



Defence Legislation Amendment (Application of Criminal Code) Act 2001

Act No. 141 of 2001 as amended

This compilation was prepared on 3 June 2003

**[This Act was amended by Act No. 63 of 2002
and Act No. 135 of 2003]**

Amendments from Act No. 63 of 2002

[Schedule 2 (item 10) amended Item 41 of Schedule 1
Schedule 2 (item 10) commenced on 2 October 2001]

Amendments from Act No. 135 of 2003

[Schedule 2 (item 28) repealed and substituted subsection 2(2)]
Schedule 2 (item 9) commenced on 1 October 2001]

Prepared by the Office of Legislative Drafting,
Attorney-General's Department, Canberra

Contents

| | | |
|---|---------------------------------|---|
| 1 | Short title | 1 |
| 2 | Commencement | 1 |
| 3 | Schedule(s) | 1 |
| 4 | Application of amendments | 1 |

Schedule 1—Amendment of Acts 1

| | |
|---|----|
| Part 1—Amendments relating to the Criminal Code | 1 |
| <i>Approved Defence Projects Protection Act 1947</i> | 1 |
| <i>Control of Naval Waters Act 1918</i> | 2 |
| <i>Defence Act 1903</i> | 2 |
| <i>Defence Force Discipline Act 1982</i> | 13 |
| <i>Defence Force Retirement and Death Benefits Act 1973</i> | 66 |
| <i>Defence Forces Retirement Benefits Act 1948</i> | 68 |
| <i>Defence (Special Undertakings) Act 1952</i> | 69 |
| <i>Military Superannuation and Benefits Act 1991</i> | 73 |
| <i>Naval Defence Act 1910</i> | 74 |
| <i>Weapons of Mass Destruction (Prevention of Proliferation) Act 1995</i> | 75 |
| Part 2—Technical amendment | 76 |
| <i>Defence Force Discipline Act 1982</i> | 76 |

An Act relating to the application of the *Criminal Code* to certain offences, and for other purposes

[Assented to 1 October 2001]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Defence Legislation Amendment (Application of Criminal Code) Act 2001*.

2 Commencement

- (1) Sections 1, 2, 3 and 4 commence on the day on which this Act receives the Royal Assent.
- (2) Part 1 of Schedule 1 commences on 15 December 2001.
- (3) Part 2 of Schedule 1 is taken to have commenced immediately after the commencement of item 35 of Schedule 2 to the *Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001*.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Application of amendments

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Schedule 1—Amendment of Acts

Part 1—Amendments relating to the Criminal Code

Approved Defence Projects Protection Act 1947

1 After section 3

Insert:

3A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

2 Subsection 4(1)

Repeal the subsection, substitute:

- (1) A person is guilty of an offence if:
 - (a) the person boycotts or threatens to boycott any person, property, work or undertaking; and
 - (b) by doing so the first-mentioned person:
 - (i) prevents, hinders or obstructs the carrying out of an approved defence project; or
 - (ii) endeavours to prevent, hinder or obstruct the carrying out of an approved defence project.
- (1A) A person is guilty of an offence if:
 - (a) the person publishes a declaration of a boycott or threat of a boycott; and
 - (b) as a result, the carrying out of an approved defence project is prevented, hindered or obstructed.
- (1B) A person is guilty of an offence if, by speech or writing, the person advocates or encourages the prevention, hindrance or obstruction of the carrying out of an approved defence project.
- (1C) Subsections (1), (1A) and (1B) do not apply if the person has a reasonable cause or excuse.

Schedule 1 Amendment of Acts

Part 1 Amendments relating to the Criminal Code

Note: The defendant bears an evidential burden in relation to the matter in subsection (1C). See subsection 13.3(3) of the *Criminal Code*.

- (1D) A person is guilty of an offence if:
- (a) the person uses violence or a threat of violence to a person or property, or engages in any other unlawful conduct; and
 - (b) by doing so the first-mentioned person:
 - (i) prevents, hinders or obstructs the carrying out of an approved defence project; or
 - (ii) endeavours to prevent, hinder or obstruct the carrying out of an approved defence project.

Control of Naval Waters Act 1918

3 After section 3

Insert:

3AA Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

4 Subsection 6(2)

Repeal the subsection, substitute:

- (2) The master of a vessel is guilty of an offence if:
- (a) the master is given a direction under subsection (1); and
 - (b) the master fails to comply with the direction.

Maximum penalty: \$1,000.

- (2A) An offence under subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

Defence Act 1903

5 After section 5A

Insert:

6 Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

6 Subsection 51S(3)

Repeal the subsection.

7 Sections 61CY and 61CZ

Repeal the sections, substitute:

61CY Failure of witness to attend

- (1) A person is guilty of an offence if:
- (a) the person is served under paragraph 61CQ(b) with a summons to appear before a Conscientious Objection Tribunal to give evidence and is tendered reasonable expenses; and
 - (b) the person:
 - (i) fails to attend as required by the summons; or
 - (ii) fails to appear and report from day to day and has not been excused, or released from further attendance, by a member.

Penalty: Imprisonment for 6 months.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) In paragraph (1)(a), strict liability applies to the physical element of circumstance, that the summons is under paragraph 61CQ(b).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

61CZ Refusal to be sworn or to answer questions etc.

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

Schedule 1 Amendment of Acts

Part 1 Amendments relating to the Criminal Code

- (a) is required to produce a document by a summons under paragraph 61CQ(c) served on the person; and
- (b) refuses or fails to do so.

Penalty: Imprisonment for 6 months.

- (2) In paragraph (1)(a), strict liability applies to the physical element of circumstance, that the summons is under paragraph 61CQ(c).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) A person is guilty of an offence if the person:

- (a) is appearing before a Conscientious Objection Tribunal to give evidence; and
- (b) is required under paragraph 61CQ(d) either to take an oath or to make an affirmation; and
- (c) refuses or fails to comply with the requirement.

Penalty: Imprisonment for 6 months.

- (4) In paragraph (3)(b), strict liability applies to the physical element of circumstance, that the requirement is under paragraph 61CQ(d).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5) A person is guilty of an offence if the person:

- (a) is appearing before a Conscientious Objection Tribunal to give evidence; and
- (b) is required to answer a question by the presiding member; and
- (c) refuses or fails to answer the question.

Penalty: Imprisonment for 6 months.

- (6) Subsections (1), (3) and (5) do not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (6). See subsection 13.3(3) of the *Criminal Code*.

- (7) A person is guilty of an offence if the person:

- (a) is appearing before a Conscientious Objection Tribunal to give evidence; and
 - (b) gives evidence that is false or misleading in a material particular; and
-

- (c) knows that the evidence is false or misleading in the material particular.

Penalty: Imprisonment for 6 months.

8 Sections 73 to 73E

Repeal the sections, substitute:

73A Unlawfully giving or obtaining information as to defences

- (1) A person who is a member of the Defence Force or a person appointed or engaged under the *Public Service Act 1999* is guilty of an offence if:
 - (a) the person communicates to any other person any plan, document, or information relating to any fort, battery, field work, fortification, or defence work, or to any defences of the Commonwealth, or to any factory, or air force aerodrome or establishment or any other naval, military or air force information; and
 - (b) the communication is not in the course of the first-mentioned person's official duty.
- (2) A person is guilty of an offence if:
 - (a) the person obtains any plan, document, or information relating to any fort, battery, field work, fortification, or defence work, or air force aerodrome or establishment, or to any of the defences of the Commonwealth or any other naval, military or air force information; and
 - (b) that conduct is unlawful.

9 Subsections 73F(1) and (2)

Omit “, 73C, 73D or 73E”.

10 Paragraph 79(1)(c)

Omit “except for lawful cause (the proof of which shall lie upon him)”.

11 After subsection 79(1)

Insert:

- (1AA) An offence under subsection (1) is an offence of strict liability.

Schedule 1 Amendment of Acts
Part 1 Amendments relating to the Criminal Code

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

(1AB) Paragraph (1)(c) does not apply if the person proves that he or she had lawful cause for possessing the thing in question.

Note: The defendant bears a legal burden in relation to the matter in subsection (1AB). See section 13.4 of the *Criminal Code*.

12 At the end of subsection 79(1A)

Add:

Note: The defendant bears a legal burden in relation to the matter in paragraph (1A)(b). See section 13.4 of the *Criminal Code*.

13 Subsection 80A(1)

Repeal the subsection, substitute:

- (1) A person is guilty of an offence if:
- (a) the person represents himself or herself to be a returned soldier, sailor or airman; and
 - (b) the representation is false.

Penalty: \$200 or imprisonment for 6 months, or both.

14 Subsection 80A(3)

Repeal the subsection.

15 Subsection 80B(1)

Repeal the subsection, substitute:

- (1) A person is guilty of an offence if:
- (a) the person wears a service decoration; and
 - (b) the person is not the person on whom the decoration was conferred.

Penalty: \$200.

16 At the end of subsection 80B(2)

Add:

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

17 At the end of subsection 80B(3)

Add:

Note: The defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

18 At the end of subsection 80B(4)

Add:

Penalty: \$200.

19 Subsections 82(1), (2) and (3)

Repeal the subsections, substitute:

(1) If:

- (a) a person makes a sketch, drawing, photograph, picture or painting of any defence installation in Australia or of any part of one; and
- (b) the person has no lawful authority to do so;

then:

- (c) the person is guilty of an offence; and
- (d) all sketches, drawings, photographs, pictures, and paintings, and all tools and all materials or apparatus for sketching, drawing, photographing or painting found in his or her possession are forfeited and may be destroyed, sold, or otherwise disposed of, as the Governor-General directs.

(1A) The maximum penalty for an offence under subsection (1) is a fine of \$200, imprisonment for 6 months, or both.

(2) If:

- (a) a person enters or approaches any defence installation with sketching, drawing, photographing, or painting materials or apparatus in his or her possession; and
- (b) the person has no lawful authority for that conduct; and
- (c) the person intends to contravene subsection (1);

then:

- (d) the person is guilty of an offence; and
- (e) all tools and all materials or apparatus for sketching, drawing, photographing or painting found in his or her possession are forfeited and may be destroyed, sold, or otherwise disposed of, as the Governor-General directs.

(2A) The maximum penalty for an offence under subsection (2) is a fine of \$100.

