanently injured, is guilty of a crime and is liable to imprisonment for 7 years.

**184 Endangering life of child by exposure**

Any person who abandons or exposes a child under the age of 2 years whereby the life of such child is or is likely to be endangered, or his health is or is likely to be permanently injured, is guilty of a crime and is liable to imprisonment for 7 years.

**185 Setting man-traps**

- (1) Any person who sets or places any spring-gun, man-trap or other device calculated to destroy human life or to inflict grievous harm, or causes any such thing to be set or placed, in any place with the intent that it may kill or inflict grievous 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 crime and is liable to imprisonment for 3 years.
- (2) Any person who knowingly permits any such spring-gun, man-trap or other device that has been set or placed by another person in any such place and in any such manner that it is likely to cause any such result to continue so set or placed in any place that is then in, or afterwards comes into, his possession or occupation, is deemed to have set and placed the spring-gun, man-trap or device with the intent aforesaid.

- (3) This section does not make it an offence to set any trap such as is usually set for the purpose of destroying vermin.

**186            Bodily harm**

Any person who unlawfully causes bodily harm to another is guilty of a crime and is liable to imprisonment for 5 years or, upon being found guilty summarily, to imprisonment for 2 years.

**Division 4A            Female genital mutilation**

**186A            Definitions**

In this Division:

***authorised professional*** means:

- (a) a person registered under the *Nursing Act* as a general nurse or midwifery nurse;
- (b) in relation to an operation performed in a place outside the Territory, a person registered or authorised to practise general nursing or midwifery by a body established under the law of that place having functions similar to the functions of the Nurses Board under the *Nursing Act*; or
- (c) a person registered under the *Health Practitioners and Allied Professionals Registration Act* in the category of health practice of Aboriginal health work.

***female genital mutilation*** means the excision, infibulation or any other mutilation of the whole or any part of the labia majora or labia minora or clitoris.

***gender reassignment procedure*** means a surgical procedure to give a female, or a person whose sex is ambivalent, the genital appearance of a particular sex (whether male or female).

***medical practitioner***, in relation to an operation performed in a place outside the Territory, includes a person authorised to practise medicine by a body established under the law of that place having functions similar to the functions of the Medical Board of the Northern Territory under the *Medical Act*.

**186B            Female genital mutilation**

- (1) A person who performs female genital mutilation on another person is guilty of a crime and is liable to imprisonment for 14 years.

- (2) An offence is committed against this section even if one or more of the acts constituting the offence occurred outside the Territory if the person mutilated by or because of the acts is ordinarily resident in the Territory.
- (3) It is not an offence against this section to perform a surgical operation if the operation:
  - (a) has a genuine therapeutic purpose and is performed by a medical practitioner or authorised professional; or
  - (b) is a gender reassignment procedure and is performed by a medical practitioner.
- (4) A surgical operation does not have a genuine therapeutic purpose by virtue of the fact that it is performed as, or as part of, a cultural, religious or other social custom.

**186C      Removal of child from territory for female genital mutilation**

- (1) A person who takes a child from the Territory, or arranges for a child to be taken from the Territory, with the intention of having female genital mutilation performed on the child is guilty of a crime and liable to imprisonment for 14 years.
- (2) In proceedings for an offence against subsection (1), if it is proved that:
  - (a) the accused took a child, or arranged for a child to be taken, from the Territory; and
  - (b) female genital mutilation was performed on the child while outside the Territory,

it shall be presumed, until the contrary is proved, that the accused took the child, or arranged for the child to be taken, from the Territory with the intention of having female genital mutilation performed on the child.

**186D      Consent not relevant**

It is not a defence to a charge of a crime defined by this Division that the person mutilated by or because of the acts alleged to have been committed:

- (a) consented to the acts; and/or
  - (b) consented to being taken from the Territory,
- or that a parent or guardian of the person so consented.

## **Division 5      Assaults**

### **187      Definition**

In this Code **assault** means:

- (a) the direct or indirect application of force to a person without his consent or with his consent if the consent is obtained by force or by means of menaces of any kind or by fear of bodily harm or by means of false and fraudulent representations as to the nature of the act or by personation; or
- (b) the attempted or threatened application of such force where the person attempting or threatening it has an actual or apparent present ability to effect his purpose and the purpose is evidenced by bodily movement or threatening words,

other than the application of force:

- (c) when rescuing or resuscitating a person or when giving any medical treatment or first aid reasonably needed by the person to whom it is given or when restraining a person who needs to be restrained for his own protection or benefit or when attempting to do any such act;
- (d) in the course of a sporting activity where the force used is not in contravention of the rules of the game; or
- (e) that is used for and is reasonably needed for the common intercourse of life.

### **188      Common assault**

- (1) Any person who unlawfully assaults another is guilty of an offence and, if no greater punishment is provided, is liable to imprisonment for one year.
- (2) If the person assaulted:
  - (a) suffers bodily harm;
  - (b) is a female and the offender is a male;
  - (c) is under the age of 16 years and the offender is an adult;
  - (d) is unable because of infirmity, age, physique, situation or other disability effectually to defend himself or to retaliate;



- (e) is a member of the Legislative Assembly, the House of Representatives or the Senate and the assault is committed because of such membership;
- (f) is a member of the public service or a justice of the peace and is acting in the execution of his duty or is acting in aid of such a person;
- (g) is engaged in the lawful service of any court document or in the lawful execution of any process against any property or in making a lawful distress;
- (h) has done an act in the execution of any duty imposed on him by law and the assault is committed because of such act;
- (j) is assaulted in pursuance of any unlawful conspiracy;
- (k) is indecently assaulted; or
- (m) is threatened with a firearm or other dangerous or offensive weapon,

the offender is guilty of a crime and is liable to imprisonment for 5 years or, upon being found guilty summarily, to imprisonment for 2 years.

(3) If the person assaulted is:

- (a) indecently assaulted; and
- (b) under the age of 16 years,

it is not a defence to a charge of the crime defined by subsection (1) that the person assaulted consented to the act constituting the crime.

### **189A Assaults on police**

- (1) Any person who unlawfully assaults a police officer in the execution of the officer's duty is guilty of a crime and is liable to imprisonment for 5 years or, upon being found guilty summarily, to imprisonment for 2 years.
- (2) If the police officer assaulted:
  - (a) suffers bodily harm, the offender is liable to imprisonment for 7 years or, upon being found guilty summarily, to imprisonment for 3 years; or

- (b) suffers grievous harm, the offender is liable to imprisonment for 16 years.

## **189 Unlawful stalking**

- (1) A person stalks another person if, on at least 2 separate occasions:
  - (a) the person:
    - (i) follows the other person;
    - (ii) loiters outside or enters the place of residence or employment of the other person or some other place frequented by the other person;
    - (iii) interferes with property (whether or not the person has an interest in the property) in the possession of the other person;
    - (iv) keeps the other person under surveillance; or
    - (v) acts covertly in a way that could reasonably be expected to arouse the other person's apprehension or fear; and
  - (b) the person intends to cause:
    - (i) physical or mental harm to the other person or a third person; or
    - (ii) apprehension or fear.
- (2) A person who stalks another person is guilty of an offence and is liable:
  - (a) to imprisonment for 2 years; or
  - (b) where:
    - (i) the person's conduct contravened a condition of bail or an injunction or order imposed by a court (either under a law of the Commonwealth, the Territory, a State or another Territory of the Commonwealth); or
    - (ii) the person was, on any occasion to which the charge relates, in the possession of an offensive weapon,to imprisonment for 5 years.

**190      Assaults on the Administrator or judges or magistrates**

Any person who unlawfully assaults the Administrator or a judge or a magistrate whilst he is engaged in the discharge of his official functions or because of anything done or omitted to be done by him in the exercise of his official functions, is guilty of a crime and is liable to imprisonment for 14 years.

**191      Assaults on member of crew of aircraft**

Any person who, while on board an aircraft, unlawfully assaults a member of the crew of the aircraft or threatens such a member with any violence, injury or detriment of any kind to be caused to him, or any other person on the aircraft, by the offender or by any other person with the intention of affecting the performance by the member of his functions or duties in connection with the operation of the aircraft or with the intention of lessening his ability to perform those functions or duties, is guilty of a crime and is liable to imprisonment for 14 years.

**192      Sexual intercourse and gross indecency without consent**

- (1) For the purposes of this section, **consent** means free agreement.
- (2) Circumstances in which a person does not freely agree to sexual intercourse or an act of gross indecency include circumstances where:
  - (a) the person submits because of force, fear of force, or fear of harm of any type, to himself or herself or another person;
  - (b) the person submits because he or she is unlawfully detained;
  - (c) the person is asleep, unconscious or so affected by alcohol or another drug as to be incapable of freely agreeing;
  - (d) the person is incapable of understanding the sexual nature of the act;
  - (e) the person is mistaken about the sexual nature of the act or the identity of the other person;
  - (f) the person mistakenly believes that the act is for medical or hygienic purposes; or
  - (g) the person submits because of a false representation as to the nature or purpose of the act.

- (3) Any person who has sexual intercourse with another person without the consent of the other person, is guilty of a crime and is liable to imprisonment for life.
- (4) Any person who commits an act of gross indecency upon another person without the consent of the other person, is guilty of a crime and is liable to imprisonment for 14 years.
- (5) Any person who attempts to commit the crime defined by subsection (3) is liable to imprisonment for 7 years.
- (6) Any person who, being an adult, attempts to commit the crime defined by subsection (3) upon another person who is under the age of 16 years is liable to imprisonment for 14 years.
- (7) Any person who attempts to commit the crime defined by subsection (3) and in the course of such an attempt causes bodily harm to the other person is liable to imprisonment for 14 years.
- (8) Any person who attempts to commit the crime defined by subsection (3) and thereby causes grievous harm to the other person is liable to imprisonment for 17 years.

**192A Direction to jury in certain sexual offence trials**

In a relevant case the judge shall direct the jury that a person is not to be regarded as having consented to an act of sexual intercourse or to an act of gross indecency only because the person:

- (a) did not protest or physically resist;
- (b) did not sustain physical injury; or
- (c) had, on that or an earlier occasion, consented to:
  - (i) sexual intercourse; or
  - (ii) an act of gross indecency,

whether or not of the same type, with the accused.

**192B Coerced sexual self-manipulation**

- (1) In this section, ***self-manipulation*** means the insertion, into the vagina or anus of a person, of an object manipulated by that person.

- (2) Any person who coerces another person to engage in self-manipulation in circumstances where the person so coerced cannot reasonably be expected to resist, is guilty of a crime and is liable to imprisonment for 17 years.

**193            Assaults with intent to commit an offence**

Unless otherwise expressly provided, any person who unlawfully assaults a person with intent to commit an offence is guilty of a crime and is liable to imprisonment for 3 years.

**Division 6            Offences Against Liberty: Kidnapping: Abduction**

**194            Kidnapping for ransom**

- (1) Any person who:
- (a) with intent to extort or gain anything from or procure anything to be done or omitted to be done by a person by a demand containing threats of injury or detriment to be caused to a person, either by the offender or another person, if the demand is not complied with, takes or entices away or detains the person in respect of whom the threats are made; or
  - (b) receives, confines or detains the person in respect of whom the threats are made, knowing the person to have been so taken or enticed away or detained,

is guilty of a crime that is called kidnapping for ransom.

- (2) Any person who commits the crime of kidnapping for ransom is liable to imprisonment for 20 years.
- (3) If the person kidnapped has been set at liberty without having suffered grievous harm, the offender is liable to imprisonment for 10 years.

**195            Kidnapping**

Any person who takes or entices away or detains another with intent to compel that other person to work for him against his will is guilty of a crime and is liable to imprisonment for 7 years.

**196            Deprivation of liberty**

- (1) Any person who confines or detains another in any place against his will, or otherwise deprives another of his personal liberty, is guilty of a crime and is liable to imprisonment for 7 years.

- (2) It is lawful for a parent or guardian, or a person in the place of a parent or guardian, or for a school teacher, by way of correction, to impose such confinement or detention, or to cause such deprivation of personal liberty of a child, as is reasonable under the circumstances.
- (3) A person is excused from criminal responsibility for an offence defined by this section if he believes, on reasonable grounds, that the person confined, detained or deprived of his personal liberty needs to be confined, detained or deprived of his personal liberty for his own protection or benefit.

**197 False certificates by officers charged with duties relating to liberty**

Any person who:

- (a) being required by law to give any certificate touching any matter by virtue whereof the liberty of any person may be affected, gives a certificate that, in any material particular, is to his knowledge false; or
- (b) not being a person authorized by law to give such a certificate, gives such a certificate and represents himself to be a person authorized to give it,

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

**198 Concealment of matters affecting liberty**

Any person who:

- (a) being required by law to keep any record touching any matter relating to any person in confinement, refuses or neglects to keep such record, or makes in such record an entry that, in any material particular, is to his knowledge false; or
- (b) being required by law to give any information to any person touching any person in confinement, or to show to any person any person in confinement, or any place in which a person is confined:
  - (i) refuses or neglects to give such information, or to show such person or place, to any person to whom he is so required to give the information or show the person or place; or
  - (ii) gives to any person to whom he is so required to give it information touching any such matter that, in any material particular, is to his knowledge false,

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

**199 Wrongful custody of mentally ill person**

Any person who detains or assumes the custody of a mentally ill person contrary to the provisions of the laws relating to mentally ill persons is guilty of a crime and is liable to imprisonment for 2 years.

**200 Threats**

Any person who threatens to do any injury, or cause any detriment, of any kind to another with intent to prevent or hinder that other person from doing any act that he is lawfully entitled to do, or with intent to compel him to do any act that he is lawfully entitled to abstain from doing, is guilty of a crime and is liable to imprisonment for 2 years.

**201 Enticing away child under 16 years for immoral purposes**

Any person who takes or entices away or detains a child to whom he is not married and who is under the age of 16 years knowing that he has neither the lawful authority nor the consent of that child's mother or father or other person having the lawful care or charge of the child with the intention that he or another shall have sexual intercourse with the child or that the child shall be indecently dealt with or exposed to indecent behaviour, is guilty of a crime and is liable to imprisonment for 7 years.

**202 Abduction of children under 16 years**

- (1) Any person who takes a child to whom he is not married and who is under the age of 16 years out of the custody or protection of that child's mother or father or other person having the lawful care or charge of the child and against the will of such father or mother or other person is guilty of a crime and is liable to imprisonment for 3 years.
- (2) If the offender is an adult or if the child is under the age of 14 years, he is liable to imprisonment for 7 years.
- (3) It is immaterial that the offender believes the child to be of or above the age of 16 years or 14 years.
- (4) It is immaterial that the child was taken with the child's consent or at the child's suggestion.

## **Division 7      Criminal defamation**

### **203      Definitions**

In this Division:

**defamatory matter** and **publishes** have the same meaning as in the civil law of defamation at the time of the publication complained of.

**unlawfully** means the publication would not be justified, privileged or excused by the civil law of defamation at the time of the publication complained of.

### **204      Unlawful publication of defamatory matter**

Any person who unlawfully publishes any defamatory matter:

- (a) with intent to cause or that causes or is likely to cause a breach of the peace;
- (b) with intent to cause loss;
- (c) with intent to interfere with the free and informed exercise of a political right;
- (d) with intent to prevent or deter a person from performing any duty imposed on him by law;
- (e) with intent to prevent or deter any person from doing any act that he is lawfully entitled to do or to compel him to do any act that he is lawfully entitled to abstain from doing;
- (f) with intent to prevent any lawful investigation or inquiry; or
- (g) with intent to interfere with or to influence any judicial proceeding,

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

### **205      Publishing or threatening to publish defamatory matter with intent to extort money**

Any person who publishes, or directly or indirectly threatens to publish, or directly or indirectly proposes to abstain from publishing, or directly or indirectly offers to prevent the publication of, any defamatory matter concerning another with intent to extort any property from such person or any other person, or with intent to induce any person to give, confer or obtain, or to attempt to obtain, to, upon or for any person any property or benefit of any kind, is



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

**206        Further application of civil law**

In the prosecution of a crime defined by this Division, whether any particular matter is a matter of law or fact shall be determined by the civil law of defamation at the time of the publication complained of.

**207        Burden of proof**

In the prosecution of a crime defined by this Division, the burden of proving all issues shall be upon the prosecution.

**208        Prosecutions to be sanctioned by crown law officer**

A prosecution of a crime defined by this Division cannot be begun except by the direction of a Crown Law Officer.

**Part VII            Property offences and related matters**

**Division 1        Robbery: unlawful entry of buildings and use of vehicles and like offences**

**209        Definition of *stealing* and interpretation**

(1) In this Division:

***appropriates*** means assumes the rights of the owner of the property and includes, where the person has come by the property without stealing it, any later assumption of a right to it by keeping or dealing with it as owner.

***depriving*** means permanently depriving and appropriating or borrowing property without meaning the person to whom it belongs permanently to lose the property if the intention of the person appropriating or borrowing it is to treat the property as his own to dispose of (including to dispose of by lending or under a condition as to its return that he may not be able to perform) regardless of the rights of the person to whom it belongs.

***steals*** means unlawfully appropriates property of another with the intention of depriving that person of it whether or not at the time of the appropriation the person appropriating the property was willing to pay for it, but does not include the appropriation of property by a person with the reasonable belief that such property has been lost and the owner thereof cannot be discovered.

