Criminal Code Act 1995

No. 12, 1995 as amended

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Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Criminal Code Act 1995* as in force on 1 January 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 1 January 2014.

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of each amended provision.

Uncommenced amendments

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

Provisions ceasing to have effect

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to the criminal law

1 Short title

This Act may be cited as the *Criminal Code Act 1995*.

2 Commencement

(1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

(2) If this Act does not commence under subsection (1) within the period of 5 years beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 The Criminal Code

(1) The Schedule has effect as a law of the Commonwealth.

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

3A External Territories

The *Criminal Code* extends to every external Territory.

3B Offshore installations

Unless the contrary intention appears, an installation (within the meaning of the *Customs Act 1901*) that is deemed by section 5C of the *Customs Act 1901* to be part of Australia is also taken to be part of Australia for the purposes of the *Criminal Code*.

4 Definitions

(1) Expressions used in the Code (or in a particular provision of the Code) that are defined in the Dictionary at the end of the Code have the meanings given to them in the Dictionary.

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(2) Definitions in the Code of expressions used in the Code apply to its construction except insofar as the context or subject matter otherwise indicates or requires.

5 Regulations

The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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Schedule—The Criminal Code

Section 3

Chapter 1—Codification

Division 1

1.1 Codification

The only offences against laws of the Commonwealth are those offences created by, or under the authority of, this Code or any other Act.

Note: Under subsection 38(1) of the *Acts Interpretation Act 1901*, ***Act*** means an Act passed by the Parliament of the Commonwealth.

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Chapter 2—General principles of criminal responsibility

Part 2.1—Purpose and application

Division 2

2.1 Purpose

The purpose of this Chapter is to codify the general principles of criminal responsibility under laws of the Commonwealth. It contains all the general principles of criminal responsibility that apply to any offence, irrespective of how the offence is created.

2.2 Application

(1) This Chapter applies to all offences against this Code.

(2) Subject to section 2.3, this Chapter applies on and after 15 December 2001 to all other offences.

(3) Section 11.6 applies to all offences.

2.3 Application of provisions relating to intoxication

Subsections 4.2(6) and (7) and Division 8 apply to all offences. For the purpose of interpreting those provisions in connection with an offence, the other provisions of this Chapter may be considered, whether or not those other provisions apply to the offence concerned.

Part 2.2—The elements of an offence

Division 3—General

3.1 Elements

(1) An offence consists of physical elements and fault elements.

(2) However, the law that creates the offence may provide that there is no fault element for one or more physical elements.

(3) The law that creates the offence may provide different fault elements for different physical elements.

3.2 Establishing guilt in respect of offences

In order for a person to be found guilty of committing an offence the following must be proved:

(a) the existence of such physical elements as are, under the law creating the offence, relevant to establishing guilt;

(b) in respect of each such physical element for which a fault element is required, one of the fault elements for the physical element.

Note 1: See Part 2.6 on proof of criminal responsibility.

Note 2: See Part 2.7 on geographical jurisdiction.

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Division 4—Physical elements

4.1 Physical elements

(1) A physical element of an offence may be:

(a) conduct; or

(b) a result of conduct; or

(c) a circumstance in which conduct, or a result of conduct, occurs.

(2) In this Code:

conduct means an act, an omission to perform an act or a state of affairs.

engage in conduct means:

(a) do an act; or

(b) omit to perform an act.

4.2 Voluntariness

(1) Conduct can only be a physical element if it is voluntary.

(2) Conduct is only voluntary if it is a product of the will of the person whose conduct it is.

(3) The following are examples of conduct that is not voluntary:

(a) a spasm, convulsion or other unwilled bodily movement;

(b) an act performed during sleep or unconsciousness;

(c) an act performed during impaired consciousness depriving the person of the will to act.

(4) An omission to perform an act is only voluntary if the act omitted is one which the person is capable of performing.

(5) If the conduct constituting an offence consists only of a state of affairs, the state of affairs is only voluntary if it is one over which the person is capable of exercising control.

(6) Evidence of self-induced intoxication cannot be considered in determining whether conduct is voluntary.

(7) Intoxication is self-induced unless it came about:
   (a) involuntarily; or
   (b) as a result of fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force.

4.3 Omissions

An omission to perform an act can only be a physical element if:
   (a) the law creating the offence makes it so; or
   (b) the law creating the offence impliedly provides that the offence is committed by an omission to perform an act that there is a duty to perform by a law of the Commonwealth, a State or a Territory, or at common law.

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Division 5—Fault elements

5.1 Fault elements

(1) A fault element for a particular physical element may be intention, knowledge, recklessness or negligence.

(2) Subsection (1) does not prevent a law that creates a particular offence from specifying other fault elements for a physical element of that offence.

5.2 Intention

(1) A person has intention with respect to conduct if he or she means to engage in that conduct.

(2) A person has intention with respect to a circumstance if he or she believes that it exists or will exist.

(3) A person has intention with respect to a result if he or she means to bring it about or is aware that it will occur in the ordinary course of events.

5.3 Knowledge

A person has knowledge of a circumstance or a result if he or she is aware that it exists or will exist in the ordinary course of events.

5.4 Recklessness

(1) A person is reckless with respect to a circumstance if:
  (a) he or she is aware of a substantial risk that the circumstance exists or will exist; and
  (b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

(2) A person is reckless with respect to a result if:
  (a) he or she is aware of a substantial risk that the result will occur; and
  (b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

(3) The question whether taking a risk is unjustifiable is one of fact.

(4) If recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness will satisfy that fault element.

5.5 Negligence

A person is negligent with respect to a physical element of an offence if his or her conduct involves:

(a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and

(b) such a high risk that the physical element exists or will exist;

that the conduct merits criminal punishment for the offence.

5.6 Offences that do not specify fault elements

(1) If the law creating the offence does not specify a fault element for a physical element that consists only of conduct, intention is the fault element for that physical element.

(2) If the law creating the offence does not specify a fault element for a physical element that consists of a circumstance or a result, recklessness is the fault element for that physical element.

Note: Under subsection 5.4(4), recklessness can be established by proving intention, knowledge or recklessness.

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Division 6—Cases where fault elements are not required

6.1 Strict liability

(1) If a law that creates an offence provides that the offence is an offence of strict liability:

(a) there are no fault elements for any of the physical elements of the offence; and

(b) the defence of mistake of fact under section 9.2 is available.

(2) If a law that creates an offence provides that strict liability applies to a particular physical element of the offence:

(a) there are no fault elements for that physical element; and

(b) the defence of mistake of fact under section 9.2 is available in relation to that physical element.

(3) The existence of strict liability does not make any other defence unavailable.

6.2 Absolute liability

(1) If a law that creates an offence provides that the offence is an offence of absolute liability:

(a) there are no fault elements for any of the physical elements of the offence; and

(b) the defence of mistake of fact under section 9.2 is unavailable.

(2) If a law that creates an offence provides that absolute liability applies to a particular physical element of the offence:

(a) there are no fault elements for that physical element; and

(b) the defence of mistake of fact under section 9.2 is unavailable in relation to that physical element.

(3) The existence of absolute liability does not make any other defence unavailable.

Part 2.3—Circumstances in which there is no criminal responsibility

Note: This Part sets out defences that are generally available. Defences that apply to a more limited class of offences are dealt with elsewhere in this Code and in other laws.

Division 7—Circumstances involving lack of capacity

7.1 Children under 10

A child under 10 years old is not criminally responsible for an offence.

7.2 Children over 10 but under 14

(1) A child aged 10 years or more but under 14 years old can only be criminally responsible for an offence if the child knows that his or her conduct is wrong.

(2) The question whether a child knows that his or her conduct is wrong is one of fact. The burden of proving this is on the prosecution.

7.3 Mental impairment

(1) A person is not criminally responsible for an offence if, at the time of carrying out the conduct constituting the offence, the person was suffering from a mental impairment that had the effect that:

(a) the person did not know the nature and quality of the conduct; or

(b) the person did not know that the conduct was wrong (that is, the person could not reason with a moderate degree of sense and composure about whether the conduct, as perceived by reasonable people, was wrong); or

(c) the person was unable to control the conduct.

(2) The question whether the person was suffering from a mental impairment is one of fact.

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Section 7.3

(3) A person is presumed not to have been suffering from such a mental impairment. The presumption is only displaced if it is proved on the balance of probabilities (by the prosecution or the defence) that the person was suffering from such a mental impairment.

(4) The prosecution can only rely on this section if the court gives leave.

(5) The tribunal of fact must return a special verdict that a person is not guilty of an offence because of mental impairment if and only if it is satisfied that the person is not criminally responsible for the offence only because of a mental impairment.

(6) A person cannot rely on a mental impairment to deny voluntariness or the existence of a fault element but may rely on this section to deny criminal responsibility.

(7) If the tribunal of fact is satisfied that a person carried out conduct as a result of a delusion caused by a mental impairment, the delusion cannot otherwise be relied on as a defence.

(8) In this Code:

mental impairment includes senility, intellectual disability, mental illness, brain damage and severe personality disorder.

(9) The reference in subsection (8) to **mental illness** is a reference to an underlying pathological infirmity of the mind, whether of long or short duration and whether permanent or temporary, but does not include a condition that results from the reaction of a healthy mind to extraordinary external stimuli. However, such a condition may be evidence of a mental illness if it involves some abnormality and is prone to recur.

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Division 8—Intoxication

8.1 Definition—self-induced intoxication

For the purposes of this Division, intoxication is self-induced unless it came about:

(a) involuntarily; or

(b) as a result of fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force.

8.2 Intoxication (offences involving basic intent)

(1) Evidence of self-induced intoxication cannot be considered in determining whether a fault element of basic intent existed.

(2) A fault element of basic intent is a fault element of intention for a physical element that consists only of conduct.

Note: A fault element of intention with respect to a circumstance or with respect to a result is not a fault element of basic intent.

(3) This section does not prevent evidence of self-induced intoxication being taken into consideration in determining whether conduct was accidental.

(4) This section does not prevent evidence of self-induced intoxication being taken into consideration in determining whether a person had a mistaken belief about facts if the person had considered whether or not the facts existed.

(5) A person may be regarded as having considered whether or not facts existed if:

(a) he or she had considered, on a previous occasion, whether those facts existed in circumstances surrounding that occasion; and

(b) he or she honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

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Section 8.3

8.3 Intoxication (negligence as fault element)

(1) If negligence is a fault element for a particular physical element of an offence, in determining whether that fault element existed in relation to a person who is intoxicated, regard must be had to the standard of a reasonable person who is not intoxicated.

(2) However, if intoxication is not self-induced, regard must be had to the standard of a reasonable person intoxicated to the same extent as the person concerned.

8.4 Intoxication (relevance to defences)

(1) If any part of a defence is based on actual knowledge or belief, evidence of intoxication may be considered in determining whether that knowledge or belief existed.

(2) If any part of a defence is based on reasonable belief, in determining whether that reasonable belief existed, regard must be had to the standard of a reasonable person who is not intoxicated.

(3) If a person's intoxication is not self-induced, in determining whether any part of a defence based on reasonable belief exists, regard must be had to the standard of a reasonable person intoxicated to the same extent as the person concerned.

(4) If, in relation to an offence:

(a) each physical element has a fault element of basic intent; and

(b) any part of a defence is based on actual knowledge or belief;

evidence of self-induced intoxication cannot be considered in determining whether that knowledge or belief existed.

(5) A fault element of basic intent is a fault element of intention for a physical element that consists only of conduct.

Note: A fault element of intention with respect to a circumstance or with respect to a result is not a fault element of basic intent.

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8.5 Involuntary intoxication

A person is not criminally responsible for an offence if the person's conduct constituting the offence was as a result of intoxication that was not self-induced.

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Division 9—Circumstances involving mistake or ignorance

9.1 Mistake or ignorance of fact (fault elements other than negligence)

(1) A person is not criminally responsible for an offence that has a physical element for which there is a fault element other than negligence if:

(a) at the time of the conduct constituting the physical element, the person is under a mistaken belief about, or is ignorant of, facts; and

(b) the existence of that mistaken belief or ignorance negates any fault element applying to that physical element.

(2) In determining whether a person was under a mistaken belief about, or was ignorant of, facts, the tribunal of fact may consider whether the mistaken belief or ignorance was reasonable in the circumstances.

9.2 Mistake of fact (strict liability)

(1) A person is not criminally responsible for an offence that has a physical element for which there is no fault element if:

(a) at or before the time of the conduct constituting the physical element, the person considered whether or not facts existed, and is under a mistaken but reasonable belief about those facts; and

(b) had those facts existed, the conduct would not have constituted an offence.

(2) A person may be regarded as having considered whether or not facts existed if:

(a) he or she had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and

(b) he or she honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

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Note: Section 6.2 prevents this section applying in situations of absolute liability.

9.3 Mistake or ignorance of statute law

(1) A person can be criminally responsible for an offence even if, at the time of the conduct constituting the offence, he or she is mistaken about, or ignorant of, the existence or content of an Act that directly or indirectly creates the offence or directly or indirectly affects the scope or operation of the offence.

(2) Subsection (1) does not apply, and the person is not criminally responsible for the offence in those circumstances, if the Act is expressly to the contrary effect.

9.4 Mistake or ignorance of subordinate legislation

(1) A person can be criminally responsible for an offence even if, at the time of the conduct constituting the offence, he or she is mistaken about, or ignorant of, the existence or content of the subordinate legislation that directly or indirectly creates the offence or directly or indirectly affects the scope or operation of the offence.

(2) Subsection (1) does not apply, and the person is not criminally responsible for the offence in those circumstances, if:

(a) the subordinate legislation is expressly to the contrary effect; or

(c) at the time of the conduct, the subordinate legislation:

(i) has not been made available to the public (by means of the Register under the *Legislative Instruments Act 2003* or otherwise); and

(ii) has not otherwise been made available to persons likely to be affected by it in such a way that the person would have become aware of its contents by exercising due diligence.

(3) In this section:

available includes available by sale.

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subordinate legislation means an instrument of a legislative character made directly or indirectly under an Act, or in force directly or indirectly under an Act.

9.5 Claim of right

(1) A person is not criminally responsible for an offence that has a physical element relating to property if:

(a) at the time of the conduct constituting the offence, the person is under a mistaken belief about a proprietary or possessory right; and

(b) the existence of that right would negate a fault element for any physical element of the offence.

(2) A person is not criminally responsible for any other offence arising necessarily out of the exercise of the proprietary or possessory right that he or she mistakenly believes to exist.

(3) This section does not negate criminal responsibility for an offence relating to the use of force against a person.

Division 10—Circumstances involving external factors

10.1 Intervening conduct or event

A person is not criminally responsible for an offence that has a physical element to which absolute liability or strict liability applies if:

(a) the physical element is brought about by another person over whom the person has no control or by a non-human act or event over which the person has no control; and

(b) the person could not reasonably be expected to guard against the bringing about of that physical element.

10.2 Duress

(1) A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence under duress.

(2) A person carries out conduct under duress if and only if he or she reasonably believes that:

(a) a threat has been made that will be carried out unless an offence is committed; and

(b) there is no reasonable way that the threat can be rendered ineffective; and

(c) the conduct is a reasonable response to the threat.

(3) This section does not apply if the threat is made by or on behalf of a person with whom the person under duress is voluntarily associating for the purpose of carrying out conduct of the kind actually carried out.

10.3 Sudden or extraordinary emergency

(1) A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence in response to circumstances of sudden or extraordinary emergency.

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(2) This section applies if and only if the person carrying out the conduct reasonably believes that:

(a) circumstances of sudden or extraordinary emergency exist; and

(b) committing the offence is the only reasonable way to deal with the emergency; and

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

10.4 Self-defence

(1) A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence in self-defence.

(2) A person carries out conduct in self-defence if and only if he or she believes the conduct is necessary:

(a) to defend himself or herself or another person; or

(b) to prevent or terminate the unlawful imprisonment of himself or herself or another person; or

(c) to protect property from unlawful appropriation, destruction, damage or interference; or

(d) to prevent criminal trespass to any land or premises; or

(e) to remove from any land or premises a person who is committing criminal trespass;

and the conduct is a reasonable response in the circumstances as he or she perceives them.

(3) This section does not apply if the person uses force that involves the intentional infliction of death or really serious injury:

(a) to protect property; or

(b) to prevent criminal trespass; or

(c) to remove a person who is committing criminal trespass.

(4) This section does not apply if:

(a) the person is responding to lawful conduct; and

(b) he or she knew that the conduct was lawful.

However, conduct is not lawful merely because the person carrying it out is not criminally responsible for it.

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10.5 Lawful authority

A person is not criminally responsible for an offence if the conduct constituting the offence is justified or excused by or under a law.

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Part 2.4—Extensions of criminal responsibility

Division 11

11.1 Attempt

(1) A person who attempts to commit an offence is guilty of the offence of attempting to commit that offence and is punishable as if the offence attempted had been committed.

(2) For the person to be guilty, the person's conduct must be more than merely preparatory to the commission of the offence. The question whether conduct is more than merely preparatory to the commission of the offence is one of fact.

(3) For the offence of attempting to commit an offence, intention and knowledge are fault elements in relation to each physical element of the offence attempted.

Note: Under section 3.2, only one of the fault elements of intention or knowledge would need to be established in respect of each physical element of the offence attempted.

(3A) Subsection (3) has effect subject to subsection (6A).

(4) A person may be found guilty even if:

(a) committing the offence attempted is impossible; or

(b) the person actually committed the offence attempted.

(5) A person who is found guilty of attempting to commit an offence cannot be subsequently charged with the completed offence.

(6) Any defences, procedures, limitations or qualifying provisions that apply to an offence apply also to the offence of attempting to commit that offence.

(6A) Any special liability provisions that apply to an offence apply also to the offence of attempting to commit that offence.

(7) It is not an offence to attempt to commit an offence against section 11.2 (complicity and common purpose), section 11.2A (joint commission), section 11.3 (commission by proxy),

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section 11.5 (conspiracy to commit an offence) or section 135.4 (conspiracy to defraud).

11.2 Complicity and common purpose

(1) A person who aids, abets, counsels or procures the commission of an offence by another person is taken to have committed that offence and is punishable accordingly.

(2) For the person to be guilty:

(a) the person's conduct must have in fact aided, abetted, counselled or procured the commission of the offence by the other person; and

(b) the offence must have been committed by the other person.

(3) For the person to be guilty, the person must have intended that:

(a) his or her conduct would aid, abet, counsel or procure the commission of any offence (including its fault elements) of the type the other person committed; or

(b) his or her conduct would aid, abet, counsel or procure the commission of an offence and have been reckless about the commission of the offence (including its fault elements) that the other person in fact committed.

(3A) Subsection (3) has effect subject to subsection (6).

(4) A person cannot be found guilty of aiding, abetting, counselling or procuring the commission of an offence if, before the offence was committed, the person:

(a) terminated his or her involvement; and

(b) took all reasonable steps to prevent the commission of the offence.

(5) A person may be found guilty of aiding, abetting, counselling or procuring the commission of an offence even if the other person has not been prosecuted or has not been found guilty.

