

# **Explanatory Statement**

## **CRIMINAL CODE AMENDMENT (PROPERTY OFFENCES) BILL 2022**

**SERIAL NO. 60**

LEGISLATIVE ASSEMBLY OF THE  
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

### **GENERAL OUTLINE**

The purpose of this Bill is to amend the Criminal Code to modernise and rationalise property offences in the Criminal Code, and to insert a number of new offences. Consistent with ongoing policy, the Bill will convert the offences to come under the operation of the criminal responsibility provisions of Part IIAA of the Criminal Code.

The Model Criminal Code (MCC) developed by the Model Criminal Code Officers Committee (MCCOC) under the auspices of the former Standing Committee of Attorneys-General, the Commonwealth Criminal Code and the *Criminal Code 2002* (ACT) (ACT Criminal Code) provide guidance on the structure and content of the offences.

This Bill amends Part VII of the Criminal Code to:

- (a) revise the structure of property offences to come under the operation of Part IIAA, using the MCC as a guide;
- (b) revise penalties for property offences so they are more closely aligned with other jurisdictions and properly reflect the seriousness of offending;
- (c) introduce definitions relevant to property offences;
- (d) introduce into Part IIAA a provision for 'dishonesty' and a fault element applicable to that provision;
- (e) introduce the new theft-related offences of 'Making-off without payment', 'Shoplifting', and 'Going equipped with an item to commit theft and related offences';
- (f) add an aggravating circumstance for the offence of 'Burglary', that being 'Burglary in company';
- (g) introduce three new fraud offences that apply to dishonesty perpetrated against the Territory;

- (h) reform money laundering offences to clarify the fault elements, and to add an intermediate money laundering offence;
- (i) reform bribery offences, and add a new second-tier bribery offence;
- (j) reform and simplify forgery offences and preparatory forgery offences;
- (k) repeal a number of obsolete offences; and
- (l) repeal interpretative provisions that are no longer required.

## NOTES ON CLAUSES

### Part 1 Preliminary matter

#### Clause 1. Short title

This is a formal clause which provides for the citation of the Bill. The Bill, when passed, may be cited as the *Criminal Code Amendment (Property Offences) Act 2022*.

#### Clause 2. Commencement

This is a formal clause which provides when the Act will commence. The Act will commence on a day fixed by the Administrator by *Gazette* notice.

### Part 2 Amendment of Criminal Code

#### Clause 3. Act Amended

This is a formal clause which provides that Part 2 of the Bill amends the Criminal Code.

#### Clause 4. Section 1 amended (Definitions)

Subsection (1) of this clause repeals the definitions of '**belongs**', '**benefit**', '**deception**', '**indictable offence**', '**menace**', '**obtain**', '**property** (both definitions)' and '**public officer**' in section 1 and inserts into section 1 references to definitions for '**agent**', '**appropriates**', '**appropriation**', '**belongs**', '**benefit**', '**deals with**', '**deception**', '**demand with a menace**', '**depriving**', '**dishonesty**', '**false document**', '**indictable offence**', '**menace**', '**obtain**', '**principal**', '**proceeds of crime**', '**property**', '**public duty**', '**public officer**', '**services**', '**steals**', '**supply**', and '**theft**'.

**Clause 5.                    Section 43AGA inserted**

This clause inserts into Part IIAA a provision for '**dishonesty**' that is to apply to the Criminal Code. Dishonesty in relation to conduct is taken to be 'dishonest according to the standards of ordinary people'.

This definition is consistent with the test for dishonesty endorsed by the High Court in *Peters v The Queen* (1998) 192 CLR 493. This is the same test as currently employed in the *Corporations Act 2001* (Cth). It is different from the test used in the MCC.

The test involves an assessment of the defendant's subjective state of mind against the standards of ordinary people. In applying the test, the finder of fact will consider the defendant's knowledge, intention or belief and consider whether that renders the defendant's conduct dishonest by the standards of ordinary people.

Absolute liability applies to the conduct of dishonesty. There is no requirement to prove that the defendant was aware that their conduct was dishonest according to the standards of ordinary people.

**Clause 6.                    Section 75A amended (Definitions)**

This clause removes the definition of '**public officer**' at section 75A, because the definition has been moved to section 1.

**Clause 7.                    Section 80 amended**

This clause amends the heading of section 80 to remove a reference to 'dishonesty' from the title of the provision, replacing it with 'improper conduct'. This is to avoid confusion with the new provisions relating to 'dishonesty'.

**Clause 8.                    Section 103A amended (Threats or reprisals to persons involved in criminal investigations or judicial proceedings or against public officers)**

This clause removes the definition of '**public officer**' from this section, because the definition has been moved to section 1.

## **Clause 9.                   Part VI, Division 5A inserted**

This clause moves the offence of ‘Assault with intent to steal’ and the associated definitions of ‘*steals*’, ‘*appropriates*’ and ‘*depriving*’ into Part VI of the Criminal Code as Division 5A.

### **Division 5A           Assault with intent to steal**

#### **193A   Interpretation**

This new section incorporates definitions for the purposes of new Division 5A.

#### **193B   Assault with intent to steal**

This retains existing section 212 (Assault with intent to steal), and moves the offence to be located with the other assault offences. The only amendments to this provision are minor technical drafting updates. This Bill does not bring the offence of ‘Assault with attempt to steal’ under the operation of Part IIAA.

## **Clause 10.               Part VII, Division 1, 1A and 2 replaced**

This clause repeals Part VII, Division 1 (including sections 209 to 226), 1A (including sections 226A and 226B), and 2 (including sections 227 and 228) and inserts a new Division 1 (Theft and related offences) (including new sections 209 to 228AB), and Division 2 (Deception, dishonesty and blackmail) (including new sections 228AC to 228AO).

### **Division 1           Theft and related offences**

#### **Subdivision 1    Interpretation**

#### **209   Definitions**

New section 209 inserts definitions for ‘*appropriation*’, ‘*belongs*’, ‘*property*’, ‘*services*’, and ‘*supply*’.

The definition for ‘*appropriation*’ refers to new section 212.

The definition for ‘*belongs*’ refers to new section 211.

The definition for ‘*property*’ refers to new section 210.

The definition for '**services**' includes any rights (including rights in relation to, and interests in, property), benefits, privileges or facilities, but does not include rights or benefits that are the supply of goods. This is consistent with the definition in section 300 of the ACT Criminal Code.

The definition for '**supply**' includes:

- (a) in relation to goods – supply (or re-supply) by way of sale, exchange, lease, hire or hire-purchase; and
- (b) in relation to services – provide, grant and confer.

This is consistent with the definition in section 300 of the ACT Criminal Code.

## **210 Meaning of *property* for this Division**

Section 210 inserts a definition of '**property**'. The definition is based on the definition provided under the MCC, with the addition of 'any organ or part of a human body and any blood, ova, semen or other substance extracted from the human body'. This is included for consistency with the definition of '**property**' at section 238 for Division 6 (Criminal Damage).

The provision includes electricity in the definition of '**property**', to make clear that stealing electricity can be charged as general theft. Water is not explicitly specified in the definition, because water constitutes tangible property and so there is no doubt that it falls under the definition of '**property**'.

## **211 Person to whom property *belongs* for this Division**

Section 211 mirrors section 305 of the ACT Criminal Code. The provision contains a number of special rules for determining to whom property belongs for the purpose of this Division.

## **212 Appropriation of property**

Section 212 mirrors section 304 of the ACT Criminal Code, which follows closely section 15.3 of the MCC.

## **213 Intention of permanently depriving**

Section 213 provides for the interpretation on when a person has the intention of permanently depriving for the purposes of property. This is based on the MCC and is consistent with section 306 of the ACT Criminal Code. This section does not limit the circumstances in which a person can be taken to have intended to permanently deprive someone else of property.



## **214 Dishonesty**

Section 214 provides for some points of interpretation on the matter of dishonesty for this Division. This is to be read together with the new provision for 'dishonesty' at section 43AGA. New section 214(1) is based on section 15.2 of the MCC, and is similar to section 303 of the ACT Criminal Code.