- (3) A person is guilty of an offence if the person trespasses on:
- (a) a defence installation, or on any land reserved for or forming part of one (whether or not any erection, fort, fortification, or work of any kind is on the land); or
 - (b) a building or land reserved or set apart for or used in connection with the administration, accommodation, or training of any part of the Defence Force; or
 - (c) an aircraft.

Penalty: \$40.

20 At the end of section 82

Add:

- (5) In this section:

defence installation means any fort, battery, fieldwork, fortification, aircraft, air force establishment or aircraft material or any naval, military or air force work of defence.

21 Subsections 83(1), (2) and (3)

Repeal the subsections, substitute:

- (1) A person who is not a member of the Defence Force is guilty of an offence if:
- (a) the person uses or wears a defence emblem or an emblem so nearly resembling a defence emblem as to be capable of being mistaken for such an emblem; and
 - (b) the person does not have the written authority of the Minister, or of a person authorised in writing by the Minister, to do so.

Penalty: \$200.

- (2) A person is guilty of an offence if:
- (a) the person makes, supplies or offers to supply a defence emblem or an emblem so nearly resembling a defence emblem as to be capable of being mistaken for such an emblem; and
-

- (b) the person does not have the written authority of the Minister, or of a person authorised in writing by the Minister, to do so.

Penalty: \$500.

- (3) A person is guilty of an offence if:
 - (a) the person flies or displays a defence flag; and
 - (b) the person is not a member of the Defence Force acting in the course of his or her duties; and
 - (c) the person does not have the written authority of the Minister, or of a person authorised in writing by the Minister, to do so.

Penalty: \$200.

22 After subsection 83(4)

Insert:

- (4A) An offence under subsection (4) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

23 At the end of subsection 83(5)

Add:

Note: The defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3) of the *Criminal Code*.

24 At the end of section 84

Add:

- (2) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

25 Sections 86 and 88

Repeal the sections, substitute:

86 Failure of witness to appear

- (1) A person is guilty of an offence if:

- (a) the person has been served with a summons under the *Defence Force Discipline Act 1982* to appear as a witness before a service tribunal; and
- (b) the person:
 - (i) fails to appear as required by the summons; or
 - (ii) fails to appear and report himself or herself from day to day and has not been excused or released by the tribunal from further attendance.

Penalty: \$1,000 or imprisonment for 6 months, or both.

- (2) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

88 False or misleading evidence

A person who is appearing as a witness before a service tribunal is guilty of an offence if:

- (a) the person gives evidence; and
- (b) the evidence is false or misleading; and
- (c) the person knows that the evidence is false or misleading.

Penalty: \$1,000 or imprisonment for 6 months, or both.

26 After subsection 89(1)

Insert:

- (1A) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

27 Section 90

Repeal the section, substitute:

- (1) A person is guilty of an offence if:
 - (a) an order under section 140 of the *Defence Force Discipline Act 1982* applies to the person; and
-

(b) the person contravenes or fails to comply with the order.

Penalty: \$1,000 or imprisonment for 6 months, or both.

(2) In paragraph (1)(a), strict liability applies to the physical element of circumstance, that the order is under section 140 of the *Defence Force Discipline Act 1982*.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

28 Paragraph 106(b)

Omit “intentionally”.

29 At the end of section 106

Add:

(2) In paragraph (1)(a), strict liability applies to the physical element of circumstance, that the requirement is under section 94.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

30 Paragraph 107(a)

Repeal the paragraph, substitute:

- (a) a sample is provided by a member pursuant to a requirement made by an authorised person under section 94; and
- (aa) the person interferes with, or otherwise deals with, the sample; and

31 At the end of section 107

Add:

(2) In paragraph (1)(a), strict liability applies to the physical element of circumstance, that the requirement is under section 94.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

32 Subsection 116W(5)

Repeal the subsection, substitute:

- (5) A person is guilty of an offence if:
 - (a) a ranger makes a requirement of the person under this section; and
 - (b) the person fails to comply with the requirement.

Penalty: \$1,000.

- (6) An offence under subsection (5) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (7) Subsection (5) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (7). See subsection 13.3(3) of the *Criminal Code*.

33 Section 116Y

Repeal the section, substitute:

- (1) A person is guilty of an offence if:
- (a) the person assaults or threatens another person; and
 - (b) that other person is a ranger performing his or her duties under this Part or the by-laws.

Penalty: \$5,000 or imprisonment for 2 years, or both.

- (2) In paragraph (1)(b), strict liability applies to the physical element of circumstance, that the performance of the duties is under this Part or the by-laws.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

34 Section 118

Repeal the section, substitute:

118 Penalty against raising forces without authority

A person is guilty of an offence if:

- (a) the person induces another person to enlist or engage to serve in any naval, military or air force; and
- (b) the raising of that force has not been authorised by or under this Act or another Act.

Penalty: Imprisonment for 6 months.

35 Section 123AA

Repeal the section, substitute:

123AA Intoxicating liquor not to be supplied to cadets

- (1) A person is guilty of an offence if:
- (a) the person sells or supplies intoxicating liquor to another person; and
 - (b) the person is a member of the Australian Cadet Corps, is under such age as is prescribed, and is in uniform.

Penalty: \$40.

- (2) Subsection (1) does not apply if the liquor is sold or supplied by direction of a duly qualified medical practitioner.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

36 Saving—regulations

Regulations that were in effect for the purposes of section 123AA of the *Defence Act 1903* immediately before the commencement of this item continue to have effect after that time as if they had been made for the purposes of section 123AA of that Act, as in force after that time.

Defence Force Discipline Act 1982

37 Subsection 3(1)

Insert:

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

38 Subsection 3(1) (definition of *property*)

Repeal the definition, substitute:

property includes:

- (a) real property; and
- (b) personal property; and
- (c) money; and

- (d) a thing in action or other intangible property; and
- (e) electricity; and
- (f) a wild creature that is:
 - (i) tamed; or
 - (ii) ordinarily kept in captivity; or
 - (iii) reduced (or in the course of being reduced) into the possession of a person.

39 Subsection 3(13)

Repeal the subsection, substitute:

- (13) In this Act, an offence is an *ancillary offence* in relation to another offence if the first-mentioned offence is an offence against:
 - (a) section 11.1, 11.4 or 11.5 of the *Criminal Code*; or
 - (b) section 6 of the *Crimes Act 1914*;that relates to that other offence.

40 Section 10

Repeal the section, substitute:

10 Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all service offences, other than old system offences.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

41 Subsection 11(3)

Omit “the principles of the common law that apply in relation to”, substitute “the application of Chapter 2 of the *Criminal Code* to”.

42 After subsection 11(3)

Insert:

- (3A) In particular, subsections (1) and (2) merely provide for matters to which a service tribunal must have regard in deciding whether a member was reckless, or negligent. They do not alter the definitions of *recklessness* and *negligence* in sections 5.4 and 5.5 of the *Criminal Code*.

Maximum punishment: Imprisonment for 15 years.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

15B Aiding the enemy while captured

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person is captured by the enemy; and
 - (b) the person serves with the enemy, aids the enemy in prosecuting hostilities or measures likely to influence morale or aids the enemy in any other manner that is not authorised by international law.

Maximum punishment: Imprisonment for life.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

15C Providing the enemy with material assistance

- (1) A person who is a defence member or a defence civilian is guilty of an offence if the person provides the enemy with, or permits or enables the enemy to have access to, arms, ammunition, vehicles, supplies of any description or any other thing likely to assist the enemy.

Maximum punishment: Imprisonment for life.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

15D Harbours enemies

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person harbours or protects another person; and
 - (b) that other person is an enemy person; and
 - (c) that other person is not a prisoner of war; and
 - (d) the first-mentioned person knows that the other person is an enemy person.

Maximum punishment: Imprisonment for 15 years.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

15E Offences relating to signals and messages

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person is engaged on service in connection with operations against the enemy; and
 - (b) the person:
 - (i) gives a signal, message or other communication that the person knows to be false; or
 - (ii) alters or interferes with a signal, message or other communication; or
 - (iii) alters or interferes with apparatus for giving or receiving a signal, message or other communication.

Maximum punishment: Imprisonment for 15 years.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

15F Failing to carry out orders

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person:
 - (i) is ordered by his or her superior officer to prepare for, or to carry out, operations against the enemy; or
 - (ii) is otherwise under orders to prepare for, or to carry out, operations against the enemy; and
 - (b) the person does not use his or her utmost exertions to carry those orders into effect.

Maximum punishment: Imprisonment for 15 years.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

15G Imperilling the success of operations

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person engages in any conduct; and
 - (b) the conduct imperils the success of operations against the enemy.

Maximum punishment: Imprisonment for 15 years.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

16 Communicating with the enemy

- (1) A person who is a defence member or a defence civilian is guilty of an offence if the person communicates with, or gives intelligence to, the enemy.

Maximum punishment: Imprisonment for 15 years.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

16A Failing to report information received from the enemy

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person receives information from the enemy; and
 - (b) the person does not make the information known to proper authority; and
 - (c) the information is likely to be directly or indirectly useful in operations against the enemy; and
 - (d) the person knows or could reasonably be expected to know that the information is likely to be directly or indirectly useful in operations against the enemy.

Maximum punishment: Imprisonment for 15 years.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

16B Offence committed with intent to assist the enemy

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person engages in conduct that constitutes an offence against any of sections 15 to 16A (other than section 15B or 15C); and
 - (b) the person engages in that conduct with intent to assist the enemy.

Maximum punishment: Imprisonment for life.

- (2) In paragraph (1)(a), strict liability applies to the physical element of circumstance, that the conduct constitutes an offence against the section concerned.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

17 Leaving a post, abandoning equipment or otherwise failing to perform duty

- (1) A defence member is guilty of an offence if the member is engaged on service in connection with operations against the enemy and:
- (a) the member:
 - (i) has a duty to be at a post, position or other place; and
 - (ii) leaves the post, position or place; or
 - (b) the member abandons his or her weapons or other equipment; or
 - (c) the member does not properly perform his or her duty in any other manner in attacking or defending against the enemy.

Maximum punishment: Imprisonment for 5 years.

- (2) It is a defence if the member proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

- (3) In this section:

equipment includes vehicles, ammunition, instruments and tools.