(6) Any special liability provisions that apply to an offence apply also for the purposes of determining whether a person is guilty of that offence because of the operation of subsection (1).

(7) If the trier of fact is satisfied beyond reasonable doubt that a person either:

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(a) is guilty of a particular offence otherwise than because of the operation of subsection (1); or

(b) is guilty of that offence because of the operation of subsection (1);

but is not able to determine which, the trier of fact may nonetheless find the person guilty of that offence.

11.2A Joint commission

Joint commission

(1) If:

(a) a person and at least one other party enter into an agreement to commit an offence; and

(b) either:

(i) an offence is committed in accordance with the agreement (within the meaning of subsection (2)); or

(ii) an offence is committed in the course of carrying out the agreement (within the meaning of subsection (3));

the person is taken to have committed the joint offence referred to in whichever of subsection (2) or (3) applies and is punishable accordingly.

Offence committed in accordance with the agreement

(2) An offence is committed in accordance with the agreement if:

(a) the conduct of one or more parties in accordance with the agreement makes up the physical elements consisting of conduct of an offence (the ***joint offence***) of the same type as the offence agreed to; and

(b) to the extent that a physical element of the joint offence consists of a result of conduct—that result arises from the conduct engaged in; and

(c) to the extent that a physical element of the joint offence consists of a circumstance—the conduct engaged in, or a result of the conduct engaged in, occurs in that circumstance.

Offence committed in the course of carrying out the agreement

(3) An offence is committed in the course of carrying out the agreement if the person is reckless about the commission of an

offence (the ***joint offence***) that another party in fact commits in the course of carrying out the agreement.

Intention to commit an offence

(4) For a person to be guilty of an offence because of the operation of this section, the person and at least one other party to the agreement must have intended that an offence would be committed under the agreement.

Agreement may be non-verbal etc.

(5) The agreement:
  (a) may consist of a non-verbal understanding; and
  (b) may be entered into before, or at the same time as, the conduct constituting any of the physical elements of the joint offence was engaged in.

Termination of involvement etc.

(6) A person cannot be found guilty of an offence because of the operation of this section if, before the conduct constituting any of the physical elements of the joint offence concerned was engaged in, the person:
  (a) terminated his or her involvement; and
  (b) took all reasonable steps to prevent that conduct from being engaged in.

Person may be found guilty even if another party not prosecuted etc.

(7) A person may be found guilty of an offence because of the operation of this section even if:
  (a) another party to the agreement has not been prosecuted or has not been found guilty; or
  (b) the person was not present when any of the conduct constituting the physical elements of the joint offence was engaged in.

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Special liability provisions apply

(8) Any special liability provisions that apply to the joint offence apply also for the purposes of determining whether a person is guilty of that offence because of the operation of this section.

11.3 Commission by proxy

A person who:

(a) has, in relation to each physical element of an offence, a fault element applicable to that physical element; and

(b) procures conduct of another person that (whether or not together with conduct of the procurer) would have constituted an offence on the part of the procurer if the procurer had engaged in it;

is taken to have committed that offence and is punishable accordingly.

11.4 Incitement

(1) A person who urges the commission of an offence is guilty of the offence of incitement.

(2) For the person to be guilty, the person must intend that the offence incited be committed.

(2A) Subsection (2) has effect subject to subsection (4A).

(3) A person may be found guilty even if committing the offence incited is impossible.

(4) Any defences, procedures, limitations or qualifying provisions that apply to an offence apply also to the offence of incitement in respect of that offence.

(4A) Any special liability provisions that apply to an offence apply also to the offence of incitement in respect of that offence.

(5) It is not an offence to incite the commission of an offence against section 11.1 (attempt), this section or section 11.5 (conspiracy).

Penalty:

(a) if the offence incited is punishable by life imprisonment—imprisonment for 10 years; or

(b) if the offence incited is punishable by imprisonment for 14 years or more, but is not punishable by life imprisonment—imprisonment for 7 years; or

(c) if the offence incited is punishable by imprisonment for 10 years or more, but is not punishable by imprisonment for 14 years or more—imprisonment for 5 years; or

(d) if the offence is otherwise punishable by imprisonment—imprisonment for 3 years or for the maximum term of imprisonment for the offence incited, whichever is the lesser; or

(e) if the offence incited is not punishable by imprisonment—the number of penalty units equal to the maximum number of penalty units applicable to the offence incited.

Note: Under section 4D of the *Crimes Act 1914*, these penalties are only maximum penalties. Subsection 4B(2) of that Act allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount not greater than 5 times the maximum fine that the court could impose on an individual convicted of the same offence. Penalty units are defined in section 4AA of that Act.

11.5 Conspiracy

(1) A person who conspires with another person to commit an offence punishable by imprisonment for more than 12 months, or by a fine of 200 penalty units or more, is guilty of the offence of conspiracy to commit that offence and is punishable as if the offence to which the conspiracy relates had been committed.

Note: Penalty units are defined in section 4AA of the *Crimes Act 1914*.

(2) For the person to be guilty:

(a) the person must have entered into an agreement with one or more other persons; and

(b) the person and at least one other party to the agreement must have intended that an offence would be committed pursuant to the agreement; and

(c) the person or at least one other party to the agreement must have committed an overt act pursuant to the agreement.

(2A) Subsection (2) has effect subject to subsection (7A).

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(3) A person may be found guilty of conspiracy to commit an offence even if:

(a) committing the offence is impossible; or

(b) the only other party to the agreement is a body corporate; or

(c) each other party to the agreement is at least one of the following:

(i) a person who is not criminally responsible;

(ii) a person for whose benefit or protection the offence exists; or

(d) subject to paragraph (4)(a), all other parties to the agreement have been acquitted of the conspiracy.

(4) A person cannot be found guilty of conspiracy to commit an offence if:

(a) all other parties to the agreement have been acquitted of the conspiracy and a finding of guilt would be inconsistent with their acquittal; or

(b) he or she is a person for whose benefit or protection the offence exists.

(5) A person cannot be found guilty of conspiracy to commit an offence if, before the commission of an overt act pursuant to the agreement, the person:

(a) withdrew from the agreement; and

(b) took all reasonable steps to prevent the commission of the offence.

(6) A court may dismiss a charge of conspiracy if it thinks that the interests of justice require it to do so.

(7) Any defences, procedures, limitations or qualifying provisions that apply to an offence apply also to the offence of conspiracy to commit that offence.

(7A) Any special liability provisions that apply to an offence apply also to the offence of conspiracy to commit that offence.

(8) Proceedings for an offence of conspiracy must not be commenced without the consent of the Director of Public Prosecutions. However, a person may be arrested for, charged with, or remanded in custody or on bail in connection with, an offence of conspiracy before the necessary consent has been given.

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11.6 References in Acts to offences

(1) A reference in a law of the Commonwealth to an offence against a law of the Commonwealth (including this Code) includes a reference to an offence against section 11.1 (attempt), 11.4 (incitement) or 11.5 (conspiracy) of this Code that relates to such an offence.

(2) A reference in a law of the Commonwealth (including this Code) to a particular offence includes a reference to an offence against section 11.1 (attempt), 11.4 (incitement) or 11.5 (conspiracy) of this Code that relates to that particular offence.

(3) Subsection (1) or (2) does not apply if a law of the Commonwealth is expressly or impliedly to the contrary effect.

(4) In particular, an express reference in a law of the Commonwealth to:

(a) an offence against, under or created by the *Crimes Act 1914*; or

(b) an offence against, under or created by a particular provision of the *Crimes Act 1914*; or

(c) an offence arising out of the first-mentioned law or another law of the Commonwealth; or

(d) an offence arising out of a particular provision; or

(e) an offence against, under or created by the *Taxation Administration Act 1953*;

does not mean that the first-mentioned law is impliedly to the contrary effect.

Note: Sections 11.2 (complicity and common purpose), 11.2A (joint commission), and 11.3 (commission by proxy) of this Code operate as extensions of principal offences and are therefore not referred to in this section.

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Part 2.5—Corporate criminal responsibility

Division 12

12.1 General principles

(1) This Code applies to bodies corporate in the same way as it applies to individuals. It so applies with such modifications as are set out in this Part, and with such other modifications as are made necessary by the fact that criminal liability is being imposed on bodies corporate rather than individuals.

(2) A body corporate may be found guilty of any offence, including one punishable by imprisonment.

Note: Section 4B of the *Crimes Act 1914* enables a fine to be imposed for offences that only specify imprisonment as a penalty.

12.2 Physical elements

If a physical element of an offence is committed by an employee, agent or officer of a body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, the physical element must also be attributed to the body corporate.

12.3 Fault elements other than negligence

(1) If intention, knowledge or recklessness is a fault element in relation to a physical element of an offence, that fault element must be attributed to a body corporate that expressly, tacitly or impliedly authorised or permitted the commission of the offence.

(2) The means by which such an authorisation or permission may be established include:

(a) proving that the body corporate's board of directors intentionally, knowingly or recklessly carried out the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence; or

(b) proving that a high managerial agent of the body corporate intentionally, knowingly or recklessly engaged in the relevant

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conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence; or

(c) proving that a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to non-compliance with the relevant provision; or

(d) proving that the body corporate failed to create and maintain a corporate culture that required compliance with the relevant provision.

(3) Paragraph (2)(b) does not apply if the body corporate proves that it exercised due diligence to prevent the conduct, or the authorisation or permission.

(4) Factors relevant to the application of paragraph (2)(c) or (d) include:

(a) whether authority to commit an offence of the same or a similar character had been given by a high managerial agent of the body corporate; and

(b) whether the employee, agent or officer of the body corporate who committed the offence believed on reasonable grounds, or entertained a reasonable expectation, that a high managerial agent of the body corporate would have authorised or permitted the commission of the offence.

(5) If recklessness is not a fault element in relation to a physical element of an offence, subsection (2) does not enable the fault element to be proved by proving that the board of directors, or a high managerial agent, of the body corporate recklessly engaged in the conduct or recklessly authorised or permitted the commission of the offence.

(6) In this section:

board of directors means the body (by whatever name called) exercising the executive authority of the body corporate.

corporate culture means an attitude, policy, rule, course of conduct or practice existing within the body corporate generally or in the part of the body corporate in which the relevant activities takes place.

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high managerial agent means an employee, agent or officer of the body corporate with duties of such responsibility that his or her conduct may fairly be assumed to represent the body corporate's policy.

12.4 Negligence

(1) The test of negligence for a body corporate is that set out in section 5.5.

(2) If:

(a) negligence is a fault element in relation to a physical element of an offence; and

(b) no individual employee, agent or officer of the body corporate has that fault element;

that fault element may exist on the part of the body corporate if the body corporate's conduct is negligent when viewed as a whole (that is, by aggregating the conduct of any number of its employees, agents or officers).

(3) Negligence may be evidenced by the fact that the prohibited conduct was substantially attributable to:

(a) inadequate corporate management, control or supervision of the conduct of one or more of its employees, agents or officers; or

(b) failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.

12.5 Mistake of fact (strict liability)

(1) A body corporate can only rely on section 9.2 (mistake of fact (strict liability)) in respect of conduct that would, apart from this section, constitute an offence on its part if:

(a) the employee, agent or officer of the body corporate who carried out the conduct was under a mistaken but reasonable belief about facts that, had they existed, would have meant that the conduct would not have constituted an offence; and

(b) the body corporate proves that it exercised due diligence to prevent the conduct.

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(2) A failure to exercise due diligence may be evidenced by the fact that the prohibited conduct was substantially attributable to:

(a) inadequate corporate management, control or supervision of the conduct of one or more of its employees, agents or officers; or

(b) failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.

12.6 Intervening conduct or event

A body corporate cannot rely on section 10.1 (intervening conduct or event) in respect of a physical element of an offence brought about by another person if the other person is an employee, agent or officer of the body corporate.

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Part 2.6—Proof of criminal responsibility

Division 13

13.1 Legal burden of proof—prosecution

(1) The prosecution bears a legal burden of proving every element of an offence relevant to the guilt of the person charged.

Note: See section 3.2 on what elements are relevant to a person's guilt.

(2) The prosecution also bears a legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof imposed on the defendant.

(3) In this Code:

legal burden, in relation to a matter, means the burden of proving the existence of the matter.

13.2 Standard of proof—prosecution

(1) A legal burden of proof on the prosecution must be discharged beyond reasonable doubt.

(2) Subsection (1) does not apply if the law creating the offence specifies a different standard of proof.

13.3 Evidential burden of proof—defence

(1) Subject to section 13.4, a burden of proof that a law imposes on a defendant is an evidential burden only.

(2) A defendant who wishes to deny criminal responsibility by relying on a provision of Part 2.3 (other than section 7.3) bears an evidential burden in relation to that matter.

(3) A defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence bears an evidential burden in relation to that matter. The exception, exemption, excuse, qualification or justification need not accompany the description of the offence.

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(4) The defendant no longer bears the evidential burden in relation to a matter if evidence sufficient to discharge the burden is adduced by the prosecution or by the court.

(5) The question whether an evidential burden has been discharged is one of law.

(6) In this Code:

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

13.4 Legal burden of proof—defence

A burden of proof that a law imposes on the defendant is a legal burden if and only if the law expressly:

(a) specifies that the burden of proof in relation to the matter in question is a legal burden; or

(b) requires the defendant to prove the matter; or

(c) creates a presumption that the matter exists unless the contrary is proved.

13.5 Standard of proof—defence

A legal burden of proof on the defendant must be discharged on the balance of probabilities.

13.6 Use of averments

A law that allows the prosecution to make an averment is taken not to allow the prosecution:

(a) to aver any fault element of an offence; or

(b) to make an averment in prosecuting for an offence that is directly punishable by imprisonment.

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Part 2.7—Geographical jurisdiction

Division 14—Standard geographical jurisdiction

14.1 Standard geographical jurisdiction

(1) This section may apply to a particular offence in either of the following ways:

(a) unless the contrary intention appears, this section applies to the following offences:

(i) a primary offence, where the provision creating the offence commences at or after the commencement of this section;

(ii) an ancillary offence, to the extent to which it relates to a primary offence covered by subparagraph (i);

(b) if a law of the Commonwealth provides that this section applies to a particular offence—this section applies to that offence.

Note: In the case of paragraph (b), the expression ***offence*** is given an extended meaning by subsections 11.2(1) and 11.2A(1), section 11.3 and subsection 11.6(1).

(2) If this section applies to a particular offence, a person does not commit the offence unless:

(a) the conduct constituting the alleged offence occurs:

(i) wholly or partly in Australia; or

(ii) wholly or partly on board an Australian aircraft or an Australian ship; or

(b) the conduct constituting the alleged offence occurs wholly outside Australia and a result of the conduct occurs:

(i) wholly or partly in Australia; or

(ii) wholly or partly on board an Australian aircraft or an Australian ship; or

(c) all of the following conditions are satisfied:

(i) the alleged offence is an ancillary offence;

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(ii) the conduct constituting the alleged offence occurs wholly outside Australia;

(iii) the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur, wholly or partly in Australia or wholly or partly on board an Australian aircraft or an Australian ship.

Defence—primary offence

(3) If this section applies to a particular offence, a person is not guilty of the offence if:

(aa) the alleged offence is a primary offence; and

(a) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(b) there is not in force in:

(i) the foreign country where the conduct constituting the alleged offence occurs; or

(ii) the part of the foreign country where the conduct constituting the alleged offence occurs;

a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the first-mentioned offence.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3). See subsection 13.3(3).

(4) For the purposes of the application of subsection 13.3(3) to an offence, subsection (3) of this section is taken to be an exception provided by the law creating the offence.

Defence—ancillary offence

(5) If this section applies to a particular offence, a person is not guilty of the offence if:

(a) the alleged offence is an ancillary offence; and

(b) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(c) the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs,

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or is intended by the person to occur, wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(d) there is not in force in:

(i) the foreign country where the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur; or

(ii) the part of the foreign country where the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur;

a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the primary offence.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5). See subsection 13.3(3).

(6) For the purposes of the application of subsection 13.3(3) to an offence, subsection (5) of this section is taken to be an exception provided by the law creating the offence.

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Division 15—Extended geographical jurisdiction

15.1 Extended geographical jurisdiction—category A

(1) If a law of the Commonwealth provides that this section applies to a particular offence, a person does not commit the offence unless:

(a) the conduct constituting the alleged offence occurs:

(i) wholly or partly in Australia; or

(ii) wholly or partly on board an Australian aircraft or an Australian ship; or

(b) the conduct constituting the alleged offence occurs wholly outside Australia and a result of the conduct occurs:

(i) wholly or partly in Australia; or

(ii) wholly or partly on board an Australian aircraft or an Australian ship; or

(c) the conduct constituting the alleged offence occurs wholly outside Australia and:

(i) at the time of the alleged offence, the person is an Australian citizen; or

(ii) at the time of the alleged offence, the person is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; or

(d) all of the following conditions are satisfied:

(i) the alleged offence is an ancillary offence;

(ii) the conduct constituting the alleged offence occurs wholly outside Australia;

(iii) the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur, wholly or partly in Australia or wholly or partly on board an Australian aircraft or an Australian ship.

Note: The expression ***offence*** is given an extended meaning by subsections 11.2(1) and 11.2A(1), section 11.3 and subsection 11.6(1).

Defence—primary offence

(2) If a law of the Commonwealth provides that this section applies to a particular offence, a person is not guilty of the offence if:

(aa) the alleged offence is a primary offence; and

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(a) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(b) the person is neither:

(i) an Australian citizen; nor

(ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and

(c) there is not in force in:

(i) the foreign country where the conduct constituting the alleged offence occurs; or

(ii) the part of the foreign country where the conduct constituting the alleged offence occurs;

a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the first-mentioned offence.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3).

(3) For the purposes of the application of subsection 13.3(3) to an offence, subsection (2) of this section is taken to be an exception provided by the law creating the offence.

Defence—ancillary offence

(4) If a law of the Commonwealth provides that this section applies to a particular offence, a person is not guilty of the offence if:

(a) the alleged offence is an ancillary offence; and

(b) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(c) the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur, wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(d) the person is neither:

(i) an Australian citizen; nor

(ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and

(e) there is not in force in:

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(i) the foreign country where the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur; or

(ii) the part of the foreign country where the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur;

a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the primary offence.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3).

(5) For the purposes of the application of subsection 13.3(3) to an offence, subsection (4) of this section is taken to be an exception provided by the law creating the offence.

15.2 Extended geographical jurisdiction—category B

(1) If a law of the Commonwealth provides that this section applies to a particular offence, a person does not commit the offence unless:

(a) the conduct constituting the alleged offence occurs:

(i) wholly or partly in Australia; or

(ii) wholly or partly on board an Australian aircraft or an Australian ship; or

(b) the conduct constituting the alleged offence occurs wholly outside Australia and a result of the conduct occurs:

(i) wholly or partly in Australia; or

(ii) wholly or partly on board an Australian aircraft or an Australian ship; or

(c) the conduct constituting the alleged offence occurs wholly outside Australia and:

(i) at the time of the alleged offence, the person is an Australian citizen; or

(ii) at the time of the alleged offence, the person is a resident of Australia; or

(iii) at the time of the alleged offence, the person is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; or

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(d) all of the following conditions are satisfied:

(i) the alleged offence is an ancillary offence;

(ii) the conduct constituting the alleged offence occurs wholly outside Australia;

(iii) the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur, wholly or partly in Australia or wholly or partly on board an Australian aircraft or an Australian ship.