## **215 Theft of land**

Section 215 provides an interpretative note in relation to the theft of land or things forming part of the land. This provision is modelled on section 15.4 of the MCC.

## **216 General deficiency**

Section 216 mirrors section 15.7 of the MCC and section 308 of the ACT Criminal Code. It allows for a person to be found guilty of the offence of theft in relation to all or any part of a general deficiency of money or items of property that were appropriated over a period, even though the prosecution cannot identify the particular sums of money or property taken on each occasion. A typical example of when this is when the defendant is an employee in a retail business and takes small amounts of money from the cash register over a period of time.

## **Subdivision 2 Theft and related offences**

### **217 Theft**

Section 217 replaces existing section 210 (General punishment of stealing) to align it with the offence of theft under the MCC.

This amendment simplifies the current offence by combining the two tiers of stealing (current sections 210(1) and 210(2)) and creating a new general offence of 'Theft'. The maximum penalty is set as imprisonment for 10 years.

The first physical element is that a person appropriates property. The fault element, specified in section 217(1)(c), is that the person has the intention of permanently depriving the person to whom the property belongs of that property.

The second physical element is that the property belongs to another person. The fault element is that the person committing the offence must have knowledge of that circumstance.

The third physical element is that the conduct mentioned in 217(1)(a) is dishonest. Section 43AGA applies, which provides that absolute liability applies to this physical element.

Section 217(3) states that this offence is to be known as the offence of 'Theft'. This is relevant to new sections 218 and 225, which use this reference.

## **218 Robbery**

Section 218 provides for the offence of 'Robbery', replacing existing section 211 (Robbery). New section 218 is based on section 16.1 of the MCC and is broadly consistent with the ACT Criminal Code. Robbery is the use of force, or threat to use force, in order to commit theft. The provision retains the maximum penalty for this offence as imprisonment for 14 years.

The offence of 'Robbery' firstly requires proof that the defendant committed the offence of theft, set out in new section 217.

It also requires proof of the immediate use of force, or threatened use of force 'then and there'. Threats to use force at some later time, or threats against property, do not establish the offence of 'Robbery', but may be relevant to a different offence, such as blackmail.

The fault element for this physical element is 'with the intention of committing the offence of theft, or escaping from the scene of the offence'. The force or threats must therefore be causally linked to the theft, and not merely coincidental.

The second physical element is that the force was used or threatened when the person committed the offence of theft or immediately before or after committing the offence. Strict liability applies to this physical element.

## **219 Circumstances of aggravation for robbery**

Section 219(1) retains the effect of current section 211(2) by legislating for three circumstances of aggravation for robbery, all of which attract a maximum penalty of life imprisonment. To establish a circumstance of aggravation for robbery, the prosecution must prove all the elements of the offence of robbery and also prove that one or more of the circumstances of aggravation was present and that the defendant was reckless as to that circumstance.

Section 219(1)(a) provides for the circumstance of the offence being committed in the company of one or more people, section 219(1)(b) provides for the circumstance of having possession of a firearm or other dangerous or offensive weapon, and section 219(1)(c) provides for the circumstance of causing harm to another person while committing the offence, or immediately before or immediately after committing the offence.



## **220 Entering building with intention to commit offence**

Section 220 provides for an offence of entering or remaining in a building with the intention to commit any offence in the building, which includes a summary offence. This provision replaces existing section 213(2), including when the offence is committed at night, applying current section 213(5).

The maximum penalty for the offence at new section 220 is imprisonment for four years, which rationalises the penalties under current sections 213(2) and 213(5). The intention of the provision is to cover the penalties able to be imposed under the current sections 213(2) and 213(5).

Offences against the *Trespass Act 1987* are excluded from the offences that may constitute an offence for the purpose of the provision.

The first physical element for the offence is the conduct of entering or remaining in a building. The fault element for that physical element is 'with the intention of committing an offence (other than an offence against the *Trespass Act 1987*) in the building'. Section 220(2) makes the fault element clear.

The second physical element is the circumstance that the person is a trespasser. 'Trespass' is not defined and has its common law meaning, as per the MCC and ACT Criminal Code provisions for burglary. The fault element for that circumstance is recklessness.

Section 220(3) is intended to replace current section 214(3), by setting out that if the prosecution proves that a person entered or remained in the building, and was a trespasser and was reckless as to that circumstance, this can be used as evidence that the person entered or remained in the building with the intention of committing an offence (other than an offence against the *Trespass Act 1987*) in the building. This provision is to assist the prosecution, but proof of entry may not be definitive as to the intention to commit an offence. This subsection only applies to the offence in new section 220.

Section 220(4) is modelled on section 16.3 of the MCC (Burglary) and ACT Criminal Code provision for Burglary. This subsection provides that a person is not a trespasser merely because the person was permitted to enter or remain in the building for a purpose that was not the person's intended purpose, or because of fraud, misrepresentation or another's mistake. This is because burglary involves the physical violation of possessory rights.

Circumstances where a person has permission to enter the building may be an offence of 'Theft', rather than 'Entering a building with intention to commit offence', or 'Burglary'. There is further discussion of this point in the MCCOC Chapter 3 report titled 'Theft, Fraud, Bribery and Related Offences' (1995) (pages 75 to 81), and the Explanatory Statement for the ACT Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Bill 2003 (pages 22 and 23).

## **221 Burglary**

Section 221 provides for an offence of 'Burglary', and is broadly modelled on the equivalent MCC offence. This new offence replaces the current offences involving entry with intention to commit an indictable offence at section 213(3) and 213(4) of the Criminal Code, including when the offence is committed at night, applying section 213(5).

The maximum penalty for the new offence is imprisonment for 14 years, which rationalises the current penalties under section 213(3), 213(4) and 213(5), except for offences involving a dwelling house at night, which is now at new section 222(1)(a) as a separate circumstance of aggravation. The intention of the provision is to cover the penalties able to be imposed under current sections 213(3), 213(4) and 213(5).

The first physical element for the offence is the conduct of entering or remaining in a building. The fault element for that physical element is with the intention of committing an indictable offence or an offence against section 188(1) (Common Assault) in the building. The person does not have to know whether the offence they intend to commit is an indictable offence or an offence against section 188(1).

The second physical element is the circumstance that the person is a trespasser. 'Trespass' is not defined and has its common law meaning. The fault element for that circumstance is recklessness.

Section 221(3) is modelled on section 16.3 of the MCC (Burglary) and ACT Criminal Code provision for burglary. This section provides that a person is not a trespasser merely because the person is permitted to enter or remain in the building for a purpose that is not the person's intended purpose, or because of fraud, misrepresentation or another's mistake. This is because burglary involves the physical violation of possessory rights. Circumstances where a person has permission to enter the building may be an offence of theft, rather than burglary.

There is further discussion of this point in the MCCOC Chapter 3 report titled 'Theft, Fraud, Bribery and Related Offences' (1995) (pages 75 to 81), and the Explanatory Statement for the ACT Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Bill 2003 (pages 22 and 23).

## **222 Circumstances of aggravation for burglary**

Section 222 provides for four circumstances in which the offence of burglary is aggravated and attracts a higher maximum penalty. To establish a circumstance of aggravation for burglary, the prosecution must prove all the elements of the offence of 'Burglary' and also prove that one or more of the circumstances of aggravation was present, and that the defendant was reckless as to that circumstance.

Section 222(1)(a) provides for a circumstance of aggravation where the offence of 'Burglary' is committed in a dwelling-house at night. This offence retains part of the effect of current sections 213(4) and (5), which set a maximum penalty of imprisonment for 20 years for the conduct of entering a dwelling-house at night with intention to commit an indictable offence punishable by more than three years imprisonment.

The prosecution is required to prove the offender was reckless as to both the building entered being a dwelling-house and that the offence was committed at night.