18 Endangering morale

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person spreads a report; and
 - (b) the report relates to operations against the enemy; and
 - (c) by spreading the report the person intends to create despondency or unnecessary alarm.

Maximum punishment: Imprisonment for 2 years.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person is engaged on service in connection with operations against the enemy; and
 - (b) the person spreads a report; and
 - (c) the report relates to operations against the enemy; and

- (d) by spreading the report the person intends to create despondency or unnecessary alarm.

Maximum punishment: Imprisonment for 5 years.

19 Conduct after capture by the enemy

- (1) A defence member is guilty of an offence if:
- (a) the member is captured by the enemy; and
 - (b) any reasonable steps are available to the member to rejoin his or her force; and
 - (c) the member does not take those steps.

Maximum punishment: Imprisonment for 5 years.

- (2) A defence member is guilty of an offence if:
- (a) the member and another person are captured by the enemy; and
 - (b) any reasonable steps are available to the other person to rejoin his or her force; and
 - (c) the member prevents or discourages the other person from taking those steps.

Maximum punishment: Imprisonment for 5 years.

- (3) A defence member is guilty of an offence if:
- (a) the member is captured by the enemy; and
 - (b) the member engages in conduct with the intention of securing favourable treatment for himself or herself; and
 - (c) the conduct is detrimental to other persons also captured by the enemy.

Maximum punishment: Imprisonment for 5 years.

- (4) A defence member is guilty of an offence if:
- (a) the member is captured by the enemy; and
 - (b) the member is in a position of authority over other persons also captured by the enemy; and
 - (c) the member ill-treats those other persons.

Maximum punishment: Imprisonment for 5 years.

Division 2—Mutiny, desertion and unauthorised absence

20 Mutiny

- (1) A defence member who takes part in a mutiny is guilty of an offence.

Maximum punishment: Imprisonment for 10 years.

- (2) A defence member is guilty of an offence if:
- (a) the member takes part in a mutiny; and
 - (b) the mutiny's object, or one of its objects, is the refusal or avoidance of duty or service in connection with operations against the enemy or the impeding of the performance of such a duty or service.

Maximum punishment: Imprisonment for life.

21 Failing to suppress mutiny

- (1) A defence member is guilty of an offence if:
- (a) a mutiny is taking place or is intended; and
 - (b) the member knows that fact; and
 - (c) the member does not take reasonable steps:
 - (i) to suppress or prevent the mutiny; or
 - (ii) to report to proper authority without delay that the mutiny is taking place or is intended.

Maximum punishment: Imprisonment for 2 years.

- (2) A defence member is guilty of an offence if:
- (a) a mutiny is taking place or is intended; and
 - (b) the member knows that fact; and
 - (c) the member knows, or could reasonably be expected to know, that the mutiny's object, or one of its objects, is:
 - (i) the refusal or avoidance of duty or service in connection with operations against the enemy; or
 - (ii) the impeding of the performance of such duty or service; and
 - (d) the member does not take reasonable steps:

- (i) to suppress or prevent the mutiny; or
- (ii) to report to proper authority without delay that the mutiny is taking place or is intended.

Maximum punishment: Imprisonment for 5 years.

22 Desertion

- (1) A defence member is guilty of an offence if the member:
- (a) is on active service or has been warned for active service; and
 - (b) without leave, and with the intention of avoiding that service, departs from, or does not attend at, his or her place of duty.

Maximum punishment: Imprisonment for 5 years.

- (2) A defence member is guilty of an offence if:
- (a) the member is absent without leave; and
 - (b) the member engages in conduct; and
 - (c) the conduct manifests an intention to avoid active service.

Maximum punishment: Imprisonment for 5 years.

23 Absence from duty

- (1) A defence member is guilty of an offence if the member:
- (a) is required to attend for duty; and
 - (b) does not attend for the duty.

Maximum punishment: Imprisonment for 12 months.

- (2) A defence member is guilty of an offence if the member:
- (a) is required to perform a duty; and
 - (b) ceases to perform the duty before he or she is permitted to do so.

Maximum punishment: Imprisonment for 12 months.

- (3) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) It is a defence to a charge under this section if the person proves that he or she had a reasonable excuse for engaging in the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (4). See section 13.4 of the *Criminal Code*.

24 Absence without leave

- (1) A defence member who is absent without leave is guilty of an offence.

Maximum punishment: Imprisonment for 12 months.

- (2) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the member proves that he or she was absent due to circumstances not reasonably within the member's control.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

Division 3—Insubordination and violence

25 Assaulting a superior officer

- (1) A defence member is guilty of an offence if:
- (a) the member assaults a person; and
 - (b) that person is a superior officer.

Maximum punishment: Imprisonment for 2 years.

- (2) Strict liability applies to paragraph (1)(b).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the member proves that he or she neither knew, nor could reasonably be expected to have known, that the person against whom the offence is alleged to have been committed was a superior officer.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

26 Insubordinate conduct

- (1) A defence member is guilty of an offence if:
- (a) the member engages in conduct that is threatening, insubordinate or insulting to a person; and
 - (b) the person is a superior officer.

Maximum punishment: Imprisonment for 6 months.

- (2) A defence member is guilty of an offence if:
- (a) the member uses language that is threatening, insubordinate or insulting about a person; and
 - (b) the language is used in that person's presence; and
 - (c) the person is a superior officer.

Maximum punishment: Imprisonment for 6 months.

- (3) An offence against this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) It is a defence to a charge under this section if the person proves that he or she neither knew, nor could reasonably be expected to have known, that the person against whom the offence is alleged to have been committed was a superior officer.

Note: The defendant bears a legal burden in relation to the matter in subsection (4). See section 13.4 of the *Criminal Code*.

27 Disobeying a lawful command

- (1) A defence member is guilty of an offence if:
- (a) a person gives the member a lawful command; and
 - (b) the person giving the command is a superior officer; and
 - (c) the member disobeys the command.

Maximum punishment: Imprisonment for 2 years.

- (2) Strict liability applies to paragraphs (1)(b) and (c).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the member proves that he or she neither knew, nor could reasonably be expected to have known, that the person who gave the command was a superior officer.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

28 Failing to comply with a direction in relation to a ship, aircraft or vehicle

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person is in or near a service ship, service aircraft or service vehicle; and
 - (b) the person is given a lawful direction by, or with the authority of, the person in command of the ship, aircraft or vehicle; and
 - (c) the direction:
 - (i) relates to the sailing or handling of the ship, the flying or handling of the aircraft or the handling of the vehicle; or
 - (ii) affects the safety of the ship, aircraft or vehicle or of the persons on board the ship, aircraft or vehicle; and
 - (d) the first-mentioned person does not comply with the direction.

Maximum punishment: Imprisonment for 2 years.

- (2) Strict liability applies to paragraph (1)(d).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

29 Failing to comply with a general order

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) a lawful general order applies to the person; and
 - (b) the person does not comply with the order.

Maximum punishment: Imprisonment for 12 months.

- (2) An offence under subsection (1) is an offence of strict liability.
-

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the member proves that he or she neither knew, nor could reasonably be expected to have known, of the order.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

30 Assaulting a guard

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person assaults another person; and
 - (b) that other person is a member of the Defence Force or of an allied force; and
 - (c) that other person is on guard duty.

Maximum punishment: Imprisonment for 2 years.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person is engaged on service in connection with operations against the enemy; and
 - (b) the person assaults another person; and
 - (c) that other person is a member of the Defence Force or of an allied force; and
 - (d) that other person is on guard duty.

Maximum punishment: Imprisonment for 5 years.

31 Obstructing a police member

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person obstructs another person; and
 - (b) that other person:
 - (i) is a police member acting in the performance of his or her duty; or
 - (ii) is lawfully exercising authority under or on behalf of a service police officer.

Maximum punishment: Imprisonment for 12 months.

- (2) A defence member is guilty of an offence if:
- (a) the member is called on to assist another person; and
 - (b) that other person:
 - (i) is a police member acting in the performance of his or her duty; or
 - (ii) is lawfully exercising authority under or on behalf of a service police officer; and
 - (c) the member refuses to assist that other person.

Maximum punishment: Imprisonment for 12 months.

- (3) In paragraphs (1)(b) and (2)(b), strict liability applies to the physical element of circumstance, that the person was a police member, or a person lawfully exercising authority under or on behalf of a service police officer.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) It is a defence to a charge under this section if the person proves that he or she neither knew, nor could reasonably be expected to have known, that the other person was a police member, or a person lawfully exercising authority under or on behalf of a service police officer, as the case requires.

Note: The defendant bears a legal burden in relation to the matter in subsection (4). See section 13.4 of the *Criminal Code*.

32 Person on guard or on watch

- (1) A defence member is guilty of an offence if the member is on guard duty or on watch and the member:
- (a) sleeps at the member's post or on watch; or
 - (b) is not on duty at a post but sleeps when the member's duty requires him or her to be awake; or
 - (c) is intoxicated (see subsection (5)); or
 - (d) leaves his or her post before being regularly relieved or otherwise absents himself or herself from a place where it is the member's duty to be.

Maximum punishment: Imprisonment for 12 months.

- (2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) A defence member is guilty of an offence if the member:
- (a) is engaged on service in connection with operations against the enemy; and
 - (b) is on guard duty or on watch; and
 - (c) engages in conduct that constitutes an offence against subsection (1).

Maximum punishment: Imprisonment for 5 years.

- (4) Strict liability applies to paragraph (3)(c).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5) For the purposes of this section, a person is *intoxicated* if, and only if, the person's faculties are, because of the person being under the influence of intoxicating liquor or a drug (other than a drug administered by, or taken in accordance with the directions of, a person lawfully authorised to administer the drug), so impaired that the person is unfit to be entrusted with the person's duty or with any duty that the person may be called on to perform.
- (6) It is a defence if a person charged with an offence under this section proves that he or she had a reasonable excuse for engaging in the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (6). See section 13.4 of the *Criminal Code*.

33 Assault, insulting or provocative words etc.

A person who is a defence member or a defence civilian is guilty of an offence if the person is on service land, in a service ship, service aircraft or service vehicle or in a public place and the person:

- (a) assaults another person; or
- (b) creates a disturbance or takes part in creating or continuing a disturbance; or
- (c) within the view or hearing of another person, engages in conduct that is obscene; or
- (d) uses insulting or provocative words to another person.