Note: The expression ***offence*** is given an extended meaning by subsections 11.2(1) and 11.2A(1), section 11.3 and subsection 11.6(1).

Defence—primary offence

(2) If a law of the Commonwealth provides that this section applies to a particular offence, a person is not guilty of the offence if:

(aa) the alleged offence is a primary offence; and

(a) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(b) the person is neither:

(i) an Australian citizen; nor

(ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and

(c) there is not in force in:

(i) the foreign country where the conduct constituting the alleged offence occurs; or

(ii) the part of the foreign country where the conduct constituting the alleged offence occurs;

a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the first-mentioned offence.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3).

(3) For the purposes of the application of subsection 13.3(3) to an offence, subsection (2) of this section is taken to be an exception provided by the law creating the offence.

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Defence—ancillary offence

(4) If a law of the Commonwealth provides that this section applies to a particular offence, a person is not guilty of the offence if:

(a) the alleged offence is an ancillary offence; and

(b) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(c) the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur, wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(d) the person is neither:

(i) an Australian citizen; nor

(ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and

(e) there is not in force in:

(i) the foreign country where the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur; or

(ii) the part of the foreign country where the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur;

a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the primary offence.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3).

(5) For the purposes of the application of subsection 13.3(3) to an offence, subsection (4) of this section is taken to be an exception provided by the law creating the offence.

15.3 Extended geographical jurisdiction—category C

(1) If a law of the Commonwealth provides that this section applies to a particular offence, the offence applies:

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(a) whether or not the conduct constituting the alleged offence occurs in Australia; and

(b) whether or not a result of the conduct constituting the alleged offence occurs in Australia.

Note: The expression ***offence*** is given an extended meaning by subsections 11.2(1) and 11.2A(1), section 11.3 and subsection 11.6(1).

Defence—primary offence

(2) If a law of the Commonwealth provides that this section applies to a particular offence, a person is not guilty of the offence if:

(aa) the alleged offence is a primary offence; and

(a) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(b) the person is neither:

(i) an Australian citizen; nor

(ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and

(c) there is not in force in:

(i) the foreign country where the conduct constituting the alleged offence occurs; or

(ii) the part of the foreign country where the conduct constituting the alleged offence occurs;

a law of that foreign country, or that part of that foreign country, that creates an offence that corresponds to the first-mentioned offence.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3).

(3) For the purposes of the application of subsection 13.3(3) to an offence, subsection (2) of this section is taken to be an exception provided by the law creating the offence.

Defence—ancillary offence

(4) If a law of the Commonwealth provides that this section applies to a particular offence, a person is not guilty of the offence if:

(a) the alleged offence is an ancillary offence; and

(b) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(c) the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur, wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(d) the person is neither:

(i) an Australian citizen; nor

(ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and

(e) there is not in force in:

(i) the foreign country where the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur; or

(ii) the part of the foreign country where the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur;

a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the primary offence.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3).

(5) For the purposes of the application of subsection 13.3(3) to an offence, subsection (4) of this section is taken to be an exception provided by the law creating the offence.

15.4 Extended geographical jurisdiction—category D

If a law of the Commonwealth provides that this section applies to a particular offence, the offence applies:

(a) whether or not the conduct constituting the alleged offence occurs in Australia; and

(b) whether or not a result of the conduct constituting the alleged offence occurs in Australia.

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Section 15.4

Note: The expression ***offence*** is given an extended meaning by subsections 11.2(1) and 11.2A(1), section 11.3 and subsection 11.6(1).

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Division 16—Miscellaneous

16.1 Attorney-General's consent required for prosecution if alleged conduct occurs wholly in a foreign country in certain circumstances

(1) Proceedings for an offence must not be commenced without the Attorney-General's written consent if:

(a) section 14.1, 15.1, 15.2, 15.3 or 15.4 applies to the offence; and

(b) the conduct constituting the alleged offence occurs wholly in a foreign country; and

(c) at the time of the alleged offence, the person alleged to have committed the offence is neither:

(i) an Australian citizen; nor

(ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

(2) However, a person may be arrested for, charged with, or remanded in custody or released on bail in connection with an offence before the necessary consent has been given.

16.2 When conduct taken to occur partly in Australia

Sending things

(1) For the purposes of this Part, if a person sends a thing, or causes a thing to be sent:

(a) from a point outside Australia to a point in Australia; or

(b) from a point in Australia to a point outside Australia;

that conduct is taken to have occurred partly in Australia.

Sending electronic communications

(2) For the purposes of this Part, if a person sends, or causes to be sent, an electronic communication:

(a) from a point outside Australia to a point in Australia; or

(b) from a point in Australia to a point outside Australia;

that conduct is taken to have occurred partly in Australia.

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Point

(3) For the purposes of this section, ***point*** includes a mobile or potentially mobile point, whether on land, underground, in the atmosphere, underwater, at sea or anywhere else.

16.3 Meaning of *Australia*

(1) For the purposes of the application of this Part to a particular primary offence, ***Australia*** has the same meaning it would have if it were used in a geographical sense in the provision creating the primary offence.

(2) For the purposes of the application of this Part to a particular ancillary offence, ***Australia*** has the same meaning it would have if it were used in a geographical sense in the provision creating the primary offence to which the ancillary offence relates.

(3) For the purposes of this Part, if a provision creating an offence extends to an external Territory, it is to be assumed that if the expression ***Australia*** were used in a geographical sense in that provision, that expression would include that external Territory.

(4) This section does not affect the meaning of the expressions ***Australian aircraft***, ***Australian citizen*** or ***Australian ship***.

16.4 Result of conduct

A reference in this Part to a ***result of conduct*** constituting an offence is a reference to a result that is a physical element of the offence (within the meaning of subsection 4.1(1)).

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Chapter 4—The integrity and security of the international community and foreign governments

Division 70—Bribery of foreign public officials

70.1 Definitions

In this Division:

benefit includes any advantage and is not limited to property.

business advantage means an advantage in the conduct of business.

control, in relation to a company, body or association, includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

duty, in relation to a foreign public official, means any authority, duty, function or power that:

(a) is conferred on the official; or

(b) that the official holds himself or herself out as having.

foreign government body means:

(a) the government of a foreign country or of part of a foreign country; or

(b) an authority of the government of a foreign country; or

(c) an authority of the government of part of a foreign country; or

(d) a foreign local government body or foreign regional government body; or

(e) a foreign public enterprise.

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foreign public enterprise means a company or any other body or association where:

(a) in the case of a company—one of the following applies:

(i) the government of a foreign country or of part of a foreign country holds more than 50% of the issued share capital of the company;

(ii) the government of a foreign country or of part of a foreign country holds more than 50% of the voting power in the company;

(iii) the government of a foreign country or of part of a foreign country is in a position to appoint more than 50% of the company's board of directors;

(iv) the directors (however described) of the company are accustomed or under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of the government of a foreign country or of part of a foreign country;

(v) the government of a foreign country or of part of a foreign country is in a position to exercise control over the company; and

(b) in the case of any other body or association—either of the following applies:

(i) the members of the executive committee (however described) of the body or association are accustomed or under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of the government of a foreign country or of part of a foreign country;

(ii) the government of a foreign country or of part of a foreign country is in a position to exercise control over the body or association; and

(c) the company, body or association:

(i) enjoys special legal rights or a special legal status under a law of a foreign country or of part of a foreign country; or

(ii) enjoys special benefits or privileges under a law of a foreign country or of part of a foreign country;

because of the relationship of the company, body or association with the government of the foreign country or of the part of the foreign country, as the case may be.

foreign public official means:

(a) an employee or official of a foreign government body; or

(b) an individual who performs work for a foreign government body under a contract; or

(c) an individual who holds or performs the duties of an appointment, office or position under a law of a foreign country or of part of a foreign country; or

(d) an individual who holds or performs the duties of an appointment, office or position created by custom or convention of a foreign country or of part of a foreign country; or

(e) an individual who is otherwise in the service of a foreign government body (including service as a member of a military force or police force); or

(f) a member of the executive, judiciary or magistracy of a foreign country or of part of a foreign country; or

(g) an employee of a public international organisation; or

(h) an individual who performs work for a public international organisation under a contract; or

(i) an individual who holds or performs the duties of an office or position in a public international organisation; or

(j) an individual who is otherwise in the service of a public international organisation; or

(k) a member or officer of the legislature of a foreign country or of part of a foreign country; or

(l) an individual who:

(i) is an authorised intermediary of a foreign public official covered by any of the above paragraphs; or

(ii) holds himself or herself out to be the authorised intermediary of a foreign public official covered by any of the above paragraphs.

public international organisation means:

(a) an organisation:

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(i) of which 2 or more countries, or the governments of 2 or more countries, are members; or

(ii) that is constituted by persons representing 2 or more countries, or representing the governments of 2 or more countries; or

(b) an organisation established by, or a group of organisations constituted by:

(i) organisations of which 2 or more countries, or the governments of 2 or more countries, are members; or

(ii) organisations that are constituted by the representatives of 2 or more countries, or the governments of 2 or more countries; or

(c) an organisation that is:

(i) an organ of, or office within, an organisation described in paragraph (a) or (b); or

(ii) a commission, council or other body established by an organisation so described or such an organ; or

(iii) a committee, or subcommittee of a committee, of an organisation described in paragraph (a) or (b), or of such an organ, council or body.

share includes stock.

70.2 Bribing a foreign public official

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

(a) the person:

(i) provides a benefit to another person; or

(ii) causes a benefit to be provided to another person; or

(iii) offers to provide, or promises to provide, a benefit to another person; or

(iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and

(b) the benefit is not legitimately due to the other person; and

(c) the first-mentioned person does so with the intention of influencing a foreign public official (who may be the other person) in the exercise of the official's duties as a foreign public official in order to:

(i) obtain or retain business; or

(ii) obtain or retain a business advantage that is not legitimately due to the recipient, or intended recipient, of the business advantage (who may be the first-mentioned person).

Note: For defences see sections 70.3 and 70.4.

(1A) In a prosecution for an offence under subsection (1), it is not necessary to prove that business, or a business advantage, was actually obtained or retained.

Benefit that is not legitimately due

(2) For the purposes of this section, in working out if a benefit is ***not legitimately due*** to a person in a particular situation, disregard the following:

(a) the fact that the benefit may be, or be perceived to be, customary, necessary or required in the situation;

(b) the value of the benefit;

(c) any official tolerance of the benefit.

Business advantage that is not legitimately due

(3) For the purposes of this section, in working out if a business advantage is ***not legitimately due*** to a person in a particular situation, disregard the following:

(a) the fact that the business advantage may be customary, or perceived to be customary, in the situation;

(b) the value of the business advantage;

(c) any official tolerance of the business advantage.

Penalty for individual

(4) An offence against subsection (1) committed by an individual is punishable on conviction by imprisonment for not more than 10 years, a fine not more than 10,000 penalty units, or both.

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Penalty for body corporate

(5) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine not more than the greatest of the following:

(a) 100,000 penalty units;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the conduct constituting the offence—3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the period (the ***turnover period***) of 12 months ending at the end of the month in which the conduct constituting the offence occurred.

(6) For the purposes of this section, the ***annual turnover*** of a body corporate, during the turnover period, is the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during that period, other than the following supplies:

(a) supplies made from any of those bodies corporate to any other of those bodies corporate;

(b) supplies that are input taxed;

(c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*);

(d) supplies that are not made in connection with an enterprise that the body corporate carries on.

(7) Expressions used in subsection (6) that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning in that subsection as they have in that Act.

(8) The question whether 2 bodies corporate are related to each other is to be determined for the purposes of this section in the same way as for the purposes of the *Corporations Act 2001*.

70.3 Defence—conduct lawful in foreign public official's country

(1) A person is not guilty of an offence against section 70.2 in the cases set out in the following table:

Defence of lawful conduct			
Item	**In a case where the person's conduct occurred in relation to this kind of foreign public official...**	**and if it were assumed that the person's conduct had occurred wholly...**	**this written law requires or permits the provision of the benefit ...**
1	an employee or official of a foreign government body	in the place where the central administration of the body is located	a written law in force in that place
2	an individual who performs work for a foreign government body under a contract	in the place where the central administration of the body is located	a written law in force in that place
3	an individual who holds or performs the duties of an appointment, office or position under a law of a foreign country or of part of a foreign country	in the foreign country or in the part of the foreign country, as the case may be	a written law in force in the foreign country or in the part of the foreign country, as the case may be
4	an individual who holds or performs the duties of an appointment, office or position created by custom or convention of a foreign country or of part of a foreign country	in the foreign country or in the part of the foreign country, as the case may be	a written law in force in the foreign country or in the part of the foreign country, as the case may be
5	an individual who is otherwise in the service of a foreign government body (including service as a member of a military force or police force)	in the place where the central administration of the body is located	a written law in force in that place
6	a member of the executive, judiciary or magistracy of a	in the foreign country or in the part of the	a written law in force in the

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Section 70.3

Defence of lawful conduct			
Item	**In a case where the person's conduct occurred in relation to this kind of foreign public official...**	**and if it were assumed that the person's conduct had occurred wholly...**	**this written law requires or permits the provision of the benefit ...**
	foreign country or of part of a foreign country	foreign country, as the case may be	foreign country or in the part of the foreign country, as the case may be
7	an employee of a public international organisation	in the place where the headquarters of the organisation is located	a written law in force in that place
8	an individual who performs work for a public international organisation under a contract	in the place where the headquarters of the organisation is located	a written law in force in that place
9	an individual who holds or performs the duties of a public office or position in a public international organisation	in the place where the headquarters of the organisation is located	a written law in force in that place
10	an individual who is otherwise in the service of a public international organisation	in the place where the headquarters of the organisation is located	a written law in force in that place
11	a member or officer of the legislature of a foreign country or of part of a foreign country	in the foreign country or in the part of the foreign country, as the case may be	a written law in force in the foreign country or in the part of the foreign country, as the case may be

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

(2) A person is not guilty of an offence against section 70.2 if:

(a) the person's conduct occurred in relation to a foreign public official covered by paragraph (l) of the definition of ***foreign***

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public official in section 70.1 (which deals with intermediaries of foreign public officials covered by other paragraphs of that definition); and

(b) assuming that the first-mentioned person's conduct had occurred instead in relation to:

(i) the other foreign public official of whom the first-mentioned foreign public official was an authorised intermediary; or

(ii) the other foreign public official in relation to whom the first-mentioned foreign public official held himself or herself out to be an authorised intermediary;

subsection (1) would have applied in relation to the first-mentioned person.

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

(3) To avoid doubt, if:

(a) a person's conduct occurred in relation to a foreign public official covered by 2 or more paragraphs of the definition of ***foreign public official*** in section 70.1; and

(b) at least one of the corresponding items in subsection (1) is applicable to the conduct of the first-mentioned person;

subsection (1) applies to the conduct of the first-mentioned person.

70.4 Defence—facilitation payments

(1) A person is not guilty of an offence against section 70.2 if:

(a) the value of the benefit was of a minor nature; and

(b) the person's conduct was engaged in for the sole or dominant purpose of expediting or securing the performance of a routine government action of a minor nature; and

(c) as soon as practicable after the conduct occurred, the person made a record of the conduct that complies with subsection (3); and

(d) any of the following subparagraphs applies:

(i) the person has retained that record at all relevant times;

(ii) that record has been lost or destroyed because of the actions of another person over whom the first-mentioned person had no control, or because of a

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non-human act or event over which the first-mentioned person had no control, and the first-mentioned person could not reasonably be expected to have guarded against the bringing about of that loss or that destruction;

(iii) a prosecution for the offence is instituted more than 7 years after the conduct occurred.

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

Routine government action

(2) For the purposes of this section, a ***routine government action*** is an action of a foreign public official that:

(a) is ordinarily and commonly performed by the official; and

(b) is covered by any of the following subparagraphs:

(i) granting a permit, licence or other official document that qualifies a person to do business in a foreign country or in a part of a foreign country;

(ii) processing government papers such as a visa or work permit;

(iii) providing police protection or mail collection or delivery;

(iv) scheduling inspections associated with contract performance or related to the transit of goods;

(v) providing telecommunications services, power or water;

(vi) loading and unloading cargo;

(vii) protecting perishable products, or commodities, from deterioration;

(viii) any other action of a similar nature; and

(c) does not involve a decision about:

(i) whether to award new business; or

(ii) whether to continue existing business with a particular person; or

(iii) the terms of new business or existing business; and

(d) does not involve encouraging a decision about:

(i) whether to award new business; or

(ii) whether to continue existing business with a particular person; or

(iii) the terms of new business or existing business.

Content of records

(3) A record of particular conduct engaged in by a person complies with this subsection if the record sets out:

(a) the value of the benefit concerned; and

(b) the date on which the conduct occurred; and

(c) the identity of the foreign public official in relation to whom the conduct occurred; and

(d) if that foreign public official is not the other person mentioned in paragraph 70.2(1)(a)—the identity of that other person; and

(e) particulars of the routine government action that was sought to be expedited or secured by the conduct; and

(f) the person's signature or some other means of verifying the person's identity.

70.5 Territorial and nationality requirements

(1) A person does not commit an offence against section 70.2 unless:

(a) the conduct constituting the alleged offence occurs:

(i) wholly or partly in Australia; or

(ii) wholly or partly on board an Australian aircraft or an Australian ship; or

(b) the conduct constituting the alleged offence occurs wholly outside Australia and:

(i) at the time of the alleged offence, the person is an Australian citizen; or

(ii) at the time of the alleged offence, the person is a resident of Australia; or

(iii) at the time of the alleged offence, the person is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Note: The expression ***offence against section 70.2*** is given an extended meaning by subsections 11.2(1), 11.2A(1) and 11.6(2).

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(2) Proceedings for an offence against section 70.2 must not be commenced without the Attorney-General's written consent if:

(a) the conduct constituting the alleged offence occurs wholly outside Australia; and

(b) at the time of the alleged offence, the person alleged to have committed the offence is:

(i) a resident of Australia; and

(ii) not an Australian citizen.

(3) However, a person may be arrested for, charged with, or remanded in custody or released on bail in connection with an offence against section 70.2 before the necessary consent has been given.

70.6 Saving of other laws

This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

Division 71—Offences against United Nations and associated personnel

71.1 Purpose

The purpose of this Division is to protect United Nations and associated personnel and give effect to the Convention on the Safety of United Nations and Associated Personnel.

71.2 Murder of a UN or associated person

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

(a) the person's conduct causes the death of another person; and

(b) that other person is a UN or associated person; and

(c) the UN or associated person is engaged in a UN operation that is not a UN enforcement action; and

(d) the first-mentioned person intends to cause, or is reckless as to causing, the death of the UN or associated person or any other person by the conduct.

Maximum penalty: Imprisonment for life.