- (2) A person cannot steal land or things forming part of the land and severed from it by him or at his directions, except:
  - (a) where he has legal authority to sell or dispose of land belonging to another and he appropriates the land or anything forming part of it by dealing with it in breach of the confidence reposed in him;
  - (b) where he is not in possession of the land and he appropriates anything forming part of the land by severing it or causing it to be severed, or after it has been severed; or
  - (c) where, being in possession of the land under a tenancy or holding over after a tenancy, he appropriates the whole or part of any fixture or structure let to be used with the land.
- (3) Where property is subject to a trust, the persons to whom it belongs shall be regarded as including any person having a right to enforce the trust and an intention to defeat the trust shall be regarded as an intention to deprive of the property any person having that right.
- (4) Where a person receives property from or on account of another and is under an obligation to the other to retain or deal with it or its proceeds in a particular way, the property or proceeds shall be regarded, as against him, as belonging to the person from whom he received it until the obligation is discharged.
- (5) Where a person obtains property by another's mistake and is under an obligation to make restoration, in whole or in part, of the property or its proceeds or its value, then, to the extent of that obligation, the property or proceeds shall be regarded, as against the person who has so obtained it, as belonging to the person entitled to restoration and an intention not to make restoration shall be regarded as an intention to deprive that person of the property or proceeds.
- (6) Property of a corporation sole shall be regarded as belonging to the corporation notwithstanding that there is a vacancy in the corporation.

## **210 General punishment of stealing**

- (1) Any person who steals is guilty of a crime and is liable, if no other punishment is provided, to imprisonment for 7 years.
- (2) If the thing stolen is a testamentary instrument, whether the testator is living or dead, or if the thing stolen has a value of \$100,000 or more, the offender is liable to imprisonment for 14 years.

## **211 Robbery**

- (1) Any person who steals and immediately before or at the time of his doing so, or immediately after doing so, uses or threatens to use violence to any person in order to obtain the thing stolen, to prevent or overcome resistance to its being stolen or to prevent or hinder his pursuit, is guilty of a crime called robbery and is liable to imprisonment for 14 years.
- (2) If the offender is armed with a firearm or any other dangerous or offensive weapon or is in company with one or more person or persons, or if, immediately before, at or immediately after the time of the robbery he causes bodily harm to any person, he is liable to imprisonment for life.

## **212 Assault with intent to steal**

- (1) Any person who assaults another with intent to steal anything is guilty of a crime and is liable to imprisonment for 7 years.
- (2) If the offender is armed with a firearm or any other dangerous or offensive weapon or is in company with one or more person or persons or if such assault causes bodily harm, he is liable to imprisonment for 14 years.
- (3) If the offender is armed with a firearm and immediately before, at or immediately after such assault he injures any person by discharging it, he is liable to imprisonment for life.

## **213 Unlawful entry of buildings**

- (1) Any person who unlawfully enters a building with intent to commit any offence therein is guilty of an offence.
- (2) If he does so with intent to commit a simple offence therein he is guilty of a simple offence and is liable to imprisonment for one year; if the building is a dwelling-house he is liable to imprisonment for 2 years.
- (3) If he does so with intent to commit therein a crime for which the maximum punishment is not greater than 3 years imprisonment, he is guilty of a crime and is liable to imprisonment for 3 years; if the building is a dwelling-house he is liable to imprisonment for 5 years and, if it is actually occupied at the time of his entry, he is liable to imprisonment for 7 years.
- (4) If he does so with intent to commit any other crime therein he is guilty of a crime and is liable to imprisonment for 7 years; if the building is a dwelling-house he is liable to imprisonment for 10 years.

- (5) If he commits an offence hereinbefore defined at night-time he is liable to twice the punishment prescribed for that offence.
- (6) If he commits an offence defined by this section when armed with a firearm or any other dangerous or offensive weapon, he is liable to imprisonment for 20 years; if the building is a dwelling-house he is liable to imprisonment for life.

**214      Uncertainty as to offender's intent, &c.**

- (1) If it is proved that a person has unlawfully entered a building with intent to commit a simple offence or crime therein, but the evidence cannot establish which, he shall be found guilty of unlawful entry with intent to commit a simple offence.
- (2) If it is proved that a person has unlawfully entered a building with intent to commit a crime therein, but the evidence cannot establish which, he shall be found guilty of unlawful entry with intent to commit a crime for which the maximum punishment is not greater than 3 years imprisonment.
- (3) Proof of the fact that a person has unlawfully entered a building is evidence that he did so with intent to commit a simple offence or crime therein.

**215      Persons found armed with intent to unlawfully enter buildings**

Any person who is found armed with a firearm or any other dangerous or offensive weapon with intent to unlawfully enter a building is guilty of a crime and is liable to imprisonment for 7 years.

**216      Unlawfully taking control of aircraft**

- (1) Any person who unlawfully, directly or indirectly, takes control of an aircraft from its pilot is guilty of 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 immediately before, at or immediately after the time of taking such control, uses or threatens to use violence to any person or property in order to take control of the aircraft or to prevent or overcome resistance to such control being taken, or is armed with a firearm or other dangerous or offensive weapon, or is in company with one or more person or persons, he is liable to imprisonment for life.

**217      Unlawful use of aircraft**

Any person who unlawfully uses an aircraft is guilty of a crime and is liable to imprisonment for 7 years.

**218      Unlawful use of vessel, motor vehicle, caravan or trailer**

(1) Any person who unlawfully uses a vessel or motor vehicle, or a caravan or trailer designed to be attached to a motor vehicle, is guilty of an offence and is liable to imprisonment for 2 years.

(2) If:

- (a) in the course of such unlawful use the offender causes any injury to any person or any danger to the lives or safety of the public or any member of it;
- (b) the property unlawfully used is of the value of \$20,000 or more;
- (c) the property unlawfully used is damaged by the offender and the cost of repairing or compensating for the same is \$1,000 or more, or its value as the result of his use of it is reduced by \$1,000 or more;
- (d) the vessel, motor vehicle, caravan or trailer is taken with the intention of using it for or in connection with the commission of an offence other than a regulatory offence; or
- (e) as a result of such unlawful use the whereabouts of the vessel, motor vehicle, caravan or trailer remain unknown to the person entitled to lawful possession of it for 48 hours or longer,

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

**219      Removal of things from places open to public**

- (1) Any person who, in circumstances not amounting to stealing, unlawfully removes from any place to which the public has access to view that place or any collection kept in it, any article displayed or kept for display therein, is guilty of a crime and is liable to imprisonment for 3 years.
- (2) It is immaterial that the public's access to the place is limited to a particular period or a particular occasion.

**220      Unlawful disposition of mortgaged goods**

Any person who, being the mortgagor of mortgaged goods, removes or disposes of the goods without the consent of the mortgagee and with intent to defraud, is guilty of a crime and is liable to imprisonment for 3 years.

**221      Unlawful appropriation of power**

Any person who unlawfully abstracts or diverts to his own use or to the use of any other person any electrical power is guilty of a crime and is liable to imprisonment for 3 years.

**222      Unlawfully obtaining confidential information**

Any person who unlawfully abstracts any confidential information from any register, document, computer or other repository of information with intent to cause loss to a person or with intent to publish the same to a person who is not lawfully entitled to have or to receive it, or with intent to use it to obtain a benefit or advantage for himself or another, is guilty of a crime and is liable to imprisonment for 3 years.

**223      Unlawfully disclosing trade secrets**

Any person who unlawfully publishes or discloses a trade secret with intent to cause loss to a person or to obtain a benefit or advantage for himself or another is guilty of a crime and is liable to imprisonment for 3 years.

**224      Severing with intent to steal**

Any person who makes anything moveable with intent to steal it is guilty of a crime and is liable to imprisonment for 3 years.

**225      Using registered brands with criminal intention**

Any person who, with intent to facilitate the commission of 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 crime and is liable to imprisonment for 3 years.

**226      Dealing with minerals with criminal intention**

Any person who, with intent to facilitate the commission of a crime, takes, conceals or otherwise disposes of any ore of any metal or mineral in or about a mine or on a mining lease is guilty of a crime and is liable to imprisonment for 3 years.

## **Division 2      Criminal deception: blackmail and extortion**

### **227      Criminal deception**

- (1) Any person who by any deception obtains the property of another is guilty of a crime and is liable to the same punishment as if he had stolen the property.
- (2) For the purposes of subsection (1), a person **obtains property** if he obtains ownership, possession or control of it and **obtains** includes obtaining for another and enabling another to obtain or retain.
- (3) Any person who by any deception obtains credit or further credit for himself or another, whether for the performance of an obligation that is legally enforceable or for one that is not, is guilty of a crime and is liable to imprisonment for 7 years.
- (4) Any person who, for the purposes of gain for himself or another, by any deception induces a person to engage in any conduct is guilty of a crime and is liable to imprisonment for 7 years.

### **228      Blackmail and extortion**

- (1) Any person who makes any demand with menaces with intent to obtain some benefit for himself or another or to cause some detriment or injury to another is guilty of a crime and is liable to imprisonment for 14 years.
- (2) It is a defence to a charge of a crime defined by this section to prove that the making of such demand was reasonable by the standards of an ordinary person similarly circumstanced to the accused person.

## **Division 3      Receiving property stolen or unlawfully obtained and like offences**

### **229      Receiving stolen property, &c.**

- (1) Any person who receives anything that has been obtained by means of a crime or by means of any act done at a place not in the Territory that, if it had been done in the Territory, would have constituted a crime and that is an offence under the law in force in the place where it was done, knowing or believing it to have been so obtained, is guilty of a crime.
- (2) Where the thing so obtained has been:
  - (a) converted into other property; or
  - (b) mortgaged or pledged or exchanged for other property,

any person who knowing or believing:

- (c) that the property is wholly or in part the property into which the thing so obtained has been converted or for which it has been mortgaged or pledged or exchanged; and
- (d) that the thing so obtained was obtained under such circumstances as to constitute a crime defined by subsection (1),

receives the whole or any part of the property into which the thing so obtained has been converted or for which it has been mortgaged or pledged or exchanged is guilty of a crime within the meaning of subsection (1) and may be indicted and punished accordingly.

- (3) If the thing received has a value of \$100,000 or more, the offender is liable to imprisonment for 14 years.
- (4) In any other case, the offender is liable to imprisonment for 7 years.
- (5) For the purpose of proving the receiving of anything it is sufficient to show that the accused person has, either alone or jointly with some other person, had the thing in his possession or has aided in concealing it or disposing of it.

## **230 Receiving after change of ownership**

When a thing has been obtained by means of a crime, or by means of an act done at a place not in the Territory that, if it had been done in the Territory, would have constituted a crime and that is an offence under the law in force in the place where it was done, and another person has acquired a lawful title to it, or, in the event of the thing having been converted into other property or mortgaged or pledged or exchanged for other property as referred to in section 229, another person has acquired a lawful title to such other property or the proceeds or part proceeds of such conversion, mortgage, pledge or exchange, a subsequent receiving of the thing or of such other property, proceeds or part proceeds, is not an offence although the receiver knows or believes that the thing has previously been so obtained.

## **231 Taking reward for recovery of property obtained by means of a crime**

Any person who corruptly receives or obtains, or corruptly agrees to receive or obtain, any property or benefit of any kind upon an agreement or understanding that he will help any person to recover anything that has been obtained by means of a crime or by means of any act done at a place not in the Territory that, if it had been done in the Territory, would have constituted a crime and that is an



offence under the law in force in the place where it was done, is, unless he has used all due diligence to cause the offender to be brought to trial for the offence, guilty of a crime and is liable to imprisonment for 7 years.

## **Division 4            Frauds by Trustees, Officers of Corporations: False Accounting**

### **232            Trustees fraudulently disposing of trust property**

- (1) Any person who, being a trustee of any property, destroys the property with intent to defraud or, with intent to defraud, converts the property to any use not authorized by the trust is guilty of a crime and is liable to imprisonment for 7 years.
- (2) If civil proceedings have been taken against a trustee in respect of any act done by him that is an offence under this section, he cannot be afterwards prosecuted for the same cause, as for a crime, on the complaint of the person by whom the civil proceedings were taken without the sanction of the court or judge before whom the civil proceedings were had or are pending.
- (3) For the purposes of this section **trustee** means the following persons and no others:
  - (a) a trustee within the meaning of any statute;
  - (b) trustees upon express trust created by a deed, will or instrument in writing, whether for a public or private or charitable purpose;
  - (c) trustees appointed by or under the authority of a statute for any such purpose;
  - (d) persons upon whom the duties of any such trust as aforesaid devolve;
  - (e) executors and administrators; or
  - (f) liquidators, trustees and other like officers acting under any law relating to corporations or to bankrupts, by whomsoever appointed or elected.

**233 False accounting**

Any person who, with a view to gain for himself or another or with intent to deceive or cause loss to another:

- (a) destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose or any similar purpose or for any financial transaction; or
- (b) in furnishing information for any purpose produces or makes use of any account, or any such record or document referred to in paragraph (a), that is or may be misleading, false or deceptive in a material particular,

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

**234 False statements by officers of corporations, &c.**

- (1) An officer, auditor or promoter, or person purporting to act as such, of a corporation or an unincorporated association, either existing or intended to be formed, who, with intent to deceive its members or creditors about its affairs or with intent to induce any person to entrust or advance any property to it or to become a member or to enter into any security for the benefit of it, publishes or concurs in publishing a written statement or account that, to his knowledge, is or may be misleading, false or deceptive in a material particular is guilty of a crime and is liable to imprisonment for 7 years.
- (2) Where the affairs of a corporation or an association are managed by its members, this section shall apply to any statement that a member publishes or concurs in publishing in connection with his functions of management as if he were an officer of the corporation or association.

**235 Suppression, &c., of documents**

- (1) Any person who, with intent to defraud, destroys, defaces or conceals any document that is evidence of title to land or estate in land, or any valuable security, will or other testamentary document or any original document of or belonging to, or filed or deposited in, any court of justice or any government department, is guilty of a crime and is liable to imprisonment for 7 years.
- (2) Any person who, for the purposes of gain for himself or another or with intent to cause loss to another, by any deception procures the execution of a valuable security, is guilty of a crime and is liable to imprisonment for 7 years.

- (3) Subsection (2) shall apply in relation to the making, acceptance, endorsement, alteration, cancellation or destruction in whole or in part of a valuable security and in relation to the signing or sealing of any paper or other material in order that it may be made or converted into, or used or dealt with as, a valuable security, as if that were the execution of a valuable security.

## **Division 5            Secret commissions**

### **236            Solicitation or receipt of secret commissions**

Any person who as:

- (a) the agent or employee of any person;
- (b) a trustee or guardian;
- (c) a legal practitioner, medical practitioner, accountant, auditor, engineer, architect, surveyor, valuer or other professional advisor;
- (d) an officer, partner, manager or other participant in the direction, management or administration of the business or affairs of a corporation or an unincorporated association; or
- (e) an arbitrator, adjudicator or referee,

has any powers, duties or functions to carry out and who corruptly asks for, receives or obtains, or agrees to receive or obtain from any third person, any property or benefit for himself or another on account of his failure properly to carry out or the manner in which he carries out or promises or agrees to carry out those powers, duties or functions and any such third person who corruptly gives, offers or agrees to give such property or benefit, are guilty of a crime and each is liable to imprisonment for 3 years.

### **237            Independent advisor accepting secret commission**

Any person who holds himself out to the public as being engaged in the business of making for commercial purposes disinterested selections or examinations, or expressing disinterested opinions in relation to property or services, and who asks for, receives or obtains, or agrees to receive, any property or benefit of any kind in order to influence his selection, examination or opinion, is guilty of a crime and is liable to imprisonment for 3 years.

## **Division 6      Criminal damage to property**

### **238      Definition**

In this Division ***unlawful*** or ***unlawfully*** includes, in the case of damage by the owner of property to that property, with intent to defraud.

### **239      Arson**

Any person who unlawfully sets fire to:

- (a) a building;
- (b) a ship, whether complete or not;
- (c) a stack of cultivated vegetable produce, or a stack, tank, storage or collection of mineral or vegetable fuel;
- (d) a mine or the workings, fittings or appliances of a mine; or
- (e) an aircraft,

is guilty of a crime and is liable to imprisonment for life.

### **240      Attempts to commit arson**

Any person who:

- (a) attempts to commit a crime defined by section 239; or
- (b) unlawfully sets fire to anything that is so situated that any such thing as is mentioned in section 239 is likely to catch fire from it,

is guilty of a crime and is liable to imprisonment for 14 years.

### **241      Setting fire to crops and growing plants**

Any person who unlawfully sets fire to:

- (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) standing trees, saplings or shrubs, whether indigenous or cultivated; or

- (d) pasture, whether indigenous or cultivated,
- is guilty of a crime and is liable to imprisonment for 14 years.

**242 Casting away, &c., ships**

Any person who:

- (a) unlawfully casts away or destroys a ship, whether complete or not;
- (b) unlawfully does an act that tends to the immediate loss or destruction of a ship in distress; or
- (c) with intent to bring a ship into danger, interferes with any light, beacon, mark or signal used for purposes of navigation or for the guidance of seamen, or exhibits any false light or signal,

is guilty of a crime and is liable to imprisonment for life.

**243 Attempts to cast away, &c., ships**

Any person who attempts to commit a crime defined by section 242 is guilty of a crime and is liable to imprisonment for 14 years.

**244 Damaging aircraft**

Any person who, with intent to bring an aircraft into danger or to damage any property upon any aircraft:

- (a) damages or deals with the aircraft or with anything upon or near the aircraft or with anything either directly or indirectly connected with the guidance, control or operation of the aircraft in such a manner as to affect or endanger, or be likely to affect or endanger, the free and safe use of the aircraft;
- (b) shows any light or gives any sign or signal so as to affect, or to be likely to affect, the free and safe use of such aircraft; or
- (c) by any omission to do any act that it is his duty to do causes the free and safe use of the aircraft to be endangered,

is guilty of a crime and is liable to imprisonment for life.

**245 Attempts to damage aircraft, &c.**

Any person who:

- (a) attempts to commit a crime defined by section 244; or

- (b) while on board an aircraft does any act or makes any omission whereby, to his knowledge, the safety of the aircraft is or is likely to be endangered,

is guilty of a crime and is liable to imprisonment for 14 years.

**246 Damaging signals**

Any person who unlawfully damages, removes, defaces or renders invisible any light, beacon, buoy, mark or signal used for the purposes of navigation or for the guidance of vessels or aircraft or unlawfully attempts to damage, remove, deface or render invisible any such thing, is guilty of a crime and is liable to imprisonment for 14 years.