Maximum punishment: Imprisonment for 6 months.

34 Assaulting an inferior

- (1) A defence member is guilty of an offence if:
- (a) the member assaults or ill-treats a person; and
 - (b) the person is a member of the Defence Force who is of inferior rank to the member.

Maximum punishment: Imprisonment for 2 years.

- (2) Strict liability applies to paragraph (1)(b).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the member proves that he or she neither knew, nor could reasonably be expected to have known, that the other person was a member of the Defence Force of inferior rank to the member.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

Division 4—Offences relating to performance of duty

35 Negligent performance of duty

A defence member is guilty of an offence if the member:

- (a) is required by the member's office or appointment to perform a duty; and
- (b) by act or omission, performs that duty negligently.

Maximum punishment: Imprisonment for 3 months.

36 Dangerous conduct

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct is in or in connection with:
 - (i) the operation, handling, servicing or storage; or
 - (ii) the giving of directions with respect to the operation, handling, servicing or storage;of a ship, aircraft or vehicle or a weapon, missile, explosive or other dangerous thing or equipment; and

- (c) the conduct causes, or is likely to cause, the death of or grievous bodily harm to another person; and
- (d) the first-mentioned person knows of the matter mentioned in paragraph (c); and
- (e) where the person mentioned in paragraph (c) is an enemy person—the conduct is not in the execution of the first-mentioned person's duty.

Maximum punishment: Imprisonment for 10 years.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct is in or in connection with:
 - (i) the operation, handling, servicing or storage; or
 - (ii) the giving of directions with respect to the operation, handling, servicing or storage;of a ship, aircraft or vehicle or a weapon, missile, explosive or other dangerous thing or equipment; and
 - (c) the conduct causes, or is likely to cause, the death of or grievous bodily harm to another person; and
 - (d) the first-mentioned person is reckless as to the matter mentioned in paragraph (c); and
 - (e) where the person mentioned in paragraph (c) is an enemy person—the conduct is not in the execution of the first-mentioned person's duty.

Maximum punishment: Imprisonment for 5 years.

- (3) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct is in or in connection with:
 - (i) the operation, handling, servicing or storage; or
 - (ii) the giving of directions with respect to the operation, handling, servicing or storage;of a ship, aircraft or vehicle or a weapon, missile, explosive or other dangerous thing or equipment; and

- (c) the conduct causes, or is likely to cause, the death of or grievous bodily harm to another person; and
- (d) the first-mentioned person is negligent as to the matter mentioned in paragraph (c); and
- (e) where the person mentioned in paragraph (c) is an enemy person—the conduct is not in the execution of the first-mentioned person’s duty.

Maximum punishment: Imprisonment for 2 years.

36A Unauthorised or negligent discharge of weapon

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
 - (a) the person discharges a weapon; and
 - (b) the person is not authorised to discharge the weapon in the circumstances in which the discharge takes place.

Maximum punishment: Imprisonment for 6 months.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if, by act or omission, the person negligently causes or contributes to the discharge of a weapon.

Maximum punishment: Imprisonment for 6 months.

37 Intoxicated while on duty etc.

- (1) A defence member is guilty of an offence if:
 - (a) the member is on duty, or reports or should report for duty; and
 - (b) the member is intoxicated (see subsection (3)).

Maximum punishment: Imprisonment for 6 months.

- (2) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) For the purposes of this section, a person is *intoxicated* if, and only if, the person’s faculties are, because of the person being under the influence of intoxicating liquor or a drug (other than a drug administered by, or taken in accordance with the directions of, a

person lawfully authorised to administer the drug), so impaired that the person is unfit to be entrusted with the person's duty or with any duty that the person may be called on to perform.

38 Malingering

- (1) A defence member is guilty of an offence if, with intent to make or keep himself or herself unfit for duty or service, the member:
- (a) injures himself or herself or causes or permits himself or herself to be injured; or
 - (b) by act or omission, causes himself or herself to suffer from a sickness or disability or prolongs or aggravates a sickness or disability from which he or she is suffering.

Maximum punishment: Imprisonment for 12 months.

- (2) A defence member is guilty of an offence if:
- (a) the member represents himself or herself to be suffering from a physical or mental condition; and
 - (b) the member makes the representation with intent to avoid duty or service; and
 - (c) the representation is false; and
 - (d) the member knows that the representation is false.

Maximum punishment: Imprisonment for 12 months.

Division 5—Offences relating to ships, vehicles, aircraft and weapons

39 Loss of, or hazard to, service ship

- (1) A defence member is guilty of an offence if:
- (a) the member engages in conduct; and
 - (b) the conduct causes or allows a service ship to be lost, stranded or hazarded; and
 - (c) the member intends that the conduct will have that result.

Maximum punishment: Imprisonment for 5 years.

- (2) A defence member is guilty of an offence if:
- (a) the member engages in conduct; and

- (b) the conduct causes or allows a service ship to be lost, stranded or hazarded; and
- (c) the member is reckless as to whether the conduct will have that result.

Maximum punishment: Imprisonment for 2 years.

- (3) A defence member is guilty of an offence if:
 - (a) the member engages in conduct; and
 - (b) the conduct causes or allows a service ship to be lost, stranded or hazarded; and
 - (c) the member is negligent as to whether the conduct will have that result.

Maximum punishment: Imprisonment for 6 months.

40 Driving while intoxicated

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
 - (a) the person drives a service vehicle in any place, whether a public place or not; and
 - (b) the person is under the influence of intoxicating liquor or a drug to such an extent as to be incapable of having proper control of the vehicle.

Maximum punishment: Imprisonment for 12 months.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if:
 - (a) the person drives a vehicle on service land; and
 - (b) the person is under the influence of intoxicating liquor or a drug to such an extent as to be incapable of having proper control of the vehicle.

Maximum punishment: Imprisonment for 12 months.

- (3) An offence under this section is an offence of absolute liability.

Note: For *absolute liability*, see section 6.2 of the *Criminal Code*.

40A Dangerous driving

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person drives a service vehicle in any place, whether a public place or not; and
 - (b) the person does so at a speed, or in a manner, dangerous to another person in that place.

Maximum punishment: Imprisonment for 6 months.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person drives a vehicle on service land; and
 - (b) the person does so at a speed, or in a manner, dangerous to another person on that land.

Maximum punishment: Imprisonment for 6 months.

- (3) Absolute liability applies to paragraphs (1)(a) and (2)(a).

Note: For *absolute liability*, see section 6.2 of the *Criminal Code*.

- (4) Strict liability applies to paragraphs (1)(b) and (2)(b).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

40B Negligent conduct in driving

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person drives a service vehicle in any place, whether a public place or not; and
 - (b) in doing so, the person engages in negligent conduct.

Maximum punishment: Imprisonment for 3 months.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person drives a vehicle on service land; and
 - (b) in doing so, the person engages in negligent conduct.

Maximum punishment: Imprisonment for 3 months.

- (3) Absolute liability applies to paragraphs (1)(a) and (2)(a).

Note: For *absolute liability*, see section 6.2 of the *Criminal Code*.

40C Driving a service vehicle for unauthorised purpose

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person:
 - (i) drives a service vehicle in any place, whether a public place or not; and
 - (ii) is not authorised to drive that vehicle; or
 - (b) the person uses a service vehicle for an unauthorised purpose.

Maximum punishment: Imprisonment for 3 months.

- (2) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence to a charge under subsection (1) if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

40D Driving without due care or attention etc.

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person drives a service vehicle in any place, whether a public place or not; and
 - (b) the person does so without due care and attention or without reasonable consideration for another person in that place.

Maximum punishment:

- (c) if the person is a member of the Defence Force—a fine of the amount of the member's pay for 7 days; or
 - (d) in any other case—a fine of \$100.
- (2) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person drives a vehicle on service land; and

- (b) the person does so without due care and attention or without reasonable consideration for another person on that land.

Maximum punishment:

- (c) if the person is a member of the Defence Force—a fine of the amount of the member's pay for 7 days; or
 - (d) in any other case—a fine of \$100.
- (3) An offence under this section is an offence of absolute liability.

Note: For *absolute liability*, see section 6.2 of the *Criminal Code*.

41 Low flying

- (1) A defence member is guilty of an offence if:
- (a) the member flies a service aircraft; and
 - (b) by or in accordance with a lawful general order, there is a minimum height at which the member is authorised to fly; and
 - (c) the height at which the member flies is less than that minimum height; and
 - (d) the member is reckless or negligent as to the matter in paragraph (c).

Maximum punishment: Imprisonment for 12 months.

- (2) Strict liability applies to paragraph (1)(b).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the member proves that he or she neither knew, nor could reasonably be expected to have known, of the general order.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

42 Inaccurate certification in relation to ships, aircraft, vehicles etc.

A person who is a defence member or a defence civilian is guilty of an offence if:

- (a) the person gives a certificate, makes or signs a document or makes an entry in a document; and

- (b) the certificate, document or entry relates to any matter affecting the safety or efficiency of a service ship, service aircraft, service vehicle, service missile or service weapon; and
- (c) the person does not take reasonable care to ensure the accuracy of the certificate, document or entry.

Maximum punishment: Imprisonment for 12 months.

Division 5A—Property offences

Subdivision A—Service property offences

43 Destroying or damaging service property

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct results in the destruction of, or damage to, service property; and
 - (c) the person intends that result.

Maximum punishment: Imprisonment for 5 years.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct results in the destruction of, or damage to, service property; and
 - (c) the person is reckless as to that result.

Maximum punishment: Imprisonment for 2 years.

- (3) A person who is a defence member or a defence civilian is guilty of an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct results in the destruction of, or damage to, service property; and
 - (c) the person is negligent as to that result.

Maximum punishment: Imprisonment for 6 months.

- (4) It is a defence to a charge under subsection (1) if the person proves that he or she had a reasonable excuse for engaging in the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (4). See section 13.4 of the *Criminal Code*.

44 Losing service property

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person loses any property; and
 - (b) the property is, or forms part of, service property issued for the person's use, or entrusted to the person's care, in connection with the person's duties.

Maximum punishment: Imprisonment for 6 months.

- (2) Absolute liability applies to paragraph (1)(a).

Note: For *absolute liability*, see section 6.2 of the *Criminal Code*.