Note: Section 71.23 defines ***UN enforcement action***, ***UN operation*** and ***UN or associated person***.

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

71.3 Manslaughter of a UN or associated person

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

(a) the person's conduct causes the death of another person; and

(b) that other person is a UN or associated person; and

(c) the UN or associated person is engaged in a UN operation that is not a UN enforcement action; and

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(d) the first-mentioned person intends to cause, or is reckless as to causing, serious harm to the UN or associated person or any other person by the conduct.

Maximum penalty: Imprisonment for 25 years.

Note: Section 71.23 defines ***UN enforcement action***, ***UN operation*** and ***UN or associated person***.

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

71.4 Intentionally causing serious harm to a UN or associated person

(1) A person is guilty of an offence if:
(a) the person's conduct causes serious harm to another person; and
(b) that other person is a UN or associated person; and
(c) the UN or associated person is engaged in a UN operation that is not a UN enforcement action; and
(d) the first-mentioned person intends to cause serious harm to the UN or associated person or any other person by the conduct.

Maximum penalty: Imprisonment for 20 years.

Maximum penalty (aggravated offence): Imprisonment for 25 years.

Note 1: Section 71.23 defines ***UN enforcement action***, ***UN operation*** and ***UN or associated person***.

Note 2: Section 71.13 defines ***aggravated offence***.

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

71.5 Recklessly causing serious harm to a UN or associated person

(1) A person is guilty of an offence if:
(a) the person's conduct causes serious harm to another person; and
(b) that other person is a UN or associated person; and
(c) the UN or associated person is engaged in a UN operation that is not a UN enforcement action; and

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(d) the first-mentioned person is reckless as to causing serious harm to the UN or associated person or any other person by the conduct.

Maximum penalty: Imprisonment for 15 years.

Maximum penalty (aggravated offence): Imprisonment for 19 years.

Note 1: Section 71.23 defines ***UN enforcement action***, ***UN operation*** and ***UN or associated person***.

Note 2: Section 71.13 defines ***aggravated offence***.

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

71.6 Intentionally causing harm to a UN or associated person

(1) A person is guilty of an offence if:
(a) the person's conduct causes harm to another person without the consent of that person; and
(b) that other person is a UN or associated person; and
(c) the UN or associated person is engaged in a UN operation that is not a UN enforcement action; and
(d) the first-mentioned person intends to cause harm to the UN or associated person or any other person by the conduct.

Maximum penalty: Imprisonment for 10 years.

Maximum penalty (aggravated offence): Imprisonment for 13 years.

Note 1: Section 71.23 defines ***UN enforcement action***, ***UN operation*** and ***UN or associated person***.

Note 2: Section 71.13 defines ***aggravated offence***.

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

71.7 Recklessly causing harm to a UN or associated person

(1) A person is guilty of an offence if:
(a) the person's conduct causes harm to another person without the consent of that person; and
(b) that other person is a UN or associated person; and

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(c) the UN or associated person is engaged in a UN operation that is not a UN enforcement action; and

(d) the first-mentioned person is reckless as to causing harm to the UN or associated person or any other person by the conduct.

Maximum penalty: Imprisonment for 7 years.

Maximum penalty (aggravated offence): Imprisonment for 9 years.

Note 1: Section 71.23 defines ***UN enforcement action***, ***UN operation*** and ***UN or associated person***.

Note 2: Section 71.13 defines ***aggravated offence***.

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

71.8 Unlawful sexual penetration

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

(a) the person sexually penetrates another person without the consent of that person; and

(b) that other person is a UN or associated person; and

(c) the UN or associated person is engaged in a UN operation that is not a UN enforcement action; and

(d) the first-mentioned person knows about, or is reckless as to, the lack of consent.

Maximum penalty: Imprisonment for 15 years.

Maximum penalty (aggravated offence): Imprisonment for 20 years.

Note 1: Section 71.23 defines ***UN enforcement action***, ***UN operation*** and ***UN or associated person***.

Note 2: Section 71.13 defines ***aggravated offence***.

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

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(3) In this section:

sexually penetrate means:

(a) penetrate (to any extent) the genitalia or anus of a person by any part of the body of another person or by any object manipulated by that other person; or

(b) penetrate (to any extent) the mouth of a person by the penis of another person; or

(c) continue to sexually penetrate as defined in paragraph (a) or (b).

(4) In this section, being ***reckless*** as to a lack of consent to sexual penetration includes not giving any thought to whether or not the person is consenting to sexual penetration.

(5) In this section, the genitalia or others parts of the body of a person include surgically constructed genitalia or other parts of the body of the person.

71.9 Kidnapping a UN or associated person

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

(a) the person takes or detains another person without his or her consent; and

(b) that other person is a UN or associated person; and

(c) the UN or associated person is engaged in a UN operation that is not a UN enforcement action; and

(d) the first-mentioned person takes or detains the UN or associated person with the intention of:

(i) holding him or her to ransom or as a hostage; or

(ii) taking or sending him or her out of the country; or

(iii) committing a serious offence against him or her or another person.

Maximum penalty: Imprisonment for 15 years.

Maximum penalty (aggravated offence): Imprisonment for 19 years.

Note 1: Section 71.23 defines ***UN enforcement action***, ***UN operation*** and ***UN or associated person***.

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Note 2: Section 71.13 defines ***aggravated offence***.

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

(3) In this section, ***serious offence*** means an offence under a law of the Commonwealth, a State or Territory or a foreign law the maximum penalty for which is death, or imprisonment for not less than 12 months.

71.10 Unlawful detention of UN or associated person

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

(a) the person takes or detains another person without that other person's consent; and

(b) that other person is a UN or associated person; and

(c) the UN or associated person is engaged in a UN operation that is not a UN enforcement action.

Maximum penalty: Imprisonment for 5 years.

Maximum penalty (aggravated offence): Imprisonment for 6 years.

Note 1: Section 71.23 defines ***UN enforcement action***, ***UN operation*** and ***UN or associated person***.

Note 2: Section 71.13 defines ***aggravated offence***.

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

71.11 Intentionally causing damage to UN or associated person's property etc.

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

(a) the person's conduct causes damage to official premises, private accommodation or a means of transportation (the ***property***); and

(b) the property is occupied or used by a UN or associated person; and

(c) the conduct gives rise to a danger of serious harm to a person; and

(d) that person is the UN or associated person referred to in paragraph (b); and

(e) the UN or associated person is engaged in a UN operation that is not a UN enforcement action; and

(f) the first-mentioned person intends to cause the damage to the property; and

(g) the first-mentioned person is reckless as to the danger to the person referred to in paragraph (c).

Maximum penalty: Imprisonment for 10 years.

Note: Section 71.23 defines ***UN enforcement action***, ***UN operation*** and ***UN or associated person***.

(2) Strict liability applies to paragraphs (1)(b), (d) and (e).

71.12 Threatening to commit other offences

A person is guilty of an offence if the person:

(a) threatens to commit an offence (the ***threatened offence***) under any of sections 71.2 to 71.11; and

(b) intends to compel any other person to do or omit to do an act by making the threat.

Maximum penalty:

(a) if the threatened offence is the offence under section 71.2 (murder of a UN or associated person)—imprisonment for 10 years; or

(b) if the threatened offence is the offence under section 71.3, 71.4, 71.5, 71.8 or 71.9 (manslaughter of, causing serious harm to, kidnapping, or sexually penetrating, a UN or associated person)—imprisonment for 7 years; or

(c) if the threatened offence is the offence under section 71.6 or 71.11 (causing harm to, or damaging the property etc. of, a UN or associated person)—imprisonment for 5 years; or

(d) if the threatened offence is the offence under section 71.7 or 71.10 (recklessly causing harm to, or unlawful detention of, a UN or associated person)—imprisonment for 3 years.

Note: Section 71.23 defines ***UN or associated person***.

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71.13 Aggravated offences

(1) For the purposes of this Division, an offence against section 71.4, 71.5, 71.6, 71.7, 71.8, 71.9 or 71.10 is an ***aggravated offence*** if:

(a) the offence was committed during the deliberate and systematic infliction of severe pain over a period of time; or

(b) the offence was committed by the use or threatened use of an offensive weapon; or

(c) the offence was committed against a person in an abuse of authority.

(2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.

(3) In order to prove an aggravated offence, the prosecution must prove that the defendant intended to commit, or was reckless as to committing, the matters referred to in paragraph (1)(a), (b) or (c).

(4) In this section:

offensive weapon includes:

(a) an article made or adapted for use for causing injury to, or incapacitating, a person; or

(b) an article where the person who has the article intends, or threatens to use, the article to cause injury to, or to incapacitate, another person.

71.14 Defence—activities involving serious harm

A person is not criminally responsible for an offence against section 71.4 or 71.5 if the conduct causing serious harm to another person is engaged in by the first-mentioned person:

(a) for the purpose of benefiting the other person or in pursuance of a socially acceptable function or activity; and

(b) having regard to the purpose, function or activity, the conduct was reasonable.

Note 1: If a person causes less than serious harm to another person, the prosecution is obliged to prove that the harm was caused without the consent of the person harmed (see for example section 71.6).

Note 2: A defendant bears an evidential burden in relation to the matter in this section, see subsection 13.3(3).

71.15 Defence—medical or hygienic procedures

A person is not criminally responsible for an offence against section 71.8 in respect of any sexual penetration carried out in the course of a procedure in good faith for medical or hygienic purposes.

Note: A defendant bears an evidential burden in relation to the matter in this section, see subsection 13.3(3).

71.16 Jurisdictional requirement

A person commits an offence under this Division only if:

(a) the conduct constituting the alleged offence occurs:
  (i) wholly or partly in Australia; or
  (ii) wholly or partly on board an Australian aircraft or an Australian ship; or

(b) the conduct constituting the alleged offence occurs wholly outside Australia and:
  (i) at the time of the alleged offence, the person is an Australian citizen; or
  (ii) at the time of the alleged offence, the person is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; or
  (iii) at the time of the alleged offence, the person is a stateless person whose habitual residence is in Australia; or
  (iv) the conduct is subject to the jurisdiction of another State Party to the Convention established in accordance with paragraph 1 or 2 of article 10 and the person enters Australia; or

(c) the alleged offence is committed against an Australian citizen; or

(d) by engaging in the conduct constituting the alleged offence, the person intends to compel a legislative, executive or judicial institution of the Commonwealth, a State or a Territory to do or omit to do an act.

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71.17 Exclusion of this Division if State/Territory laws provide for corresponding offences

(1) A State or Territory court does not have jurisdiction to determine a charge of an offence under this Division if the conduct constituting the offence also constitutes an offence (the ***State offence***) against the law of that State or Territory.

(2) If:

(a) a prosecution is brought against a person under this Division; and

(b) a court finds that there is a corresponding State offence;

then this section does not prevent the person from being prosecuted for the State offence.

71.18 Double jeopardy

If a person has been convicted or acquitted of an offence in respect of conduct under the law of a foreign country, the person cannot be convicted of an offence under this Division in respect of that conduct.

71.19 Saving of other laws

This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or of a State or Territory.

71.20 Bringing proceedings under this Division

(1) Proceedings for an offence under this Division must not be commenced without the Attorney-General's written consent.

(2) However, a person may be arrested, charged, remanded in custody, or released on bail, in connection with an offence under this Division before the necessary consent has been given.

71.21 Ministerial certificates relating to proceedings

(1) The Foreign Affairs Minister may issue a certificate stating any of the following matters:

(a) the Convention entered into force for Australia on a specified day;
(b) the Convention remains in force for Australia or any other State Party on a specified day;
(c) a matter relevant to the establishment of jurisdiction by a State Party under paragraph 1 or 2 of article 10 of the Convention;
(d) a matter relevant to whether a person is or was a UN or associated person;
(e) a matter relevant to whether an operation is or was a UN operation.

(2) The Immigration Minister may issue a certificate stating that:
(a) a person is or was an Australian citizen at a particular time; or
(b) a person is or was a stateless person whose habitual residence is or was in Australia.

(3) In any proceedings, a certificate under this section is prima facie evidence of the matters in the certificate.

71.22 Jurisdiction of State courts preserved

For the purposes of section 38 of the *Judiciary Act 1903*, a matter arising under this Act, including a question of interpretation of the Convention, is taken not to be a matter arising directly under a treaty.

71.23 Definitions

(1) In this Division:

associated personnel means:
(a) persons assigned by a government, or an intergovernmental organisation, with the agreement of the competent organ of the United Nations; or
(b) persons engaged by the Secretary-General of the United Nations, a specialised agency or the International Atomic Energy Agency; or

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(c) persons deployed by a humanitarian non-governmental organisation or agency under an agreement with the Secretary-General of the United Nations, a specialised agency or the International Atomic Energy Agency;

to carry out activities in support of the fulfilment of the mandate of a UN operation.

Convention means the Convention on the Safety of United Nations and Associated Personnel, done at New York on 9 December 1994.

Note: The text of the Convention is set out in Australian Treaty Series 1995 No. 1. In 2000 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible through that Department's website.

Foreign Affairs Minister means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

Immigration Minister means the Minister administering the *Migration Act 1958*.

UN enforcement action means a UN operation:

(a) that is authorised by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations; and

(b) in which any of the UN or associated personnel are engaged as combatants against organised armed forces; and

(c) to which the law of international armed conflict applies.

UN operation means an operation established by the competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control if:

(a) the operation is for the purpose of maintaining or restoring international peace and security; or

(b) the Security Council or the General Assembly has declared, for the purposes of the Convention, that there exists an exceptional risk to the safety of the personnel engaged in the operation.

UN or associated person means a person who is a member of any UN personnel or associated personnel.

UN personnel means:

(a) persons engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a UN operation; or

(b) any other officials or experts on mission of the United Nations, its specialised agencies or the International Atomic Energy Agency who are present in an official capacity in the area where a UN operation is being conducted.

(2) In this Division, a person's conduct ***causes*** death or harm if it substantially contributes to the death or harm.

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Division 72—Explosives and lethal devices

Subdivision A—International terrorist activities using explosive or lethal devices

72.1 Purpose

The purpose of this Subdivision is to create offences relating to international terrorist activities using explosive or lethal devices and give effect to the International Convention for the Suppression of Terrorist Bombings, done at New York on 15 December 1997.

Note: The text of the Convention is available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible through that Department's website.

72.2 ADF members not liable for prosecution

Nothing in this Subdivision makes a member of the Australian Defence Force acting in connection with the defence or security of Australia liable to be prosecuted for an offence.

72.3 Offences

(1) A person commits an offence if:

(a) the person intentionally delivers, places, discharges or detonates a device; and

(b) the device is an explosive or other lethal device and the person is reckless as to that fact; and

(c) the device is delivered, placed, discharged, or detonated, to, in, into or against:

(i) a place of public use; or

(ii) a government facility; or

(iii) a public transportation system; or

(iv) an infrastructure facility; and

(d) the person intends to cause death or serious harm.

Penalty: Imprisonment for life.

(2) A person commits an offence if:

(a) the person intentionally delivers, places, discharges or detonates a device; and

(b) the device is an explosive or other lethal device and the person is reckless as to that fact; and

(c) the device is delivered, placed, discharged, or detonated, to, in, into or against:

(i) a place of public use; or

(ii) a government facility; or

(iii) a public transportation system; or

(iv) an infrastructure facility; and

(d) the person intends to cause extensive destruction to the place, facility or system; and

(e) the person is reckless as to whether that intended destruction results or is likely to result in major economic loss.

Penalty: Imprisonment for life.

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

72.4 Jurisdictional requirement

(1) A person commits an offence under this Subdivision only if one or more of the following paragraphs applies and the circumstances relating to the alleged offence are not exclusively internal (see subsection (2)):

(a) the conduct constituting the alleged offence occurs:

(i) wholly or partly in Australia; or

(ii) wholly or partly on board an Australian ship or an Australian aircraft;

(b) at the time of the alleged offence, the person is an Australian citizen;

(c) at the time of the alleged offence, the person is a stateless person whose habitual residence is in Australia;

(d) the conduct is subject to the jurisdiction of another State Party to the Convention established in accordance with paragraph 1 or 2 of Article 6 of the Convention and the person is in Australia;

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(e) the alleged offence is committed against a government facility of the Commonwealth, or of a State or Territory, that is located outside Australia;

(f) the alleged offence is committed against:

(i) an Australian citizen; or

(ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory;

(g) by engaging in the conduct constituting the alleged offence, the person intends to compel a legislative, executive or judicial institution of the Commonwealth, a State or a Territory to do or omit to do an act.

(2) The circumstances relating to the alleged offence are exclusively internal if:

(a) the conduct constituting the alleged offence occurs wholly within Australia; and

(b) the alleged offender is an Australian citizen; and

(c) all of the persons against whom the offence is committed are Australian citizens or bodies corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and

(d) the alleged offender is in Australia; and

(e) no other State Party to the Convention has a basis under paragraph 1 or 2 of Article 6 of the Convention for exercising jurisdiction in relation to the conduct.

72.5 Saving of other laws

This Subdivision is not intended to exclude or limit the operation of any other law of the Commonwealth or of a State or Territory.

72.6 Double jeopardy and foreign offences

If a person has been convicted or acquitted of an offence in respect of conduct under the law of a foreign country, the person cannot be convicted of an offence under this Subdivision in respect of that conduct.

72.7 Bringing proceedings under this Subdivision

(1) Proceedings for an offence under this Subdivision must not be commenced without the Attorney-General's written consent.

(2) However, a person may be arrested, charged, remanded in custody, or released on bail, in connection with an offence under this Subdivision before the necessary consent has been given.

(3) In determining whether to bring proceedings for an offence under this Subdivision, the Attorney-General must have regard to the terms of the Convention, including paragraph 2 of Article 19.

(4) In determining whether to bring proceedings for an offence under this Subdivision, the Attorney-General must also have regard to:

(a) whether the conduct constituting the offence also gives rise to an offence under a law of a State or Territory; and

(b) whether a prosecution relating to the conduct under the State or Territory law has been or will be commenced.

72.8 Ministerial certificates relating to proceedings

(1) The Minister administering the *Charter of the United Nations Act 1945* may issue a certificate stating any of the following matters:

(a) that the Convention entered into force for Australia on a specified day;

(b) that the Convention remains in force for Australia or any other State Party on a specified day;

(c) a matter relevant to the establishment of jurisdiction by a State Party under paragraph 1 or 2 of Article 6 of the Convention.

(2) The Minister administering the *Australian Citizenship Act 2007* may issue a certificate stating that:

(a) a person is or was an Australian citizen at a particular time; or

(b) a person is or was a stateless person whose habitual residence is or was in Australia at a particular time.

(3) In any proceedings, a certificate under this section is prima facie evidence of the matters in the certificate.

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72.9 Jurisdiction of State courts preserved

For the purposes of section 38 of the *Judiciary Act 1903*, a matter arising under this Subdivision, including a question of interpretation of the Convention, is taken not to be a matter arising directly under a treaty.

72.10 Definitions

In this Subdivision:

Convention means the Convention referred to in section 72.1.

explosive or other lethal device has the same meaning as in the Convention.

government facility has the same meaning as ***State or government facility*** has in the Convention.

infrastructure facility has the same meaning as in the Convention.

place of public use has the same meaning as in the Convention.

public transportation system has the same meaning as in the Convention.