Section 222(1)(b) adds a new circumstance of aggravation, of committing the offence of 'Burglary' in company with one or more other people. The maximum penalty for this offence is imprisonment for 20 years. The prosecution is required to prove that the offender was reckless as to being in company with one or more people.

Section 222(1)(c) provides for a circumstance of aggravation of possessing a firearm or any other dangerous or offensive weapon while committing the offence of 'Burglary'. This retains the effect of existing section 213(6). The maximum penalty for this offence is imprisonment for 20 years.

Section 222(1)(d) retains the circumstance of aggravation of possessing a firearm or other dangerous or offensive weapon while committing the offence of 'Burglary' when the building in which the offence is committed is a dwelling-house. The maximum penalty is life imprisonment, which retains the current penalty in section 213(6) of the Criminal Code.

Section 222(4) makes it clear that the prosecution must include in the charge any circumstances of aggravation that it intends to prove.

## **223 Alternative verdict**

Section 223 applies so that if in a prosecution against section 221(1), the trier of fact is not satisfied beyond reasonable doubt that the defendant entered or remained in a building intending to commit a indictable offence or an offence pursuant to section 188(1), but is satisfied beyond reasonable doubt that the person entered or remained in the building with the intention of committing another offence (except for an offence under the *Trespass Act 1987*), the trier of fact may find the person guilty of the alternative offence pursuant to section 220(1), which is the offence of 'Entering building with intention to commit an offence'.

## **224 Damaging or interfering with property as trespasser**

Section 224 is intended to replace part of the offence of current section 226B (Home invasion and invasion of business premises). The new title is to more accurately describe the conduct involved. The offence has a maximum penalty of imprisonment for seven years. The key difference between this offence and new section 220 (Entering building with intention to commit offence) and 221 (Burglary) is that this offence does not require proof that the defendant had the intention to commit an offence at the time of entering as a trespasser.

The offence of 'Damaging or interfering with property as a trespasser' retains the scope of current Division 1A, as it covers damaging or otherwise interfering with the building or property. This is broader than the offence in existing section 241 (Damage to Property).

The first physical element of the offence (new section 224(1)(a)) is the conduct of entering a building. The fault element is that this was intentional.

The second physical element of the offence (new section 224(1)(b)) is that the person is a trespasser. The fault element is that the person was reckless as to that circumstance. Consistent with the offences in new sections 220 and 221, 'trespass' is not defined and has its ordinary common law meaning

The third physical element of the offence (new section 224(1)(c)) is that the person damaged or interfered with the building or any property in the building. The fault element is that the conduct was intentional. 'Damage' is defined at section 224(3). 'Interferes with' is not defined and carries its ordinary meaning. The damage or interference need not be of a permanent nature or cause monetary loss.

## **225 Going equipped for theft and related offences**

Section 225(1) is a new offence provision, and provides for an offence of possessing an item in a place other than the person's home, with the intention of using it in the course of, or in relation to, committing the offence of theft, or a related offence. This is a preparatory offence, and is based on section 16.7 of the MCC. The maximum penalty is imprisonment for three years.

Section 225(2) makes it clear that 'with the intention of using it in the course of or in relation to committing the offence of theft or a related offence' is the fault element that applies to the physical element (conduct) in section 225(1)(b).

Section 225(3) provides for an offence of possessing a firearm or other dangerous or offensive weapon with the intention of using it in the course of, or in relation to, committing theft, or a related offence. This provision replaces current section 215 (Persons found armed with intent to unlawfully enter buildings), but has a wider scope because it applies to theft or related offences, which includes new section 218 (Robbery) and new section 228AB (Driving, using or riding motor vehicle, vessel or aircraft without consent). The maximum penalty is imprisonment for seven years.

Section 225(4) makes it clear that the fault element for the physical element in new section 225(3)(b) is that set out in new section 225(3)(c) 'engages in the conduct...with the intention of using it in the course of or in relation to committing the offence of theft or a related offence'.

Section 225(5) states that the fault element for sections 225(1)(a) and 225(3)(a) is strict liability.

Section 225(6) identifies the offences which are 'related offences' for the purpose of new section 225.

## **226 Receiving stolen property**

Section 226 replaces existing section 229 (Receiving stolen property &c.) which provides for the offence of receiving stolen property.

The first physical element of the offence (new section 226(1)(a)) is that the person receives property. The fault element is that the conduct was intentional.

The second physical element of the offence (new section 226(1)(b)) is the circumstance that the property is stolen property. The fault element is that the defendant either has knowledge that the property was stolen property, or believes the property to be stolen. 'Belief' is not a concept defined in Part IIAA, and carries its ordinary meaning.

Section 226(1)(c) provides that the conduct mentioned in 226(1)(a) must be dishonest. This element is required because a person could receive property, knowing or believing to have been stolen, in circumstances which are not dishonest by the standards of ordinary people - for example, a person receiving stolen property with the intention to return it to the owner. New section 43AGA (Dishonesty) applies, which provides that absolute liability applies to this physical element. The maximum penalty is imprisonment for 10 years, which follows that for the offence of theft.

Section 226(2)(a) provides a note that 'stolen property' is 'appropriated' (refer to section 212 (Appropriation of property)). This is consistent with the ACT Criminal Code. Section 226(2)(b) provides for 'stolen property' before the commencement of the section.

## **227 Shoplifting**

Section 227 is a new offence to provide for a summary offence of shoplifting, and applies to goods worth less than \$500 that are dishonestly appropriated from a place where the goods are for sale by retail.

This offence is intended to provide for a less serious alternative to theft. It does not preclude the appropriation of retail goods being charged as theft pursuant to new section 217 if the prosecution considers that to be the more appropriate charge. The maximum penalty for the offence of shoplifting is 50 penalty units, or imprisonment for six months.

The first physical element of the offence (new section 227(1)(a)) is that the person appropriates property. New section 227(1)(c) sets out the fault element, which is that the appropriation occurred with the intention of permanently depriving the owner of that property. A person who leaves a retail premises without realising that they have property with them would not have that intention.

Section 227(1)(b) sets out circumstances that must apply to the property, namely that it must be offered for sale at a place where goods are for sale by retail, and be worth less than \$500. The place where goods are made available for sale need not be a permanent premises, which would allow the provision to also apply to market stalls. Strict liability applies to the circumstances in section 227(1)(b).

Section 227(1)(d) provides that the conduct mentioned in paragraph (a) must be dishonest. Almost all examples where the elements 227(1)(a) to (c) are met would be circumstances that are dishonest by the standards of ordinary people. However, there could be exceptions, such as a parent giving a young child food to consume in the supermarket, with the intention of paying at the checkout by scanning the packaging.

Section 43AGA (Dishonesty) applies, which provides that absolute liability applies to the circumstance of dishonesty.

## **228 Making off without payment**

Section 228 is a new offence for when a person receives goods or services in circumstances where payment is required immediately after the provision of the goods or services, and the person intentionally makes off without paying, in circumstances that are dishonest. Examples of when this offence may apply include: driving off from a service station after filling a vehicle with fuel; or leaving a restaurant or a hairdresser without paying.

The maximum penalty for this offence is imprisonment for two years, reflecting that generally the offence will involve appropriations of a modest value.

The first physical element of the offence (new section 228(1)(a)) is that a person is supplied with goods or services. Strict liability applies to this circumstance.

The second physical element of the offence (new section 228(1)(b)) is that immediate payment for the goods or services is required or expected. The fault element for that circumstance is knowledge. The immediacy of the payment will depend on the circumstances – for example, a hairdresser requires payment immediately following a haircut, while a bar may keep a tab for several hours before requiring payment. However, the payment must be expected before the person leaves the premises.

Section 228(3) makes clear that it is not an offence if the supply of goods or services is unlawful.

Section 228(4) notes that immediate payment includes payment at the time of collecting goods in relation to which a service is supplied.

The third physical element of the offence (new section 228(1)(c)) is that the person makes off without paying for the goods or services. The fault element for that circumstance is that they do so intentionally. A person who forgets to pay will therefore not be liable for this offence.