- (3) It is a defence if the person proves that he or she took reasonable steps for the safe-keeping of the lost property.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

45 Unlawful possession of service property

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person is in possession of service property; and
 - (b) the person has no lawful authority for being in possession of the property.

Maximum punishment: Imprisonment for 6 months.

- (2) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the person proves that he or she:

- (a) was not aware that he or she was in possession of the property; or
 - (b) was not aware that the property was service property; or
-

- (c) had a reasonable excuse for his or her possession of the property without authority.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

Subdivision B—Possession of property suspected of having been unlawfully obtained

46 Possession of property suspected of having been unlawfully obtained

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
 - (a) the person is in possession of property; and
 - (b) the property may reasonably be suspected of having been unlawfully obtained.

Maximum punishment: Imprisonment for 6 months.

- (2) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the person proves that he or she:
 - (a) was not aware that he or she was in possession of the property; or
 - (b) was not aware of the circumstances by reason of which that property may reasonably be suspected of having been unlawfully obtained; or
 - (c) had a reasonable excuse for his or her possession of the property.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

- (4) It is a defence if the person proves that the property was not unlawfully obtained.

Note: The defendant bears a legal burden in relation to the matter in subsection (4). See section 13.4 of the *Criminal Code*.

Subdivision C—Fraudulent conduct

47 When property belongs to a person

- (1) For the purposes of this Subdivision, property *belongs to* a person if, and only if:
 - (a) the person has possession or control of the property; or
 - (b) the person has a proprietary right or interest in the property, other than an equitable interest arising only from:
 - (i) an agreement to transfer an interest; or
 - (ii) an agreement to grant an interest; or
 - (iii) a constructive trust.
- (2) Subsection (1) has effect subject to subsections 134.1(9) and (10) of the *Criminal Code* (which deal with money transfers).

47A Dishonesty

For the purposes of this Subdivision, *dishonest* means:

- (a) dishonest according to the standards of ordinary people; and
- (b) known by the defendant to be dishonest according to the standards of ordinary people.

Note: In the case of the offence of theft, see also section 47D.

47B Determination of dishonesty to be a matter for the trier of fact

In a prosecution for an offence against this Subdivision, the determination of dishonesty is a matter for the trier of fact.

47C Theft

- (1) A person who is a defence member or a defence civilian is guilty of an offence if the person dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property.

Maximum punishment: Imprisonment for 5 years.

- (2) For the purposes of this Act, an offence against subsection (1) is to be known as the offence of theft.

47D Special rules about the meaning of dishonesty

- (1) For the purposes of this Subdivision, a person's appropriation of property belonging to another is taken not to be dishonest if the person appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.
- (2) However, the rule in subsection (1) does not apply if the person appropriating the property held it as trustee or personal representative.
- (3) For the purposes of this Subdivision, a person's appropriation of property belonging to another may be dishonest even if the person or another person is willing to pay for the property.

47E Appropriation of property

- (1) For the purposes of this Subdivision, any assumption of the rights of an owner to ownership, possession or control of property, without the consent of the person to whom it belongs, amounts to an appropriation of the property. This includes, in a case where a person has come by property (innocently or not) without committing theft, any later such assumption of rights without consent by keeping or dealing with it as owner.
- (2) For the purposes of this Subdivision, if property, or a right or interest in property, is, or purports to be, transferred or given to a person acting in good faith, a later assumption by the person of rights which the person had believed himself or herself to be acquiring does not, because of any defect in the transferor's title, amount to an appropriation of the property.

47F Theft of land or things forming part of land

- (1) For the purposes of this Subdivision, a person cannot commit theft of land, except in the following cases:
 - (a) the case where the person appropriates anything forming part of the land by severing it or causing it to be severed;
 - (b) the case where:
 - (i) the person is a trustee or personal representative, or is authorised (by power of attorney, as liquidator of a
-

company or otherwise) to sell or dispose of land belonging to another; and

- (ii) the person appropriates the land, or anything forming part of it, by dealing with it in breach of the confidence reposed in the person.
- (2) For the purposes of this section, *land* does not include incorporeal hereditaments.

47G Trust property

- (1) For the purposes of this Subdivision, if property is subject to a trust, the persons to whom the property belongs include any person who has a right to enforce the trust.
- (2) Accordingly, for the purposes of this Subdivision, an intention to defeat the trust is an intention to deprive any such person of the property.

47H Obligation to deal with property in a particular way

For the purposes of this Subdivision, if:

- (a) a person receives property from or on account of another; and
 - (b) the person is under a legal obligation to the other to retain and deal with that property or its proceeds in a particular way;
- the property or proceeds belong (as against the person) to the other.

47J Property obtained because of fundamental mistake

- (1) For the purposes of this Subdivision, if:
 - (a) a person gets property by another's fundamental mistake; and
 - (b) the person is under a legal obligation to make restoration (in whole or in part) of the property or its proceeds;then, to the extent of that obligation, the property or proceeds belong (as against the person) to the person entitled to restoration.
- (2) For the purposes of this Subdivision, an intention not to make restoration is:
 - (a) an intention to permanently deprive the person so entitled of the property or proceeds; and

- (b) an appropriation of the property or proceeds without the consent of the person entitled to restoration.
- (3) For the purposes of this section, a *fundamental mistake* is:
 - (a) a mistake about the identity of the person getting the property; or
 - (b) a mistake as to the essential nature of the property; or
 - (c) a mistake about the amount of any money if the person getting the money is aware of the mistake at the time of getting the money.
- (4) In this section:

money includes anything that is equivalent to money. For this purpose, cheques, negotiable instruments and electronic funds transfers are taken to be equivalent to money.

47K Property of a corporation sole

For the purposes of this Subdivision, property of a corporation sole belongs to the corporation despite a vacancy in the corporation.

47L Property belonging to 2 or more persons

If property belongs to 2 or more persons, a reference in this Subdivision to the person to whom the property belongs is a reference to all of those persons.

47M Intention of permanently depriving a person of property

- (1) For the purposes of this Subdivision, if:
 - (a) a person appropriates property belonging to another without meaning the other permanently to lose the thing itself; and
 - (b) the person's intention is to treat the thing as the person's own to dispose of regardless of the other's rights;the person has the intention of permanently depriving the other of it.
- (2) For the purposes of this section, a borrowing or lending of a thing amounts to treating the thing as the borrower's or lender's own to dispose of regardless of another's rights if, and only if, the

borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.

- (3) For the purposes of this section, if:
- (a) a person has possession or control (lawfully or not) of property belonging to another; and
 - (b) the person parts with the property under a condition as to its return that the person may not be able to perform; and
 - (c) the parting is done for purposes of the person's own and without the other's authority;

the parting is taken to amount to treating the property as the person's own to dispose of regardless of the other's rights.

Note: See also paragraph 47J(2)(a).

47N General deficiency

- (1) For the purposes of this Subdivision, a person may be convicted of theft of all or any part of a general deficiency in money even though the deficiency is made up of any number of particular sums of money that were appropriated over a period of time.
- (2) For the purposes of this Subdivision, a person may be convicted of theft of all or any part of a general deficiency in property other than money even though the deficiency is made up of any number of particular items of property that were appropriated over a period of time.

47P Receiving

- (1) A person who is a defence member or a defence civilian is guilty of an offence if the person dishonestly receives stolen property, knowing or believing the property to be stolen.

Maximum punishment: Imprisonment for 5 years.

- (2) For the purposes of this Act, an offence against subsection (1) is to be known as the offence of receiving.

Stolen property

- (3) For the purposes of this section, property is ***stolen property*** if, and only if:

- (a) it is original stolen property (as defined by subsection (5)); or
 - (b) it is previously received property (as defined by subsection (6)); or
 - (c) it is tainted property (as defined by subsection (8)).
- This subsection has effect subject to subsections (4) and (7).

- (4) For the purposes of this section, ***stolen property*** does not include land obtained in the course of an offence against a law of the Commonwealth, a State or a Territory that involves obtaining property by deception (however described).

Original stolen property

- (5) For the purposes of this section, ***original stolen property*** is:
- (a) property, or a part of property, that:
 - (i) was appropriated in the course of theft (whether or not the property, or the part of the property, is in the state it was in when it was so appropriated); and
 - (ii) is in the possession or custody of the person who so appropriated the property; or
 - (b) property, or a part of property, that:
 - (i) was otherwise unlawfully obtained (whether or not the property, or the part of the property, is in the state it was in when it was so obtained); and
 - (ii) is in the possession or custody of the person who so obtained the property or the person for whom the property was so obtained.

Previously received property

- (6) For the purposes of this section, ***previously received property*** is property that:
- (a) was received in the course of an offence against subsection (1); and
 - (b) is in the possession or custody of the person who received the property in the course of that offence.
- (7) For the purposes of this section, property ceases to be original stolen property or previously received property:
- (a) after the property is restored:
-

- (i) to the person from whom it was appropriated or obtained; or
 - (ii) to other lawful possession or custody; or
- (b) after:
- (i) the person from whom the property was appropriated or obtained ceases to have any right to restitution in respect of the property; or
 - (ii) a person claiming through the person from whom the property was appropriated or obtained ceases to have any right to restitution in respect of the property.

Tainted property

- (8) For the purposes of this section, ***tainted property*** is property that:
- (a) is (in whole or in part) the proceeds of sale of, or property exchanged for:
 - (i) original stolen property; or
 - (ii) previously received property; and
 - (b) if subparagraph (a)(i) applies—is in the possession or custody of:
 - (i) if the original stolen property was appropriated in the course of theft (whether in contravention of this Act or of another law)—the person who so appropriated the original stolen property; or
 - (ii) if the original stolen property was otherwise unlawfully obtained—the person who so obtained the property or the person for whom the property was so obtained; and
 - (c) if subparagraph (a)(ii) applies—is in the possession or custody of the person who received the previously received property in the course of an offence against subsection (1).

Money transfers

- (9) For the purposes of this section, if, as a result of the application of subsection 134.1(9) or (10) of the *Criminal Code*, an amount credited to an account held by a person is property obtained in the course of an offence against section 134.1 of the *Criminal Code*:
- (a) while the whole or any part of the amount remains credited to the account, the property is taken to be in the possession of the person; and

- (b) if the person fails to take such steps as are reasonable in the circumstances to secure that the credit is cancelled—the person is taken to have received the property; and

- (c) subsection (7) of this section does not apply to the property.