Subdivision B—Plastic explosives

72.11 Purpose

The purpose of this Subdivision is to create offences relating to plastic explosives and give effect to the Convention on the Marking of Plastic Explosives.

Note: The Convention requires the introduction of detection agents into plastic explosives so as to render the explosives detectable by vapour detection means. This is known as the marking of the explosives.

72.12 Trafficking in unmarked plastic explosives etc.

(1) A person commits an offence if:
  (a) the person traffics in a substance; and
  (b) the substance is a plastic explosive; and

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(c) the plastic explosive breaches a marking requirement; and
(d) the trafficking is not authorised under section 72.18, 72.19, 72.20, 72.21, 72.22 or 72.23.

Penalty: Imprisonment for 10 years.

(2) The fault element for paragraph (1)(b) is recklessness.

(3) Strict liability applies to paragraphs (1)(c) and (d).

Note 1: For the marking requirements, see section 72.33.

Note 2: For defences, see section 72.16.

72.13 Importing or exporting unmarked plastic explosives etc.

(1) A person commits an offence if:
(a) the person imports or exports a substance; and
(b) the substance is a plastic explosive; and
(c) the plastic explosive breaches a marking requirement; and
(d) the import or export is not authorised under section 72.18, 72.19, 72.20, 72.22 or 72.23.

Penalty: Imprisonment for 10 years.

(2) The fault element for paragraph (1)(b) is recklessness.

(3) Strict liability applies to paragraphs (1)(c) and (d).

Note 1: For the marking requirements, see section 72.33.

Note 2: For defences, see section 72.16.

72.14 Manufacturing unmarked plastic explosives etc.

(1) A person commits an offence if:
(a) the person:
(i) engages in the manufacture of a substance; or
(ii) exercises control or direction over the manufacture of a substance; and
(b) the substance is a plastic explosive; and
(c) the plastic explosive breaches the first marking requirement; and

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(d) the manufacture is not authorised under section 72.18 or 72.21.

Penalty: Imprisonment for 10 years.

(2) The fault element for paragraph (1)(b) is recklessness.

(3) Strict liability applies to paragraphs (1)(c) and (d).

Note 1: For the marking requirements, see section 72.33.

Note 2: For defences, see section 72.16.

72.15 Possessing unmarked plastic explosives etc.

(1) A person commits an offence if:

(a) the person possesses a substance; and

(b) the substance is a plastic explosive; and

(c) the plastic explosive breaches a marking requirement; and

(d) the possession is not authorised under section 72.18, 72.19, 72.20, 72.21, 72.22 or 72.23.

Penalty: Imprisonment for 2 years.

(2) The fault element for paragraph (1)(b) is recklessness.

(3) Strict liability applies to paragraphs (1)(c) and (d).

Note 1: For the marking requirements, see section 72.33.

Note 2: For defences, see section 72.16.

72.16 Defences

(1) If:

(a) a person is charged with an offence against section 72.12, 72.13, 72.14 or 72.15; and

(b) the prosecution alleges that the plastic explosive breached a particular marking requirement;

it is a defence if the defendant proves that he or she had no reasonable grounds for suspecting that the plastic explosive breached that marking requirement.

Note 1: A defendant bears a legal burden in relation to the matter in subsection (1) (see section 13.4).

Note 2: For the marking requirements, see section 72.33.

(2) If:

(a) a person is charged with an offence against section 72.12, 72.13 or 72.15; and

(b) the prosecution alleges that the plastic explosive breached the second marking requirement;

it is a defence if the defendant proves that, at the time of the alleged offence:

(c) the plastic explosive contained a detection agent; and

(d) the concentration of the detection agent in the plastic explosive was not less than the minimum manufacture concentration for the detection agent; and

(e) the detection agent was homogenously distributed throughout the plastic explosive.

Note 1: A defendant bears a legal burden in relation to the matter in subsection (2) (see section 13.4).

Note 2: For the marking requirements, see section 72.33.

Note 3: For ***minimum manufacture concentration***, see section 72.34.

72.17 Packaging requirements for plastic explosives

(1) A person commits an offence if:

(a) the person manufactures a substance; and

(b) the substance is a plastic explosive; and

(c) within 24 hours after the manufacture of the plastic explosive, the person does not cause the plastic explosive to be contained, enclosed or packaged in a wrapper with:

(i) the expression "PLASTIC EXPLOSIVE" (in upper-case lettering); and

(ii) the date of manufacture of the plastic explosive; and

(iii) if the plastic explosive is of a prescribed type—that type; and

(iv) if the plastic explosive contains a detection agent for the purpose of meeting the first marking requirement—the name of the detection agent; and

(v) if the plastic explosive contains a detection agent for the purpose of meeting the first marking requirement—the

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concentration of the detection agent in the plastic explosive at the time of manufacture, expressed as a percentage by mass;

legibly displayed on the outer surface of the wrapper.

Penalty: Imprisonment for 2 years.

(2) The fault element for paragraphs (1)(b) and (c) is recklessness.

72.18 Authorisation for research etc.

Authorisation

(1) A responsible Minister may, by writing, authorise:

(a) the trafficking in; or

(b) the import, export, manufacture or possession of;

an unmarked plastic explosive.

(2) A responsible Minister must not give an authorisation under subsection (1) in relation to an unmarked plastic explosive unless the responsible Minister is satisfied that:

(a) the plastic explosive is for use exclusively for one or more of the following:

(i) research, development or testing of new or modified explosives;

(ii) development or testing of explosives detection equipment;

(iii) training in explosives detection;

(iv) forensic science; or

(b) both:

(i) the plastic explosive is an integral part of an explosive device that was manufactured exclusively for defence purposes; and

(ii) the explosive device is for use exclusively for defence purposes; or

(c) the plastic explosive will, within 3 years after the commencement of this section, become an integral part of an explosive device manufactured exclusively for defence purposes.

(3) An authorisation under subsection (1) must specify the grounds on which it was given.

Conditions and restrictions

(4) An authorisation under subsection (1) is subject to such conditions and restrictions as are specified in the authorisation.

(5) A responsible Minister must not give an authorisation under subsection (1) in relation to an unmarked plastic explosive on grounds covered by paragraph (2)(a) unless the authorisation is subject to a condition imposing a limit as to the quantity of the plastic explosive.

Criteria

(6) In exercising a power conferred by this section in relation to:
  (a) the trafficking in; or
  (b) the import, export, manufacture or possession of;

an unmarked plastic explosive, a responsible Minister must have regard to:
  (c) the Convention on the Marking of Plastic Explosives; and
  (d) whether the trafficking, import, export, manufacture or possession is reasonable; and
  (e) such other matters (if any) as the responsible Minister considers relevant.

72.19 Authorisation for defence and police purposes—15 year limit

Authorisation

(1) A responsible Minister may, by writing, authorise:
  (a) the trafficking in; or
  (b) the import, export or possession of;

an unmarked plastic explosive that was:
  (c) manufactured before the commencement of this section; or
  (d) manufactured after the commencement of this section in accordance with an authorisation given under subsection 72.21(2).

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(2) A responsible Minister must not give an authorisation under subsection (1) in relation to an unmarked plastic explosive unless the responsible Minister is satisfied that the plastic explosive is exclusively for use in connection with:

(a) the operation of the Australian Defence Force; or

(b) the operation in Australia of a visiting force (within the meaning of the *Defence (Visiting Forces) Act 1963*); or

(c) the operation of:

(i) the Australian Federal Police; or

(ii) the police force or police service of a State or Territory.

Conditions and restrictions

(3) An authorisation under subsection (1) is subject to such conditions and restrictions as are specified in the authorisation.

Criteria

(4) In exercising a power conferred by this section in relation to:

(a) the trafficking in; or

(b) the import, export or possession of;

an unmarked plastic explosive, a responsible Minister must have regard to:

(c) the Convention on the Marking of Plastic Explosives; and

(d) whether the trafficking, import, export or possession is reasonable; and

(e) such other matters (if any) as the responsible Minister considers relevant.

Sunset

(5) This section ceases to have effect at the end of 15 years after its commencement.

72.20 Authorisation for existing stocks—3 year limit

Authorisation

(1) A responsible Minister may, by writing, authorise:

(a) the trafficking in; or

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(b) the import, export or possession of;

an unmarked plastic explosive that was manufactured before the commencement of this section.

Conditions and restrictions

(2) An authorisation under subsection (1) is subject to such conditions and restrictions as are specified in the authorisation.

(3) A responsible Minister must not give an authorisation under subsection (1) in relation to an unmarked plastic explosive unless the authorisation is subject to a condition that, within 3 years after the commencement of this section:

(a) the plastic explosive will not exist; or

(b) the plastic explosive will be made permanently ineffective.

Criteria

(4) In exercising a power conferred by this section in relation to:

(a) the trafficking in; or

(b) the import, export or possession of;

an unmarked plastic explosive, a responsible Minister must have regard to:

(c) the Convention on the Marking of Plastic Explosives; and

(d) whether the trafficking, import, export or possession is reasonable; and

(e) such other matters (if any) as the responsible Minister considers relevant.

72.21 Authorisation of manufacturers—6 month transitional period

Object

(1) The object of this section is to allow manufacturers a 6 month transitional period for compliance with sections 72.12, 72.14 and 72.15.

Authorisation

(2) A responsible Minister may, by writing, authorise:

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(a) the manufacture of an unmarked plastic explosive after the commencement of this section; or

(b) the trafficking in an unmarked plastic explosive manufactured after the commencement of this section; or

(c) the possession of an unmarked plastic explosive manufactured after the commencement of this section.

(3) A responsible Minister must not give an authorisation under subsection (2) in relation to an unmarked plastic explosive unless the responsible Minister is satisfied that the plastic explosive is exclusively for use in connection with:

(a) the operation of the Australian Defence Force; or

(b) the operation in Australia of a visiting force (within the meaning of the *Defence (Visiting Forces) Act 1963*); or

(c) the operation of:

(i) the Australian Federal Police; or

(ii) the police force or police service of a State or Territory.

Conditions and restrictions

(4) An authorisation under subsection (2) is subject to such conditions and restrictions as are specified in the authorisation.

Sunset

(5) This section ceases to have effect at the end of 6 months after its commencement.

72.22 Authorisation for overseas defence purposes—7 day limit

(1) A member of the Australian Defence Force is authorised to possess, import or traffic in an unmarked plastic explosive if:

(a) the plastic explosive was obtained in the course of the operation outside Australia of the Australian Defence Force; and

(b) the member believes on reasonable grounds that there is insufficient time to obtain an authorisation under this Subdivision because of:

(i) an emergency; or

(ii) any other sudden or unexpected circumstances.

(2) An authorisation under subsection (1) ceases to have effect at the end of the seventh day after the day on which the plastic explosive was obtained.

72.23 Authorisation for overseas Australian Federal Police purposes—7 day limit

(1) A member of the Australian Federal Police is authorised to possess, import or traffic in an unmarked plastic explosive if:

(a) the plastic explosive was obtained in the course of the operation outside Australia of the Australian Federal Police; and

(b) the member believes on reasonable grounds that there is insufficient time to obtain an authorisation under this Subdivision because of:

(i) an emergency; or

(ii) any other sudden or unexpected circumstances.

(2) An authorisation under subsection (1) ceases to have effect at the end of the seventh day after the day on which the plastic explosive was obtained.

72.24 Forfeited plastic explosives

(1) If a court:

(a) convicts a person of an offence against this Subdivision in relation to a plastic explosive; or

(b) makes an order under section 19B of the *Crimes Act 1914* in respect of a person charged with an offence against this Subdivision in relation to a plastic explosive;

the court may order the forfeiture to the Commonwealth of the plastic explosive.

(2) A plastic explosive forfeited to the Commonwealth under subsection (1) becomes the property of the Commonwealth.

(3) A plastic explosive forfeited to the Commonwealth under subsection (1) is to be dealt with in such manner as a responsible Minister directs.

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(4) Without limiting subsection (3), a responsible Minister may direct that a plastic explosive forfeited to the Commonwealth under subsection (1) be:

(a) destroyed; or

(b) used exclusively for one or more of the purposes covered by paragraph 72.18(2)(a).

Note 1: See also section 10.5 (lawful authority).

Note 2: See also section 229 of the *Customs Act 1901* (forfeiture of goods that have been unlawfully imported or exported).

72.25 Surrendered plastic explosives

(1) A person may surrender a plastic explosive to the Commonwealth at a place, and in a manner, prescribed for the purposes of this subsection.

(2) A plastic explosive surrendered to the Commonwealth under subsection (1) becomes the property of the Commonwealth.

(3) A plastic explosive surrendered to the Commonwealth under subsection (1) is to be dealt with in such manner as a responsible Minister directs.

(4) Without limiting subsection (3), a responsible Minister may direct that a plastic explosive surrendered to the Commonwealth under subsection (1) be:

(a) destroyed; or

(b) used exclusively for one or more of the purposes covered by paragraph 72.18(2)(a).

Note: See also section 10.5 (lawful authority).

72.26 Destruction of plastic explosives obtained overseas for defence purposes

A member of the Australian Defence Force may destroy an unmarked plastic explosive if the plastic explosive was obtained in the course of the operation outside Australia of the Australian Defence Force.

72.27 Destruction of plastic explosives obtained overseas for Australian Federal Police purposes

A member of the Australian Federal Police may destroy an unmarked plastic explosive if the plastic explosive was obtained in the course of the operation outside Australia of the Australian Federal Police.

72.28 Delegation by Minister

(1) The Minister may, by writing, delegate to:

(a) the Secretary of the Department; or

(b) an SES employee, or an acting SES employee, in the Department, where the employee occupies or acts in a position with a classification of Senior Executive Band 3;

all or any of the Minister's powers under sections 72.18, 72.19, 72.20, 72.21, 72.24 and 72.25.

(2) A delegate is, in the exercise of a power delegated under subsection (1), subject to the written directions of the Minister.

72.29 Delegation by Minister for Defence

(1) The Minister for Defence may, by writing, delegate to:

(a) an SES employee, or an acting SES employee, in the Department of Defence, where the employee occupies or acts in a position with a classification of Senior Executive Band 3; or

(b) an officer of the Australian Navy who holds the rank of Vice-Admiral or a higher rank; or

(c) an officer of the Australian Army who holds the rank of Lieutenant-General or a higher rank; or

(d) an officer of the Australian Air Force who holds the rank of Air Marshal or a higher rank; or

(e) an officer of the Australian Defence Force who is on deployment as the Commander of an Australian Task Force, contingent or force element that is operating outside Australia;

all or any of the powers of the Minister for Defence under sections 72.18, 72.19, 72.20, 72.21, 72.24 and 72.25.

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(2) A delegate must not exercise a power delegated under subsection (1) unless the exercise of the power relates to:
  (a) the operation of the Australian Defence Force; or
  (b) the operation in Australia of a visiting force (within the meaning of the *Defence (Visiting Forces) Act 1963*); or
  (c) the operation outside Australia of a person who, under a contract, performs services for the Australian Defence Force.

(3) A delegate is, in the exercise of a power delegated under subsection (1), subject to the written directions of the Minister for Defence.

72.30 Review by Administrative Appeals Tribunal of authorisation decisions

(1) An application may be made to the Administrative Appeals Tribunal for review of a decision refusing to give an authorisation under subsection 72.18(1), 72.19(1), 72.20(1) or 72.21(2).

(2) An application may be made to the Administrative Appeals Tribunal for review of a decision to specify a condition or restriction in an authorisation under subsection 72.18(1), 72.19(1), 72.20(1) or 72.21(2), but such an application may only be made by a person to whom the authorisation applies.

72.31 Geographical jurisdiction

Section 15.2 (extended geographical jurisdiction—category B) applies to each offence against this Subdivision.

72.32 Saving of other laws

This Subdivision is not intended to exclude or limit the operation of any other law of the Commonwealth or of a State or Territory.

72.33 Marking requirements

(1) This section sets out the 2 ***marking requirements*** for a plastic explosive.

Concentration of detection agent at time of manufacture

(2) The ***first marking requirement*** is that, at the time of the manufacture of the plastic explosive, all of the following conditions were satisfied:

(a) the plastic explosive contained a detection agent;

(b) the concentration of the detection agent in the plastic explosive was not less than the minimum manufacture concentration for the detection agent;

(c) the detection agent was homogenously distributed throughout the plastic explosive.

Note: For ***minimum manufacture concentration***, see section 72.34.

Freshness

(3) The ***second marking requirement*** is that less than 10 years have elapsed since the manufacture of the plastic explosive.

Interpretation

(4) In determining whether a plastic explosive manufactured before the commencement of this section breached the first marking requirement, assume that this section and sections 72.34 and 72.36 had been in force at the time of manufacture.

72.34 Detection agents and minimum manufacture concentrations

For the purposes of this Subdivision, the following table defines:

(a) ***detection agent***; and

(b) the ***minimum manufacture concentration*** for each detection agent.

Detection agents and minimum manufacture concentrations

Item	Detection agent	Minimum manufacture concentration
1	Ethylene glycol dinitrate (EGDN) (molecular formula: $C_2H_4(NO_3)_2$) (molecular weight: 152)	0.2% by mass
2	2,3-Dimethyl-2,3-dinitrobutane (DMNB)	1% by mass

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Detection agents and minimum manufacture concentrations		
Item	**Detection agent**	**Minimum manufacture concentration**
	(molecular formula: $C_6H_{12}(NO_2)_2$) (molecular weight: 176)	
3	para-Mononitrotoluene (p-MNT) (molecular formula: $C_7H_7NO_2$) (molecular weight: 137)	0.5% by mass
4	a substance prescribed for the purposes of this table item	the concentration prescribed for the purposes of this table item in relation to the substance

72.35 Presumption as to concentration of detection agent

(1) This section applies in relation to a prosecution for an offence against this Subdivision.

(2) If no detection agent can be detected in a sample of a plastic explosive when tested using:

(a) a method generally accepted in the scientific community as a reliable means of measuring the concentration of detection agents in plastic explosives; or

(b) a method prescribed for the purposes of this paragraph;

it is presumed, unless the contrary is proved, that the plastic explosive breaches the first marking requirement.

Note: A defendant bears a legal burden in relation to proving the contrary (see section 13.4).

72.36 Definitions

In this Subdivision:

Convention on the Marking of Plastic Explosives means:

(a) the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991; or

(b) if:

(i) the Convention is amended; and

(ii) the amendment binds Australia;

the Convention as so amended.

Note: In 2006, the text of the Convention was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Department of Defence means the Department that deals with matters relating to defence.

detection agent has the meaning given by section 72.34.

explosive device includes the following:

(a) a bomb;
(b) a grenade;
(c) a mine;
(d) a missile;
(e) a perforator;
(f) a projectile;
(g) a rocket;
(h) a shaped charge;
(i) a shell.

export includes take from Australia.

first marking requirement has the meaning given by subsection 72.33(2).

high explosive means an explosive with a velocity of detonation that is greater than the velocity of sound in the explosive (typically greater than 340 metres per second), and includes the following:

(a) cyclotetramethylenetetranitramine (HMX);
(b) pentaerythritol tetranitrate (PETN);
(c) cyclotrimethylenetrinitramine (RDX).

import includes bring into Australia.

manufacture a substance means any process by which a substance is produced, and includes the following:

(a) the process of transforming a substance into a different substance;
(b) the reprocessing of a substance.