Section 228(1)(d) provides that the conduct mentioned in section 228(1)(c) is dishonest. This is so that a person who has made an innocent mistake, such as forgetting to carry any means of payment, and makes arrangements to return to pay, is not guilty of the offence. New section 43AGA applies, which provides that the fault element for this physical element is absolute liability.

### **228AA Removal of item from places open to public**

This provision replaces existing section 219 (Removal of things from places open to the public), and applies to circumstances in which a person removes an item from premises open to the public, for example, a museum or art gallery, and the circumstances are dishonest. The offence does not require proof of any intention to permanently deprive, and so would apply even if a person intended to only 'borrow' an item before returning it. The maximum penalty remains imprisonment for three years.

The first physical element of the offence (new section 228AA(1)(a)) is that the person removes an item from the premises. The fault element for that conduct is intention.

The second and third physical elements of the offence (new sections 228AA(1)(b) and 228AA(1)(c)) are that the premises are at any time open to the public, and the item is publically exhibited or kept for a public exhibition at the premises, but is not exhibited or kept for the purpose of selling or any other commercial dealing. New section 228AA(2) provides that the strict liability applies to these elements.

This offence is to protect items of cultural significance in which the public as a whole has an interest, such as items that are displayed in a museum or an art gallery. Accordingly, 228AA(1)(c) expressly provides that the offence does not apply in cases where the item is exhibited or kept for exhibition to sell or for some other commercial dealing, such as where it is displayed as a sample of what is on sale. In such cases the usual rules for theft apply.

Section 228AA(1)(d) provides that the conduct in 228AA(1)(a) is dishonest. This is to exclude circumstances such as museum staff moving an item as part of their employment. New section 43AGA applies, which provides that absolute liability applies to this physical element.



## **228AB Driving, using or riding motor vehicle, vessel or aircraft without consent**

This section replaces existing sections 217 (Unlawful use of aircraft) and 218 (Unlawful use of vessel, motor vehicle, caravan or trailer). The provision has been guided by section 16.5 of the MCC and section 318 of the ACT Criminal Code, but has been drafted so that the one offence provision covers driving, riding as a passenger and other use of the vehicle. The provision does not require that the defendant had the intention to permanently deprive the owner of the aircraft, vessel or vehicle, and so it covers 'joyriding'.

The new provision requires proof of the circumstance of 'dishonesty' because there are circumstances in which a person could use a motor vehicle without the owner's consent that are not dishonest by the standards of ordinary people, and should therefore not be criminalised, but do not fall under any of the Part IIAA defences.

The first physical element of the offence (new section 228AB(1)(a)) is that the person drives, uses or rides in or on a motor vehicle, vessel or aircraft. The fault element for this conduct is intention.

Section 228AB(1)(b) sets out two circumstances, that the motor vessel, vehicle or aircraft belongs to another person ('the owner') and was taken from the owner without their consent. Section 218(1)(c) specifies the fault element for both of these circumstances is recklessness.

Section 228AB(1)(d) sets out a further circumstance, that the person's conduct in paragraph (a) is dishonest. New section 43AGA applies, which provides that absolute liability applies to this physical element. Section 228AB(1)(d) is to ensure that the offence provision does not criminalise conduct that would not generally be considered dishonest, such as a person driving or riding as a passenger in a car knowing that it was taken from its owner without consent, in order to return the car to its owner.

The maximum penalty for this offence is imprisonment for five years, unless the offending involves an aircraft, in which case the maximum penalty remains seven years. This offence is intended to cover all of existing sections 217, 218(1) and 218(2). The existing aggravating factors set out in section 218(2) are not included in the new offence provision, and the sentencing judge can take into account the relevant features of the particular case.

'Motor vehicle' is broadly defined as any vehicle for use on land that is designed to be wholly or partly self-propelled, and includes a trailer or caravan attached to it.

## Division 2      Deception, dishonesty and blackmail

### Subdivision 1      Interpretation and general matters

#### 228AC Definitions

**‘Belongs’** is defined in relation to property to mean having possession or control of it, or having any proprietary right or interest in it, other than an equitable interest arising only from an agreement to transfer or grant an interest, or from a constructive trust. This definition is derived from section 301(1) of the ACT Criminal Code.

The definition of **‘deception’** mirrors the MCC definition, and is defined to include a deception by words or other conduct, whether as to fact or to law, and includes a deception to about the intention of the person using the deception or anyone else, and conduct by a person that causes a computer, machine or an electronic device to make a response that the person is not authorised to cause it to do.

The definition for **‘demand with a menace’** refers to new section 228AF.

The definition for **‘menace’** refers to new section 228AD.

The definition of **‘obtain’** in relation to property refers to new section 228AE.

#### 228AD Meaning of *menace*

The definition of **‘menace’** is modelled on the MCC definition, and is defined to include an express or implied threat of action that is detrimental or unpleasant to another person, or if a person is making a demand, a general threat of detrimental or unpleasant action against another person that is implied because the person making the demand is a public officer.

A threat against an individual is a menace only if it would likely cause an individual of normal stability and courage to act unwillingly, or the threat would likely cause an individual to act unwillingly because of a particular vulnerability of which the maker of the threat is aware.

A threat against an entity other than an individual is a menace only if it would ordinarily cause an unwilling response, or would likely cause an unwilling response because of a particular vulnerability of which the maker of the threat is aware.

### **228AE Meaning of *obtain***

The definition of '***obtain***' in relation to property for the purposes of section 228AH is modelled on section 328 of the ACT Criminal Code. It includes obtaining, enabling or inducing ownership, possession or control of property by an individual or through a third party.

### **228AF Meaning of *demand with a menace***

Section 228AF provides for a definition of '***demand with a menace***'. The demand does not have to be a demand for money or other property however, it will also include those. The menace does not need to be an action threatened to be taken by the person making the demand.

### **228AG Intention of permanently depriving**

Section 229AG provides for a definition of '***intention of permanently depriving***', for Division 2 and particularly section 228AH. This is similar the definition in new section 213, but refers to 'obtaining' rather than 'appropriating' property.

## **Subdivision 2 Offences**

### **228AH Obtaining property by deception**

This provision is to replace the offence at current section 227(1)(a) of obtaining property by criminal deception. The offence is modelled broadly on the MCC provision at section 17.2, but explicitly specifies the physical and fault elements.

The first physical element of the offence (new section 228AH(1)(a)) is that the person engages in deception. The fault element is that the conduct is engaged in with the intention of permanently depriving another person of property.

The second physical element of the offence (new section 228AH(1)(c)) is that this conduct results in the person obtaining the property belonging to another person, and that this result was intended. There must be a causal link between the deception and obtaining.

Section 228AH(1)(d) provides that the conduct engaged in under section 228AH(1)(a) is dishonest. New section 43AGA applies, which provides that absolute liability applies to this physical element. Generally deception will involve dishonesty, but there are some situations in which a deception may not be dishonest by the standards of ordinary people.

Examples in the ACT Explanatory Statement for the Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Bill 2003 (at page 39) include: when there is a claim of right and an owner uses deception to regain property; and when a daughter deceives her elderly mother to transfer property into her name (e.g. antique furniture which the mother refuses to sell) by telling 'white lies' in order to sell the property to pay for her mother's care.

The maximum penalty for the offence is imprisonment for 10 years.

### **228AI Transfers of money etc.**

This new section clarifies the circumstances under which money in an account is taken to have been obtained with the intention of permanently depriving the owner. This provision is modelled on section 330 of the ACT Criminal Code.

### **228AJ General deficiency**

This new section mirrors the provision at new section 216. It provides that a person may be found guilty of the offence in section 228AH (Obtaining property by deception) in relation to all or part of a general deficiency in money or other property, even though the deficiency is made up of a number of particular amounts of money or items of other property that were obtained over a period of time.

### **228AK Obtaining financial advantage by deception**

This new section replaces existing section 227(1)(b) (Obtaining a benefit by deception). The maximum penalty for the offence is imprisonment for 10 years.