**247 Damaging railways, roadways and runways**

Any person who unlawfully damages any railway, roadway or runway or any light, sign or signal on or connected with such railway, roadway or runway or shows any light, sign or signal so as to affect the free and safe use of such railway, roadway or runway, is guilty of a crime and is liable to imprisonment for 14 years.

**248 Taking or sending goods likely to damage aircraft**

- (1) Any person who unlawfully:

- (a) carries or places dangerous goods on board an aircraft;
- (b) delivers dangerous goods to another person for the purpose of such goods being placed on board an aircraft; or
- (c) has dangerous goods in his possession on board an aircraft,

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

- (2) For the purposes of subsection (1), **dangerous goods** means:

- (a) firearms, ammunition, offensive weapons and explosive substances; and
- (b) substances and things that by reason of their nature or condition may endanger the safety of an aircraft or of a person on board an aircraft.

**249 Damaging mines**

Any person who, with intent to damage or to obstruct the working of a mine, unlawfully:

- (a) causes water to run into the mine or into any subterranean passage communicating with the mine;
- (b) obstructs any shaft or passage of the mine;
- (c) obstructs the working of any machine, appliance or apparatus appertaining to or used with the mine, whether the thing in question is completed or not; or
- (d) damages or unfastens a rope, chain or tackle that is used in the mine or upon any way or work appertaining to or used with the mine,

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

**250 Damaging navigation works**

Any person who:

- (a) unlawfully damages, 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 that appertains to a port, harbour, dock, canal, aqueduct, reservoir or inland water, or that is used for purposes of navigation or lading or unlading goods; or
- (b) unlawfully does any act with intent to obstruct the carrying on or completion of navigation works or the maintenance of the navigation of navigable water and thereby obstructs such carrying on, completion or maintenance,

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

**251 Criminal damage in general**

- (1) Any person who unlawfully damages any property is guilty of an offence and is liable to imprisonment for 2 years.
- (2) If:
  - (a) the property in question is a ship in distress or that is wrecked or stranded or anything that belongs to such a ship;

- (b) the property in question is a document that is deposited or kept in a public office or that is evidence of title to any land or estate in land;
- (c) the loss caused or intended to be caused by such damage is greater than \$500; or
- (d) the damage is caused when preparing to commit, committing or attempting to escape after committing or to conceal the offender's participation in a crime,

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

(3) If:

- (a) the property in question is a testamentary instrument, whether the testator is living or dead, or a register that is authorized 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 such register that is required by law to be sent to any public officer;
- (b) the loss caused or intended to be caused by such damage is greater than \$50,000;
- (c) the damage endangers, or is likely to endanger, the life of any person; or
- (d) the damage is caused by the explosion of an explosive substance,

the offender is guilty of a crime and is liable to imprisonment for 14 years.

(4) If:

- (a) the property in question is a building, ship, aircraft, motor vehicle or railway engine or carriage and the damage is caused by the explosion of an explosive substance and if:
  - (i) any person is in the building, ship, aircraft, motor vehicle or railway engine or carriage; or
  - (ii) the damage actually endangers the life of any person;
- (b) the property in question is a bank or wall of the sea or of a river, canal, aqueduct, reservoir or inland water and the damage causes actual danger of inundation or damage to any land or building;



- (c) the property in question is a bridge and it is destroyed; or
- (d) the property in question is a bridge and the damage is done with intent to render the bridge dangerous or impassable and it is thereby rendered dangerous or impassable,

the offender is guilty of a crime and is liable to imprisonment for life.

**252 Attempts to destroy property by explosives**

Any person who, with intent to unlawfully damage any property, puts any explosive substance in any place is guilty of a crime and is liable to imprisonment for 14 years.

**253 Unlawful deposition of explosives**

Any person who unlawfully throws, leaves down or otherwise deposits any explosive substance in any place under such circumstances that it may cause damage to the property of any person is guilty of a crime and is liable to imprisonment for 2 years.

**254 Communicating infectious diseases to animals**

Any person who unlawfully causes or is concerned in causing or attempts to cause any infectious disease to be communicated to or among any animal or animals is guilty of a crime and is liable to imprisonment for 7 years.

**255 Removing boundary marks**

Any person who, with intent to defraud, removes or defaces any object or mark that has been lawfully erected or made as an indication of the boundary of any land, is guilty of a crime and is liable to imprisonment for 3 years.

**256 Obstructing railways or runways**

Any person who, by any unlawful act or by an intentional omission to do any act that it is his duty to do, causes any railway engine or carriage, or aircraft in use upon a railway or runway to be obstructed in its passage on the railway or runway is guilty of a crime and is liable to imprisonment for 5 years.

**257 Threatening to burn or destroy**

- (1) Any person who knowingly causes any person to receive any communication threatening that any such thing as is mentioned in section 239 shall be burnt or destroyed is guilty of a crime and is liable to imprisonment for 5 years.

- (2) It is a defence to a charge of a crime defined by this section to prove that causing the person to receive such communication was reasonable by the standards of an ordinary person similarly circumstanced to the accused person.

## **Division 7            Forgery and like offences**

### **258            Forgery**

Any person who, in order to obtain a benefit for himself or another, or to cause a person to act to his or another's prejudice, or to induce a person to do or refrain from doing an act whether in the Territory or elsewhere:

- (a) makes a false writing in any register or record kept by lawful authority or in any document that purports to be issued by lawful authority as testifying to the contents of any such register or record or to any fact or event;
- (b) makes a copy of an existing document or writing with the intention of representing it to be the original document or writing;
- (c) alters an existing document or writing with the intention of representing the altered document or writing to be the original document or writing;
- (d) makes a document or writing that purports to be made or issued by or on behalf of a person who did not make or issue it or authorize its making or issue or who does not exist with the intention of representing it was made or issued by or on behalf of that person;
- (e) makes a document or writing that falsely purports to be made at a particular place or time or before or witnessed by a particular person with the intention of representing that such particulars are true; or
- (f) makes a document or writing in the nature of an order or a warrant or a receipt for or with respect to the payment of money or any valuable consideration for a greater or lower amount than that which the person on whose behalf the order, warrant or receipt is made out is entitled to or has paid,

is said to forge the document or writing and is guilty of a crime and is liable to imprisonment for 7 years.

**259            Counterfeiting tokens**

Any person who makes a counterfeit token with intent that it be used as a means of committing or attempting to commit the crime of criminal deception is guilty of a crime and is liable to imprisonment for 5 years.

**260            Uttering forged documents or writings or counterfeit tokens**

Any person who, knowing that a document or writing has been forged or that any token is counterfeit, utters such document, writing or token is guilty of a crime and is liable to the same punishment as if he had forged the document or writing or made the counterfeit token.

**261            Uttering cancelled or exhausted documents**

Any person who knowingly utters as and for a subsisting and effectual document or writing any document or writing that has by any lawful authority been ordered to be revoked, cancelled or suspended, or the operation of which has ceased by effluxion of time or by death or by the happening of any other event, is guilty of a crime and is liable to the same punishment as if he had forged the document or writing.

**262            Uttering cancelled stamps**

Any person who knowingly utters as and for a valid and uncanceled stamp a stamp, or an impression of a seal, used for any purpose connected with the public revenue of the Territory or of any other part of the Commonwealth that has been already used, or that has been cancelled, is guilty of a crime and is liable to the same punishment as if he had forged the stamp or seal.

**263            Procuring execution of documents by deception**

Any person who, by means of any deception as to the nature, contents or operation of a document, procures another to sign or execute the document is guilty of a crime and is liable to the same punishment as if he had forged the document.

**264            Purchase of forged document or writing or counterfeit token, &c.**

Any person who purchases, receives or has in his possession a forged document or writing or counterfeit token knowing it to be forged or counterfeit and with intent that it be uttered, is guilty of a crime and is liable to imprisonment for 5 years.

**265      Falsification of registers**

Any person who, having the actual custody of any register or record kept by lawful authority, knowingly permits any entry that, in any material particular, is to his knowledge false to be made in the register or record, is guilty of a crime and is liable to imprisonment for 7 years.

**266      Sending false certificate of marriage to registrar**

Any person who signs or transmits to a person authorized by law to register marriages a certificate of marriage, or any document purporting to be a certificate of marriage, that in any material particular is to his knowledge false, is guilty of a crime and is liable to imprisonment for 7 years.

**268      Attempts to procure unauthorized status**

Any person who:

- (a) by deception procures any authority authorized by any statute to issue certificates testifying that the holders thereof are entitled to exercise any profession, trade or business or are entitled to any right or privilege or to enjoy any rank or status to issue to him or any other person any such certificate;
- (b) falsely represents to any person that he has obtained any certificate issued by any such authority; or
- (c) by deception procures himself or any other person to be registered on any register kept by lawful authority as a person entitled to such a certificate, or as a person entitled to exercise any profession, trade or business or entitled to any right or privilege or to enjoy any rank or status,

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

**269      Circulating false copies of rules or lists of members of societies or corporations**

Any person who, knowingly and with intent to deceive or to enable another person to deceive, utters to any person a document that purports to be a copy of the memorandum or articles of association of a corporation, or of the rules or by-laws of any corporation or society constituted under the authority of any statute, but which is not a true copy thereof, or a document that purports to be a list of the members of any such corporation or society, but which is not a true list of such members, is guilty of a crime and is liable to imprisonment for 3 years.

## **Division 8      Preparation for forgery**

### **270      Instruments and material for forgery**

Any person who, without authorization or excuse, the proof of which lies on him:

- (a) makes, or begins or prepares to make, or uses, or knowingly has in his possession or disposes of, any paper or other material resembling any paper or other material such as is specially provided by the proper authority for the purpose of being used for or making:
  - (i) any document acknowledging or being evidence of the indebtedness of the government of the Territory or of any other government;
  - (ii) any stamp, licence, permit or other document issued by or on behalf of the government of the Territory or any of its departments or statutory bodies or by any other government or its departments or statutory bodies; or
  - (iii) any bank note,or any machinery or instrument or material for making any such paper or material, or capable of producing in or on paper or material any writing used in or on any paper or material specially provided for any such purpose;
- (b) impresses or makes upon any plate or material any writing resembling, in whole or part, the writing used in any such document as aforesaid; or
- (c) uses, or knowingly has in his possession, or disposes of any plate or material upon which such writing is impressed or made,

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

### **271      Counterfeit stamps**

Any person who, without authorization or excuse, the proof of which lies on him:

- (a) makes or mends, or begins or prepares to make or mend, or uses, or knowingly has in his possession or disposes of, any die, plate or instrument capable of making an impression resembling that made by any die, plate or instrument used for the purpose of making any stamp, whether impressed or adhesive, that is used for the purposes of the public revenue

of the Territory or any other part of the Commonwealth or in any foreign state, or capable of producing in or on paper or other material any writing used in or on any paper or other material specially provided by the proper authority for any such purpose;

- (b) knowingly has in his possession or disposes of any paper or other material that has on it the impression of any such die, plate or instrument, or any paper that has on it or in it any such writing as aforesaid;
- (c) fraudulently and with intent that use may be made of any such stamp as aforesaid, or of any part of it, removes the stamp from any material in any way;
- (d) fraudulently and with intent that use may be made of any part of any stamp, mutilates the stamp;
- (e) fraudulently fixes or places upon any material, or upon any such stamp, any stamp or part of a stamp that has been in any way removed from any other material, or out of or from any other stamp;
- (f) fraudulently and with intent that use may be made of any such stamp that has been already impressed upon or attached to any material, erases or otherwise removes, either really or apparently, from such material anything written on it; or
- (g) knowingly has in his possession or disposes of anything obtained or prepared by any such unlawful act as aforesaid,

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

## **Division 9      Personation**

### **272      Personation in general**

- (1) Any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead, is, unless otherwise stated, guilty of a crime and is liable to imprisonment for 3 years.
- (2) If the representation is that the offender is a person entitled by will or operation of law to any specific property and he commits the offence with intent to obtain such property or possession thereof he is liable to imprisonment for 14 years.

**273      Falsely acknowledging deeds, recognizances, &c.**

Any person who, without authorization or excuse, the proof of which lies on him, makes in the name of any other person before any court or person lawfully authorized to take such an acknowledgment, an acknowledgment of liability of any kind, or an acknowledgment of a deed or other instrument, is guilty of a crime and is liable to imprisonment for 7 years.

**274      Personation of a person named in a certificate**

Any person who utters any document that has been issued by lawful authority to another person and whereby that other person is certified to be a person possessed of any qualification recognized by law for any purpose, or to be the holder of any office, or to be entitled to exercise any profession, trade or business, or to be entitled to any right or privilege, or to enjoy any rank or status, and falsely represents himself to be the person named in the document is guilty of a crime and is liable to imprisonment for 7 years.

**275      Lending certificates for personation**

Any person who, being a person to whom any document has been issued by lawful authority whereby he is certified to be a person possessed of any qualification recognized by law for any purpose, or to be the holder of any office, or to be entitled to exercise any profession, trade or business, or to be entitled to any right or privilege, or to enjoy any rank or status, lends the document to another person with intent that that other may represent himself to be the person named therein is guilty of a crime and is liable to imprisonment for 3 years.

**Division 10      Unlawful Interference with data processing systems**

**276      Making false data processing material, &c.**

- (1) Any person who unlawfully alters, falsifies, erases or destroys any data processing material with any fraudulent intention is guilty of a crime and is liable to imprisonment for 3 years.
- (2) If he does so with the intent that an incorrect data processing response will be produced and with the intent that it may in any way be used or acted upon as being correct, whether in the Territory or elsewhere, to the prejudice of any person or with intent that any person may, in the belief that it is correct, be induced to do or refrain from doing any act, whether in the Territory or elsewhere, he is liable to imprisonment for 7 years.

## **Part VIII                    Attempts and preparation to commit offences: conspiracy: accessories after the fact**

### **Division 1                Attempts and preparation to commit offences**

#### **277                    Attempts to commit offences**

- (1) Any person who attempts to commit a crime or a simple offence is guilty of an offence.
- (2) If the offence attempted to be committed is a crime he is, unless otherwise stated, guilty of a crime.
- (3) When a person who commits a crime is punishable on being found guilty summarily, a person who attempts to commit such a crime may also be found guilty summarily.

#### **278                    Punishment of attempts to commit offences**

- (1) Any person who attempts to commit a crime of such a kind that a person found guilty of it is liable to the punishment of imprisonment for life or of imprisonment for 14 years or longer is liable, if no other punishment is provided, to imprisonment for 7 years.
- (2) Any person who attempts to commit a crime of any other kind 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 found guilty of the crime or simple offence that he attempted to commit is liable.

#### **279                    Reduction of punishment**

- (1) When a person is found guilty of attempting to commit an offence and it appears to the court or the justices of the peace that he desisted of his own motion from the further prosecution of his intention, without its fulfilment being prevented by circumstances independent of his will, he is liable to one-half only of the punishment to which he would otherwise be liable.
- (2) If that punishment is imprisonment for life, the greatest punishment to which he is liable is imprisonment for 7 years.

#### **280                    Attempts to procure commission of criminal offences**

- (1) Any person who attempts to procure another to do any act, make any omission or cause any event, whether in the Territory or elsewhere, of such a nature that, if the act were done or the omission were made or the event were caused, an offence would



thereby be committed under the laws of the Territory or the laws in force in the place where the act, omission or event is proposed to be done, made or caused whether by himself or by that other person, is guilty of an offence of the same kind and is liable to the same punishment as if he had himself attempted to do the same act, make the same omission or cause the same event in the Territory.

- (2) If the act, omission or event is proposed to be done, made or caused at a place not in the Territory, the punishment cannot exceed that which he would have incurred under the laws in force where the act, omission or event was proposed to be done, made or caused if he had himself attempted to do the proposed act, make the proposed omission or cause the proposed event.
- (3) A prosecution with respect to a matter referred to in subsection (2) cannot be instituted except at the request of the government of the state having jurisdiction in the place where the act, omission or event was proposed to be done, made or caused.

## **281 Preparation to commit crimes with explosives, &c.**

Any person who makes or knowingly has in his possession any explosive substance or any dangerous or noxious thing with intent by means thereof to commit, or for the purpose of enabling any other person by means thereof to commit, any crime is guilty of a crime and is liable to imprisonment for 5 years.

## **Division 2 Conspiracy: accessories after the fact**

### **282 Conspiracy to commit crimes**

Any person who conspires with another to commit any crime, or to do any act, make any omission or cause any event in any part of the world that, if done in the Territory, would be a crime and that 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 found guilty of the crime in question is liable is less than imprisonment for 7 years, then to such lesser punishment.

### **283 Conspiracy to commit simple offences**

Any person who conspires with another to commit a simple offence or to do any act, make any omission or cause any event in any part of the world that if done in the Territory would be a simple offence and that is an offence under the laws in force in the place where it

is proposed to be done, is guilty of a crime and is liable to imprisonment for one year.

**284 Conspiracy to deceive or defraud**

Any person who conspires with another by deception or any fraudulent conduct to affect the market price of anything publicly sold or to defraud the public or any person, whether a particular person or not, or to extort any property from any person is guilty of a crime and is liable to imprisonment for 7 years.

**285 Conspiracy to lay false charge**

- (1) Any person who conspires with another to charge any person or cause any person to be charged with an offence, whether alleged to have been committed in the Territory or elsewhere, knowing that such person is innocent of the alleged offence is guilty of a crime.
- (2) If the offence is such that a person found guilty of it is liable to be sentenced to imprisonment for life the offender is liable to imprisonment for life.
- (3) In any other case the offender is liable to imprisonment for 7 years.

**286 Conspiracy to pervert justice**

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

**287 Conspiring to murder**

Any person who conspires with another person to murder any person, whether such person is in the Territory or elsewhere, is guilty of a crime and is liable to imprisonment for 14 years.