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marking requirement has the meaning given by section 72.33.

minimum manufacture concentration has the meaning given by section 72.34.

Minister for Defence means the Minister administering the *Defence Act 1903*.

plastic explosive means an explosive product (including an explosive product in flexible or elastic sheet form) that is:

(a) formulated with:

(i) one or more high explosives which in their pure form have a vapour pressure less than 10^{-4} Pa at a temperature of 25°C; and

(ii) a binder material; and

(b) as a mixture, malleable or flexible at normal room temperature.

possess a substance includes the following:

(a) receive or obtain possession of the substance;

(b) have control over the disposition of the substance (whether or not the substance is in the custody of the person);

(c) have joint possession of the substance.

responsible Minister means:

(a) the Minister; or

(b) the Minister for Defence.

second marking requirement has the meaning given by subsection 72.33(3).

traffic in a substance means:

(a) transfer the substance; or

(b) offer the substance for sale; or

(c) invite the making of offers to buy the substance; or

(d) prepare the substance for transfer with the intention of transferring any of it or believing that another person intends to transfer any of it; or

(e) transport or deliver the substance with the intention of transferring any of it or believing that another person intends to transfer any of it; or

(f) guard or conceal the substance with the intention of transferring any of it or the intention of assisting another person to transfer any of it; or

(g) possess the substance with the intention of transferring any of it.

For the purposes of paragraph (d), preparing a substance for transfer includes packaging the substance or separating the substance into discrete units.

transfer means transfer ownership or possession.

unmarked plastic explosive means a plastic explosive that breaches a marking requirement.

wrapper, in relation to a plastic explosive, means a wrapper the inner surface of which is in contact with the plastic explosive.

Subdivision C—Cluster munitions and explosive bomblets

72.37 Purpose

The purpose of this Subdivision is to create offences relating to cluster munitions and explosive bomblets and give effect to the Convention on Cluster Munitions.

72.38 Offences relating to cluster munitions

Doing acts with a cluster munition

(1) A person commits an offence if the person does any of the following with a cluster munition:

(a) uses it;

(b) develops, produces or otherwise acquires it;

(c) stockpiles or retains it;

(d) transfers it to anyone.

Penalty: Imprisonment for 10 years.

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Promoting acts with a cluster munition

(2) A person (the ***first person***) commits an offence if:

(a) the first person assists, encourages or induces another person to do any of the following acts with a cluster munition:

(i) use it;

(ii) develop, produce or otherwise acquire it;

(iii) stockpile or retain it;

(iv) transfer it to anyone; and

(b) the other person does the act; and

(c) the first person intends that the act be done.

Penalty: Imprisonment for 10 years.

Geographical jurisdiction

(3) Section 15.2 (extended geographical jurisdiction—category B) applies to an offence against this section.

Relationship with other provisions

(4) Division 11 does not apply in relation to an offence against subsection (2).

Note 1: Later sections of this Subdivision set out defences.

Note 2: This section relates to Articles 1 and 9 of the Convention on Cluster Munitions.

72.39 Defence—acquisition or retention authorised by Defence Minister

(1) Section 72.38 does not apply to the acquisition or retention of a cluster munition authorised under subsection (2).

Note: A defendant bears an evidential burden in relation to the matter in subsection (1): see subsection 13.3(3).

(2) The Minister administering the *Explosives Act 1961* may authorise, in writing, specified members of the Australian Defence Force or other specified Commonwealth public officials to acquire or retain specified cluster munitions for one or more of the following purposes:

(a) the development of, and training in, cluster munition and explosive submunition detection, clearance or destruction techniques;
(b) the development of cluster munition counter-measures;
(c) the destruction of the munitions.

Note 1: For specification by class see the *Acts Interpretation Act 1901*.

Note 2: This section relates to paragraphs 6 and 7 of Article 3 of the Convention on Cluster Munitions.

(3) The regulations may prescribe requirements relating to authorisations under subsection (2).

(4) An authorisation made under subsection (2) is not a legislative instrument.

(5) The Minister described in subsection (2) may delegate his or her power under that subsection to:
(a) the Secretary of the Department administered by that Minister; or
(b) an SES employee in that Department.

Note: For the definition of ***SES employee*** see the *Acts Interpretation Act 1901*.

72.40 Defence—transfer for destruction etc.

Transfer to foreign party to Convention on Cluster Munitions

(1) Section 72.38 does not apply to the transfer of a cluster munition to a party to the Convention on Cluster Munitions for one or more of the following purposes:
(a) the development of, and training in, cluster munition and explosive submunition detection, clearance or destruction techniques;
(b) the development of cluster munition counter-measures;
(c) the destruction of the munition.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (1): see subsection 13.3(3).

Note 2: This subsection relates to paragraph 7 of Article 3 of the Convention on Cluster Munitions.

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Intended transfer to Australian Defence Force

(2) Subsections (3) and (4) have effect if:
  (a) a person has a cluster munition; and
  (b) the person gives notice to a police officer or member of the Australian Defence Force that the person wishes to transfer the munition to a member of the Australian Defence Force or other Commonwealth public official; and
  (c) the person gives notice without delay after the first time the person has the cluster munition after the commencement of this subsection.

(3) Subsection 72.38(1) does not apply to the person stockpiling or retaining the cluster munition at any time before the person transfers it to a member of the Australian Defence Force or other Commonwealth public official.

(4) Subsection 72.38(1) does not apply to the person transferring the cluster munition to a member of the Australian Defence Force or other Commonwealth public official.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) and whichever of subsections (3) and (4) is relevant: see subsection 13.3(3).

72.41 Defence—acts by Australians in military cooperation with countries not party to Convention on Cluster Munitions

A person who is an Australian citizen, is a member of the Australian Defence Force or is performing services under a Commonwealth contract does not commit an offence against section 72.38 by doing an act if:
  (a) the act is done in the course of military cooperation or operations with a foreign country that is not a party to the Convention on Cluster Munitions; and
  (b) the act is not connected with the Commonwealth:
    (i) using a cluster munition; or
    (ii) developing, producing or otherwise acquiring a cluster munition; or
    (iii) stockpiling or retaining a cluster munition; or
    (iv) transferring a cluster munition; and

(c) the act does not consist of expressly requesting the use of a cluster munition in a case where the choice of munitions used is within the Commonwealth's exclusive control.

Note 1: A defendant bears an evidential burden in relation to the matter in this section: see subsection 13.3(3).

Note 2: The expression ***offence against section 72.38*** is given an extended meaning by subsections 11.2(1) and 11.2A(1), section 11.3 and subsection 11.6(2).

Note 3: This section relates to paragraphs 3 and 4 of Article 21 of the Convention on Cluster Munitions.

72.42 Defence—acts by military personnel of countries not party to Convention on Cluster Munitions

(1) Section 72.38 does not apply to the stockpiling, retention or transfer of a cluster munition that:

(a) is done by:

(i) a member of the armed forces of a foreign country that is not a party to the Convention on Cluster Munitions; or

(ii) a person who is connected with such forces as described in subsection (2) and is neither an Australian citizen nor a resident of Australia; and

(b) is done in connection with the use by those forces of any of the following in Australia in the course of military cooperation or operations with the Australian Defence Force:

(i) a base;

(ii) an aircraft of any part of those forces or an aircraft being commanded or piloted by a member of those forces in the course of his or her duties as such a member;

(iii) a ship of any part of those forces or a ship being operated or commanded by a member of those forces in the course of his or her duties as such a member.

Note: A defendant bears an evidential burden in relation to the matter in this section: see subsection 13.3(3).

(2) This subsection covers a person with any of the following connections with the armed forces of a foreign country that is not a party to the Convention on Cluster Munitions:

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(a) the person is employed by, or in the service of, any of those forces;

(b) the person is serving with an organisation accompanying any of those forces;

(c) the person is attached to or accompanying those forces and is subject to the law of that country governing any of the armed forces of that country.

72.43 Forfeiture of cluster munition

(1) This section applies if a court:

(a) convicts someone of an offence against subsection 72.38(1); or

(b) makes an order under section 19B of the *Crimes Act 1914* relating to an offence against subsection 72.38(1).

Note: The expression ***offence against subsection 72.38(1)*** is given an extended meaning by subsections 11.2(1) and 11.2A(1), section 11.3 and subsection 11.6(2).

(2) The court may order forfeiture to the Commonwealth of any cluster munition involved in the offence.

(3) A cluster munition ordered to be forfeited to the Commonwealth becomes the Commonwealth's property.

72.44 Application of this Subdivision to explosive bomblets

This Subdivision applies in relation to explosive bomblets in the same way as it applies in relation to cluster munitions.

72.45 Definitions

In this Subdivision:

cluster munition has the meaning given by paragraph 2 of Article 2 of the Convention on Cluster Munitions.

Convention on Cluster Munitions means the Convention on Cluster Munitions done at Dublin on 30 May 2008.

Note: In 2012, the text of the Convention was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

explosive bomblet has the meaning given by paragraph 13 of Article 2 of the Convention on Cluster Munitions.

explosive submunition has the meaning given by paragraph 3 of Article 2 of the Convention on Cluster Munitions.

police officer means:

(a) a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or

(b) a special member of the Australian Federal Police (within the meaning of that Act); or

(c) a member (however described) of a police force of a State or Territory.

transfer has the meaning given by paragraph 8 of Article 2 of the Convention on Cluster Munitions.

Note: Imports and exports are some examples of transfers.

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Division 73—People smuggling and related offences

Subdivision A—People smuggling offences

73.1 Offence of people smuggling

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

(a) the first person organises or facilitates the entry of another person (the ***other person***) into a foreign country (whether or not via Australia); and

(b) the entry of the other person into the foreign country does not comply with the requirements under that country's law for entry into the country; and

(c) the other person is not a citizen or permanent resident of the foreign country.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

(2) Absolute liability applies to the paragraph (1)(c) element of the offence.

(3) For the purposes of this Code, an offence against subsection (1) is to be known as the offence of people smuggling.

73.2 Aggravated offence of people smuggling (danger of death or serious harm etc.)

(1) A person (the ***first person***) commits an offence against this section if the first person commits the offence of people smuggling (the ***underlying offence***) in relation to another person (the ***victim***) and either or both of the following apply:

(b) in committing the underlying offence, the first person subjects the victim to cruel, inhuman or degrading treatment;

(c) in committing the underlying offence:

(i) the first person's conduct gives rise to a danger of death or serious harm to the victim; and

(ii) the first person is reckless as to the danger of death or serious harm to the victim that arises from the conduct.

Penalty: Imprisonment for 20 years or 2,000 penalty units, or both.

(2) There is no fault element for the physical element of conduct described in subsection (1), that the first person commits the underlying offence, other than the fault elements (however described), if any, for the underlying offence.

(2A) To avoid doubt, the first person may be convicted of an offence against this section even if the first person has not been convicted of the underlying offence.

73.3 Aggravated offence of people smuggling (at least 5 people)

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

(a) the first person organises or facilitates the entry of a group of at least 5 persons (the ***other persons***) into a foreign country (whether or not via Australia); and

(b) the entry of at least 5 of the other persons into the foreign country does not comply with the requirements under that country's law for entry into that country; and

(c) at least 5 of the other persons whose entry into the foreign country is covered by paragraph (b) are not citizens or permanent residents of the foreign country.

Penalty: Imprisonment for 20 years or 2,000 penalty units, or both.

(2) Absolute liability applies to the paragraph (1)(c) element of the offence.

(3) If, on a trial for an offence against subsection (1), the trier of fact is not satisfied that the defendant is guilty of that offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against subsection 73.1(1), the trier of fact may find the defendant not guilty of an offence against subsection (1) but guilty of an offence against subsection 73.1(1), so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

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73.3A Supporting the offence of people smuggling

(1) A person (the ***first person***) commits an offence if:

(a) the first person provides material support or resources to another person or an organisation (the ***receiver***); and

(b) the support or resources aids the receiver, or a person or organisation other than the receiver, to engage in conduct constituting the offence of people smuggling.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

(2) Subsection (1) does not apply if the conduct constituting the offence of people smuggling relates, or would relate, to:

(a) the first person; or

(b) a group of persons that includes the first person.

(3) To avoid doubt, the first person commits an offence against subsection (1) even if the offence of people smuggling is not committed.

73.4 Jurisdictional requirement

A person commits an offence against this Subdivision only if:

(a) both:

(i) the person is an Australian citizen or a resident of Australia; and

(ii) the conduct constituting the alleged offence occurs wholly outside Australia; or

(b) both:

(i) the conduct constituting the alleged offence occurs wholly or partly in Australia; and

(ii) a result of the conduct occurs, or is intended by the person to occur, outside Australia.

73.5 Attorney-General's consent required

(1) Proceedings for an offence against this Subdivision must not be commenced without the Attorney-General's written consent.

(2) However, a person may be arrested, charged, remanded in custody or released on bail in connection with an offence against this Subdivision before the necessary consent has been given.

Subdivision B—Document offences related to people smuggling and unlawful entry into foreign countries

73.6 Meaning of *travel or identity document*

(1) For the purposes of this Subdivision, a document is a ***travel or identity document*** if it is:

(a) a travel document; or

(b) an identity document.

73.7 Meaning of *false travel or identity document*

(1) For the purposes of this Subdivision, a travel or identity document is a ***false travel or identity document*** if, and only if:

(a) the document, or any part of the document:

(i) purports to have been made in the form in which it is made by a person who did not make it in that form; or

(ii) purports to have been made in the form in which it is made on the authority of a person who did not authorise its making in that form; or

(b) the document, or any part of the document:

(i) purports to have been made in the terms in which it is made by a person who did not make it in those terms; or

(ii) purports to have been made in the terms in which it is made on the authority of a person who did not authorise its making in those terms; or

(c) the document, or any part of the document:

(i) purports to have been altered in any respect by a person who did not alter it in that respect; or

(ii) purports to have been altered in any respect on the authority of a person who did not authorise its alteration in that respect; or

(d) the document, or any part of the document:

(i) purports to have been made or altered by a person who did not exist; or

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(ii) purports to have been made or altered on the authority of a person who did not exist; or

(e) the document, or any part of the document, purports to have been made or altered on a date on which, at a time at which, at a place at which, or otherwise in circumstances in which, it was not made or altered.

(2) For the purposes of this Subdivision, a person is taken to ***make*** a false travel or identity document if the person alters a document so as to make it a false travel or identity document (whether or not it was already a false travel or identity document before the alteration).

(3) This section has effect as if a document that purports to be a true copy of another document were the original document.

73.8 Making, providing or possessing a false travel or identity document

A person (the ***first person***) is guilty of an offence if:

(a) the first person makes, provides or possesses a false travel or identity document; and

(b) the first person intends that the document will be used to facilitate the entry of another person (the ***other person***) into a foreign country, where the entry of the other person into the foreign country would not comply with the requirements under that country's law for entry into the country; and

(c) the first person made, provided or possessed the document:

(i) having obtained (whether directly or indirectly) a benefit to do so; or

(ii) with the intention of obtaining (whether directly or indirectly) a benefit.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

73.9 Providing or possessing a travel or identity document issued or altered dishonestly or as a result of threats

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

(a) the first person provides or possesses a travel or identity document; and

(b) the first person knows that:

(i) the issue of the travel or identity document; or

(ii) an alteration of the travel or identity document;

has been obtained dishonestly or by threats; and

(c) the first person intends that the document will be used to facilitate the entry of another person (the ***other person***) into a foreign country, where the entry of the other person into the foreign country would not comply with the requirements under that country's law for entry into the country; and

(d) the first person provided or possessed the document:

(i) having obtained (whether directly or indirectly) a benefit to do so; or

(ii) with the intention of obtaining (whether directly or indirectly) a benefit.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

(2) For the purposes of subsection (1), a ***threat*** may be:

(a) express or implied; or

(b) conditional or unconditional.

(3) For the purposes of subsection (1), ***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.

(4) In a prosecution for an offence against this section, the determination of dishonesty is a matter for the trier of fact.

73.10 Providing or possessing a travel or identity document to be used by a person who is not the rightful user

A person (the ***first person***) is guilty of an offence if:

(a) the first person provides or possesses a travel or identity document; and

(b) the first person intends that the document will be used to facilitate the entry of another person (the ***other person***) into a

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foreign country, where the entry of the other person into the foreign country would not comply with the requirements under that country's law for entry into the country; and

(c) the first person knows that the other person is not the person to whom the document applies; and

(d) the first person provided or possessed the document:

(i) having obtained (whether directly or indirectly) a benefit to do so; or

(ii) with the intention of obtaining (whether directly or indirectly) a benefit.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

73.11 Taking possession of or destroying another person's travel or identity document

A person (the ***first person***) is guilty of an offence if:

(a) the first person takes possession of, or destroys, a travel or identity document that applies to another person (the ***other person***); and

(b) the first person does so intending to conceal the other person's identity or nationality; and

(c) at the time of doing so, the first person intends to organise or facilitate the entry of the other person into a foreign country:

(i) having obtained, or with the intention of obtaining, whether directly or indirectly, a benefit to organise or facilitate that entry; and

(ii) where the entry of the other person into the foreign country would not comply with the requirements under that country's law for entry into the country.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

73.12 Jurisdictional requirement

Section 15.2 (extended geographical jurisdiction—category B) applies to an offence against this Subdivision.

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Chapter 5—The security of the Commonwealth

Part 5.1—Treason and urging violence

Division 80—Treason and urging violence

Subdivision A—Preliminary

80.1A Definition of *organisation*

In this Division:

organisation means:

(a) a body corporate; or

(b) an unincorporated body;

whether or not the body is based outside Australia, consists of persons who are not Australian citizens, or is part of a larger organisation.

Subdivision B—Treason

80.1 Treason

(1) A person commits an offence if the person:

(a) causes the death of the Sovereign, the heir apparent of the Sovereign, the consort of the Sovereign, the Governor-General or the Prime Minister; or

(b) causes harm to the Sovereign, the Governor-General or the Prime Minister resulting in the death of the Sovereign, the Governor-General or the Prime Minister; or

(c) causes harm to the Sovereign, the Governor-General or the Prime Minister, or imprisons or restrains the Sovereign, the Governor-General or the Prime Minister; or

(d) levies war, or does any act preparatory to levying war, against the Commonwealth; or

(g) instigates a person who is not an Australian citizen to make an armed invasion of the Commonwealth or a Territory of the Commonwealth.

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Penalty: Imprisonment for life.

(2) A person commits an offence if the person:

(a) receives or assists another person who, to his or her knowledge, has committed an offence against this Subdivision (other than this subsection) with the intention of allowing him or her to escape punishment or apprehension; or

(b) knowing that another person intends to commit an offence against this Subdivision (other than this subsection), does not inform a constable of it within a reasonable time or use other reasonable endeavours to prevent the commission of the offence.