Section 228AK uses the narrower concept of 'financial advantage' rather than 'benefit'. 'Financial advantage' is also used in the MCC and ACT Criminal Code. It is not defined, but examples may include obtaining higher remuneration, being awarded a tender, or reducing a debt that is owed.

The first physical element of the offence (new section 228AK(a)) is that the person engages in deception. The fault element for that conduct is intention.

The second physical element of the offence (new section 228AK(b)) is that the conduct results in the person obtaining a financial advantage from another person. The fault element for that circumstance is that the person intended that result.

The third physical element of the offence (new section 228AK(c)) is that the conduct is dishonest. New section 43AGA applies, which provides that absolute liability applies to this physical element.

### **228AL Dishonestly intending to obtain gain from Territory**

The new offences at sections 228AL, 228AM and 228AN are to cover circumstances where dishonesty is perpetrated against the Northern Territory. There are similar 'general dishonesty' offences in the Criminal Code (Cth) and ACT Criminal Code. The NT is following the ACT and Commonwealth in its inclusion of these offences, because of the significant public interest in ensuring that government revenue and government operations are protected. The maximum penalty for these three provisions is imprisonment for five years.

The first physical element of the offence (new section 228AL(1)(a)) is that the person engages in conduct. New section 228AL(1)(b) provides the fault element for that conduct, which is that the conduct is engaged in with the intention of obtaining a gain from another person.

The second physical element of the offence (new section 228AL(1)(c)) is that the conduct is dishonest. New section 43AGA applies, which provides that absolute liability applies to this physical element.

The third physical element of the offence (new section 228AL(1)(d)) is that the other person is the Territory. Absolute liability applies to this physical element.

### **228AM Dishonestly intending to cause loss for Territory**

New section 228AM provides for an offence which is identical to 228AL, except the conduct is engaged in with the intention of causing a loss to the Northern Territory.

### **228AN Dishonestly causing loss or risk of loss for Territory**

New section 228AN provides for an offence of intentionally engaging in conduct that results in a loss, or the risk of loss, to the Northern Territory. New section 228AN(1)(b) provides that the fault element for that result is that 'the person knows the loss will happen or knows there is a substantial risk of the loss happening'.

## **228AO Blackmail and extortion**

Section 228AO is broadly modelled on the MCC and ACT Criminal Code, but there are some key differences to retain the more objective aspects of existing section 228. The maximum penalty for this offence remains imprisonment for 14 years.

The first physical element of the offence (new section 228AO(1)(a)) is that the person makes a demand with a menace of another person. New section 228AO(1)(b) specifies that the fault element for this physical element is with the intention of obtaining a gain from the other person, causing the other person a loss, or influencing the other person in their exercise of public duty.

The second physical element of the offence (new section 228AO(1)(c)) is that there are no reasonable grounds for making the demand. New section 228AO(3) specifies that the fault element for this provision is strict liability. The defendant can therefore raise a defence of mistake of fact with regard to this element. This is different from the ACT provision, which requires the prosecution to prove that the defendant did not believe that he or she had reasonable grounds for making the demand.

New section 228AO(1)(d) sets out the physical element (circumstance) that the use of menace is not a proper means of enforcing the demand. Strict liability also applies to this physical element. This is different from the ACT provision, which requires the prosecution to prove that the defendant did not reasonably believe that the use of the menace was a proper means of reinforcing the demand.

### **Clause 11. Part VII, Divisions 3 to 5 replaced**

This clause repeals Part VII, Division 3 (Receiving property stolen or unlawfully obtained and like offences) (including sections 229 to 231), Division 3A (Money laundering) (including sections 231A to 231F), Division 4 (Frauds by trustees, officers of corporations: false accounting) (including sections 232 to 235), and Division 5 (Secret commissions) (including sections 236 and 237) to insert new Division 3 (Money laundering) (including new sections 229 to 236A), Division 4 (False accounting and false statements) (including new sections 236B to 236D), and Division 5 (Bribery and secret commissions) (including new section 236E to 236N).

## **Division 3            Money Laundering**

### **229 Definitions**

Section 229 provides definitions for the terms '***deals with***', '***indictable offence***', and '***proceeds of crime***'.

The definitions for '***deals with***' and '***proceeds of crime***' have been modelled on existing section 231A, with '***proceeds of crime***' being modified to refer to an 'indictable offence'.

The definition of '***indictable offence***' is adapted from the definition of '***offence***' in existing section 231A.

### **230 Money laundering with knowledge or belief**

Section 230 provides for the offence of money laundering with knowledge or belief as to the money or property being the proceeds of crime, or being used or intended to be used in the commission of, or to facilitate the commission of, an indictable offence.

The first physical element of the offence (new section 230(1)(a)) is that a person deals with money or other property. The fault element for that conduct is intention.

The second physical element of the offence (new section 230(1)(b)) is the circumstance that the money or property is the proceeds of crime, or is being used, or is intended to be used in the commission of, or to facilitate the commission of, an indictable offence. The fault element for that circumstance is knowledge or belief. 'Belief' is not defined in Part IIAA and carries its ordinary meaning.

Section 230(2) provides for a defence where the conduct in subsection (1) is done in order to assist law enforcement.

The maximum penalty for this offence is imprisonment for 20 years.

### **231 Money laundering with recklessness**

Section 231 provides for an offence which mirrors that in new section 230, except the fault element is recklessness for the circumstance that the money or property is the proceeds of crime, or is being used or is intended to be used in the commission of, or to facilitate the commission of, an indictable offence. The maximum penalty for this offence is imprisonment for 10 years, to reflect the lower level of culpability associated with the fault element.

## **232 Dealing with suspicious property**

Section 232 is modelled on similar Commonwealth offences at section 400.9 of the Criminal Code (Cth), and provides for an offence where a person intentionally deals with money or property, and it is 'reasonable to suspect' (objectively, for the finder of fact having regard to all the evidence) that the money or property is the proceeds of crime. The maximum penalty for this offence is imprisonment for two years.

The first physical element of the offence (new section 232(1)(a)) is dealing with money or other property. The fault element for that conduct is intention.

The second physical element of the offence (new section 232(1)(b)) is the circumstance that 'it is reasonable to suspect that the money or other property is the proceeds of crime'. Absolute liability applies to this physical element.

New section 232(5) contains a non-exhaustive list of circumstances in which it is taken to be reasonable to suspect that the money or property mentioned in subsection (1)(a) is the proceeds of crime, including: evidence of structuring transactions; using accounts in false names; or the value of money or property being grossly out of proportion to the defendant's income and expenditure.

New section 232(3) provides for a defence, where the defendant had 'no reasonable grounds for suspecting' that the money or other property was derived, directly or indirectly, from some unlawful activity. The defence involves considering the circumstances from the defendant's point of view, at the time of the conduct of dealing with the money or other property. The defendant bears the legal burden in relation to this defence.

## **233 Proof of other offences not required**

Section 233 is modelled on section 400.13 of the Commonwealth Code. New section 233(1) makes clear that for new sections 230, 231 or 232, in order to prove that money or property is the proceeds of crime, it is not necessary to establish that a particular indictable offence was committed in relation to the money or other property, or a particular person committed an indictable offence in relation to the money or other property.

New section 233(2) makes clear that in order to prove (for new sections 230 and 231) that money or other property was being used, or was intended to be used in the commission of, or to facilitate the commission of, an indictable offence, it is not necessary to establish an intention that a



particular indictable offence be committed, or an intention that a particular person commit an indictable offence.

### **234 Prosecution requires consent of Director of Public Prosecutions**

New section 234 retains the requirement in existing section 231E that a prosecution for an offence against this Division must not be commenced without the consent of the Director of Public Prosecutions.

### **235 Alternative verdict for an offence against section 230**

New section 235 provides for an alternative verdict, so that a person who is charged with an offence against new section 230 can be found guilty, in the alternative, of an offence against new sections 231 or 232.

### **236 Alternative verdict for an offence against section 231**

New section 236 provides for an alternative verdict, so that a person who is charged with an offence against new section 231 can be found guilty, in the alternative, of an offence against new section 232.