**288 Conspiracy to carry out seditious enterprise**

Any person who conspires with another to carry out any seditious enterprise is guilty of a crime and is liable to imprisonment for 3 years.

**289 Other conspiracies**

Any person who conspires with another:

- (a) to prevent or defeat the execution or enforcement of any statute law;

- (b) to prevent or obstruct the free and lawful disposition of any property by the owner thereof for its fair value; or
- (c) to prevent or obstruct, by means of any conduct that, if engaged in by an individual person, would constitute an offence on his part, the free and lawful exercise of the trade, profession or occupation of any person,

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

## **290 Industrial disputes**

Notwithstanding anything contained in section 293, no act done, omission made or event caused by any 2 or more persons in contemplation or furtherance of any industrial dispute and no agreement or combination by any 2 or more persons to do any act, make any omission or cause any event or to procure any act to be done, omission to be made or event to be caused in contemplation or furtherance of any industrial dispute, shall render any of such persons guilty of an offence if such act, omission or event when done, made or caused by an individual person would not have rendered such person guilty of an offence.

## **291 Conspiracy by husband and wife**

A husband and wife are capable of criminally conspiring together.

## **292 Position of other conspirators no defence**

It shall not be a defence to a charge of conspiracy that the person with whom the accused is alleged to have conspired:

- (a) has not been prosecuted;
- (b) has been found guilty of a different offence;
- (c) is not amenable to justice;
- (d) has been acquitted; or
- (e) lacked the capacity to commit an offence.

## **293 Conspiracy to commit more than one offence**

If a person conspires to engage in conduct that would constitute the crime of conspiracy under any 2 or more of the foregoing provisions, he is guilty of only one conspiracy so long as such conduct is part of one agreement or continuous conspiratorial relationship.

**294 Punishment of accessories after the fact**

- (1) Any person who becomes an accessory after the fact to murder or terrorism is guilty of a crime and is liable to imprisonment for 14 years.
- (2) Any person who becomes an accessory after the fact to any other crime of such a nature that the offender may be sentenced to imprisonment for a term greater than 3 years is guilty of a crime and is liable, if no other punishment is provided, to imprisonment for 2 years.
- (3) Any person who becomes an accessory after the fact to any other crime or to any simple offence of such a nature that the offender may be sentenced on being found guilty summarily to imprisonment for one year, is guilty of an offence and is liable to a punishment equal to one-half of the greatest punishment to which the perpetrator is liable on being found guilty.
- (4) If the perpetrator is punishable on being found guilty summarily the accessory may also be found guilty summarily; otherwise the accessory is guilty of a crime.

**Part IX Procedure**

**Division 1 Preliminary proceedings: change of place of trial:  
no true bill**

**295 Jurisdiction**

The jurisdiction of courts of justice with respect to the trial of offenders is set forth in the laws relating to the constitution and jurisdiction of those courts respectively.

**296 Preliminary proceedings on charges of crimes**

The practice and procedure relating to the examination and committal for trial of persons charged with crimes are set forth in the laws relating to justices of the peace and their powers and authorities.

**297 Change of place of trial**

- (1) When a person has been committed for trial at a court held at any place, whether he has been admitted to bail or not, the Supreme Court or a judge 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.

- (2) When an indictment has been presented against any such person the court may, on the application of the Crown or the accused person and upon good cause shown, order that the trial shall be held at some place other than that named in the indictment and at a time to be named in the order.
- (4) The obligations of any persons who are bound to attend as witnesses or to produce any documents are in like manner to be deemed to be altered to the same time and place upon their being given written notice to that effect.

**297A      No true bill**

- (1) When a person charged with a crime has been committed for trial and it is not intended to put him on his trial a Crown Law Officer shall:
  - (a) issue a certificate to that effect; and
  - (b) deliver it to the person committed:
    - (i) if the person is not in custody, by giving it to him personally or sending it by post to his last known address; or
    - (ii) if the person is in custody, by sending it by post or giving it to the person who has custody of him.
- (2) If the committed person has been released on bail, upon the issue of the certificate, the bail undertaking and any conditions of bail shall cease to have effect and any security or money deposited thereunder shall be returned to the person who deposited it.
- (3) If the committed person has not been released on bail, upon the delivery of the certificate, the warrant of commitment shall cease to have effect.

**Division 2            Indictments**

**298            Nature of indictments**

- (1) When a person charged with a crime has been committed for trial and it is intended to put him on his trial for the crime the charge is to be reduced to writing in a document that is called an indictment.
- (2) The indictment is to be signed by a Crown Law Officer.

**299      Altering charges after committal**

When a person charged with a crime has been committed for trial and if, in the opinion of the person responsible for the presentation of the indictment, the evidence produced at the preliminary proceedings is such that he ought to be charged with some further or other offence he may present an indictment charging such further or other offence.

**300      Ex officio information**

A Crown Law Officer may sign an indictment against any person for any offence whether the accused person has been committed for trial or not.

**301      Arrest of person charged in ex officio information**

- (1) When an indictment has been presented against a person who is not in custody and has not been committed for trial or held to bail to attend to be tried upon the charge set forth in the indictment, or who does not appear to be tried upon the charge set forth in the indictment, a judge of the court in which the indictment is presented may issue a warrant under his hand to arrest the accused person and bring him before a justice of the peace.
- (2) The justice of the peace before whom he is brought may commit him to prison until he can be tried on the indictment or may, in a proper case, admit him to bail to attend to be tried on the indictment.

**302      Nolle prosequi**

- (1) A Crown Law Officer may inform any court, by writing under his hand, that the Crown will not further proceed upon any indictment then pending in that court.
- (2) When such information is given to the court the accused person is to be discharged from any further proceedings upon that indictment.

**303      General rule as to indictments**

Except as otherwise expressly provided an indictment must charge one offence against one person.

**304      Commencement of indictment**

The commencement of an indictment shall indicate the name of the person by whom it is signed and the authority of that person to sign it.

### **305 Form of indictment**

- (1) An indictment shall contain a statement of the offence charged together with such particulars as may be necessary to give reasonable information as to the nature of the charge.
- (2) If more than one offence is charged each offence shall be set out in a separate paragraph called a count and numbered consecutively.
- (3) The statement of the offence shall describe the offence shortly in ordinary language in which the use of technical terms is unnecessary and it need not state all the elements of the offence, but it shall contain a reference to the section and the enactment defining the offence.
- (4) If any circumstance of aggravation is intended to be relied upon it shall be charged in the indictment.

### **306 Description of property**

- (1) A description of property in an indictment may be in ordinary language and shall be such as to indicate with reasonable clarity the property referred to and, if the property is so described, it shall not be necessary, except when required for the purpose of describing an offence depending on any special ownership of property or special value of property, to name the person to whom the property belongs or the value of the property.
- (2) Where property is vested in more than one person and the owners of the property are referred to in an indictment it is sufficient to describe the property as owned by one of those persons by name and others and if the persons owning the property are a body of persons with a collective name it is sufficient to use the collective name without naming any individual.

### **307 Description of persons**

The description or designation in an indictment of the accused person or of any other person to whom reference is made shall be such as is reasonably sufficient to identify him without necessarily stating his correct name or his address or occupation and if, owing to the name of the person being unknown or for any other reason, it is impossible or impracticable to give such a description or designation, such description or designation shall be given as is reasonably practicable in the circumstances or he may be described as "a person unknown".

**308      Circumstances in which more than one person may be charged in the same indictment**

- (1) Any number of persons charged with committing or with counselling or procuring the commission of the same offence, although at different times, or of being accessories after the fact to the same offence, although at different times, and any number of persons charged with receiving, although at different times, any property that has been obtained by means of a crime, or by means of an act that, if it had been done in the Territory, would be a crime and that is an offence under the laws in force in the place where it was done, or any part of any property so obtained, may be charged with substantive offences in the same indictment and may be tried together notwithstanding that the perpetrator or the person who so obtained the property is not included in the same indictment or is not amenable to justice.
- (2) Any number of persons charged with committing different or separate offences arising substantially out of the same facts or out of closely related facts so that a substantial part of the facts is relevant to all the charges may be charged in the same indictment and tried together.

**309      Circumstances in which more than one charge may be joined against the one person**

- (1) Charges for more than one offence may be joined in the same indictment against the same person, whether he is being proceeded against separately or with another or others, if those charges are founded on the same facts or are, or form part of, a series of offences of the same or similar character or a series of offences committed in the prosecution of a single purpose.
- (2) Charges of stealing any property or, alternatively, of receiving the same property knowing or believing it to have been stolen may be joined in the same indictment.

**310      Circumstances where more than one offence may be charged as one offence**

- (1) In an indictment against a person for an assault the accused person may be charged and proceeded against notwithstanding that such assault is alleged to be constituted by a number of assaults provided they were committed on the same person in the prosecution of a single purpose or at about the same time.
- (2) In an indictment against a person for stealing property where the property was stolen over a period of time the accused person may be charged and proceeded against for stealing the property over



the period of time, notwithstanding that different acts of stealing took place at different times and it is not possible to identify in all instances each particular act of stealing.

**311 Formal defect**

Without in any way limiting the power of the court to order an indictment to be amended, an indictment shall not be quashed by reason of formal defect if it is shown that such formal defect would not cause surprise or uncertainty to the accused person as to the true nature of the charge or charges brought against him.

**312 Order for amendment of indictment**

- (1) Where, before trial or at any stage of a trial, it appears to the court that the indictment is defective or that there appears to be a variance between the indictment and the evidence, the court shall make such order for the amendment of the indictment as the court thinks necessary to meet the circumstances of the case if it is shown that the required amendment can be made without injustice.
- (2) Where an indictment is so amended a note of the order for amendment shall be endorsed on the indictment and the indictment shall be treated for the purposes of the trial and for the purposes of all proceedings in connection therewith as having been presented in the amended form.

**313 Particulars**

The court may in any case direct particulars to be delivered to the accused person of any matter alleged in the indictment and unless they are delivered he is entitled to be discharged.

**314 Being found guilty summarily**

The provisions of this Division relating to indictments apply to complaints preferred against offenders upon their trial before justices of the peace in order to their being found guilty summarily of a crime.

**Division 3 Effect of indictment: alternative verdicts**

**315 Offences involving circumstances of aggravation**

- (1) Upon an indictment charging a person with an offence committed with circumstances of aggravation he may be found guilty alternatively of the offence charged without any of such circumstances of aggravation or of the offence charged with any other circumstances of lesser aggravation contained in the section

defining that offence.

- (2) Upon an indictment charging a person with an offence of such a nature that he may be found guilty alternatively of some other offence, he may be found guilty of that other offence with or without any circumstance of aggravation prescribed for that offence.

**316                  Indictment containing count of murder or manslaughter**

- (1) Upon an indictment charging a person with murder he may be found guilty alternatively of manslaughter, but not of any other offence except as otherwise expressly provided.
- (2) Upon an indictment charging a person with manslaughter he cannot be found guilty of any other offence except as otherwise expressly provided.

**317                  Charge of homicide of child**

Upon an indictment charging a person with murder or manslaughter, if it appears that the person alleged to have been killed was a child of which a woman had recently been delivered, the accused person may be found guilty alternatively of the crime of preventing the child from being born alive by an act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child, or of the crime of endeavouring by a secret disposition of the dead body of the child to conceal the birth.

**318                  Charge of offence against the person where section 31 or intoxication is a defence**

Upon an indictment charging a person with murder, manslaughter or any other offence against the person, if he is found not guilty of the crime charged or any other offence of which he might otherwise be found guilty upon that indictment by reason of the provisions of section 31 or intoxication, other than intoxication of such a nature that the provisions of section 35 apply, he may be found guilty alternatively of the offence defined by section 154 with or without any of the circumstances of aggravation therein set out.

**319                  Charge of offence against morality, sexual intercourse or gross indecency without consent**

- (1) Upon an indictment charging a person with a crime defined by section 127, 128, 129, 130, 131 or 136 he may be found guilty alternatively of any other crime also defined by the section defining the crime with which he is charged.

- (2) Upon an indictment charging a person with a crime defined by section 192(3) the person may be found guilty alternatively of:

- (a) an attempt to commit that crime; or
- (b) a crime defined by section 127, 128, 129, 130 or 132(2)(a) or an attempt to commit such a crime.

**320                  Charge of causing event, &c.**

- (1) Upon an indictment charging a person with a crime of which causing an event is an element he may be found guilty alternatively of any offence of which causing an event of a similar, but less injurious, nature is an element.
- (2) Upon an indictment charging a person with a crime of which an intent to cause an event is an element he may be found guilty alternatively of any offence of which the unlawful causing of that event is an element.

**321                  Charge of property offence**

Upon an indictment charging a person with a property offence he may be found guilty of having committed that offence or any other offence available upon that indictment with respect to some, but not all, of the property described in the indictment.

**322                  Charge of stealing and criminal deception**

Upon an indictment charging a person with stealing any property he may be found guilty alternatively of obtaining the property by deception and upon an indictment charging a person with obtaining property by deception he may be found guilty alternatively of stealing the property.

**323                  Charge of stealing or receiving**

Upon an indictment charging a person with stealing any property or, alternatively, receiving the same property knowing or believing it to have been stolen he may be found guilty of:

- (a) stealing the property;
- (b) receiving the property; or
- (c) either stealing or receiving the property.

**324 Charge of counselling or procuring commission of an offence**

Upon an indictment charging a person with counselling or procuring the commission of an offence he may be found guilty alternatively of counselling or procuring the commission of any other offence of such a nature that a person may be found guilty of it upon an indictment charging him with committing the offence of which the accused person is alleged to have counselled or procured the commission.

**325 Finding of guilt for attempt to commit offence, &c.**

- (1) Upon an indictment charging a person with committing an offence he may be found guilty alternatively of attempting to commit that offence, or of attempting to commit any other offence of which he might be found guilty upon the indictment.
- (2) Upon an indictment charging a person with procuring the commission of an offence he may be found guilty alternatively of attempting to procure the commission of that offence, or of attempting to procure the commission of any other offence of such a nature that a person may be found guilty of it upon an indictment charging him with committing the offence of which the accused person is alleged to have procured the commission.
- (3) Upon an indictment charging a person with attempting to commit an offence he may be found guilty alternatively of attempting to commit any other offence of such a nature that a person may be found guilty of it upon an indictment charging him with committing the offence that the accused person is alleged to have attempted to commit.
- (4) Upon an indictment charging a person with attempting to procure the commission of an offence he may be found guilty alternatively of attempting to procure the commission of any other offence of such a nature that a person may be found guilty of it upon an indictment charging him with committing the offence of which the accused person is alleged to have attempted to procure the commission.
- (5) Upon an indictment charging a person with attempting to procure another to do an act, make an omission or cause an event of such a nature that if the act had been done, the omission had been made or the event had been caused an offence would thereby have been committed he may be found guilty alternatively of attempting to procure that other person to do any other act, make any other omission or cause any other event of such a nature that if the act had been done, the omission had been made or the event had been caused an offence would thereby have been committed, such

last-mentioned offence being itself of such a nature that a person may be found guilty of it upon an indictment charging him with doing the act, making the omission or causing the event that the accused person is alleged in the indictment to have attempted to procure that other person to do, make or cause.

**326 When evidence shows offence of similar nature**

- (1) Upon an indictment charging a person with an offence if the evidence establishes that he is guilty of another offence of such a nature that upon an indictment charging him with it he might have been found guilty of the offence with which he is actually charged, he may be found guilty of the offence with which he is so charged.
- (2) A person so tried is not liable to be afterwards prosecuted for the offence so established by the evidence unless the presiding judge thinks fit to discharge the jury from giving any verdict and to direct the accused person to be indicted for that offence; in which case he may be dealt with in all respects as if he had not been put upon his trial for the offence with which he is actually charged.

**327 Charge of corrupt practices at elections**

Upon an indictment charging a person with a crime relating to elections he may be found guilty alternatively of an offence relating to elections punishable on being found guilty summarily.

**328 Charge of stealing animals**

Upon an indictment charging a person with stealing an animal he may be found guilty alternatively of a crime defined by section 225 or any simple offence dealing with:

- (a) unlawfully using an animal; or
- (b) unlawfully branding or marking an animal or altering the brand or mark.

**329 Charge of joint receiving**

Upon an indictment charging 2 or more persons jointly with a crime of which the receiving of any property is an element if the evidence establishes that one or more of them separately received any part or parts of the property under such circumstances as to constitute a crime, such one or more of the accused persons may be found guilty of the crime or crimes so established by the evidence.

**330 Court to determine availability of alternative charge**

It is the duty of the court to determine at the conclusion of the evidence whether or not, upon the evidence, any other charge is in fact available for the consideration of the jury.

**Division 4 Notice of alibi: trial adjournment: pleas: practice**

**331 Notice of alibi**

- (1) An accused person shall not upon his trial on indictment, without the leave of the court, adduce evidence of an alibi unless, before the expiration of the prescribed period, he gives to the Director of Public Prosecutions written notice of particulars of the alibi and unless the notice contains the name and address of any person whom he claims can support the alibi or, if such name or address is not known to him at the time he gave the notice:
  - (a) he gives in the notice all information in his possession that may be of material assistance in locating that person; and
  - (b) the court is satisfied that before giving that notice he had made all reasonable attempts to obtain that name and address and that thereafter he continued to make all reasonable attempts to obtain and to inform the Director of Public Prosecutions of that name and address.
- (2) A notice under this section shall be duly given if it is delivered to or left at the office of the Director of Public Prosecutions or sent by certified mail addressed to him at his office.
- (3) The court shall not refuse leave under this section if it appears to the court that the accused person was not, upon his committal for trial, informed by that court of the requirements of this section.
- (4) Evidence tending to disprove an alibi may, subject to a direction by the court, be given before or after evidence is given in support of the alibi.
- (5) A notice purporting to be given under this section on behalf of the accused person by his solicitor shall, until the contrary is proved, be deemed to be given with the authority of the accused person.
- (6) In this section:

**evidence of an alibi** means evidence tending to show that by reason of the presence of the accused person at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to

have been committed at the time of its alleged commission.