Penalty: Imprisonment for life.

(8) In this section:

constable means a member or special member of the Australian Federal Police or a member of the police force or police service of a State or Territory.

80.1AA Treason—materially assisting enemies etc.

Assisting enemies at war with the Commonwealth

(1) A person commits an offence if:

(a) the Commonwealth is at war with an enemy (whether or not the existence of a state of war has been declared); and

(b) the enemy is specified, by Proclamation made for the purpose of this paragraph, to be an enemy at war with the Commonwealth; and

(c) the person engages in conduct; and

(d) the person intends that the conduct will materially assist the enemy to engage in war with the Commonwealth; and

(e) the conduct assists the enemy to engage in war with the Commonwealth; and

(f) when the person engages in the conduct, the person:

(i) is an Australian citizen; or

(ii) is a resident of Australia; or

(iii) has voluntarily put himself or herself under the protection of the Commonwealth; or

(iv) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for life.

Note: If a body corporate is convicted of an offence against subsection (1), subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 10,000 penalty units.

(2) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, a Proclamation made for the purpose of paragraph (1)(b) of this section may be expressed to take effect from a day:

(a) before the day on which the Proclamation is registered under the *Legislative Instruments Act 2003*; but

(b) not before the day on which the Proclamation is made.

(3) The fault element for paragraph (1)(f) is intention.

Note: For intention, see subsection 5.2(2).

Assisting countries etc. engaged in armed hostilities against the ADF

(4) A person commits an offence if:

(a) a country or organisation is engaged in armed hostilities against the Australian Defence Force; and

(b) the person engages in conduct; and

(c) the person intends that the conduct will materially assist the country or organisation to engage in armed hostilities against the Australian Defence Force; and

(d) the conduct assists the country or organisation to engage in armed hostilities against the Australian Defence Force; and

(e) when the person engages in the conduct, the person:

(i) is an Australian citizen; or

(ii) is a resident of Australia; or

(iii) has voluntarily put himself or herself under the protection of the Commonwealth; or

(iv) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for life.

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Note: If a body corporate is convicted of an offence against subsection (4), subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 10,000 penalty units.

(5) The fault element for paragraph (4)(e) is intention.

Note: For intention, see subsection 5.2(2).

Humanitarian aid

(6) Subsections (1) and (4) do not apply to engagement in conduct by way of, or for the purposes of, the provision of aid of a humanitarian nature.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (6). See subsection 13.3(3).

Note 2: There is a defence in section 80.3 for acts done in good faith.

Subdivision C—Urging violence

80.2 Urging violence against the Constitution etc.

Urging the overthrow of the Constitution or Government by force or violence

(1) A person (the ***first person***) commits an offence if:

(a) the first person intentionally urges another person to overthrow by force or violence:

(i) the Constitution; or

(ii) the Government of the Commonwealth, of a State or of a Territory; or

(iii) the lawful authority of the Government of the Commonwealth; and

(b) the first person does so intending that force or violence will occur.

Penalty: Imprisonment for 7 years.

Note: For intention, see section 5.2.

(2) Recklessness applies to the element of the offence under subsection (1) that it is:

(a) the Constitution; or

(b) the Government of the Commonwealth, a State or a Territory; or

(c) the lawful authority of the Government of the Commonwealth;

that the first person urges the other person to overthrow.

Urging interference in Parliamentary elections or constitutional referenda by force or violence

(3) A person (the ***first person***) commits an offence if:

(a) the first person intentionally urges another person to interfere, by force or violence, with lawful processes for:

(i) an election of a member or members of a House of the Parliament; or

(ii) a referendum; and

(b) the first person does so intending that force or violence will occur.

Penalty: Imprisonment for 7 years.

Note: For intention, see section 5.2.

(4) Recklessness applies to the element of the offence under subsection (3) that it is lawful processes for an election of a member or members of a House of the Parliament, or for a referendum, that the first person urges the other person to interfere with.

Note: There is a defence in section 80.3 for acts done in good faith.

80.2A Urging violence against groups

Offences

(1) A person (the ***first person***) commits an offence if:

(a) the first person intentionally urges another person, or a group, to use force or violence against a group (the ***targeted group***); and

(b) the first person does so intending that force or violence will occur; and

(c) the targeted group is distinguished by race, religion, nationality, national or ethnic origin or political opinion; and

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(d) the use of the force or violence would threaten the peace, order and good government of the Commonwealth.

Penalty: Imprisonment for 7 years.

Note: For intention, see section 5.2.

(2) A person (the ***first person***) commits an offence if:

(a) the first person intentionally urges another person, or a group, to use force or violence against a group (the ***targeted group***); and

(b) the first person does so intending that force or violence will occur; and

(c) the targeted group is distinguished by race, religion, nationality, national or ethnic origin or political opinion.

Penalty: Imprisonment for 5 years.

Note: For intention, see section 5.2.

(3) The fault element for paragraphs (1)(c) and (2)(c) is recklessness.

Note: For recklessness, see section 5.4.

Alternative verdict

(4) Subsection (5) applies if, in a prosecution for an offence (the ***prosecuted offence***) against subsection (1), the trier of fact:

(a) is not satisfied that the defendant is guilty of the offence; but

(b) is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the ***alternative offence***) against subsection (2).

(5) The trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Note: There is a defence in section 80.3 for acts done in good faith.

80.2B Urging violence against members of groups

Offences

(1) A person (the ***first person***) commits an offence if:

(a) the first person intentionally urges another person, or a group, to use force or violence against a person (the ***targeted person***); and

(b) the first person does so intending that force or violence will occur; and

(c) the first person does so because of his or her belief that the targeted person is a member of a group (the ***targeted group***); and

(d) the targeted group is distinguished by race, religion, nationality, national or ethnic origin or political opinion; and

(e) the use of the force or violence would threaten the peace, order and good government of the Commonwealth.

Penalty: Imprisonment for 7 years.

Note: For intention, see section 5.2.

(2) A person (the ***first person***) commits an offence if:

(a) the first person intentionally urges another person, or a group, to use force or violence against a person (the ***targeted person***); and

(b) the first person does so intending that force or violence will occur; and

(c) the first person does so because of his or her belief that the targeted person is a member of a group (the ***targeted group***); and

(d) the targeted group is distinguished by race, religion, nationality, national or ethnic origin or political opinion.

Penalty: Imprisonment for 5 years.

Note: For intention, see section 5.2.

(3) For the purposes of paragraphs (1)(c) and (2)(c), it is immaterial whether the targeted person actually is a member of the targeted group.

(4) The fault element for paragraphs (1)(d) and (2)(d) is recklessness.

Note: For recklessness, see section 5.4.

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Alternative verdict

(5) Subsection (6) applies if, in a prosecution for an offence (the ***prosecuted offence***) against subsection (1), the trier of fact:
  (a) is not satisfied that the defendant is guilty of the offence; but
  (b) is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the ***alternative offence***) against subsection (2).

(6) The trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Note: There is a defence in section 80.3 for acts done in good faith.

Subdivision D—Common provisions

80.3 Defence for acts done in good faith

(1) Subdivisions B and C do not apply to a person who:
  (a) tries in good faith to show that any of the following persons are mistaken in any of his or her counsels, policies or actions:
    (i) the Sovereign;
    (ii) the Governor-General;
    (iii) the Governor of a State;
    (iv) the Administrator of a Territory;
    (v) an adviser of any of the above;
    (vi) a person responsible for the government of another country; or
  (b) points out in good faith errors or defects in the following, with a view to reforming those errors or defects:
    (i) the Government of the Commonwealth, a State or a Territory;
    (ii) the Constitution;
    (iii) legislation of the Commonwealth, a State, a Territory or another country;
    (iv) the administration of justice of or in the Commonwealth, a State, a Territory or another country; or

(c) urges in good faith another person to attempt to lawfully procure a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country; or

(d) points out in good faith any matters that are producing, or have a tendency to produce, feelings of ill-will or hostility between different groups, in order to bring about the removal of those matters; or

(e) does anything in good faith in connection with an industrial dispute or an industrial matter; or

(f) publishes in good faith a report or commentary about a matter of public interest.

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

(2) In considering a defence under subsection (1), the Court may have regard to any relevant matter, including whether the acts were done:

(a) for a purpose intended to be prejudicial to the safety or defence of the Commonwealth; or

(b) with the intention of assisting an enemy:

(i) at war with the Commonwealth; and

(ii) specified by Proclamation made for the purpose of paragraph 80.1AA(1)(b) to be an enemy at war with the Commonwealth; or

(c) with the intention of assisting another country, or an organisation, that is engaged in armed hostilities against the Australian Defence Force; or

(d) with the intention of assisting a proclaimed enemy of a proclaimed country (within the meaning of subsection 24AA(4) of the *Crimes Act 1914*); or

(e) with the intention of assisting persons specified in paragraphs 24AA(2)(a) and (b) of the *Crimes Act 1914*; or

(f) with the intention of causing violence or creating public disorder or a public disturbance.

(3) Without limiting subsection (2), in considering a defence under subsection (1) in respect of an offence against Subdivision C, the Court may have regard to any relevant matter, including whether the acts were done:

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(a) in the development, performance, exhibition or distribution of an artistic work; or

(b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or

(c) in the dissemination of news or current affairs.

80.4 Extended geographical jurisdiction for offences

(1) Subject to subsection (2), section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this Division.

(2) Section 15.2 (extended geographical jurisdiction—category B) applies to an offence against subsection 80.2A(2) or 80.2B(2).

80.6 Division not intended to exclude State or Territory law

It is the intention of the Parliament that this Division is not to apply to the exclusion of a law of a State or a Territory to the extent that the law is capable of operating concurrently with this Division.

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Part 5.2—Offences relating to espionage and similar activities

Division 90—Preliminary

90.1 Definitions

(1) In this Part:

article includes any thing, substance or material.

information means information of any kind, whether true or false and whether in a material form or not, and includes:

(a) an opinion; and

(b) a report of a conversation.

intelligence or security agency has the meaning given by section 85ZL of the *Crimes Act 1914*.

record, in relation to information, means a record of information in any form, including but not limited to, a document, paper, database, software system or other article or system containing information or from which information can be derived.

security or defence of a country includes the operations, capabilities and technologies of, and methods and sources used by, the country's intelligence or security agencies.

sketch includes a representation of a place or thing.

the Commonwealth includes the Territories.

(2) In this Part, unless the contrary intention appears:

(a) expressions referring to obtaining, recording, using, having in possession, communicating or retaining include obtaining, recording, using, having in possession, communicating or retaining in whole or in part, and whether the thing or information itself, or only the substance, effect or description of the thing or information, is obtained, recorded, used, possessed, communicated or retained; and

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(b) a reference to a sketch, document or article or to information is to be read as including a reference to a copy of, a part of or a copy of a part of a sketch, document or article or information.

(3) For the purposes of this Part, a place that is occupied by, or a thing that is under the control of, the Commonwealth is taken to belong to the Commonwealth.

(4) This Part applies to and in relation to a document or article regardless of who made it and what information it contains.

Division 91—Offences relating to espionage and similar activities

91.1 Espionage and similar activities

(1) A person commits an offence if:

(a) the person communicates, or makes available:

(i) information concerning the Commonwealth's security or defence; or

(ii) information concerning the security or defence of another country, being information that the person acquired (whether directly or indirectly) from the Commonwealth; and

(b) the person does so intending to prejudice the Commonwealth's security or defence; and

(c) the person's act results in, or is likely to result in, the information being communicated or made available to another country or a foreign organisation, or to a person acting on behalf of such a country or organisation.

Penalty: Imprisonment for 25 years.

(2) A person commits an offence if:

(a) the person communicates, or makes available:

(i) information concerning the Commonwealth's security or defence; or

(ii) information concerning the security or defence of another country, being information that the person acquired (whether directly or indirectly) from the Commonwealth; and

(b) the person does so:

(i) without lawful authority; and

(ii) intending to give an advantage to another country's security or defence; and

(c) the person's act results in, or is likely to result in, the information being communicated or made available to another country or a foreign organisation, or to a person acting on behalf of such a country or organisation.

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Penalty: Imprisonment for 25 years.

(3) A person commits an offence if:

(a) the person makes, obtains or copies a record (in any form) of:

(i) information concerning the Commonwealth's security or defence; or

(ii) information concerning the security or defence of another country, being information that the person acquired (whether directly or indirectly) from the Commonwealth; and

(b) the person does so:

(i) intending that the record will, or may, be delivered to another country or a foreign organisation, or to a person acting on behalf of such a country or organisation; and

(ii) intending to prejudice the Commonwealth's security or defence.

Penalty: Imprisonment for 25 years.

(4) A person commits an offence if:

(a) the person makes, obtains or copies a record (in any form) of:

(i) information concerning the Commonwealth's security or defence; or

(ii) information concerning the security or defence of another country, being information that the person acquired (whether directly or indirectly) from the Commonwealth; and

(b) the person does so:

(i) without lawful authority; and

(ii) intending that the record will, or may, be delivered to another country or a foreign organisation, or to a person acting on behalf of such a country or organisation; and

(iii) intending to give an advantage to another country's security or defence.

Penalty: Imprisonment for 25 years.

(5) For the purposes of subparagraphs (3)(b)(i) and (4)(b)(ii), the person concerned does not need to have a particular country, foreign organisation or person in mind at the time when the person makes, obtains or copies the record.

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(6) A person charged with an offence under this section may only be remanded on bail by a judge of the Supreme Court of a State or Territory. This subsection has effect despite anything in section 93.1.

Note: Section 93.1 deals with how a prosecution is instituted.

(7) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to offences under this section.

91.2 Defence—information lawfully available

(1) It is a defence to a prosecution of an offence against subsection 91.1(1) or (2) that the information the person communicates or makes available is information that has already been communicated or made available to the public with the authority of the Commonwealth.

(2) It is a defence to a prosecution of an offence against subsection 91.1(3) or (4) that the record of information the person makes, obtains or copies is a record of information that has already been communicated or made available to the public with the authority of the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matters in subsections (1) and (2). See subsection 13.3(3).

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Division 93—Prosecutions and hearings

93.1 Institution of prosecution

(1) A prosecution under this Part may be instituted only by, or with the consent of, the Attorney-General or a person acting under the Attorney-General's direction.

(2) However:

(a) a person charged with an offence against this Part may be arrested, or a warrant for his or her arrest may be issued and executed; and

(b) such a person may be remanded in custody or on bail;

even if the consent of the Attorney-General or a person acting under his or her direction has not been obtained, but no further proceedings are to be taken until that consent has been obtained.

(3) Nothing in this section prevents the discharging of the accused if proceedings are not continued within a reasonable time.

93.2 Hearing in camera etc.

(1) This section applies to a hearing of an application or other proceedings before a federal court, a court exercising federal jurisdiction or a court of a Territory, whether under this Act or otherwise.

(2) At any time before or during the hearing, the judge or magistrate, or other person presiding or competent to preside over the proceedings, may, if satisfied that it is in the interest of the security or defence of the Commonwealth:

(a) order that some or all of the members of the public be excluded during the whole or a part of the hearing; or

(b) order that no report of the whole or a specified part of, or relating to, the application or proceedings be published; or

(c) make such order and give such directions as he or she thinks necessary for ensuring that no person, without the approval of the court, has access (whether before, during or after the hearing) to any affidavit, exhibit, information or other document used in the application or the proceedings that is on the file in the court or in the records of the court.

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(3) A person commits an offence if the person contravenes an order made or direction given under this section.

Penalty: Imprisonment for 5 years.

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Division 94—Forfeiture

94.1 Forfeiture of articles etc.

A sketch, article, record or document which is made, obtained, recorded, retained, forged, possessed or otherwise dealt with in contravention of this Part is forfeited to the Commonwealth.

Part 5.3—Terrorism

Division 100—Preliminary

100.1 Definitions

(1) In this Part:

AFP member means:

(a) a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or

(b) a special member of the Australian Federal Police (within the meaning of that Act).

Commonwealth place has the same meaning as in the *Commonwealth Places (Application of Laws) Act 1970*.

confirmed control order means an order made under section 104.16.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

continued preventative detention order means an order made under section 105.12.

control order means an interim control order or a confirmed control order.

corresponding State preventative detention law means a law of a State or Territory that is, or particular provisions of a law of a State or Territory that are, declared by the regulations to correspond to Division 105 of this Act.

express amendment of the provisions of this Part or Chapter 2 means the direct amendment of the provisions (whether by the insertion, omission, repeal, substitution or relocation of words or matter).

frisk search means:

(a) a search of a person conducted by quickly running the hands over the person's outer garments; and

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(b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

funds means:

(a) property and assets of every kind, whether tangible or intangible, movable or immovable, however acquired; and

(b) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such property or assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, debt instruments, drafts and letters of credit.

identification material, in relation to a person, means prints of the person's hands, fingers, feet or toes, recordings of the person's voice, samples of the person's handwriting or photographs (including video recordings) of the person, but does not include tape recordings made for the purposes of section 23U or 23V of the *Crimes Act 1914*.

initial preventative detention order means an order made under section 105.8.

interim control order means an order made under section 104.4, 104.7 or 104.9.

issuing authority:

(a) for initial preventative detention orders—means a senior AFP member; and

(b) for continued preventative detention orders—means a person appointed under section 105.2.

issuing court means:

(a) the Federal Court of Australia; or

(b) the Family Court of Australia; or

(c) the Federal Circuit Court of Australia.

Judge means a Judge of a court created by the Parliament.

lawyer means a person enrolled as a legal practitioner of a federal court or the Supreme Court of a State or Territory.

listed terrorist organisation means an organisation that is specified by the regulations for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in section 102.1.

ordinary search means a search of a person or of articles in the possession of a person that may include:

(a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes or hat; and

(b) an examination of those items.

organisation means a body corporate or an unincorporated body, whether or not the body:

(a) is based outside Australia; or

(b) consists of persons who are not Australian citizens; or

(c) is part of a larger organisation.

police officer means:

(a) an AFP member; or

(b) a member (however described) of a police force of a State or Territory.

prescribed authority has the same meaning as in Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*.

preventative detention order means an order under section 105.8 or 105.12.

prohibited contact order means an order made under section 105.15 or 105.16.

referring State has the meaning given by section 100.2.

seizable item means anything that:

(a) would present a danger to a person; or

(b) could be used to assist a person to escape from lawful custody; or

(c) could be used to contact another person or to operate a device remotely.

senior AFP member means:

(a) the Commissioner of the Australian Federal Police; or

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(b) a Deputy Commissioner of the Australian Federal Police; or
(c) an AFP member of, or above, the rank of Superintendent.

superior court means:
(a) the High Court; or
(b) the Federal Court of Australia; or
(c) the Family Court of Australia or of a State; or
(d) the Supreme Court of a State or Territory; or
(e) the District Court (or equivalent) of a State or Territory.

terrorist act means an action or threat of action where:
(a) the action falls within subsection (2) and does not fall within subsection (3); and
(b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and
(c) the action is done or the threat is made with the intention of:
(i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or
(ii) intimidating the public or a section of the public.

tracking device means any electronic device capable of being used to determine or monitor the location of a person or an object or the status of an object.