### **236A Recklessness as to nature of money or property sufficient for offence of attempt against section 231**

New section 236A provides that recklessness as to the nature of money or property is sufficient to prove an attempt of an offence against new section 231, so that the default fault element for an attempt (that being of knowledge, as per section 43BF(4)), does not apply.

## **Division 4 False accounting and false statements**

### **236B False accounting**

New section 236B provides for three offences of false accounting. Subsection (1) relates to damaging, destroying or concealing an accounting document. Subsection (3) relates to making an entry in an accounting document that is false or misleading in a material particular, or omitting a material particular from an accounting document. Subsection (5) relates to producing a false accounting document. The penalty for each of these offences is imprisonment for seven years.

#### Subsection (1)

The first physical element of the offence (new section 236B(1)(a)) is that a person damages, destroys or conceals an accounting document. The fault element for that conduct is with the intention of obtaining a gain from another person, or causing a loss for another person.

The second physical element of the offence (new section 236B(1)(c)) is that the conduct is dishonest. New section 43AGA applies, which provides that absolute liability applies to this physical element.

### Subsection (3)

The first physical element of the offence (new section 236B(3)(a)) is that a person makes, or concurs in making, an entry that is false or misleading in a material particular, or omits, or concurs in omitting, a material particular from an accounting document. The fault element for that conduct is with the intention of obtaining a gain from another person, or causing a loss for another person.

The second physical element of the offence is (new section 236B(3)(c)) that the conduct is dishonest. New section 43AGA applies, which provides that absolute liability applies to this physical element.

### Subsection (5)

The first physical element of the offence (new section 236B(5)(a)) is that the person produces to another person, or makes use of, an accounting document. The fault element for that conduct is with the intention of obtaining a gain from another person, or causing a loss for another person. The person to whom the document is produced need not be same the person as that from whom it is intended to obtain a gain, or to cause a loss.

The second physical element for the offence (new section 236B(5)(c)) is the circumstance that the document is false or misleading in a material particular. The fault element for that circumstance is recklessness.

The third physical element of the offence (new section 236B(5)(d)) is that the conduct is dishonest. New section 43AGA applies, which provides that absolute liability applies to this physical element.

New section 236B(7) defines '**accounting document**' broadly as any account, record or document made or required for any accounting purpose or any similar purpose or for any

financial transaction. This definition retains the description from the existing offence provision in section 233 (False accounting).

### **236C False statements by officer of body corporate etc.**

New section 236C provides for an offence of false statements by an officer of a body corporate or unincorporated association, to modernise current section 234 (False statements by officers of corporations, &c.). The offence is broadly modelled on section 351 of the ACT Criminal Code. The maximum penalty for this offence remains imprisonment for seven years.

The first physical element of the offence (new section 236C(1)(a)) is that the person is an officer of a body corporate or unincorporated association, or purports to be an officer of a body corporate or unincorporated association. The fault element for this circumstance is strict liability.

The second physical element of the offence (new section 236C(1)(b)) is that the person publishes or concurs in the publishing of a document containing a statement or account. The fault element for that conduct is that the person does so with the intention of deceiving members or creditors of the body about the body corporate's or unincorporated association's affairs.

The third physical element of the offence (new section 236C(1)(d)) is that the document is false or misleading in a material particular. The fault element in relation to that circumstance is knowledge.

### **236D Falsification of registers**

New section 236D replaces the existing offence in section 265 (Falsification of registers). The offence has been modernised so that 'actual custody' of the record is not required, to take into account that modern records and registers will generally be kept by computer rather than as hard copies. The offence applies to anyone knowingly making or concurring in making a false entry. The maximum penalty for this offence remains imprisonment for seven years.

The first physical element of the offence (new section 236D(a)) is that a person makes an entry or concurs in making an entry in a register or record kept by a body, office or position established by an Act. The fault element for that conduct is intention.

The second physical element of the offence (new section 236D(b)) is that the entry is false or misleading in a material particular. The fault element is that the person has knowledge of that circumstance.

## **Division 5            Bribery and secret commissions**

The new bribery and secret commission offences are modelled on the bribery provisions in the ACT Criminal Code and the MCC. The offences target corrupt conduct and aim to bring the Territory into line with other jurisdictions.

The offences create the same responsibility for agents and persons bribing agents across the public and private sector. The definition of '**agent**' in new section 236E(1) includes: a person acting for another person with that other person's actual or implied authority; a public officer; an employee of an employer; a lawyer acting for a client; a partner of a partnership; officer of a body corporate; an officer of another body; or a consultant to a person. The offences cover any kind of benefit, including non-pecuniary benefits.

### **236E    Interpretation**

Section 236E provides interpretation provisions for bribery offences in new Division 5.

The definitions of '**agent**', '**benefit**', '**obtain**' and '**principal**' are modelled on the definitions in sections 352 and 353 of the ACT Criminal Code.

### **236F    Meaning of *obtain***

Section 236F(2) inserts a special meaning of '**obtain**' for the bribery offences, modelled on the ACT Criminal Code. This is complementary to the general meaning of 'obtain', which is included at section 236F(1).

### **236G    Bribery – offence by person in relation to agent**

Section 236G provides for an offence of bribery when a person commits an offence in relation to an agent, and is modelled broadly on the equivalent provision at section 356(1) of the ACT Criminal Code.

New 236G(1)(a) sets out four possible options that can constitute the first physical element of the offence. The corresponding fault element is set out at section 236G(1)(b).

The second physical element of the offence (new section 236G(1)(c)) is that the conduct is dishonest. New section 43AGA applies, which provides that absolute liability applies to this physical element.

The maximum penalty for this offence is imprisonment for seven years. The maximum penalty is increased from the penalty of imprisonment for three years at current section 236 (Solicitation

or receipt of secret commissions). The increase in penalty is to reflect the seriousness of the conduct and to bring the penalty into line with other jurisdictions.

### **236H Bribery – offence by agent**

New section 236H provides for an offence committed by an agent. The offence is modelled broadly on the equivalent provision at section 356(2) of the ACT Criminal Code.

The first physical element of the offence (new section 236H(1)(a)) is that the person is an agent. Strict liability applies to this element.

New section 236H(1)(b) provides for three possible options to constitute the second physical element. Section 236H(1)(c) provides for the corresponding fault elements. Section 236H(1)(c)(i) applies if the agent had the intention that the agent would: be influenced or affected in the exercise of the agent's function as an agent; or do or not do something as an agent, or because of the agent's position as an agent; or cause or influence the agent's principal, or another agent of the principal, to do or not do something.

Section 236H(1)(c)(ii) applies if the agent has the intention of inducing, fostering or sustaining a belief that the agent would: be influenced or affected in the exercise of the agent's function as an agent; or do or not do something as an agent, or because of the agent's position as an agent; or cause or influence the agent's principal, or another agent of the principal, to do or not do something. This means that it does not matter whether the agent genuinely intended to behave in one of these ways, or simply sought to induce, foster or sustain this belief.

The third physical element of the offence (new section 236H(1)(d)) is that the conduct is dishonest. New section 43AGA applies, which provides that absolute liability applies to this physical element.

The maximum penalty for this offence is imprisonment for seven years. The maximum penalty is increased from the penalty of imprisonment for three years at current section 236 (Solicitation or receipt of secret commissions). The increase in penalty is to reflect the seriousness of the conduct and to bring the penalty into line with other jurisdictions.

### **236J Other corrupting benefits – offence by person in relation to agent**

New section 236J provides for a less serious alternative offence to section 236G (Bribery – offence by person in relation to agent). This offence is modelled on the equivalent provision in section 357(1) (Other corrupting benefits) of the ACT Criminal Code. The penalty for this offence

is imprisonment for five years, reflecting the lower level of culpability compared to new section 236G.

New section 236J(a) provides four possible options to constitute the first physical element. The fault element for this conduct is intention.

The second physical element of the offence (new section 236J(b)) is that the conduct is dishonest. New section 43AGA applies, which provides that absolute liability applies to this physical element.