Note: Subsections 134.1(9) and (10) of the *Criminal Code* deal with money transfers.

Receiving property stolen before commencement

- (10) For the purposes of this section:

- (a) it is to be assumed that section 47C of this Act had been in force at all times before the commencement of this section; and
- (b) property that was appropriated or obtained at a time before the commencement of this section does not become ***original stolen property*** unless the property was appropriated or obtained in circumstances that (apart from paragraph (a)) amounted to an offence against a law of the Commonwealth, a State or a Territory in force at that time.

Definition

- (11) In this section:

account has the same meaning as in section 133.1 of the *Criminal Code*.

Subdivision D—Looting

48 Looting

- (1) A person who is a defence member or a defence civilian is guilty of an offence if, in the course of operations against the enemy, or in the course of operations undertaken by the Defence Force for the preservation of law and order or otherwise in aid of the civil authorities, the person:
 - (a) takes any property that has been left exposed or unprotected; or
 - (b) takes any property from the body of a person who has been killed or from a person who has been wounded, injured or captured; or
-

(c) takes any vehicle, equipment or stores captured from or abandoned by the enemy.

Maximum punishment: Imprisonment for 5 years.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person receives property; and
 - (b) the property has been taken in circumstances constituting an offence against subsection (1); and
 - (c) the person knows of those circumstances.

Maximum punishment: Imprisonment for 5 years.

- (3) It is a defence to a charge under this section if the person proves that he or she took or received the property for the service of the Commonwealth or had other reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

Division 6—Arrest, custody and proceedings before service tribunals

49 Refusing to submit to arrest

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person is ordered into arrest; and
 - (b) the order is lawful; and
 - (c) the person disobeys the order.

Maximum punishment: Imprisonment for 12 months.

- (2) Strict liability applies to paragraphs (1)(b) and (c).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the person proves that he or she neither knew, nor could reasonably be expected to have known, that the other person was acting lawfully.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

49A Assault against arresting person

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person assaults another person; and
 - (b) the other person:
 - (i) has a power of arrest over him or her under section 89 and is arresting, or attempting to arrest, him or her in the exercise of that power; or
 - (ii) is carrying out, or attempting to carry out, an order for his or her arrest under section 89; or
 - (iii) is arresting, or attempting to arrest, him or her under a warrant under section 88 or 90; or
 - (iv) has him or her in custody.

Maximum punishment: Imprisonment for 12 months.

- (2) In paragraph (1)(b), strict liability applies to the physical element of circumstance, that the conduct mentioned in that paragraph is lawful.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the person proves that he or she neither knew, nor could reasonably be expected to have known, that the other person was acting lawfully.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

50 Delaying or denying justice

- (1) A defence member is guilty of an offence if:
- (a) a person is in custody on a charge; and
 - (b) the member is required by or under this Act to take action to have the charge dealt with in accordance with this Act; and
 - (c) the member does not take the action.

Maximum punishment: Imprisonment for 12 months.

- (2) A defence member is guilty of an offence if:
- (a) a person in custody is entitled to be released; and
 - (b) the member is required by or under this Act to take action to release, or to order the release of, the person; and
 - (c) the member does not take the action.

Maximum punishment: Imprisonment for 12 months.

- (3) It is a defence to a charge under this section if the member proves that he or she had a reasonable excuse for not taking the required action.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

51 Escaping from custody

A person who is a defence member or a defence civilian is guilty of an offence if the person escapes from custody.

Maximum punishment: Imprisonment for 2 years.

52 Giving false evidence

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person has been sworn or affirmed as a witness in proceedings before a service tribunal; and
 - (b) the person makes a false statement in those proceedings; and
 - (c) the person knows the statement to be false or does not believe it to be true; and
 - (d) the statement is material in those proceedings.

Maximum punishment: Imprisonment for 5 years.

- (2) A person is not liable to be convicted of an offence under this section only on the evidence of one witness as to the falsity of the statement alleged to be false.

53 Contempt of service tribunal

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
-

- (a) the person has been served, as provided for by the rules of procedure, with a summons to appear, or has been ordered to appear, as a witness before a service tribunal; and
- (b) the person:
 - (i) fails to appear as required by the summons or order; or
 - (ii) fails to appear and report himself or herself from day to day and has not been excused or released by the tribunal from further attendance.

Maximum punishment: Imprisonment for 6 months.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if the person is appearing as a witness before a service tribunal and the person:
 - (a) refuses or fails to take an oath or make an affirmation when lawfully required to do so; or
 - (b) refuses or fails to answer a question that the person is lawfully required to answer by the tribunal; or
 - (c) refuses or fails to produce a document that the person was required to produce by a summons served on the person, as provided for by the rules of procedure, or by an order.

Maximum punishment: Imprisonment for 6 months.

- (3) It is a defence to a charge under subsection (1) or (2) if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

- (4) A person who is a defence member or a defence civilian is guilty of an offence if the person:
 - (a) insults a member of a court martial, a judge advocate, a Defence Force magistrate or a summary authority in or in relation to the exercise of his or her powers or functions as such a member, judge advocate, magistrate or authority; or
 - (b) interrupts the proceedings of a service tribunal; or
 - (c) creates a disturbance or takes part in creating or continuing a disturbance in or near a place where a service tribunal is sitting; or

- (4) A person who is a defence member or a defence civilian is guilty of an offence if, with intent to facilitate an escape from a place of confinement of another person, the first-mentioned person conveys anything into that place.

Maximum punishment: Imprisonment for 12 months.

45 After subsection 54A(2)

Insert:

- (2A) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

46 Subsection 54A(3)

After “custodial offence”, insert “proves that he or she”.

47 At the end of subsection 54A(3)

Add:

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

48 Subsection 54A(6)

Repeal the subsection, substitute:

- (6) If a person (other than a detainee) commits an offence against subsection (1) or (2) of this section by virtue of section 11.2 of the *Criminal Code*, that section has effect as if the maximum punishment for an offence against subsection (1) or (2) of this section were imprisonment for 10 days.

49 Divisions 7 and 8 of Part III

Repeal the Divisions, substitute:

Division 7—Miscellaneous offences

55 Falsifying service documents

- (1) A person who is a defence member or a defence civilian is guilty of an offence if, with intent to make a gain for the person or

another person or with intent to deceive, or to cause loss, damage or injury to, another person:

- (a) the person makes or signs a service document that is false in a material particular; or
- (b) the person makes in a service document an entry that is false in a material particular; or
- (c) the person alters a service document so that the document is false in a material particular; or
- (d) the person engages in conduct that results in the suppression of, the defacing of, the making away with or the destruction of a service document, or a part of a service document, that it is the person's duty to preserve or produce; or
- (e) the person does not make an entry in a service document that it is the person's duty to make so that the document is rendered false in a material particular.

Maximum punishment: Imprisonment for 2 years.

- (2) In subsection (1):

service document means a document belonging or pertaining to, or connected with, the Defence Force.

56 False statement in relation to application for a benefit

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person makes a statement, (whether orally, in a document or in any other way); and
 - (b) the statement:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the statement is misleading; and
 - (c) the person knows of the matter mentioned in paragraph (b); and
 - (d) the statement is made in, in connection with, or in support of, an application for:
 - (i) a grant, payment or allotment of money or an allowance; or
 - (ii) leave of absence; or

Schedule 1 Amendment of Acts

Part 1 Amendments relating to the Criminal Code

- (iii) any other benefit or advantage;
for the person or another person; and
- (e) the application arises out of, or is based on, membership of,
or service in or in connection with, the Defence Force.

Maximum punishment: Imprisonment for 12 months.

- (2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the statement is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the statement did not omit any matter or thing without which the statement is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

- (4) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person makes a statement (whether orally, in a document or in any other way); and
 - (b) the statement:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the statement is misleading; and
 - (c) the person is reckless as to the matter mentioned in paragraph (b); and
 - (d) the statement is made in, in connection with, or in support of, an application for:
 - (i) a grant, payment or allotment of money or an allowance; or
 - (ii) leave of absence; or
 - (iii) any other benefit or advantage;
for the person or another person; and
 - (e) the application arises out of, or is based on, membership of, or service in or in connection with, the Defence Force.

Maximum punishment: Imprisonment for 6 months.

- (5) Subsection (4) does not apply as a result of subparagraph (4)(b)(i) if the statement is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3) of the *Criminal Code*.

- (6) Subsection (4) does not apply as a result of subparagraph (4)(b)(ii) if the statement did not omit any matter or thing without which the statement is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6). See subsection 13.3(3) of the *Criminal Code*.

- (7) In this section:

benefit includes any advantage and is not limited to property.

57 False statement in relation to appointment or enlistment

- (1) A person is guilty of an offence if, in or in connection with an application for the person's appointment to or enlistment in the Defence Force:

(a) the person:

(i) is required to answer a question set out in a document required to be completed in relation to the person's appointment or enlistment; and

(ii) with intent to deceive, makes a false answer to the question; or

(b) with intent to deceive, the person gives any false information or document in relation to the person's appointment or enlistment; or

(c) with intent to deceive, the person does not disclose, if and when lawfully required to do so, particulars of any prior service in the Defence Force;

and as a result of that application, the person is appointed to or enlisted in the Defence Force.

Maximum punishment: Imprisonment for 3 months.

- (2) A defence member is guilty of an offence if:

(a) the member:

- (i) is required to answer a question set out in a document required to be completed in relation to the person's appointment or enlistment; and
- (ii) with intent to deceive, makes a false answer to the question; or
- (b) with intent to deceive, the member gives any false information or document in relation to the person's appointment or enlistment; or
- (c) with intent to deceive, the member does not disclose, if and when lawfully required to do so, particulars of any prior service in the Defence Force.

Maximum punishment: Imprisonment for 3 months.

58 Unauthorised disclosure of information

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
 - (a) the person discloses information; and
 - (b) there is no lawful authority for the disclosure; and
 - (c) the disclosure is likely to be prejudicial to the security or defence of Australia.

Maximum punishment: Imprisonment for 2 years.