***the prescribed period*** means the period of 14 days after the date of the committal for trial of the accused person.

### **332 Right to be tried**

- (1) A person committed for trial may, orally or in writing, at any time during the sittings of the court to which he has been committed or any subsequent sittings, make application to the court for an indictment to be presented against him in order that he may be brought to his trial.
- (2) An application pursuant to this section shall be dealt with in open court and where the application is in writing may be dealt with in the absence of the applicant.
- (3) The court may, upon an application pursuant to this section, order that:
  - (a) the application be adjourned for such period as it thinks fit;
  - (b) an indictment be presented within such period as it thinks fit;  
or
  - (c) the applicant be discharged.

### **333 Accelerating trial of persons not under committal**

- (1) A person who has not been committed for trial and who is not in custody or admitted to bail, but against whom an indictment has been presented, may apply at any time to the court in which the indictment was presented to be brought to his trial.
- (2) Upon such an application the court may order that:
  - (a) the application be adjourned for such period as it thinks fit;
  - (b) the trial be held during such sittings of the court as it thinks fit;  
or
  - (c) the applicant be discharged.

### **334 Adjournment of trial**

- (1) The court to which a person has been committed or remanded for trial on indictment or before which an indictment is presented may, if it thinks fit, adjourn the trial and may remand the accused person accordingly.

- (2) A trial may be adjourned whether or not:
  - (a) the accused person is present;
  - (b) the accused person has been called upon to plead to the indictment;
  - (c) a jury has been sworn; or
  - (d) evidence has been given.
- (3) The Crown shall, where it is proposed to make application for an adjournment in the absence of an accused person who is detained in a place of legal detention, notify in writing that accused person:
  - (a) that the application is to be made and the nature, date, time and place thereof;
  - (b) that he may furnish to the court a statement in writing in relation to the application; and
  - (c) that he may be represented by his counsel on the hearing of the application.
- (4) In this section ***adjourn the trial*** includes postpone the trial in a case where the accused person has not been called upon to plead to the indictment.

### **335      Enlargement of notices to witnesses**

- (1) Where the trial of a person charged or to be charged with an offence on indictment is adjourned, the court may enlarge the notice given to any witnesses.
- (2) Where upon the adjournment of a trial a notice to a witness is enlarged, the witness is bound to attend to give evidence at the time and place to which the trial is adjourned, without being given a fresh notice, in the same manner as if he had been bound originally by the notice to give evidence at the time and place to which the trial is adjourned.

### **336      Accused person to be called upon to plead to indictment**

- (1) An accused person is to be informed in open court of the offence with which he is charged as set forth in the indictment and may be called upon to plead to the indictment and to say whether he is guilty or not guilty of the charge.
- (2) The trial is deemed to begin and the accused person is deemed to be brought to trial when he is so called upon.



- (3) Nothing in this section prevents different judges taking the plea of an accused person and presiding at the trial of the issues by the jury.

**337 Presence in court and plea where accused is a corporation**

- (1) Where an indictment is presented against a corporation, the corporation may be present in court by its representative and it may, on arraignment, enter a plea in writing by its representative.
- (2) Any plea so entered by the representative shall for all purposes be taken to be a plea entered by the corporation.
- (3) If the corporation is not present in court by its representative or if, though it is so present, it does not enter a plea in writing by its representative, the court shall order a plea of not guilty to be entered on behalf of the corporation.
- (4) A plea so entered has the same effect as if it had been actually pleaded and the trial of the corporation may proceed accordingly.
- (5) In respect of a trial, any requirement by law that anything shall be done in the presence of the accused person or shall be read or said to or asked of the accused person shall, in the case of a corporation present in court by its representative, be construed as a requirement that that thing shall be done in the presence of the representative or read or said to or asked of the representative.
- (6) If the corporation is not present in court by its representative it shall not be necessary for the thing to be done or read or said or asked.
- (7) Without limiting subsection (1) or section 360 where, in respect of a trial, anything is required to be done or said by the accused person personally, it may, in the case of a corporation present in court by its representative, be done or said by the representative and anything so done or said shall for all purposes be taken to be done or said by the corporation.
- (8) In this section **representative** means a person appointed by the corporation to represent it for the purposes of this section; but the person so appointed is not, by virtue only of being so appointed, qualified to act on behalf of the corporation before the court for any other purpose.
- (9) A representative need not be appointed under the seal of the corporation and a statement in writing purporting to be signed by a managing director of the corporation or by any other person, by whatever name called, having, or being one of the persons having, the management of the affairs of the corporation to the effect that the person named in the statement has been appointed as the

representative of the corporation for the purposes of this section shall be admissible without further proof as prima facie evidence that that person has been so appointed.

**338 Delivery of copy of indictment**

When an indictment is presented against any person the court is required, upon his application, to order a copy of the indictment to be delivered to him without fee.

**339 Motion to quash indictment**

- (1) The accused person may before pleading apply to the court:
  - (a) to quash the indictment on the ground that it is calculated to prejudice or embarrass him in his defence to the charge or that it is formally defective; or
  - (b) to stay the proceedings on the ground that they are vexatious or harassing.
- (2) Upon such motion the court may quash the indictment, order it to be amended in such manner as the court thinks just, stay the proceedings or refuse the motion.

**340 Misnomer**

If the accused person says that he is wrongly named in the indictment the court may, on being satisfied by affidavit or otherwise of the error, order the indictment to be amended.

**341 Separate trials where 2 or more charges against the same person**

- (1) Where before a trial or at any time during a trial the court is of opinion that the accused person may be prejudiced or embarrassed in his defence by reason of his being charged with more than one offence in the same indictment or that for any other reason it is desirable to direct that the person should be tried separately for any offence or offences charged in an indictment the court may order a separate trial of any count or counts in the indictment.
- (2) The court may discharge a jury sworn from giving a verdict on the count or counts directed to be tried separately.
- (3) The procedure on the separate trial of a count shall be the same in all respects as if the count had been set out in a separate indictment.

- (4) The court may adjourn a separate trial, remand the accused person and make such orders as to bail and as to the enlargement of notices to witnesses and otherwise as the court thinks fit.
- (5) In this section **adjourn** includes postpone in a case where the accused person has not been called upon to plead to the indictment.

### **342 Pleas**

- (1) If the accused person does not apply to quash the indictment or move for a separate trial, he must either plead to it, or demur to it on the ground that it does not disclose any offence cognizable by the court.
- (2) If he pleads he may plead:
  - (a) that he is guilty of the offence charged in the indictment or, with the consent of the Crown, of any other offence of which he might be found guilty upon the indictment;
  - (b) that he is not guilty;
  - (c) that he has already been found guilty or acquitted of:
    - (i) the same offence;
    - (ii) a similar offence;
    - (iii) an offence of which he might be found guilty upon the trial of the offence charged; or
    - (iv) an offence upon the trial of which he could have been found guilty of the offence charged;
  - (d) that he has received the royal pardon for the offence charged; or
  - (e) that the court has no jurisdiction to try him for the offence charged.
- (3) Two or more pleas may be pleaded together except that the plea of guilty cannot be pleaded with any other plea to the same charge.
- (4) An accused person may plead and demur together.

**343      Defence of truth of defamatory matter to be specially pleaded**

A person charged with the unlawful publication of defamatory matter who sets up that the defamatory matter is true must plead that matter specially and may plead it with any other plea except the plea of guilty.

**344      Persons committed for sentence**

- (1) When a person has been committed for sentence for a crime he is to be called upon to plead to the indictment in the same manner as other persons and may plead either that he is guilty of the crime charged in the indictment or, with the consent of the Crown, of any other offence of which he might be found guilty upon the indictment.
- (2) If he pleads that he is not guilty the court, upon being satisfied that he duly admitted before the justice of the peace that he was guilty of the crime charged in the indictment, may direct a plea of guilty to be entered notwithstanding his plea of not guilty and a plea so entered has the same effect as if it had been actually pleaded.
- (3) If, and notwithstanding that the accused person pleads that he is guilty, it appears to the court upon examination of the depositions of the witnesses and any other information given to it that a plea of not guilty ought to be entered, the plea of not guilty is to be entered.
- (4) A person who has been committed for sentence may plead any of the other pleas mentioned in section 342.

**345      Standing mute**

If an accused person who has been committed for trial or proceeded against by way of section 300, on being called upon to plead to an indictment, will not plead or answer directly to the indictment the court may, if it thinks fit, order a plea of not guilty to be entered and a plea so entered has the same effect as if it had been actually pleaded.

**346      Plea of autrefois convict, &c.**

In a plea that the accused person has already been found guilty or acquitted it is sufficient to state that he has been lawfully found guilty or acquitted of the offence charged in the indictment or of the offence of which he alleges that he has been found guilty or acquitted and, in the latter case, to describe the offence by any term by which it is commonly known.

**347 Trial on plea of autrefois convict, &c., royal pardon or to the jurisdiction**

Upon a plea that the accused person has already been found guilty or acquitted or has received the royal pardon or to the jurisdiction of the court, the court is to proceed to determine the matter itself in such manner and upon such information as it thinks fit.

**348 Trial by jury**

Subject to section 348A, if the accused person pleads that he is not guilty he is by such plea, without any further form, deemed to have demanded that the issues raised by such plea shall be tried by a jury and is entitled to have them tried accordingly.

**348A Procedure where accused pleads not guilty and crown adduces no evidence**

(1) If:

- (a) an accused person pleads not guilty of an offence; and
- (b) the Crown does not intend to adduce any evidence in respect of the offence,

the Crown must, before a jury is empanelled, inform the court of its intention.

- (2) On being informed by the Crown under subsection (1), the court must make a finding that the accused is not guilty of the offence.
- (3) A finding of not guilty under subsection (2) has effect as if it were a not guilty verdict of a jury on the offence.

**349 Demurrer**

- (1) When an accused person demurs only and does not plead any plea the court is to proceed to hear and determine the matter forthwith.
- (2) If the demurrer is overruled he is to be called upon to plead to the indictment.
- (3) When an accused person pleads and demurs together it is in the discretion of the court whether the plea or demurrer shall be first disposed of.
- (4) No joinder in demurrer is necessary.

**350 Separate trials**

When 2 or more persons are charged in the same indictment, whether with the same offence or with different offences, the court may, at any time during the trial, on the application of any of the accused persons, direct that the trial of the accused persons or any of them shall be had separately from the trial of the other or others of them and for that purpose may, if a jury has been sworn, discharge the jury from giving a verdict as to any of the accused persons.

**351 Juries**

The law respecting the qualifications of jurors and the summoning of jurors to attend for the trial of persons charged with offences and the challenges allowed to such persons is set forth in the laws relating to juries and jurors.

**352 Accused person to be informed of his right of challenge**

When an accused person has demanded to be tried by a jury the proper officer of the court is to inform him in open court that the persons whose names are to be called are the jurors to be sworn for his trial and is further to inform him that if he desires to challenge any of them he must do so before they are sworn.

**353 Challenge to array**

If the accused person desires to object to the whole panel of jurors he must do so before any juror is sworn for his trial.

**354 Challenges to individual jurors for cause**

- (1) The Crown or the accused person may object to a particular juror on the ground:
  - (a) that the juror is not qualified by law to act as a juror; or
  - (b) that the juror is not indifferent as between the Crown and the accused person.
- (2) Such objections are in addition to any peremptory challenges that are allowed.

**355 Time for challenging**

An objection to a juror, either by way of peremptory challenge or by way of challenge for cause, may be made at any time before the officer has begun to recite the words of the oath to the juror, but not afterwards.

**356      Ascertainment of facts as to challenge**

- (1) If at any time it becomes necessary to ascertain the truth of any matter alleged as cause for challenge the fact shall be tried by the jurors already sworn if more than one or, if one juror only has been sworn, by such juror together with some indifferent person chosen by the court from the panel of jurors or, if no juror has been sworn, by 2 indifferent persons chosen by the court from such panel.
- (2) The persons so appointed are to be sworn to try the cause for challenge and their decision on the fact is final and conclusive.
- (3) If the persons so appointed cannot agree the court may discharge them from giving a decision and may appoint 2 other persons to try the fact to be chosen as in the case where no juror has been sworn.

**357      Want of understanding of accused person**

- (1) If, when the accused person is called upon to plead to the indictment or during the trial, it appears to be uncertain, for any reason, whether he is capable of understanding the proceedings at the trial so as to be able to make a proper response, the court shall inquire into the question of whether he is capable or not.
- (2) If the court finds that he is capable of understanding the proceedings the trial is to proceed as in other cases.
- (3) If the court finds that he is not so capable it is to say whether he is so found by it for the reason that he is in a state of abnormality of mind or for some other reason that it shall specify and the finding is to be recorded; and the court may order the accused person to be discharged or may order him to be kept in custody in such place and in such manner as the court thinks fit, or admit him to bail, until he can be dealt with according to law.
- (4) A person so found to be incapable of understanding the proceedings at the trial may be again indicted and tried for the offence.

**358      Jury to be sworn and informed of charge**

- (1) The jury are to be sworn to give a true verdict according to the evidence upon the issues to be tried by them.
- (2) When the jury have been sworn the proper officer of the court is to inform them of the charge set forth in the indictment and of their duty as jurors upon the trial.

**359 Discharge of juror by court**

If, after a juror has been sworn, it appears to the court from his own statement that he is not indifferent as between the Crown and the accused person, or that for any other reason he ought not to be allowed or required to act as a juror on the trial, the court may, without discharging the whole of the jury, discharge that particular juror and direct another juror to be sworn in his place.

**360 Defence by accused person**

- (1) Every accused person is entitled to give evidence, to call evidence and to be represented by counsel, but he is not entitled to make a statement from the dock.
- (2) In subsection (1) **counsel** includes any person entitled to audience as an advocate.

**361 Presence of accused**

- (1) The court may, if it thinks fit, permit an accused person to be absent during the whole or any part of the trial on such conditions as it thinks fit.
- (2) If an accused person so conducts himself as to render the continuance of the proceedings in his presence impracticable the court may order him to be removed and may direct the trial to proceed in his absence.
- (3) If an accused person injures himself in order to prevent the trial commencing or continuing the court may direct a plea of not guilty to be entered if no plea has been entered and that the trial shall proceed in his absence.
- (4) If the accused person absents himself during the trial without leave the court may direct a warrant to be issued to arrest him and bring him before the court forthwith and may also direct the trial to proceed in his absence.

**362 Evidence in defence**

At the close of the evidence for the prosecution the proper officer of the court shall ask the accused person if he intends to adduce evidence in his defence.

**363 Speeches and their order**

The circumstances in which counsel for the Crown and an accused person or his counsel may address the jury and the order of speeches are set out in Schedule 4.



**364 Summing up**

- (1) After the evidence is concluded and the counsel or the accused person or persons, as the case may be, have addressed the jury it is the duty of the court to instruct the jury as to the law applicable to the case with such observations upon the evidence as the court thinks fit to make.
- (2) After the court has instructed the jury they are to consider their verdict.

**365 Jury not to separate**

- (1) Except as hereinafter stated after the jury have been sworn and the charge has been stated to them by the proper officer they must not separate until they have given their verdict or are discharged by the court and no person except the officer of the court who has charge of them is to be allowed to speak to or communicate with any of them without the leave of the court until they are discharged.
- (2) The court may, in its discretion, permit the jury to separate before considering their verdict for such period during any adjournment of the trial as the court may think fit.
- (3) If any person disobeys the directions of this section he may be punished summarily as for contempt of court.
- (4) The validity of the proceedings is not affected by any such disobedience but, if the fact is discovered before the verdict is given, the court, if it is of opinion that such disobedience is likely to prejudice the fair trial of the charge, may discharge the jury and may direct that a fresh jury be sworn during the same sittings of the court or may adjourn the trial.

**366 Confinement of jury**

While the jury are kept together and until they have given their verdict they are to be kept during any adjournment of the court and while they are considering their verdict in some private place under the charge of an officer of the court and are to be provided with such accommodation, meals and refreshment as the court may allow.

**367 View**

- (1) The court may in any case, if it thinks fit, direct that the jury shall view any place or thing that the court thinks it is desirable that they should see and may give any necessary directions for that purpose.

- (2) The validity of the proceedings is not affected by disobedience to any such directions, but if the fact is discovered before the verdict is given the court, if it is of opinion that such disobedience is likely to prejudice the fair trial of the charge, may discharge the jury and may direct that a fresh jury be sworn during the same sittings of the court or may adjourn the trial.

**368 Majority verdict**

Where upon a trial a period of not less than 6 hours has elapsed since the jury retired and the jurors are not unanimously agreed upon their verdict the court shall:

- (a) if the jury consists of 11 or 12 jurors and 10 of those jurors are agreed upon a verdict to be given, take and enter that verdict as the verdict of the jury; or
- (b) if the jury consists of 10 jurors and 9 of those jurors are agreed upon a verdict to be given, take and enter that verdict as the verdict of the jury.

**369 Special verdict**

In any case in which it appears to the court that the question whether an accused person ought or ought not to be found guilty of an offence may depend upon some specific fact or that the proper punishment to be imposed upon a finding of guilt may depend upon some specific fact the court may require the jury to find that fact specially.

**370 General verdict on charge of defamation**

Notwithstanding the provisions of section 369 the jury, on the trial of a person charged with the unlawful publication of defamatory matter, may give a general verdict of guilty or not guilty upon the whole matter in issue in like manner as in other cases.

**371 Discharge of jury**

- (1) When the trial of an accused person is adjourned after the jury have been sworn the court may discharge the jury.
- (2) If the jury cannot agree as to the verdict to be given or reach a majority verdict as provided by section 368, or if any emergency arises of such a nature as to render it, in the opinion of the court, necessary or highly expedient for the ends of justice to do so, the court may, in its discretion, discharge the jury without giving a verdict and may direct that a fresh jury be sworn during the same sittings of the court or may adjourn the trial.