The third physical element of the offence (new section 236J(c)) is that obtaining, or expecting to obtain, the benefit would tend to influence the agent to: be influenced or affected in the exercise of the agent's function as agent; or do or not do something as agent, or because of the agent's position as agent; or cause or influence the agent's principal, or another agent of the principal, to do or not do something. The fault element for this circumstance is recklessness.

### **236K Other corrupting benefits – offence by agent**

New section 236K provides for a less serious alternative to 236H (Bribery – offence by agent). This offence is modelled on the equivalent provision in section 357(2) (Other corrupting benefits) of the ACT Criminal Code. The penalty for this offence is imprisonment for five years, reflecting the lower level of culpability compared to new section 236H.

The first physical element of the offence (new section 236K(1)(a)) is the circumstance that the person is an agent. The fault element for this element is strict liability.

New section 236K(1)(b) of the offence provides three possible options to constitute the second physical element. The fault element for this conduct is intention.

The third physical element of the offence (new section 236K(1)(c)) is that the conduct is dishonest. New section 43AGA applies, which specifies that absolute liability applies to this physical element.

The fourth physical element of the offence (new section 236K(1)(d)) is that obtaining, or expecting to obtain, the benefit would tend to influence the agent to: be influenced or affected in the exercise of the agent's function as an agent; or do or not do something as an agent, or because of the agent's position as an agent; or cause or influence the agent's principal, or another agent of the principal, to do or not do something. The fault element for this circumstance is recklessness.

### **236L Alternative verdict for offence against section 236G**

New section 236L provides for an alternative verdict, such that a person charged with an offence against section 236G (Bribery – offence by person in relation to agent) may be found guilty in the alternative of an offence against 236J (Other corrupting benefits – offence by person in relation to agent) if the trier of fact is satisfied beyond reasonable doubt that the person has committed an offence against section 236J.

### **236M Alternative verdict for offence against section 236H**

New section 236M provides for an alternative verdict, so that if a person is charged with an offence against section 236H (Bribery – offence by agent) may be found guilty in the alternative of an offence against 236K (Other corrupting benefits – offence by agent) if the trier of fact is satisfied beyond reasonable doubt that the person has committed an offence against section 236K.

### **236N Independent advisor accepting secret commissions**

This provision is to retain the existing offence in section 237. The offence is intended to capture ‘cash for comment’ type conduct, and is included in the MCC and ACT Criminal Code as the offence of ‘Payola’. The maximum penalty for this offence remains imprisonment for three years.

The first physical element of the offence (new section 236N(1)(a)) is that the person holds themselves out to the public as a being engaged in any business or activity of making independent selections or examinations, or expressing disinterested opinions in respect of property or services. The fault element for this conduct is intention.

The second physical element of the offence (new section 236N(1)(b)) is that the person requests, receives or obtains, or agrees to request or obtain, a benefit from another person. The fault element for this conduct is with the intention that the benefit will influence the person’s selection, examination or opinion.

The third physical element of the offence (new section 236N(1)(d)) is that the conduct specified in 236N(1)(b) is dishonest. New section 43AGA applies, which specifies that absolute liability applies to this physical element.

## **Clause 12.                    Section 241 amended (Damage to property)**

This clause amends the maximum penalty for the offence at section 241 (Damage to property) from 14 years imprisonment to 10 years imprisonment, for more consistency with other jurisdictions, and so the penalty is in line with other property offences.

## **Clause 13.                    Part VII, Divisions 7 ,8 and 9 replaced**

This clause repeals current Part VII, Division 7 (Forgery and like offences) (including sections 258 to 269), Division 8 (Preparation for forgery) (including sections 270 and 271), and Division 9 (Personation) (including sections 272 to 275), to insert new Division 7 (Forgery and other similar offences) (including new sections 250 to 255) and Division 8 (Preparation for forgery) (including new sections 256 and 257).

### **Division 7                    Forgery and other similar offences**

#### **250 Definitions**

New section 250 inserts definitions for '*false document*', and '*public duty*'.

The definition of '*false document*' refers to new section 251.

The definition of '*public duty*' means a duty of a public officer.

#### **251 Meaning of *false document***

Section 251 sets out a definition of false document. This is modelled on the ACT Criminal Code and the MCC definition.

#### **252 Inducing acceptance that document genuine**

New section 252 is an interpretative provision modelled on section 345(a) of the ACT Criminal Code which clarifies that a reference to inducing a person to accept a document as genuine includes a reference to causing a computer, machine or electronic device to respond to the document as though it were genuine.

#### **253 Forgery**

New section 253 provides for an offence of forgery, which replaces the existing offence in section 258 (Forgery). The offence has been modelled broadly on section 346 of the ACT Criminal Code.



The first physical element of the offence (new section 253(1)(a)) is that a person makes a false document. Section 253(1)(b) sets out the fault element for that physical element: that the conduct is engaged in with the intention that the person, or another person, will use the document to induce someone else to accept the document as genuine and, because the person accepts the document as genuine, the offender or another person obtains a gain, causes a loss or influences the exercise of a public duty.

The second physical element of the offence (new section 253(1)(c)) is that the conduct is dishonest. New section 43AGA applies, which specifies that absolute liability applies to this physical element.

The maximum penalty for this offence has been raised to imprisonment for 10 years for more consistency with other jurisdictions and to bring the penalty into line with the new offences of theft and obtaining a financial advantage or property by deception.

## **254 Using false document**

New section 254 provides an offence of using a false document. This replaces the existing offence in section 260 (Uttering forged documents or writings or counterfeit tokens).

The first physical element of the offence (new section 254(1)(a)) is that a person uses a document. The fault element for this conduct is the intention to induce someone else to accept the document as genuine and, because the person accepts the document as genuine, the offender or another person obtains a gain, causes a loss or influences the exercise of a public duty.

The second physical element of the offence (new section 254(1)(b)) is that the document is a false document. The fault element for that physical element is knowledge.

The third physical element of the offence (new section 254(1)(d)) is that the conduct is dishonest. New section 43AGA applies, which specifies that absolute liability applies to this physical element.

The maximum penalty for this offence is (as for the new offence of forgery) is increased to imprisonment for 10 years for more consistency with other jurisdictions and to bring the penalty into line with the new offences of theft and obtaining a financial advantage or property by deception.

New section 254(3) clarifies that it is not necessary to prove an intention to induce a particular person to accept the false document as genuine.

### **255 Possess false document**

New section 255 provides an offence of possessing a false document. This replaces the existing offence in section 264 (Purchase of forged document or writing or counterfeit token, &c.) and is broadly modelled on section 348 of the ACT Criminal Code.

The first physical element of the offence (new section 255(1)(a)) is that a person has the document in the person's possession. The fault element for this conduct is the intention to induce someone else to accept the document as genuine and, because the person accepts the document as genuine, the offender or another person obtains a gain, causes a loss or influences the exercise of a public duty.

The second physical element of the offence (new section 255(1)(b)) is the circumstance that the document is false. The fault element for that circumstance is that the person knows the document is false.

The third physical element of the offence (new section 255(1)(d)) is that the conduct is dishonest. New section 43AGA applies, which specifies that absolute liability applies to this physical element.

New section 255(3) clarifies that it is not necessary to prove an intention to induce a particular person to accept the false document as genuine.

The maximum penalty for this offence is (as for the new offence of forgery) is increased to imprisonment for 10 years for more consistency with other jurisdictions and to bring the penalty into line with the new offences of theft and obtaining a financial advantage or property by deception.

## **Division 8**

### **Preparation for forgery**

#### **256 Making or adapting instrument or material for forgery**

New section 256 provides for the preparatory offence of making or adapting an instrument or material for forgery, to replace the existing offence currently at section 270 (Instruments and material for forgery). The maximum penalty for this offence remains imprisonment for seven years.

The first physical element of the offence (new section 256(1)(a)) is that a person makes or adapts a device, material or other thing. The fault element for that conduct is with the intention to use the device, material or other thing to commit an offence against section 253 (Forgery), or for another person to use the device, material or other thing to commit an offence against section 253.