- (2) Strict liability applies to paragraph (1)(c).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the person proves that he or she neither knew, nor could reasonably be expected to have known, that the disclosure of the information was likely to be prejudicial to the security or defence of Australia.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

59 Dealing in or possession of narcotic goods

- (1) A person who is a defence member or a defence civilian is guilty of an offence if the person:
 - (a) is outside Australia; and
 - (b) sells, or deals or traffics in, narcotic goods; and
-

(c) knows the nature of the goods.

Maximum punishment: Imprisonment for 10 years.

(2) It is a defence to a charge under subsection (1) if the person proves that he or she had lawful authority for the conduct mentioned in paragraph (1)(b).

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

(3) A person who is a defence member or a defence civilian is guilty of an offence if the person:

- (a) is outside Australia; and
- (b) is in possession of narcotic goods; and
- (c) knows that he or she possesses those goods and knows their nature.

Maximum punishment:

- (d) if the offence is committed in relation to:
 - (i) a substance other than cannabis; or
 - (ii) a quantity of cannabis exceeding 25 grams in mass; imprisonment for 2 years; or
 - (e) if the convicted person is a member of the Defence Force and the offence is committed in relation to a quantity of cannabis not exceeding 25 grams in mass:
 - (i) in the case of a first offence—a fine of the amount of the member's pay for 14 days; or
 - (ii) in the case of a second or later offence—dismissal from the Defence Force; or
 - (f) in any other case—a fine of \$100.
- (4) It is a defence to a charge under subsection (3) if the person proves that he or she had lawful authority for possessing the narcotic goods.

Note: The defendant bears a legal burden in relation to the matter in subsection (4). See section 13.4 of the *Criminal Code*.

(5) A person who is a defence member or a defence civilian is guilty of an offence if the person:

- (a) is outside Australia; and

- (b) administers to himself or herself narcotic goods other than cannabis.

Maximum punishment: Imprisonment for 2 years.

- (6) A person who is a defence member or a defence civilian is guilty of an offence if the person uses cannabis, whether within or outside Australia.

Maximum punishment:

- (a) if the convicted person is a member of the Defence Force:
 - (i) in the case of a first offence—a fine of the amount of the member's pay for 14 days; or
 - (ii) in the case of a second or later offence—dismissal from the Defence Force; or
- (b) in any other case—a fine of \$100.

- (7) A defence member is guilty of an offence if the member:

- (a) is in Australia; and
- (b) is in possession of a quantity of cannabis not exceeding 25 grams in mass; and
- (c) knows that he or she possesses the cannabis and knows its nature.

Maximum punishment:

- (d) in the case of a first offence—a fine of the amount of the member's pay for 14 days; or
- (e) in the case of a second or later offence—dismissal from the Defence Force.

- (8) It is a defence to a charge under subsection (7) if the member proves that he or she had lawful authority for possessing the cannabis.

Note: The defendant bears a legal burden in relation to the matter in subsection (8). See section 13.4 of the *Criminal Code*.

- (9) In this section:

cannabis means a cannabis plant, whether living or dead, and includes, in any form, any flower or fruiting tops, leaves, seeds, stalks or any other part of a cannabis plant or cannabis plants and

any mixture of parts of a cannabis plant or cannabis plants, but does not include cannabis resin or cannabis fibre.

narcotic goods has the same meaning as in the *Customs Act 1901*.

60 Prejudicial conduct

- (1) A defence member is guilty of an offence if the member engages in conduct that is likely to prejudice the discipline of, or bring discredit on, the Defence Force.

Maximum punishment: Imprisonment for 3 months.

- (2) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the member proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

Division 8—Offences based on Territory offences

61 Offences based on Territory offences

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:

- (a) the person engages in conduct in the Jervis Bay Territory;
and
- (b) engaging in that conduct is a Territory offence.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if:

- (a) the person engages in conduct in a public place outside the Jervis Bay Territory; and
- (b) engaging in that conduct would be a Territory offence, if it took place in a public place in the Jervis Bay Territory.

- (3) A person who is a defence member or a defence civilian is guilty of an offence if:

- (a) the person engages in conduct outside the Jervis Bay Territory (whether or not in a public place); and

- (b) engaging in that conduct would be a Territory offence, if it took place in the Jervis Bay Territory (whether or not in a public place).
- (4) The maximum punishment for an offence against this section is:
- (a) if the relevant Territory offence is punishable by a fixed punishment—that fixed punishment; or
 - (b) otherwise—a punishment that is not more severe than the maximum punishment for the relevant Territory offence.
- (5) Strict liability applies to paragraphs (1)(b), (2)(b) and (3)(b).
- Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (6) To avoid doubt, section 10 of this Act does not have the effect that Chapter 2 of the *Criminal Code* applies to the law in force in Jervis Bay, for the purpose of determining whether an offence against this section has been committed.

Note: Section 10 of this Act applies Chapter 2 of the *Criminal Code* to the content of this section, but not to the content of the law in force in Jervis Bay. To determine, for the purposes of this section, whether Chapter 2 of the Code applies to Jervis Bay law, it is necessary to consult Jervis Bay law.

50 Section 62

Repeal the section, substitute:

62 Commanding or ordering a service offence to be committed

- (1) A defence member is guilty of an offence if:
- (a) the member commands or orders a person to engage in conduct; and
 - (b) the conduct would constitute the commission of a service offence.

Maximum punishment:

- (c) if the last-mentioned offence is punishable by a fixed punishment—that fixed punishment; or
 - (d) otherwise—a punishment that is not more severe than the maximum punishment for the last-mentioned offence.
- (2) Strict liability applies to paragraph (1)(b).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

51 Paragraph 70(4)(b)

Omit “section 7 of the *Crimes Act 1914*”, substitute “section 11.1 of the *Criminal Code*”.

52 Paragraph 96(1)(a)

Omit “subsection 61(1)”, substitute “section 61”.

53 Paragraph 96(2)(a)

Omit “section 15, 16, 20 or 22”, substitute “any of sections 15 to 16B, section 20 or section 22”.

54 Subsection 96(4)

Omit “subsection 61(1)” (wherever occurring), substitute “section 61”.

55 Paragraph 101QA(1)(e)

Omit “, without reasonable excuse,”.

56 After subsection 101QA(1)

Insert:

(1A) It is a defence to a charge under subsection (1) if the person proves that he or she had a reasonable excuse for refusing or failing to submit to the examination.

Note: The defendant bears a legal burden in relation to the matter in subsection (1A). See section 13.4 of the *Criminal Code*.

57 Paragraph 101QA(2)(f)

Omit “, without reasonable excuse”.

58 After subsection 101QA(2)

Insert:

(2A) It is a defence to a charge under subsection (2) if the person proves that he or she had a reasonable excuse for refusing or failing to do the act mentioned in subparagraph (2)(f)(i) or (ii).

Note: The defendant bears a legal burden in relation to the matter in subsection (2A). See section 13.4 of the *Criminal Code*.

59 Subsection 101QA(3)

Omit “paragraph (1)(e) or (2)(f)”, substitute “subsection (1A) or (2A)”.

60 Subsection 101QA(4)

After “to the extent that”, insert “the person proves that”.

61 Subsection 101QA(4)

Omit “is not reasonably necessary”, substitute “was not reasonably necessary”.

62 At the end of subsection 101QA(4)

Add:

Note: The defendant bears a legal burden in relation to the matter in subsection (4). See section 13.4 of the *Criminal Code*.

63 Paragraph 142(1)(a)

Omit “subsection 61(1)”, substitute “section 61”.

64 Paragraph 142(1)(b)

Omit “section 7 of the *Crimes Act 1914*”, substitute “section 11.1 of the *Criminal Code*”.

65 Paragraph 142(1)(c)

Omit “subsection 61(1)” (wherever occurring), substitute “section 61”.

66 Section 145

Omit “unsoundness of mind” (wherever occurring), substitute “mental impairment”.

67 Schedule 6 (table item 1, column 1)

Omit “subsection 15(3)”, substitute “section 16B”.

68 Schedule 6 (table item 1, column 2)

Omit “subsection 15(1)”, substitute “section 15, 15A, 15D, 15E, 15F, 15G, 16 or 16A”.

69 Schedule 6 (table item 2)

Repeal the item.

70 Schedule 6 (table item 12, column 1)

Omit “relating to an act or omission of the kind referred to in paragraph 31(1)(a)”.

71 Schedule 6 (table item 13, column 2)

Omit “an act or omission of the kind referred to in paragraph 37(1)(a)”, substitute “being intoxicated on duty”.

72 Schedule 6 (table item 15, column 1)

Omit “32(2)”, substitute “32(3)”.

73 Schedule 6 (table item 16, column 1)

Omit “32(2)”, substitute “32(3)”.

74 Schedule 6 (table item 16, column 2)

Omit “an act or omission of the kind referred to in paragraph 37(1)(a)”, substitute “being intoxicated on duty”.

75 Schedule 6 (table item 17, column 1)

Omit “32(2)”, substitute “32(3)”.

76 Schedule 6 (table item 23, column 1)

Omit “40(3)”, substitute “40A(1)”.

77 Schedule 6 (table item 23, column 2)

Omit “40(5)”, substitute “40B(1)”.

78 Schedule 6 (table item 23, column 2)

Omit “40(8)”, substitute “40D(1)”.

79 Schedule 6 (table item 24, column 1)

Omit “40(4)”, substitute “40A(2)”.

80 Schedule 6 (table item 24, column 2)

Omit “40(6)”, substitute “40B(2)”.

81 Schedule 6 (table item 24, column 2)

Omit “40(9)”, substitute “40D(2)”.

82 Schedule 6 (table item 25, column 1)

Omit “40(5)”, substitute “40B(1)”.

83 Schedule 6 (table item 25, column 2)

Omit “40(8)”, substitute “40D(1)”.

84 Schedule 6 (table item 26, column 1)

Omit “40(6)”, substitute “40B(2)”.

85 Schedule 6 (table item 26, column 2)

Omit “40(9)”, substitute “40D(2)”.

86 Schedule 6 (table item 30)

Repeal the item, substitute:

- | | | |
|----|-----------------------------|---|
| 30 | Offence against section 47C | (a) Offence against section 47P (b) Offence against section 45 (c) Offence against section 46 |
|----|-----------------------------|---|

87 Schedule 6 (after table item 31)

Insert:

- | | | |
|-----|----------------------------------|----------------------------------|
| 31A | Offence against subsection 56(1) | Offence against subsection 56(4) |
|-----|----------------------------------|----------------------------------|

88 Schedule 6 (table item 32, column 2)

Omit “59(2)”, substitute “59(3)”.