- (3) Such an exercise of discretion is not subject to review by any court.

**372            Incapacity of judge**

- (1) If the presiding judge becomes incapable of proceeding with the trial or directing the discharge of the jury, it is the duty of some officer of the court to discharge the jury.
- (2) In any such case the accused person must remain in custody and may be again put on his trial; but he has the same rights with respect to admission to bail as upon an original committal for trial for the offence with which he is charged.

**373            Incapacity of juror**

- (1) If at any time during the trial:
- (a) a juror dies; or
  - (b) the court is of the opinion that:
    - (i) the juror is not indifferent as between the Crown and the accused person; or
    - (ii) by reason of any matter of urgency or importance a juror should be discharged from further attendance,

the court may, in its discretion:

- (c) discharge the jury; or
  - (d) discharge the juror and direct that the trial shall proceed with the remaining jurors.
- (2) In any such case the presence of the remaining jurors, not being fewer than 10, shall have the same effect as if all the jurors had continued present.

**374            Verdict on Sunday**

The taking of a verdict or any other proceeding of the court is not invalid by reason of its happening on a Sunday.

**375            Further pleas**

When the issues raised by any plea or pleas, except the plea of not guilty, have been found against an accused person who has not pleaded the plea of not guilty, he is to be called upon to plead afresh.

## **Division 5      Evidence: admissions of fact**

### **376      Evidence on trials for perjury**

On the trial of a person charged with a crime of which the giving of false testimony by any person at the trial of a person charged with an offence is an element, a certificate setting out the substance and effect only, without the formal parts of the charge, and the proceedings at the trial and purporting to be signed by the officer having the custody of the records of the court where the charge was tried, or by his deputy, is sufficient evidence of the trial without proof of the signature or official character of the person who appears to have signed the certificate.

### **377      Evidence of relationship on charge of incest**

On the trial of a person charged with a crime, of which carnal knowledge or an attempt to have carnal knowledge of a woman or girl is an element and of which blood relationship is also an element:

- (a) it is sufficient to prove that the woman or girl on whose person or by whom the crime is alleged to have been committed is reputed to be the daughter or other lineal descendant, or sister or mother of the person charged, or of the person with whom the crime is alleged to have been committed, as the case may be, and it is not necessary to prove that such woman or girl, or any person being her parent or ancestor and being a descendant of the person charged, or of the person with whom the crime is alleged to have been committed, as the case may be, was born in lawful wedlock; and
- (b) the accused person is, until the contrary is proved, presumed to have had knowledge at the time of the alleged crime of the relationship existing between the woman or girl on whose person or by whom the crime is alleged to have been committed and the person charged, or the person with whom the crime is alleged to have been committed, as the case may be.

### **378      Evidence of authority**

The averment in an indictment that the prosecution is instituted by the direction of a Crown Law Officer or at the request of the government of any state is sufficient evidence of the fact until the contrary is shown.

**379                      Admissions**

- (1) An accused person may by himself or his counsel admit on the trial any fact alleged against him and such admission is sufficient proof of the fact without other evidence.
- (2) The prosecution may admit on the trial any fact alleged by the accused person and such admission is sufficient proof of the fact without other evidence.
- (3) In this section ***trial*** also includes proceedings before justices of the peace dealing summarily with a crime.

**380                      Failure to make admission may, in certain circumstances, be taken into account when passing sentence**

If a person found guilty at his trial refused to make an admission requested in writing by the Crown of such a nature that, in the opinion of the court, the making of it could not have prejudiced him in his defence, the court may take such refusal into account when passing sentence.

**Division 6                      Verdict: judgment**

**381                      Discharge of persons acquitted**

If the jury find that the accused person is not guilty, or give any other verdict that shows that he is not liable to punishment, he is entitled to be discharged from the charge of which he is so acquitted.

**382                      Acquittal on ground of insanity**

- (1) If, on the trial of a person charged on indictment, it is alleged or appears that he was insane at the time when it is alleged the offence occurred, the jury are to be required to find specially, if they find that he is not guilty, whether he was insane at that time and to say whether he is acquitted by them on account of such insanity.
- (2) If they find that he was insane at that time and say that he is acquitted by them on account of such insanity the court is required to order him to be kept in strict custody in such place and in such manner as the court thinks fit until the Administrator's pleasure is known.
- (3) In any such case, but subject to subsection (4), the Administrator may give such orders for:
  - (a) the safe custody of such person during his pleasure in such place of confinement and in such manner; or

- (b) the release of such person during his pleasure on such terms and conditions, if any,

as he thinks fit.

- (4) The Administrator shall not give an order referred to in subsection (3) except with the advice of the Executive Council.

### **383 Acquittal on ground of intoxication**

- (1) If, on the trial of a person charged on indictment with a property offence, it is alleged or appears that he is not guilty by reason of intoxication, other than intoxication of such a nature that section 35 applies, the jury are required to find specially, if they find he is not guilty, whether he is not guilty by reason of intoxication and whether such intoxication was voluntary.
- (2) If the jury find he is not guilty by reason of intoxication and his intoxication was voluntary the court may order him to pay by way of reparation an amount not exceeding the costs of bringing the charge including the costs of all reasonable investigations relating thereto and the costs of the committal proceedings and, in an appropriate case, may make an order for the payment of compensation and restitution pursuant to the *Sentencing Act*.
- (3) The court may itself assess such costs or order that they be taxed by the proper officer of the Supreme Court.
- (4) A person liable to make reparation may be ordered to make it in instalments or at some future time specified by the court.
- (5) An amount ordered to be paid for reparation shall be deemed to be a debt owed to the Attorney-General as agent of the Crown and, upon default being made in its payment, the Attorney-General may bring and maintain civil proceedings for its recovery.

### **384 Finding of guilt of property offence with respect to some only of property in indictment**

If, on the trial of a person charged on indictment with a property offence, the jury find that he committed the offence charged in the indictment or an offence available upon it with respect to some, but not all, of the property described in the indictment the jury shall return a verdict of guilty of the offence found by them to have been committed and, by way of special verdict, shall state with respect to what property the general verdict relates.

**385 Finding of guilt of stealing or receiving**

If, on the trial of a person charged on indictment with stealing any property or, alternatively, receiving the same property knowing or believing it to have been stolen, the jury find that he either stole the property or received it or some of it knowing or believing it to have been stolen, but they are unable to say which, they shall return that verdict specially and the court shall enter a finding of guilt for the offence for which the lesser punishment is provided or, if the same punishment is provided, for the first such offence charged in the indictment.

**387 Arrest of judgment**

- (1) A person found guilty of an offence, whether on his plea of guilty or otherwise, may at any time before sentence move that judgment be arrested on the ground that the indictment does not disclose any offence.
- (2) Upon the hearing of the motion the court may allow any such amendments of the indictment as it might have allowed before verdict.
- (3) The court may either hear and determine the motion forthwith or may reserve the question of law for the consideration of the Court of Criminal Appeal as hereinafter provided.

**Part X Punishment: appeal: miscellaneous matters**

**Division 2 Appeal: pardon**

**406 Interpretation**

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

***appellant*** means a person who has been found guilty and desires to appeal or to seek leave to appeal under this Division.

***Court*** means the Court of Criminal Appeal.

***court of trial*** means the court from whose finding, sentence or other determination a person is entitled to appeal or to apply for leave to appeal.

***Registrar*** means the Registrar of the Court.

***sentence*** includes any order made by the court of trial on a finding of guilt with reference to the person found guilty or his property.

- (2) For the purposes of this Division a person acquitted on the ground of insanity, where such insanity was not set up as a defence by him, shall be deemed to be a person found guilty of an offence and any order to keep him in custody shall be deemed to be a sentence.
- (3) For the purposes of this Division, a person found to be incapable of understanding the proceedings of the trial so as to be unable to make proper response, where such matter was not set up by him, shall be deemed to be a person found guilty of an offence and any order to keep him in custody shall be deemed to be a sentence.
- (5) For the purposes of this Division a person against whom an order has been made pursuant to section 383 shall be deemed to be a person found guilty on indictment, the special verdict shall be deemed to be the finding of guilt and the order shall be deemed to be the sentence.
- (7) When a person has been found guilty summarily of a crime, the finding of guilt is to be deemed a finding of guilt of a simple offence for the purposes of an appeal.

#### **407 Court of Criminal Appeal**

- (1) The Supreme Court shall be the Court of Criminal Appeal and the Court shall be duly constituted if it consists of not less than 3 judges and of an uneven number of judges.
- (2) The determination of any question before the Court shall be according to the opinion of the majority of the members of the Court hearing the case.
- (3) The judge of the court of trial shall not be one of such judges.
- (4) The Registrar of the Supreme Court shall be the Registrar of the Court.

#### **408 Reservation of points of law**

- (1) When any person is indicted for any offence the court of trial must, on the application of counsel for the accused person made before verdict and may, in its discretion, either before or after judgment, without such application, reserve any question of law that arises on the trial for the consideration of the Court.
- (2) If the accused person is found guilty and a question of law has been so reserved before judgment, the court of trial may either pronounce judgment on the finding of guilt and respite execution of the judgment or postpone the judgment until the question has been considered and decided and may either commit the person found guilty to prison or admit him to bail on recognizance, with or without



sureties, and in such sum as the court of trial thinks fit, conditioned to appear at such time and place as the court of trial may direct to receive judgment.

- (3) The judge of the court of trial is thereupon required to state, in a case signed by him, the question of law so reserved with the special circumstances upon which it arose and the case is to be transmitted to the Court.
- (4) The judge of the court of trial may state, in a case signed by him, the question of law so reserved before the trial has concluded.
- (5) Any question so reserved is to be heard and determined as an appeal by the Court and, in the discretion of the Court, may be heard and determined before the trial has concluded.
- (6) The Court may send the case back to be amended or restated if it thinks it necessary so to do.

#### **409 Appeal from arrest of judgment**

- (1) When the court of trial before which a person is found guilty on indictment arrests judgment that court is required, on the application of counsel for the prosecution, to reserve a case for the consideration of the Court as hereinbefore provided.
- (2) On the hearing of the case the Court may affirm or reverse the order arresting judgment.
- (3) If the order is reversed the Court is to direct that judgment be pronounced upon the offender and he is to be ordered to appear at such time and place as the Court may direct to receive judgment and any justice of the peace may issue his warrant for the arrest of the offender.
- (4) An offender so arrested may be admitted to bail by order of the Court or a judge thereof, which may be made at the time when the order directing judgment to be pronounced is made or afterwards.

#### **410 Right of appeal**

A person found guilty on indictment may appeal to the Court:

- (a) against the finding of guilt or any special finding on any ground that involves a question of law alone;
- (b) with the leave of the Court, or upon the certificate of the judge of the court of trial that it is a fit case for appeal, against the finding of guilt or any special finding on any ground of appeal that involves a question of fact alone or question of mixed law

and fact, or any other ground that appears to the Court to be a sufficient ground of appeal; and

- (c) with the leave of the Court against the sentence passed on the finding of guilt.

#### **411 Determination of appeal in ordinary cases**

- (1) The Court on any such appeal against a finding of guilt shall allow the appeal if it is of the opinion that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that the judgment of the court of trial should be set aside on the ground of the wrong decision on any question of law or that on any ground there was a miscarriage of justice and in any other case shall dismiss the appeal.
- (2) The Court may, notwithstanding that it is of the opinion that the point or points raised by the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.
- (3) Subject to the special provisions of this Division the Court shall, if it allows an appeal against a finding of guilt, quash the finding of guilt and direct a judgment and verdict of acquittal to be entered.
- (4) On an appeal against a sentence the Court, if it is of the 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.

#### **412 Powers of court in special cases**

- (1) Where an appellant has been found guilty of a crime and on the indictment the jury could have found him guilty of some other, but less serious, offence and it appears to the Court that, although he was not and could not be properly found guilty of the crime of which he was actually found guilty, the evidence given at his trial was such that a reasonable jury correctly instructed must find him guilty of the other offence, the Court may, instead of allowing the appeal, substitute for the verdict found by the jury a verdict of guilty of the other offence and pass such sentence in substitution for the sentence passed at the trial as may be warranted.
- (2) Where, on the finding of guilt of the appellant, the jury have found a special verdict and the Court considers that a wrong conclusion has been arrived at by the court of trial on the effect of that verdict, the Court may, instead of allowing the appeal, order such conclusion to be recorded as appears to the Court to be in law required by the

verdict and pass such sentence, whether more or less severe, in substitution for the sentence passed at the trial as may be warranted in law.

- (3) If on any appeal it appears to the Court that, although the appellant was guilty of the conduct charged against him, he was in a state of abnormality of mind at the time 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 kept in strict custody in the same manner as if a jury had found that fact specially.

#### **413 Power to grant new trial**

On an appeal against a finding of guilt on indictment the Court may, either of its own motion or on the application of the appellant, order a new trial in such manner as it thinks fit if the Court considers that a miscarriage of justice has occurred and that, having regard to all the circumstances, such miscarriage of justice can be more adequately remedied by an order for a new trial than by any other order that the Court is empowered to make.

#### **414 Appeal and reference by Crown Law Officer**

- (1) A Crown Law Officer may appeal to the Court:
- (a) where proceedings on indictment have been stayed pursuant to section 21;
  - (b) against any determination made pursuant to section 347;
  - (c) against any sentence with respect to a crime whether dealt with on indictment or summarily;
  - (d) where proceedings have been had as to whether a person ought to be declared an habitual criminal or a person incapable of exercising proper control over his sexual instincts or recommitted as such after his discharge as such and such declaration or recommitment was not made; or
  - (e) where an indictment has been quashed or proceedings on indictment have been stayed under:
    - (i) section 339; or
    - (ii) the inherent jurisdiction of the court of trial,

and the Court may, in its discretion, direct that the proceedings continue or vary the sentence and impose such sentence or make such a declaration or recommitment order, or make an order quashing the order of the court of trial quashing the indictment, and may

make any consequent orders including an order for the arrest of the respondent to the appeal as the Court thinks proper.

- (2) A Crown Law Officer may, in a case where a person has been acquitted after his trial on indictment, refer any point of law that has arisen at the trial to the Court for its consideration and opinion thereon.
- (3) Notice of the reference shall be given to the acquitted person.
- (4) Upon the reference the Court shall hear argument:
  - (a) by the Crown Law Officer or by counsel on his behalf; and
  - (b) if he so desires, by the acquitted person or by counsel on his behalf; or
  - (c) by any counsel appointed by the Crown Law Officer to present such argument as might have been presented by the acquitted person if he had appeared,

and thereupon shall consider the point referred and furnish to the Crown Law Officer its opinion thereon.

- (5) The opinion of the Court upon the reference shall not affect the trial in respect of which the reference is made or an acquittal in that trial.

#### **415 Revesting and restitution of property on finding of guilt**

- (1) The operation of any order for the restitution of any property or for the payment of compensation to an aggrieved person made by the court of trial and the operation of the provisions of any civil law relating to the revesting of the property in stolen goods on a finding of guilt shall (unless such court directs to the contrary in any case in which, in its opinion, the title to the property is not in dispute) be suspended:
  - (a) until the expiration of the time provided for appealing to the Court; and
  - (b) where notice of appeal or of application for leave to appeal is given within the time provided, until the determination of the appeal or refusal of the application,

and in cases where the operation of any such order or the operation of the said provisions is suspended until the determination of the appeal, the order or provisions shall not take effect as to the property in question if the finding of guilt is quashed on appeal, except by the special order of the Court.

- (2) The Court may annul or vary any such order although the finding of guilt is not quashed.

**416 Suspension of order with respect to driver's licence**

Where notice of appeal or application for leave to appeal is given the Court may suspend any order made with respect to the driver's licence of the appellant until the determination of the appeal or application.

**417 Time for appealing**

- (1) Any person found guilty desiring to appeal to the Court, or to obtain the leave of the Court to appeal from any finding of guilt or sentence, shall give notice of appeal or notice of application for leave to appeal in the prescribed manner within 28 days after the date of such finding of guilt or sentence.
- (2) The time within which notice of appeal, or notice of an application for leave to appeal, may be given may be extended at any time by the Court.

**418 Judge's report may be furnished on appeal**

The judge of the court of trial may, in the case of an appeal or application for leave to appeal, furnish to the Registrar a report giving his opinion upon the case or upon any point arising in the case.

**419 Supplemental powers**

- (1) The Court may, if it thinks it necessary or expedient in the interests of justice:
- (a) order the production of any document, exhibit or other thing connected with the proceedings;
  - (b) order any persons who would have been compellable witnesses at the trial to attend and be examined before the Court, whether they were or were not called at the trial, or order any such persons to be examined before any person appointed by the Court for the purpose and admit any depositions so taken as evidence;
  - (c) receive the evidence, if tendered, of any witness (including the appellant) who is a competent, but not a compellable, witness;
  - (d) where any question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, that cannot, in the opinion of the Court, be

conveniently conducted before the Court, refer the question for inquiry and report to a commissioner appointed by the Court and act upon the report of such commissioner so far as the Court thinks fit; and

- (e) appoint any person with special expert knowledge to act as assessor to the Court in any case in which it appears to the Court that such special knowledge is required for the determination of the case,

and exercise in relation to the proceedings of the Court any other powers that may for the time being be exercised by the Supreme Court on appeals or applications in civil matters and issue any warrant or other process necessary for enforcing the orders or sentences of the Court.

- (2) In no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial.

**420 Presence of appellant who is in custody**

An appellant who is in custody shall not be entitled to be present at the hearing of his appeal, application for leave to appeal or any proceedings preliminary or incidental thereto except by leave of the Court.

**421 Presence of respondent who is in custody when appeal brought by Crown Law Officer**

Unless he is represented by counsel a respondent who is in custody is entitled to be present at the hearing of an appeal brought by a Crown Law Officer.