The second physical element of the offence (new section 256(1)(b)) is that the device, material or other thing is designed or adapted to make a false document. The fault element for this circumstance is knowledge.

### **257 Possessing instrument or material for forgery**

New section 257(1) provides the preparatory offence of possessing an instrument or material with the intention that it be used to engage in an offence of forgery. The maximum penalty for this offence remains imprisonment for seven years.

The first physical element of the offence (new section 257(1)(a)) is that a person possesses a device, material or other thing. The fault element for that conduct is the intention to use the device, material or other thing to commit an offence against section 253 (Forgery), or for another person to use the device, material or other thing to commit an offence against section 253.

The second physical element of the offence (new section 257(1)(b)) is that the device, material or other thing is designed or adapted to make a false document. The fault element for this physical element is knowledge.

#### Subsection (3)

New section 257(3) provides a separate offence that is similar to new section 257(1), but without the requirement to prove the intention in section 257(1)(c).

Section 257(4) provides for a defence of 'reasonable excuse'. This provides a defence for a person who possesses a device, material or other thing knowing that it is designed or adapted to make a false document, but has a reasonable excuse for this conduct.

The penalty of two years imprisonment reflects the lower level of culpability for this offence.

**Clause 14.                    Part VII Division 10 heading replaced**

This clause repeals the heading of Part VII, Division 10 (Computer offences) and inserts a new Part VIIA heading of 'Miscellaneous offences'. A number of offences that are not 'property offences' will remain in this Part, and will not be converted by this Bill to come under the operation of Part IIAA.

The clause also inserts a new Part VIIA, Division 1 heading (Computer offences).

**Clause 15.                    Section 276E amended**

This clause amends the heading of section 276E (Unlawful appropriation of access time) by replacing the word 'appropriation' with 'use'.

**Clause 16.                    Part VIIA Division 2 inserted**

**Division 2                    Unlawfully obtaining confidential information**

**276G    Unlawfully obtaining confidential information**

This clause replaces the existing offence in section 222 (Unlawfully obtaining confidential information) and places it into its own Division, as it is neither a 'property offence' nor a 'computer offence'.

This provision has not been converted to come under the operation of Part IIAA at this time, and the only change from the current offence is a minor drafting amendment to reflect gender neutral language.

**Clause 17.                    Section 309 amended (Circumstances in which more than one charge may be joined against the one person)**

This clause amends section 309(1) to replace the word 'he' with 'the person', so that it is gender neutral.

This clause also amends 309(2) to refer to 'theft' rather than 'stealing'.

**Clause 18.                    Section 310 amended (Circumstances where more than one offence may be charged as one offence)**

This clause removes a provision relating to different acts of stealing over a period of time, because this is covered by new section 216 (General deficiency).

**Clause 19.                    Sections 322 and 323 replaced**

This clause replaces existing sections 322 (Charge of stealing and criminal deception) and 323 (Charge of stealing or receiving) with updated provisions to reflect that the offence of stealing is replaced by the offence of theft.

**Clause 20.                    Section 328 replaced**

This clause replaces existing section 328 (Charge of stealing animals) with an updated provision (Charge of theft of animal) to provide for an alternative verdict for the offence of theft in relation to an animal under regulation 23 of the *Livestock Regulations 2009*, which relates to sale or possession of livestock if the brand is removed or defaced.

**Clause 21.                    Section 385 replaced**

This clause replaces existing section 385 (Finding of guilt of stealing or receiving) with an updated provision to reflect that the offence of stealing is to be replaced by the offence of theft.

**Clause 22.                    Part XI, Division 17 Inserted****Division 17                    Criminal Code Amendment (Property Offences) Act 2022****464 Application of repealed provisions**

This is a transitional clause relating to the application of repealed provisions. It confirms that any provisions repealed by this Act continue to apply in relation to offences that were committed immediately before the commencement of this Act.

**Clause 23.                    Schedule 1 amended (Provisions of Code to which Part IIAA applies)**

This clause inserts into Schedule 1, a list of provisions to which Part IIAA applies, that being all of Part VII.

**Part 3                            Amendment of Expungement of Historical Homosexual Offence Records Act 2018****Clause 24.                    Act amended**

This is a formal clause which provides that Part 3 of the Bill amends the *Expungement of Historical Homosexual Offence Records Act 2018*.

**Clause 25.                    Section 26 amended (Dishonestly obtaining information)**

This clause amends the offence provision at section 26 of the *Expungement of Historical Homosexual Offence Records Act 2018* so that the application of 'dishonest' at new section 43AGA applies.

**Part 4                        Amendment of Local Court (Criminal Procedure) Act 1928**

**Clause 26.                    Act amended**

This is a formal clause which provides that Part 4 of the Bill amends the *Local Court (Criminal Procedure) Act 1928*.

**Clause 27.                    Section 121A amended (Offences that may be dealt with summarily)**

This clause inserts offences into the list of offences that may be dealt with summarily pursuant to section 121A(1)(a)(iii) of the *Local Court (Criminal Procedure) Act 1928*.

New section 218 (Robbery) may be heard summarily unless a circumstance of aggravation pursuant to section 219(1) applies.

New section 221 (Burglary) may be heard summarily except for when an aggravating circumstance in new section 222 (1)(c) or (d) applies. The other aggravated circumstances, at new section 222(1)(a) and (b) are therefore offences that may be dealt with summarily pursuant to section 121A of the *Local Court (Criminal Procedure) Act 1928*.

New section 228AO (Blackmail and extortion) may be heard summarily.

**Clause 28.                    Part VII, Division 8 inserted**

**Division 8                    Transitional matter for Criminal Code Amendment (Property Offences) Act 2022**

This is a transitional clause relating to the application of amended provisions. It confirms that section 121A(1)(a) of the *Local Court (Criminal Procedure) Act 1928* as in force immediately before being amended by this Act continues to apply in relation to offences that were committed immediately before the commencement of this Act.

## **Part 5                      Amendment of Sentencing Act 1995**

### **Clause 29.                      Act amended**

This clause is a formal clause which provides that Part 5 of the Bill amends the *Sentencing Act 1995*.

### **Clause 30.                      Section 3 amended (Interpretation)**

This clause replaces the definition of '**aggravated property offence**' in section 3 of the *Sentencing Act 1995* with a reference to new section 78AA, as inserted by clause 31.

### **Clause 31.                      Section 78AA inserted**

#### **78AA Aggravated property offences**

This clause inserts a new definition of '**aggravated property offence**' into the *Sentencing Act 1995* which is reflective of the amendments made to the Criminal Code by this Bill, while maintaining the effect of the previous definition as much as possible.

### **Clause 32.                      Schedule 2 amended (Violent offences)**

This clause amends Schedule 2 of the *Sentencing Act 1995* by replacing the reference to existing section 211 (Robbery) with new section 218 (Robbery) to reflect the amendments to the Criminal Code made by this Bill.

### **Clause 33.                      Part 12, Division 9 inserted**

#### **140 Definition aggravated property offence**

This is a transitional clause relating to the application of amended provisions. It confirms that the definition of '**aggravated property offence**' in the *Sentencing Act 1995* as in force immediately before being amended by this Act continues to apply in relation to offences that were committed immediately before the commencement of this Act.

## **Part 6                      Other laws amended**

### **Clause 34.                      Other laws amended**

This clause provides for a Schedule of other Acts amended by the Bill. These amendments change the references throughout various legislation to the new provisions introduced by this Bill.

**Part 7                      Repeals****Clause 35.                Act repealed**

This clause repeals the *Unauthorized Documents Act 1969*.

**Part 8                      Repeal of Act****Clause 36.                Repeal of Act**

This is a formal clause which provides that the *Criminal Code Amendment (Property Offences) Act 2022* is repealed on the day after it commences. As its function is to make amendments to other legislation upon commencement, once it has done so it is exhausted and no longer serves an active purpose.