Defence Force Retirement and Death Benefits Act 1973

89 At the end of Part I

Add:

6D Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

90 Subsection 127(1)

Repeal the subsection, substitute:

- (1) A person who is a recipient member, a person in receipt of a pension under the previous legislation (other than section 55 or 57 of the previous Act) or a person to whom deferred benefit is applicable under section 78 of this Act or section 82ZB of the previous Act, is guilty of an offence if:
 - (a) the person becomes an eligible member of the Defence Force; and
 - (b) the person does not, within 14 days after becoming such a member, inform the Authority in writing that the person has become such a member.

Maximum penalty: \$100.

91 Subsection 130(3)

Repeal the subsection, substitute:

- (3) A person is guilty of an offence if:
 - (a) the person is given a notice under subsection (2); and
 - (b) the person does not comply with the requirements in the notice.

Maximum penalty: \$40.

92 Subsection 130(8)

Repeal the subsection, substitute:

- (8) A judgment creditor is guilty of an offence if:
 - (a) the judgment creditor serves a copy of a judgment on the Authority under subsection (1); and
 - (b) the judgment creditor does not notify the Authority immediately the judgment debt is satisfied.

Maximum penalty:

- (c) if the offender is a natural person—\$100 or imprisonment for 3 months; or
- (d) if the offender is a body corporate—\$500.

Defence Forces Retirement Benefits Act 1948

93 At the end of Part I

Add:

26 Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

94 Subsection 69(7)

Repeal the subsection, substitute:

- (7) A person who is a pensioner (other than a pensioner under section 55 or 57) is guilty of an offence if:
- (a) the person again becomes a member for the purposes of this Act; and
 - (b) the person does not, within 14 days after again becoming such a member, notify the board in the prescribed manner.

Maximum penalty: \$40.

95 Saving—regulations

Regulations that were in effect for the purposes of subsection 69(7) of the *Defence Forces Retirement Benefits Act 1948* immediately before the commencement of this item continue to have effect after that time as if they had been made for the purposes of subsection 69(7) of that Act, as in force after that time.

96 Subsection 85A(3)

Repeal the subsection, substitute:

- (3) A person is guilty of an offence if:
- (a) the person is given a notice under subsection (2); and
 - (b) the person does not comply with the requirements in the notice.

Maximum penalty: \$40.

97 Subsection 85A(8)

Repeal the subsection, substitute:

- (8) A judgment creditor is guilty of an offence if:
- (a) the judgment creditor serves a copy of a judgment on the Authority under subsection (1); and
 - (b) the judgment creditor does not notify the Authority immediately the judgment debt is satisfied.

Maximum penalty:

- (c) if the offender is a natural person—\$100 or imprisonment for 3 months; or
- (d) if the offender is a body corporate—\$500.

Defence (Special Undertakings) Act 1952

98 After section 4

Insert:

5 Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

99 Section 9

Repeal the section, substitute:

9 Unlawful entry etc.

- (1) A person is guilty of an offence if:
- (a) the person is in, enters or flies over an area; and
 - (b) the area is a prohibited area.

Maximum penalty: Imprisonment for 7 years.

- (1A) Subsection (1) does not apply if the person holds a permit under section 11 in respect of the prohibited area.

Schedule 1 Amendment of Acts

Part 1 Amendments relating to the Criminal Code

Note: The defendant bears an evidential burden in relation to the matter in subsection (1A). See subsection 13.3(3) of the *Criminal Code*.

- (1B) If a permit under section 11 has been issued to the master of a ship or the pilot of an aircraft for the purpose of enabling the ship or aircraft to enter, pass through or be over a prohibited area, a person lawfully on board the ship or aircraft does not commit an offence under subsection (1) by reason only of his or her presence on board the ship or aircraft.

Note: The defendant bears an evidential burden in relation to the matter in subsection (1B). See subsection 13.3(3) of the *Criminal Code*.

- (2) A person is guilty of an offence if:

(a) the person:

- (i) makes a photograph, sketch, plan, model, article, note or other document of, or relating to, an area or anything in an area; or
- (ii) obtains, collects, records, uses, has in his or her possession, publishes or communicates to some other person a photograph, sketch, plan, model, article, note or other document or information relating to, or used in, an area, or relating to anything in an area; and

(b) the area is a prohibited area.

Maximum penalty: Imprisonment for 7 years.

- (3) Subsection (2) does not apply if the person has lawful authority or excuse for the relevant conduct.

Note: The defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

100 Subsections 11(4) and (5)

Repeal the subsections, substitute:

- (4) A person is guilty of an offence if the person:

- (a) holds a permit under this section; and
- (b) does not comply with the conditions and restrictions specified in the permit.

Maximum penalty: Imprisonment for 7 years.

- (5) A person is guilty of an offence if:
-

- (a) the person holds a permit under this section; and
- (b) the permit is revoked or suspended; and
- (c) the person does not immediately deliver it to the officer in charge of the prohibited area or to a person specified by the person revoking or suspending the permit.

Maximum penalty: Imprisonment for 2 years.

101 Sections 12 and 13

Repeal the sections, substitute:

12 Compliance with directions of officer in charge

A person is guilty of an offence if the person:

- (a) holds a permit under section 11; and
- (b) enters or is in a prohibited area; and
- (c) is given a direction by the officer in charge of the prohibited area for regulating his or her conduct in the prohibited area; and
- (d) does not comply with the direction.

Maximum penalty: Imprisonment for 2 years.

13 Sabotage

(1) A person is guilty of an offence if:

- (a) the person engages in conduct; and
- (b) the conduct results in damage to, the destruction of, obstruction of or interference with any of the things listed in subsection (2); and
- (c) the person intends to bring about that result; and
- (d) the thing is used or occupied either wholly or in part for the purposes of a special defence undertaking.

Maximum penalty: Imprisonment for 7 years.

(2) The following are the listed things:

- (a) a railway, tramway, roadway, wharf, pier or jetty, or a work or structure which is part of or connected with a means of transport by land, water or air;

- (b) a searchlight, lighthouse, buoy or other navigational aid;
- (c) a public building, fire station, aerodrome, air station or runway for aircraft;
- (d) a signal, telegraph, telephone, radar or wireless station or office;
- (e) a place used for gas, water or electricity works or other works for purposes of a public character.

102 Subsection 14(3)

Repeal the subsection, substitute:

- (3) A person is guilty of an offence if:
 - (a) an order under this section applies to the person; and
 - (b) the person contravenes or fails to comply with the order.

Maximum penalty for a contravention of this subsection:
Imprisonment for 2 years.

103 Sections 16 and 17

Repeal the sections, substitute:

16 Procedure in emergency

The pilot of an aircraft is guilty of an offence if the pilot:

- (a) is over a prohibited area or a restricted area; and
- (b) knows of that fact; and
- (c) does not have lawful authority to be there; and
- (d) does not:
 - (i) immediately cause the aircraft to be flown outside the area; and
 - (ii) as soon as possible, report the circumstances to the nearest air traffic control centre established under the Air Navigation Regulations; and
 - (iii) cause the aircraft to land at such place as is designated by the air traffic control centre and, for that purpose, obey any instructions given by the air traffic control centre as to the movement of that aircraft.

Maximum penalty: Imprisonment for 2 years.

17 Use of cameras etc.

- (1) A person is guilty of an offence if:
- (a) the person is in or is passing over a prohibited area; and
 - (b) the person has in his or her possession, carries or uses a camera or other photographic apparatus or material.

Maximum penalty: Imprisonment for 2 years.

- (2) Subsection (1) does not apply if the person does have the authority of the officer in charge of the prohibited area for the conduct mentioned in paragraph (1)(b).

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

104 Subsection 23(2)

Repeal the subsection, substitute:

- (2) A person is guilty of an offence if:
- (a) the person is in, or in the neighbourhood of, a prohibited area; and
 - (b) the person is required by the officer in charge of the prohibited area or by a Commonwealth officer or a constable to give his or her name and address to the officer or constable; and
 - (c) the person does not do so.

Maximum penalty: Imprisonment for 2 years.

105 Subsection 31(2)

Repeal the subsection, substitute:

- (2) A person is guilty of an offence if:
- (a) an order is made or a direction is given under this section; and
 - (b) the person contravenes or fails to comply with the order or direction.

Maximum penalty: Imprisonment for 5 years.

Military Superannuation and Benefits Act 1991

106 At the end of Part 1

Add:

3A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Naval Defence Act 1910

107 After section 5A

Insert:

5B Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

108 Section 44E

Repeal the section, substitute:

44E Intoxicating liquor not to be supplied to Naval Reserve Cadets

- (1) A person is guilty of an offence if:
 - (a) the person sells or supplies intoxicating liquor to another person; and
 - (b) the person is a member of the Naval Reserve Cadets, is under such age as is prescribed, and is in uniform.

Maximum penalty: \$40.

- (2) Subsection (1) does not apply if the liquor is sold or supplied by direction of a duly qualified medical practitioner.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) An offence under subsection (1) is an offence of strict liability.
-

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

109 Saving—regulations

Regulations that were in effect for the purposes of section 44E of the *Naval Defence Act 1910* immediately before the commencement of this item continue to have effect after that time as if they had been made for the purposes of section 44E of that Act, as in force after that time.

Weapons of Mass Destruction (Prevention of Proliferation) Act 1995

110 After section 8

Insert:

8A Application of the *Criminal Code*

Chapter 2 (other than Part 2.5) of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

111 Subsection 14(6)

Repeal the subsection, substitute:

- (6) A person is guilty of an offence if:
- (a) the person supplies or exports goods or provides services;
and
 - (b) that conduct is in contravention of a notice, or of a condition stated in a notice, in force under this section; and
 - (c) the person knows of the contravention.

Penalty: Imprisonment for 8 years.

Part 2—Technical amendment

Defence Force Discipline Act 1982

112 Subsection 3(1) (subparagraph (b)(i) of the definition of *defence member*)

Omit “and”, substitute “or”.

*[Minister’s second reading speech made in—
House of Representatives on 29 August 2001
Senate on 24 September 2001]*

(170/01)