**422 Appellant or respondent may be sentenced in his absence**

The power of the Court to pass any sentence may be exercised notwithstanding the person to be affected thereby is not present.

**423 Written argument**

Any party may present his argument with respect to an appeal, application for leave to appeal or any proceedings preliminary or incidental thereto in writing.

**424 Costs of appeal**

On the hearing or determination of an appeal, application for leave to appeal, any proceedings preliminary or incidental thereto or on a Crown Law Officer's reference no costs shall be allowed on either side.

**425 Admission of appellant to bail and custody when attending court**

- (1) An appellant who is not admitted to bail shall, pending the determination of his appeal, be treated in such manner as may be directed by regulations made under the laws relating to prisons.
- (2) The time during which an appellant, pending the determination of his appeal, is liberated on bail and, subject to any directions that the Court may give to the contrary on any appeal, the time during which an appellant, if in custody, is specially treated as an appellant under this section, shall not count as part of any term of imprisonment under his sentence.
- (3) Any imprisonment under such sentence, whether it is the sentence passed by the court of trial or the sentence passed by the Court, shall, subject to any directions that the Court may give as aforesaid, be deemed to be resumed or to begin to run, if the appellant is in custody, as from the day on which the appeal is determined and if he is not in custody as from the day on which he is received into prison under the sentence.
- (4) Provision shall be made by regulations under the laws relating to prisons for the manner in which an appellant, when in custody, is to be brought to any place where he is entitled to be present, or ordered to be taken, for the purposes of this Division and for the manner in which he is to be kept in custody whilst absent from prison for the purpose; and an appellant whilst in custody in accordance with those regulations shall be deemed to be in legal custody.

**426 Duties of Registrar**

- (1) The Registrar shall take all necessary steps for obtaining a hearing of any appeals or applications, notice of which is given to him and shall obtain and lay before the Court in proper form all documents, exhibits and other things relating to the proceedings in the court of trial that appear necessary for the proper determination of the appeal or application.
- (2) If it appears to the Registrar that any notice of appeal or of application for leave to appeal against a finding of guilt or sentence does not show any substantial ground of appeal, he may refer the appeal or application to the Court for summary determination; and the Court may thereupon, if it considers that the appeal or application is frivolous or vexatious, dismiss the appeal or refuse the application summarily without calling upon any person to attend the hearing.

- (3) The Registrar shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application to any person who demands the same and to officers of courts, superintendents of prisons and to such other officers or persons as he thinks fit and the superintendent of every prison shall cause such forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application and shall cause any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the Registrar.
- (4) Where an appellant is in custody, the Registrar shall give reasonable notice to him in writing:
  - (a) that if he wishes to appear in person at the Court he must seek the leave of the Court;
  - (b) that he may make such application for leave to appear in writing and may present his argument in support of such application in writing;
  - (c) that he may present his argument with respect to his appeal, application for leave to appeal or any proceedings preliminary or incidental thereto in writing;
  - (d) of the date of the sittings of the Court during which it is expected his appeal or application for leave to appeal will be heard; and
  - (e) of the result of any proceedings preliminary or incidental to his appeal or application for leave to appeal given when he was not present.
- (5) Where a respondent to a Crown Law Officer's appeal is in custody, the Registrar shall give reasonable notice to him in writing:
  - (a) that he may himself appear on the hearing of the appeal if he is not represented by counsel;
  - (b) that he may present his argument with respect to the appeal or any proceedings preliminary or incidental thereto in writing;
  - (c) of the date of the sittings of the Court during which it is expected the appeal will be heard; and
  - (d) of the result of any proceedings preliminary or incidental to the appeal given when he was not present.



**427 Documents, exhibits, &c.**

Any documents, exhibits or other things connected with any proceedings before a court of trial, in respect of which any person is entitled or may be authorized to appeal, shall be kept in the custody of the court of trial for such time as may be prescribed, subject to such power as may be prescribed for the conditional release of any such documents, exhibits or other things from that custody.

**428 Record of trial**

- (1) A record shall be made of the proceedings of any trial of any person on indictment.
- (2) On any notice of appeal or application for leave to appeal the record shall be furnished to the Registrar for the use of the Court or any judge thereof.
- (3) A copy of the record shall be furnished to any party interested upon the payment of such charges as may be prescribed by the Administrator in Council.

**429 Powers exercisable by a judge**

- (1) The powers of the Court to give leave to appeal, to extend the time in which notice of appeal or of an application for leave to appeal may be given, to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave, to admit an appellant to bail and to suspend any order made with respect to the driver's licence of the appellant may be exercised by any judge of the Court in the same manner as they may be exercised by the Court and subject to the same provisions.
- (2) If the judge refuses an application on the part of the appellant to exercise any such power in his favour, the appellant shall be entitled to have the application determined by the Court.

**430 Appeals from the decisions of the court**

- (1) Where an appeal to the Court is upheld and the appellant is entitled to have the finding of guilt against him quashed by order of the Court the Court may, upon application on behalf of the Crown at any time before the release of such appellant, either by the same or by a separate order, direct that execution of the order quashing the appellant's finding of guilt be stayed for such time, not exceeding 7 days, as the Court thinks fit; and the Court or a judge thereof shall thereupon make such order for the detention of the appellant, or his return to any former custody, or for releasing him on bail, as the Court or judge thinks fit, for the time during which such stay has been directed.

- (2) The Court or a judge thereof may, upon application by or on behalf of a Crown Law Officer, make such order for the detention of the appellant or for releasing him on bail pending the hearing of an appeal to the High Court of Australia as the Court or a judge may think fit and may at any time vary or rescind such order.
- (3) On the application of any appellant deeming himself wronged by any failure to diligently prosecute such appeal the Court or a judge thereof may order the immediate execution of the original order of the Court quashing the finding of guilt and may order the appellant's immediate release and the Court may further, if it thinks fit, award him such compensation as appears just.

#### **431      Pardoning power preserved**

Nothing in the foregoing provisions of this Division shall affect the prerogative of mercy, and a Crown Law Officer, on the consideration of any petition for the exercise of the prerogative of mercy having reference to the finding of guilt of any person or to any sentence passed on a person found guilty of an offence, may:

- (a) refer the whole case to the Court whereupon the case shall be heard and determined by the Court as in the case of an appeal by a person found guilty of an offence; or
- (b) if he desires the assistance of the Court on any point arising in the case with a view to the determination of the petition, refer that point to the Court for its opinion thereon whereupon the Court shall consider the point so referred and furnish the Crown Law Officer with its opinion thereon.

#### **432      Conditional remission of sentence by Administrator**

- (1) In any case where the prerogative of mercy is extended to an offender, it may be extended upon condition of the offender entering into a recognizance conditioned as in the case of offenders conditionally released by a court of trial.
- (2) The offender is thereupon liable to the same obligations and is liable to be dealt with in all respects in the same manner as a person conditionally released by a court of trial.

#### **433      Effect of pardon**

A pardon has the effect of discharging the person found guilty of an offence from the consequences of the finding of guilt.

**433A Reference by Attorney-General of certain findings of guilt**

- (1) Where before or after the commencement of this section a person has been found guilty of a crime or an indictable offence and the prerogative of mercy has been extended to the person in respect of that finding of guilt, the Attorney-General may, at the request of the person found guilty of the offence, if the Attorney-General is satisfied that it is expedient in the interests of justice so to do, refer the case to the Court to enable the Court to consider or again consider whether the finding of guilt should be quashed and a judgment and verdict of acquittal entered.
- (2) Notice of a reference under subsection (1) shall be given to the person found guilty of the offence.
- (3) In considering a case referred to it under subsection (1) the Court shall hear argument by the Attorney-General or by counsel on the Attorney-General's behalf and, if the Court considers it necessary to enable it to reach a conclusion on the question before it, may hear argument:
  - (a) by the person found guilty of the offence or by counsel on that person's behalf; or
  - (b) by any counsel appointed by the Attorney-General to present such argument as might have been presented by the person found guilty of an offence if the person found guilty of an offence had appeared.
- (4) In considering a case referred to it under subsection (1), but subject to subsection (5), the Court has such of the powers it has in relation to a matter brought before it on an appeal under section 410 as are necessary to enable it to determine the question referred to it.
- (5) In considering a case referred to it under subsection (1) the Court is not bound by the rules of evidence but may inform itself in such manner as it thinks fit.
- (6) Without limiting the generality of subsection (5), the Court may:
  - (a) receive in evidence:
    - (i) a transcript of evidence taken, and the exhibits produced, in a proceeding before a court of, or in an inquiry by a commission of inquiry (by whatever name called) established by or appointed under a law of, the Commonwealth or a State or Territory of the Commonwealth; or

- (ii) a report of a commission of inquiry referred to in subparagraph (i),  
  
and draw such conclusions of fact from the evidence and exhibits or report as it thinks fit; or
  - (b) adopt, as it thinks fit, the finding, decision, judgment, or reasons for the finding, decision or judgment, of a court or commission of inquiry referred to in paragraph (a) that are relevant to the Court's consideration.
- (7) The decision of the Court on a case referred to it under subsection (1) has the same force and effect as its decision on an appeal under section 410.

### **Division 3            Miscellaneous provisions**

#### **434            Names of jury to be given to accused persons**

When a person is to be tried on indictment a list of the jurors with their christian names and surnames written at full length and with the description of every juror, if required by him, shall be given to him 2 days at least before he is called upon to plead to the indictment.

#### **435            Court may direct certain persons to be prosecuted for perjury**

- (1) If it appears to a court dealing with a matter on indictment that any person has been guilty of perjury in any testimony given before it, the court may commit him to take his trial for such perjury in the same manner as if he had been charged before justices of the peace with the same perjury and sufficient evidence had been given against him.
- (2) A person so committed may be admitted to bail in the same manner as if he had been committed for trial by justices of the peace.
- (3) The court may require any person to enter into a recognizance conditioned to appear and give evidence at the trial of a person so directed to be prosecuted.

#### **435A          Treason, felony or other offences not to attract legal disability except under an act**

A person who has been found guilty of treason, a felony or other offences, whether before or after the commencement of this section, shall not, by reason of the finding of guilt, suffer a legal disability except as prescribed by an Act of the Territory or of the Commonwealth.

**436 Saving of civil remedies**

Except when expressly so provided the prosecution or finding of guilt of a person for an offence does not affect any civil remedy that any person aggrieved by the offence may have against the offender.

**437 No court fees in criminal cases**

No court fees can be taken in a court of criminal jurisdiction from any person who is charged with a crime for any proceeding had or taken in that court with respect to the charge.

**438 Copies of depositions to be allowed to persons committed for trial**

- (1) Subject to subsection (2) any person who is committed for trial is entitled to have on demand from the person who has the lawful custody thereof copies of the depositions of the witnesses on whose depositions he has been so committed.
- (2) If the demand is not made before the day appointed for the commencement of the sittings of the court to which the person on whose behalf the demand is made has been committed for trial, he is not entitled to have any such copy unless the judge is of opinion that the copy may be made and delivered without delay or inconvenience.
- (3) The court may postpone the trial on account of the person committed for trial not having previously had a copy of the depositions.

**439 Inspection of depositions at trial**

Any person who is tried for any crime is entitled at the time of his trial to inspect without fee all depositions or copies of depositions that have been taken against him and returned into the court before which the trial is had.

**440 Standard of proof**

- (1) Any matter that has to be proved by the defence in a trial must be proved on the balance of probabilities; otherwise the standard of proof is proof beyond reasonable doubt.
- (2) Subsection (1) does not apply in relation to the proof of facts necessary for determining whether evidence should be admitted or excluded.

**441 Arrest without warrant**

- (1) A person shall not be arrested without warrant except in accordance with this Code or an Act expressly giving power to arrest without warrant.
- (2) A person, not being a member of the Police Force, may without warrant arrest a person (***the offender***) where the person:
  - (a) finds the offender committing an offence or doing an act or behaving or conducting himself, or in such circumstances, that the person believes on reasonable grounds that the offender has committed an offence and that the arrest of the offender is necessary:
    - (i) to ensure the appearance of the offender before a court of competent jurisdiction;
    - (ii) to preserve public order;
    - (iii) to prevent the continuation or repetition of the offence or the commission of a further offence; or
    - (iv) for the safety or welfare of members of the public or of the offender;
  - (b) is instructed to do so by a member of the Police Force having power under an Act to apprehend the offender; or
  - (c) believes on reasonable grounds that the offender is escaping from legal custody or aiding or abetting another person to escape from legal custody or avoiding apprehension by some person having authority to apprehend the offender in the circumstances of the case.
- (3) A person who is arrested under subsection (2) and in custody shall not be questioned in relation to an offence other than by a member of the Police Force in accordance with the *Police Administration Act*.
- (4) As soon as practicable after a person is arrested under subsection (2), the person shall be delivered to a member of the Police Force, and the *Police Administration Act* shall apply to and in relation to the person and the member as if the arrest had been made under that Act.
- (5) A person who is arrested under subsection (2)(a) shall be held in custody only while the reason for the person's arrest, as referred to in that paragraph, continues.

- (6) A person who is arrested under subsection (2)(a) shall be released immediately from custody where it becomes apparent that the person did not commit the offence for which the person was arrested.
- (7) For the purposes of subsection (2)(a), **offence** does not include a contravention of or failure to comply with an instrument of a legislative or administrative character.

**442 Arrest on reasonable grounds not to be taken to be unlawful**

Where an arrest is made under section 441 under a belief that is held on reasonable grounds, the arrest shall not cease to be lawful or be taken to be unlawful where it subsequently appears or is found that the person arrested did not commit the offence alleged.

**443 Arrest on board aircraft**

- (1) A person in command of an aircraft may, on board the aircraft, with such assistance as is necessary, arrest without warrant a person whom the person in command finds committing, or reasonably suspects of having committed, or of having attempted to commit, an offence on or in relation to or affecting the use of the aircraft, and the person in command or a person authorised by that person may hold the person so arrested in custody until that person can be brought before a Justice or a court or other proper authority to be dealt with in accordance with law.
- (2) A person in command of an aircraft may, where the person considers it necessary to do so in order to prevent an offence on or in relation to or affecting the use of the aircraft, or to avoid danger to the safety of the aircraft or of persons on board the aircraft, with such assistance as the person thinks necessary:
  - (a) place a person who is on board the aircraft under restraint or in custody; and/or
  - (b) if the aircraft is not in the course of a flight, remove a person from the aircraft.

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## Schedule 4

section 363

### ORDER OF SPEECHES

#### I WHEN THE ACCUSED IS NOT DEFENDED BY COUNSEL AND CALLS NO WITNESSES TO THE FACTS EXCEPT HIMSELF

- (1) Counsel for the prosecution opens his case.
- (2) Witnesses for the prosecution.
- (3) Accused gives evidence (if he wishes). (a)
- (4) Witnesses, if any, as to accused's good character.
- (5) Accused addresses the jury in his defence.
- (6) Counsel for the prosecution may sum up his case (if he thinks proper).

#### II WHEN THE ACCUSED IS NOT DEFENDED BY COUNSEL, BUT CALLS WITNESSES AS TO THE FACTS, WHETHER OR NOT HE GIVES EVIDENCE HIMSELF

- (1) and (2) As in I, ante.
- (3) Accused may open his case.
- (4) Accused gives evidence (if he wishes). (a)
- (5) Witnesses for the defence (including witnesses, if any, as to accused's good character).
- (6) Accused addresses the jury in his defence.
- (7) Counsel for the prosecution may sum up his case (if he thinks proper).

#### III WHEN THE ACCUSED IS DEFENDED BY COUNSEL WHO CALLS NO WITNESSES TO THE FACTS EXCEPT THE ACCUSED

- (1) and (2) As in I, ante.
- (3) Accused gives evidence (if he wishes). (a)
- (4) Witnesses, if any, as to accused's good character.
- (5) Counsel for the prosecution sums up his case (if he thinks proper).
- (6) Counsel for the accused sums up the case for the defence.



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IV WHEN THE ACCUSED IS DEFENDED BY COUNSEL WHO CALLS WITNESSES TO THE FACTS, WHETHER OR NOT HE CALLS THE ACCUSED

- (1) and (2) As in I, ante.
- (3) Counsel for the accused may open his case.
- (4) Accused gives evidence (if he wishes). (a)
- (5) Witnesses for the accused (including witnesses, if any, as to accused's good character).
- (6) Counsel for the accused sums up the case for the defence.
- (7) Counsel for the prosecution sums up his case.

V AS AMONGST ACCUSED WHEN THE TRIAL INVOLVES MORE THAN ONE ACCUSED PERSON

Failing agreement by the accused persons, in the reverse order to the order in which their names appear in the indictment.

- (a) Whether the accused gives evidence or not the order of speeches remains the same.

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**Schedule II**
**Part 1**

section 3(1)

**South Australian Acts Repealed in their  
Application to the Northern Territory**

Title	Year and number
The Criminal Law Consolidation Act, 1876	1876, No. 38
An Act to amend the "Minor Offences Procedure Act 1869" and "The Criminal Law Consolidation Act, 1876"	1880, No. 166
The Criminal Law Consolidation Amendment Act, 1885	1885, No. 358
The Children's Protection Act, 1899	1899, No. 730
The Criminal Law Amendment Act, 1902	1902, No. 791

**Part 2**

section 3(2)

**Acts Repealed**

Title	Number and year
<i>Indictments Ordinance 1968</i>	No. 36, 1968
<i>Criminal Law Amendment Ordinance 1939</i>	No. 17, 1939
<i>Criminal Law Amendment Ordinance 1940</i>	No. 19, 1940
<i>Criminal Law Amendment Ordinance 1956</i>	No. 25, 1956
<i>Criminal Law Amendment Ordinance 1960</i>	No. 17, 1960
<i>Criminal Law Amendment Ordinance 1964</i>	No. 37, 1964
<i>Criminal Law Amendment Ordinance 1968</i>	No. 21, 1968
<i>Criminal Law Consolidation Ordinance (No. 2) 1968</i>	No. 67, 1968
<i>Criminal Law Consolidation Ordinance 1969</i>	No. 39, 1969
<i>Criminal Law Consolidation Amendment Ordinance 1969</i>	No. 47, 1969

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<i>Criminal Law Consolidation Ordinance 1973</i>	No. 2, 1973
<i>Criminal Law Consolidation Ordinance (No. 2) 1973</i>	No. 81, 1973
<i>Criminal Law Consolidation Ordinance (No. 3) 1973</i>	No. 6, 1974
<i>Criminal Law Consolidation Ordinance 1974</i>	No. 13, 1974
<i>Criminal Law Consolidation Act (No. 2) 1978</i>	No. 121, 1978
<i>Criminal Law Consolidation Act 1978</i>	No. 127, 1978
<i>Criminal Law Consolidation Act 1979</i>	No. 25, 1979
<i>Criminal Law Consolidation Act (No. 2) 1979</i>	No. 110, 1979
<i>Criminal Law Consolidation Amendment Act 1980</i>	No. 7, 1981
<i>Criminal Law Consolidation Amendment Act 1982</i>	No. 40, 1982
<i>Criminal Law and Procedure Ordinance 1978</i>	No. 64, 1978
<i>Criminal Law and Procedure Act (No. 2) 1978</i>	No. 126, 1978
<i>Criminal Law and Procedure Act 1979</i>	No. 93, 1979
<i>Criminal Law and Procedure Act (No. 2) 1979</i>	No. 108, 1979
<i>Criminal Law and Procedure Act (No. 3) 1979</i>	No. 142, 1979
<i>Criminal Law and Procedure Amendment Act 1981</i>	No. 76, 1981

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## ENDNOTES

**1****KEY**

Key to abbreviations

amd = amended  
 app = appendix  
 bl = by-law  
 ch = Chapter  
 cl = clause  
 div = Division  
 exp = expires/expired  
 f = forms  
 Gaz = Gazette  
 hdg = heading  
 ins = inserted  
 lt = long title  
 nc = not commenced

od = order  
 om = omitted  
 pt = Part  
 r = regulation/rule  
 rem = remainder  
 renum = renumbered  
 rep = repealed  
 s = section  
 sch = Schedule  
 sdiv = Subdivision  
 SL = Subordinate Legislation  
 sub = substituted

**2****LIST OF LEGISLATION*****Criminal Code Act 1983 (Act No. 47, 1983)***

Assent date	4 October 1983
Commenced	ss 406 – 431: 1 March 1986; rem: 1 January 1984 (s 2, Gaz G46, 18 November 1983, p 11 and Gaz G8, 26 February 1986, p 5)

***Criminal Code Amendment Act 1984 (Act No. 9, 1984)***

Assent date	29 June 1984
Commenced	29 June 1984

***Law Officers Amendment Act (No. 2) 1986 (Act No. 48, 1986)***

Assent date	10 December 1986
Commenced	19 December 1986 (Gaz S87, 17 December 1986)

***Criminal Code Amendment Act 1987 (Act No. 42, 1987)***

Assent date	15 October 1987
Commenced	15 October 1987

***Criminal Code Amendment Act 1988 (Act No. 12, 1988)***

Assent date	30 March 1988
Commenced	30 March 1988

***Statute Law Revision Act 1988 (Act No. 66, 1988)***

Assent date	22 December 1988
Commenced	22 December 1988

***Criminal Code Amendment Act 1989 (Act No. 44, 1989)***

Assent date	20 September 1989
Commenced	25 October 1989 (Gaz G42, 25 October 1989, p 4)

***Criminal Code Amendment Act (No. 2) 1989 (Act No. 71, 1989)***

Assent date	12 December 1989
Commenced	12 December 1989

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***Criminal Code Amendment Act 1990 (Act No. 17, 1990)***

Assent date 12 April 1990  
Commenced 1 November 1990 (s 2, s 2 *Misuse of Drugs Act 1990* (Act No. 15, 1990) and Gaz G40, 10 October 1990, p 3)

***Director of Public Prosecutions (Consequential Amendments) Act 1990 (Act No. 29, 1990)***

Assent date 11 June 1990  
Commenced 21 January 1991 (s 2, s 2 *Director of Public Prosecutions Act 1990* (Act No. 35, 1990) and Gaz G2, 16 January 1991, p 9)

***Criminal Code Amendment Act 1991 (Act No. 1, 1991)***

Assent date 22 February 1991  
Commenced 1 January 1984 (s 2)

***Criminal Code Amendment Act (No. 2) 1991 (Act No. 35, 1991)***

Assent date 26 September 1991  
Commenced 1 November 1991 (Gaz S58, 1 November 1991)

***Criminal Code Amendment Act (No. 3) 1991 (Act No. 72, 1991)***

Assent date 6 December 1991  
Commenced 6 December 1991

***Dental (Consequential Amendments) Act 1991 (Act No. 75, 1991)***

Assent date 10 December 1991  
Commenced 31 January 1992 (Gaz S7, 31 January 1992)

***Criminal Code Amendment Act 1992 (Act No. 4, 1992)***

Assent date 8 April 1992  
Commenced 8 May 1992 (s 2, s 2 *Prostitution Regulation Act 1992* (Act No. 6, 1992) and Gaz S28, 8 May 1992)

***Criminal Code Amendment Act (No. 2) 1992 (Act No. 41, 1992)***

Assent date 7 September 1992  
Commenced 7 September 1992

***Criminal Code Amendment Act (No. 3) 1992 (Act No. 83, 1992)***

Assent date 22 December 1992  
Commenced 22 December 1992

***Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)***

Assent date 30 June 1993  
Commenced 1 July 1993 (s 2, s 2 *Public Sector Employment and Management Act 1993* (Act No. 11, 1993) and Gaz S53, 29 June 1993)

***Criminal Code Amendment Act 1993 (Act No. 72, 1993)***

Assent date 16 November 1993  
Commenced 1 December 1993 (Gaz S95, 1 December 1993)

***Local Government (Consequential Amendments) Act 1993 (Act No. 84, 1993)***

Assent date 31 December 1993  
Commenced 1 June 1994 (s 2, s 2 *Local Government Act 1993* (Act No. 83, 1993) and Gaz S35, 20 May 1994)

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***Criminal Code Amendment Act 1994 (Act No. 11, 1994)***

Assent date 28 March 1994  
Commenced 3 April 1994 (*Gaz S24*, 31 March 1994)

***Criminal Code Amendment Act (No. 2) 1994 (Act No. 12, 1994)***

Assent date 31 March 1994  
Commenced 1 December 1994 (s 2, s 2 *Police Administration Amendment Act 1994* (Act No. 20, 1994) and *Gaz S57*, 1 December 1994)

**Amending Legislation**

***Statute Law Revision Act 1994 (Act No. 50, 1994)***

Assent date 20 September 1994  
Commenced 20 September 1994 (s 6(2))

***Criminal Code Amendment Act (No. 3) 1994 (Act No. 13, 1994)***

Assent date 6 April 1994  
Commenced 1 June 1994 (*Gaz S35*, 20 May 1994)

***Criminal Code Amendment Act (No. 4) 1994 (Act No. 46, 1994)***

Assent date 20 September 1994  
Commenced 1 November 1994 (*Gaz G43*, 26 October 1994, p 3)

***Criminal Code Amendment Act 1995 (Act No. 55, 1995)***

Assent date 28 December 1995  
Commenced 26 February 1996 (*Gaz G7*, 14 February 1996, p 2)

***Criminal Code Amendment Act (No. 2) 1995 (Act No. 63, 1995)***

Assent date 28 December 1995  
Commenced 1 August 1996 (*Gaz G30*, 24 July 1996, p 2)

***Criminal Code Amendment Act 1996 (Act No. 1, 1996)***

Assent date 23 January 1996  
Commenced 23 January 1996

***Criminal Code Amendment Act (No. 2) 1996 (Act No. 11, 1996)***

Assent date 10 April 1996  
Commenced 20 May 1996 (*Gaz G20*, 15 May 1996, p 3)

***Criminal Code Amendment Act (No. 3) 1996 (Act No. 12, 1996)***

Assent date 10 April 1996  
Commenced 20 May 1996 (*Gaz G20*, 15 May 1996, p 3)

***Criminal Code Amendment Act (No. 4) 1996 (Act No. 13, 1996)***

Assent date 10 April 1996  
Commenced 10 April 1996

***Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)***

Assent date 19 April 1996  
Commenced 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and *Gaz S15*, 13 June 1996)

***Births, Deaths and Marriages Registration (Consequential Amendments) Act 1996 (Act No. 27, 1996)***

Assent date	28 June 1996
Commenced	1 January 1997 (s 2, s 2 <i>Births, Deaths and Marriages Registration Act 1996</i> (Act No. 26, 1996) and Gaz G49, 4 December 1996, p 5)

***Criminal Code Amendment Act (No. 5) 1996 (Act No. 33, 1996)***

Assent date	5 September 1996
Commenced	1 November 1996 (Gaz G43, 23 October 1996, p 4)

***Criminal Code Amendment Act (No. 6) 1996 (Act No. 37, 1996)***

Assent date	17 September 1996
Commenced	17 September 1996

***Criminal Code Amendment Act 1997 (Act No. 4, 1997)***

Assent date	26 March 1997
Commenced	11 May 1997 (Gaz G18, 7 May 1997, p 2)

***Criminal Code Amendment Act 1998 (Act No. 79, 1998)***

Assent date	21 October 1998
Commenced	1 December 1998 (Gaz G45, 18 November 1998, p 4)

**3 SAVINGS AND TRANSITIONAL PROVISIONS**

- s 5 *Criminal Code Amendment Act 1991* (Act No. 1, 1991)  
s 4 *Criminal Code Amendment Act (No. 2) 1995* (Act No. 63, 1995)

**4 LIST OF AMENDMENTS**

s 6	amd No. 17, 1996, s 6
SCHEDULE I	
s 1	amd No. 9, 1984, s 2; No. 29, 1990, s 7; No. 28, 1993, s 3; No. 84, 1993, s 3; No. 13, 1994, s 3
s 3	amd No. 17, 1996, s 6
s 7	sub No. 9, 1984, s 3
s 12	amd No. 17, 1996, s 6
s 14	amd No. 17, 1996, s 6
s 16	amd No. 17, 1996, s 6
pt I	
div 5 hdg	amd No. 17, 1996, s 6
ss 17 – 20	amd No. 17, 1996, s 6
s 22	amd No. 66, 1988, s 6
s 27	amd No. 1, 1996, s 2
s 28	amd No. 12, 1996, s 3
s 29	amd No. 75, 1991, s 3
s 31	amd No. 12, 1996, s 6
ss 40 – 41	amd No. 12, 1996, s 6
s 43	amd No. 12, 1996, s 6
ss 45 – 46	amd No. 17, 1996, s 6
s 47	amd No. 29, 1990, s 7; No. 17, 1996, s 6
s 50	amd No. 9, 1984, s 4
s 51	sub No. 9, 1984, s 5
	amd No. 17, 1996, s 6
s 52	sub No. 9, 1984, s 5
s 53	amd No. 9, 1984, s 6

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s 55	amd No. 17, 1996, s 6
s 79	amd No. 28, 1993, s 3
s 89	amd No. 84, 1993, s 3; No. 17, 1996, s 6
s 92	amd No. 28, 1993, s 3
ss 97 – 98	amd No. 17, 1996, s 6
s 104	amd No. 17, 1996, s 6
s 106	amd No. 12, 1988, s 2
s 111	amd No. 44, 1989, s 3
s 112	amd No. 44, 1989, s 4; No. 17, 1996, s 6
s 120	amd No. 17, 1996, s 6
pt V	
div 2	
subdiv 1 hdg	ins No. 13, 1996, s 2
s 125A	ins No. 13, 1996, s 2 amd No. 37, 1996, s 2
s 125B	ins No. 13, 1996, s 2 amd No. 37, 1996, s 3
s 125C	ins No. 13, 1996, s 2
s 125D	ins No. 37, 1996, s 4
pt V	
div 2	
subdiv 2 hdg	ins No. 13, 1996, s 2
s 126	amd No. 13, 1994, s 4
ss 127 – 129	amd No. 13, 1994, s 14
s 130	amd No. 13, 1994, s 5 sub No. 11, 1996, s 3
s 131	amd No. 13, 1994, s 6; No. 11, 1996, s 4
s 131A	ins No. 13, 1994, s 7
s 132	sub No. 13, 1994, s 8
ss 134 – 135	amd No. 13, 1994, s 14
s 136	rep No. 4, 1992, s 3
s 137	sub No. 83, 1992, s 2 rep No. 13, 1996, s 3
s 137A	ins No. 83, 1992, s 2 rep No. 13, 1996, s 3
s 138	amd No. 13, 1994, s 9
s 139A	ins No. 13, 1994, s 10
ss 141 – 147	rep No. 17, 1990, s 3
s 154	amd No. 9, 1984, s 7; No. 1, 1991, s 4
s 162	amd No. 55, 1995, s 3
s 164	amd No. 17, 1996, s 6
s 168	amd No. 1, 1996, s 3
s 169	rep No. 1, 1996, s 4
s 186	amd No. 17, 1996, s 6
pt VI	
div 4A hdg	ins No. 63, 1995, s 3
ss 186A – 186D	ins No. 63, 1995, s 3
s 188	sub No. 9, 1984, s 8 amd No. 13, 1994, s 11; No. 17, 1996, s 6
s 189A	ins No. 12, 1994, s 3 amd No. 17, 1996, s 6
s 189	rep No. 9, 1984, s 8 ins No. 11, 1994, s 3
s 192	sub No. 13, 1994, s 12
ss 192A – 192B	ins No. 13, 1994, s 12
s 201	amd No. 13, 1994, s 14



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s 214	amd No. 17, 1996, s 6
s 267	rep No. 27, 1996, s 4
ss 277 – 279	amd No. 17, 1996, s 6
s 282	amd No. 17, 1996, s 6
s 285	amd No. 17, 1996, s 6
s 292	amd No. 17, 1996, s 6
s 294	amd No. 17, 1996, s 6
pt IX	
div 1 hdg	amd No. 9, 1984, s 9
s 296	amd No. 9, 1984, s 10
s 297A	ins No. 9, 1984, s 11
s 298	amd No. 29, 1990, s 7
s 299	amd No. 9, 1984, s 12
s 302	amd No. 29, 1990, s 7
s 310	amd No. 44, 1989, s 5
s 314	amd No. 17, 1996, s 6
s 315	amd No. 9, 1984, s 13; No. 17, 1996, s 6
ss 316 – 318	amd No. 17, 1996, s 6
s 319	amd No. 9, 1984, s 14; No. 13, 1994, s 13; No. 17, 1996, s 6
ss 320 – 329	amd No. 17, 1996, s 6
s 331	amd No. 48, 1986, s 9; No. 29, 1990, s 7
s 332	amd No. 9, 1984, s 15
s 333	sub No. 9, 1984, s 16
s 336	amd No. 9, 1984, s 17
s 342	amd No. 17, 1996, s 6
s 344	amd No. 17, 1996, s 6
s 345	amd No. 9, 1984, s 18
ss 346 – 347	amd No. 17, 1996, s 6
s 348	amd No. 79, 1998, s 3
s 348A	ins No. 79, 1998, s 4
s 357	amd No. 9, 1984, s 19
s 369	amd No. 17, 1996, s 6
s 371	amd No. 9, 1984, s 20
s 373	amd No. 4, 1997, s 3
s 380	amd No. 17, 1996, s 6
s 382	amd No. 33, 1996, s 3
s 383	amd No. 9, 1984, s 21; No. 17, 1996, s 6
s 385	amd No. 17, 1996, s 6
s 386	rep No. 9, 1984, s 22
s 387	amd No. 17, 1996, s 6
s 388	amd No. 9, 1984, s 23
	rep No. 17, 1996, s 6
pt X	
div hdg	rep No. 17, 1996, s 6
ss 389 – 392	rep No. 17, 1996, s 6
s 393	amd No. 9, 1984, s 24; No. 12, 1996, s 4
	rep No. 17, 1996, s 6
ss 394 – 395	rep No. 17, 1996, s 6
s 396	amd No. 9, 1984, s 25
	rep No. 17, 1996, s 6
s 397	amd No. 71, 1989, s 2
	rep No. 17, 1996, s 6
s 398	rep No. 17, 1996, s 6
s 399	amd No. 71, 1989, s 3
	rep No. 17, 1996, s 6
s 400	amd No. 71, 1989, s 4; No. 29, 1990, s 7; No. 72, 1991, s 2
	rep No. 17, 1996, s 6

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s 400A	ins No. 71, 1989, s 5 rep No. 17, 1996, s 6
s 401	amd No. 29, 1990, s 7 rep No. 17, 1996, s 6
ss 402 – 405	rep No. 17, 1996, s 6
s 406	amd No. 9, 1984, s 26; No. 17, 1996, s 6
ss 408 – 413	amd No. 17, 1996, s 6
s 414	amd No. 29, 1990, s 7; No. 46, 1994, s 3
s 415	amd No. 17, 1996, s 6
s 417	amd No. 17, 1996, s 6
s 421	amd No. 29, 1990, s 7
s 424	amd No. 29, 1990, s 7
s 426	amd No. 29, 1990, s 7; No. 17, 1996, s 6
ss 430 – 431	amd No. 17, 1996, s 6
s 433	amd No. 17, 1996, s 6
s 433A	ins No. 42, 1987, s 2 amd No. 17, 1996, s 6
s 434	amd No. 41, 1992, s 2
s 435A	ins No. 35, 1991, s 3 amd No. 17, 1996, s 6
s 436	amd No. 17, 1996, s 6
s 438	amd No. 9, 1984, s 27
ss 441 – 443	ins No. 72, 1993, s 3
sch 1 – 3	rep No. 17, 1990, s 3
sch 4	amd No. 12, 1996, s 5
sch 5	rep No. 17, 1996, s 6