(2) Action falls within this subsection if it:
(a) causes serious harm that is physical harm to a person; or
(b) causes serious damage to property; or
(c) causes a person's death; or
(d) endangers a person's life, other than the life of the person taking the action; or
(e) creates a serious risk to the health or safety of the public or a section of the public; or
(f) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to:
(i) an information system; or
(ii) a telecommunications system; or
(iii) a financial system; or

(iv) a system used for the delivery of essential government services; or

(v) a system used for, or by, an essential public utility; or

(vi) a system used for, or by, a transport system.

(3) Action falls within this subsection if it:

(a) is advocacy, protest, dissent or industrial action; and

(b) is not intended:

(i) to cause serious harm that is physical harm to a person; or

(ii) to cause a person's death; or

(iii) to endanger the life of a person, other than the person taking the action; or

(iv) to create a serious risk to the health or safety of the public or a section of the public.

(4) In this Division:

(a) a reference to any person or property is a reference to any person or property wherever situated, within or outside Australia; and

(b) a reference to the public includes a reference to the public of a country other than Australia.

100.2 Referring States

(1) A State is a ***referring State*** if the Parliament of the State has referred the matters covered by subsections (2) and (3) to the Parliament of the Commonwealth for the purposes of paragraph 51(xxxvii) of the Constitution:

(a) if and to the extent that the matters are not otherwise included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference under paragraph 51(xxxvii) of the Constitution); and

(b) if and to the extent that the matters are included in the legislative powers of the Parliament of the State.

This subsection has effect subject to subsection (5).

(2) This subsection covers the matters to which the referred provisions relate to the extent of making laws with respect to those matters by including the referred provisions in this Code.

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(3) This subsection covers the matter of terrorist acts, and of actions relating to terrorist acts, to the extent of making laws with respect to that matter by making express amendment of this Part or Chapter 2.

(4) A State is a ***referring State*** even if a law of the State provides that the reference to the Commonwealth Parliament of either or both of the matters covered by subsections (2) and (3) is to terminate in particular circumstances.

(5) A State ceases to be a referring State if a reference by the State of either or both of the matters covered by subsections (2) and (3) terminate.

(6) In this section:

referred provisions means the provisions of Part 5.3 of this Code as inserted by the *Criminal Code Amendment (Terrorism) Act 2002*, to the extent to which they deal with matters that are included in the legislative powers of the Parliaments of the States.

100.3 Constitutional basis for the operation of this Part

Operation in a referring State

(1) The operation of this Part in a referring State is based on:
  (a) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)); and
  (b) the legislative powers that the Commonwealth Parliament has in respect of matters to which this Part relates because those matters are referred to it by the Parliament of the referring State under paragraph 51(xxxvii) of the Constitution.

Note: The State reference fully supplements the Commonwealth Parliament's other powers by referring the matters to the Commonwealth Parliament to the extent to which they are not otherwise included in the legislative powers of the Commonwealth Parliament.

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Operation in a non-referring State

(2) The operation of this Part in a State that is not a referring State is based on the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).

Note: Subsection 100.4(5) identifies particular powers that are being relied on.

Operation in a Territory

(3) The operation of this Part in the Northern Territory, the Australian Capital Territory or an external Territory is based on:

(a) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of that Territory; and

(b) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).

Despite subsection 22(3) of the *Acts Interpretation Act 1901*, this Part as applying in those Territories is a law of the Commonwealth.

Operation outside Australia

(4) The operation of this Part outside Australia and the external Territories is based on:

(a) the legislative powers that the Commonwealth Parliament has under paragraph 51(xxix) of the Constitution; and

(b) the other legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).

100.4 Application of provisions

Part generally applies to all terrorist acts and preliminary acts

(1) Subject to subsection (4), this Part applies to the following conduct:

(a) all actions or threats of action that constitute terrorist acts (no matter where the action occurs, the threat is made or the action, if carried out, would occur);

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(b) all actions (***preliminary acts***) that relate to terrorist acts but do not themselves constitute terrorist acts (no matter where the preliminary acts occur and no matter where the terrorist acts to which they relate occur or would occur).

Note: See the following provisions:
(a) subsection 101.1(2);
(b) subsection 101.2(4);
(c) subsection 101.4(4);
(d) subsection 101.5(4);
(e) subsection 101.6(3);
(f) section 102.9.

Operation in relation to terrorist acts and preliminary acts occurring in a State that is not a referring State

(2) Subsections (4) and (5) apply to conduct if the conduct is itself a terrorist act and:
(a) the terrorist act consists of an action and the action occurs in a State that is not a referring State; or
(b) the terrorist act consists of a threat of action and the threat is made in a State that is not a referring State.

(3) Subsections (4) and (5) also apply to conduct if the conduct is a preliminary act that occurs in a State that is not a referring State and:
(a) the terrorist act to which the preliminary act relates consists of an action and the action occurs, or would occur, in a State that is not a referring State; or
(b) the terrorist act to which the preliminary act relates consists of a threat of action and the threat is made, or would be made, in a State that is not a referring State.

(4) Notwithstanding any other provision in this Part, this Part applies to the conduct only to the extent to which the Parliament has power to legislate in relation to:
(a) if the conduct is itself a terrorist act—the action or threat of action that constitutes the terrorist act; or
(b) if the conduct is a preliminary act—the action or threat of action that constitutes the terrorist act to which the preliminary act relates.

(5) Without limiting the generality of subsection (4), this Part applies to the action or threat of action if:

(a) the action affects, or if carried out would affect, the interests of:

(i) the Commonwealth; or

(ii) an authority of the Commonwealth; or

(iii) a constitutional corporation; or

(b) the threat is made to:

(i) the Commonwealth; or

(ii) an authority of the Commonwealth; or

(iii) a constitutional corporation; or

(c) the action is carried out by, or the threat is made by, a constitutional corporation; or

(d) the action takes place, or if carried out would take place, in a Commonwealth place; or

(e) the threat is made in a Commonwealth place; or

(f) the action involves, or if carried out would involve, the use of a postal service or other like service; or

(g) the threat is made using a postal or other like service; or

(h) the action involves, or if carried out would involve, the use of an electronic communication; or

(i) the threat is made using an electronic communication; or

(j) the action disrupts, or if carried out would disrupt, trade or commerce:

(i) between Australia and places outside Australia; or

(ii) among the States; or

(iii) within a Territory, between a State and a Territory or between 2 Territories; or

(k) the action disrupts, or if carried out would disrupt:

(i) banking (other than State banking not extending beyond the limits of the State concerned); or

(ii) insurance (other than State insurance not extending beyond the limits of the State concerned); or

(l) the action is, or if carried out would be, an action in relation to which the Commonwealth is obliged to create an offence under international law; or

(m) the threat is one in relation to which the Commonwealth is obliged to create an offence under international law.

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(6) To avoid doubt, subsections (2) and (3) apply to a State that is not a referring State at a particular time even if no State is a referring State at that time.

100.5 Application of *Acts Interpretation Act 1901*

(1) The *Acts Interpretation Act 1901*, as in force on the day on which Schedule 1 to the *Criminal Code Amendment (Terrorism) Act 2003* commences, applies to this Part.

(2) Amendments of the *Acts Interpretation Act 1901* made after that day do not apply to this Part.

(3) Despite subsections (1) and (2), sections 2D, 2E and 2F of the *Acts Interpretation Act 1901* apply to this Part.

100.6 Concurrent operation intended

(1) This Part is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

(2) Without limiting subsection (1), this Part is not intended to exclude or limit the concurrent operation of a law of a State or Territory that makes:

(a) an act or omission that is an offence against a provision of this Part; or

(b) a similar act or omission;

an offence against the law of the State or Territory.

(3) Subsection (2) applies even if the law of the State or Territory does any one or more of the following:

(a) provides for a penalty for the offence that differs from the penalty provided for in this Part;

(b) provides for a fault element in relation to the offence that differs from the fault elements applicable to the offence under this Part;

(c) provides for a defence in relation to the offence that differs from the defences applicable to the offence under this Part.

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(4) If:

(a) an act or omission of a person is an offence under this Part and is also an offence under the law of a State or Territory; and

(b) the person has been punished for the offence under the law of the State or Territory;

the person is not liable to be punished for the offence under this Part.

100.7 Regulations may modify operation of this Part to deal with interaction between this Part and State and Territory laws

(1) The regulations may modify the operation of this Part so that:

(a) provisions of this Part do not apply to a matter that is dealt with by a law of a State or Territory specified in the regulations; or

(b) no inconsistency arises between the operation of a provision of this Part and the operation of a State or Territory law specified in the regulations.

(2) Without limiting subsection (1), regulations made for the purposes of that subsection may provide that the provision of this Part does not apply to:

(a) a person specified in the regulations; or

(b) a body specified in the regulations; or

(c) circumstances specified in the regulations; or

(d) a person or body specified in the regulations in the circumstances specified in the regulations.

(3) In this section:

matter includes act, omission, body, person or thing.

100.8 Approval for changes to or affecting this Part

(1) This section applies to:

(a) an express amendment of this Part (including this section); and

(b) an express amendment of Chapter 2 that applies only to this Part (whether or not it is expressed to apply only to this Part).

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(2) An express amendment to which this section applies is not to be made unless the amendment is approved by:

(a) a majority of the group consisting of the States, the Australian Capital Territory and the Northern Territory; and

(b) at least 4 States.

Division 101—Terrorism

101.1 Terrorist acts

(1) A person commits an offence if the person engages in a terrorist act.

Penalty: Imprisonment for life.

(2) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

101.2 Providing or receiving training connected with terrorist acts

(1) A person commits an offence if:
(a) the person provides or receives training; and
(b) the training is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
(c) the person mentioned in paragraph (a) knows of the connection described in paragraph (b).

Penalty: Imprisonment for 25 years.

(2) A person commits an offence if:
(a) the person provides or receives training; and
(b) the training is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
(c) the person mentioned in paragraph (a) is reckless as to the existence of the connection described in paragraph (b).

Penalty: Imprisonment for 15 years.

(3) A person commits an offence under this section even if:
(a) a terrorist act does not occur; or
(b) the training is not connected with preparation for, the engagement of a person in, or assistance in a specific terrorist act; or
(c) the training is connected with preparation for, the engagement of a person in, or assistance in more than one terrorist act.

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(4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.

(5) If, in a prosecution for an offence (the ***prosecuted offence***) against a subsection of this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the ***alternative offence***) against another subsection of this section, the trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

101.4 Possessing things connected with terrorist acts

(1) A person commits an offence if:
  (a) the person possesses a thing; and
  (b) the thing is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
  (c) the person mentioned in paragraph (a) knows of the connection described in paragraph (b).

Penalty: Imprisonment for 15 years.

(2) A person commits an offence if:
  (a) the person possesses a thing; and
  (b) the thing is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
  (c) the person mentioned in paragraph (a) is reckless as to the existence of the connection described in paragraph (b).

Penalty: Imprisonment for 10 years.

(3) A person commits an offence under subsection (1) or (2) even if:
  (a) a terrorist act does not occur; or
  (b) the thing is not connected with preparation for, the engagement of a person in, or assistance in a specific terrorist act; or
  (c) the thing is connected with preparation for, the engagement of a person in, or assistance in more than one terrorist act.

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(4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.

(5) Subsections (1) and (2) do not apply if the possession of the thing was not intended to facilitate preparation for, the engagement of a person in, or assistance in a terrorist act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3)).

(6) If, in a prosecution for an offence (the ***prosecuted offence***) against a subsection of this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the ***alternative offence***) against another subsection of this section, the trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

101.5 Collecting or making documents likely to facilitate terrorist acts

(1) A person commits an offence if:
(a) the person collects or makes a document; and
(b) the document is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
(c) the person mentioned in paragraph (a) knows of the connection described in paragraph (b).

Penalty: Imprisonment for 15 years.

(2) A person commits an offence if:
(a) the person collects or makes a document; and
(b) the document is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
(c) the person mentioned in paragraph (a) is reckless as to the existence of the connection described in paragraph (b).

Penalty: Imprisonment for 10 years.

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(3) A person commits an offence under subsection (1) or (2) even if:
  (a) a terrorist act does not occur; or
  (b) the document is not connected with preparation for, the engagement of a person in, or assistance in a specific terrorist act; or
  (c) the document is connected with preparation for, the engagement of a person in, or assistance in more than one terrorist act.

(4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.

(5) Subsections (1) and (2) do not apply if the collection or making of the document was not intended to facilitate preparation for, the engagement of a person in, or assistance in a terrorist act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3)).

(6) If, in a prosecution for an offence (the ***prosecuted offence***) against a subsection of this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the ***alternative offence***) against another subsection of this section, the trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

101.6 Other acts done in preparation for, or planning, terrorist acts

(1) A person commits an offence if the person does any act in preparation for, or planning, a terrorist act.

Penalty: Imprisonment for life.

(2) A person commits an offence under subsection (1) even if:
  (a) a terrorist act does not occur; or
  (b) the person's act is not done in preparation for, or planning, a specific terrorist act; or
  (c) the person's act is done in preparation for, or planning, more than one terrorist act.

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(3) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

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Division 102—Terrorist organisations

Subdivision A—Definitions

102.1 Definitions

(1) In this Division:

advocate has the meaning given by subsection (1A).

associate: a person associates with another person if the person meets or communicates with the other person.

close family member of a person means:

(a) the person's spouse or de facto partner; or

(b) a parent, step-parent or grandparent of the person; or

(c) a child, step-child or grandchild of the person; or

(d) a brother, sister, step-brother or step-sister of the person; or

(e) a guardian or carer of the person.

Note: See also subsection (19).

member of an organisation includes:

(a) a person who is an informal member of the organisation; and

(b) a person who has taken steps to become a member of the organisation; and

(c) in the case of an organisation that is a body corporate—a director or an officer of the body corporate.

recruit includes induce, incite and encourage.

terrorist organisation means:

(a) an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act occurs); or

(b) an organisation that is specified by the regulations for the purposes of this paragraph (see subsections (2), (3) and (4)).

*Definition of **advocates***

(1A) In this Division, an organisation ***advocates*** the doing of a terrorist act if:

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(a) the organisation directly or indirectly counsels or urges the doing of a terrorist act; or

(b) the organisation directly or indirectly provides instruction on the doing of a terrorist act; or

(c) the organisation directly praises the doing of a terrorist act in circumstances where there is a substantial risk that such praise might have the effect of leading a person (regardless of his or her age or any mental impairment that the person might suffer) to engage in a terrorist act.

Terrorist organisation regulations

(2) Before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in this section, the Minister must be satisfied on reasonable grounds that the organisation:

(a) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur); or

(b) advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).

(2A) Before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in this section, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation.

(3) Regulations for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in this section cease to have effect on the third anniversary of the day on which they take effect. To avoid doubt, this subsection does not prevent:

(a) the repeal of those regulations; or

(b) the cessation of effect of those regulations under subsection (4); or

(c) the making of new regulations the same in substance as those regulations (whether the new regulations are made or take effect before or after those regulations cease to have effect because of this subsection).

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(4) If:

(a) an organisation is specified by regulations made for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in this section; and

(b) the Minister ceases to be satisfied of either of the following (as the case requires):

(i) that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur);

(ii) that the organisation advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur);

the Minister must, by written notice published in the *Gazette*, make a declaration to the effect that the Minister has ceased to be so satisfied. The regulations, to the extent to which they specify the organisation, cease to have effect when the declaration is made.

(5) To avoid doubt, subsection (4) does not prevent the organisation from being subsequently specified by regulations made for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in this section if the Minister becomes satisfied as mentioned in subsection (2).

(6) If, under subsection (3) or (4), a regulation ceases to have effect, section 15 of the *Legislative Instruments Act 2003* applies as if the regulation had been repealed.

(17) If:

(a) an organisation (the ***listed organisation***) is specified in regulations made for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in this section; and

(b) an individual or an organisation (which may be the listed organisation) makes an application (the ***de-listing application***) to the Minister for a declaration under subsection (4) in relation to the listed organisation; and

(c) the de-listing application is made on the grounds that there is no basis for the Minister to be satisfied that the listed organisation:

(i) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act

(whether or not a terrorist act has occurred or will occur); or

(ii) advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur);

as the case requires;

the Minister must consider the de-listing application.

(18) Subsection (17) does not limit the matters that may be considered by the Minister for the purposes of subsection (4).

(19) For the purposes of this Division, the close family members of a person are taken to include the following (without limitation):

(a) a de facto partner of the person;

(b) someone who is the child of the person, or of whom the person is the child, because of the definition of ***child*** in the Dictionary;

(c) anyone else who would be a member of the person's family if someone mentioned in paragraph (a) or (b) is taken to be a close family member of the person.

102.1A Reviews by Parliamentary Joint Committee on Intelligence and Security

Review of listing regulation

(1) If a regulation made after the commencement of this section specifies an organisation for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in section 102.1, the Parliamentary Joint Committee on Intelligence and Security may:

(a) review the regulation as soon as possible after the making of the regulation; and

(b) report the Committee's comments and recommendations to each House of the Parliament before the end of the applicable disallowance period for that House.

Review of listing regulation—extension of applicable disallowance period

(3) If the Committee's report on a review of a regulation is tabled in a House of the Parliament:

(a) during the applicable disallowance period for that House; and

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(b) on or after the eighth sitting day of the applicable disallowance period;

then whichever of the following provisions is applicable:

(c) subsections 48(4), (5) and (5A) and section 48B of the *Acts Interpretation Act 1901*;

(d) Part 5 of the *Legislative Instruments Act 2003*;

have or has effect, in relation to that regulation and that House, as if each period of 15 sitting days referred to in those provisions were extended in accordance with the table:

Extension of applicable disallowance period

Item	If the Committee's report is tabled in that House...	extend the period of 15 sitting days by...
1	on the fifteenth sitting day of the applicable disallowance period	8 sitting days of that House
2	on the fourteenth sitting day of the applicable disallowance period	7 sitting days of that House
3	on the thirteenth sitting day of the applicable disallowance period	6 sitting days of that House
4	on the twelfth sitting day of the applicable disallowance period	5 sitting days of that House
5	on the eleventh sitting day of the applicable disallowance period	4 sitting days of that House
6	on the tenth sitting day of the applicable disallowance period	3 sitting days of that House
7	on the ninth sitting day of the applicable disallowance period	2 sitting days of that House
8	on the eighth sitting day of the applicable disallowance period	1 sitting day of that House

Applicable disallowance period

(4) For the purposes of the application of this section to a regulation, the ***applicable disallowance period*** for a House of the Parliament means the period of 15 sitting days of that House after the regulation, or a copy of the regulation, was laid before that House in accordance with whichever of the following provisions was applicable:

(a) paragraph 48(1)(c) of the *Acts Interpretation Act 1901*;

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(b) section 38 of the *Legislative Instruments Act 2003*.

Subdivision B—Offences

102.2 Directing the activities of a terrorist organisation

(1) A person commits an offence if:

(a) the person intentionally directs the activities of an organisation; and

(b) the organisation is a terrorist organisation; and

(c) the person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

(2) A person commits an offence if:

(a) the person intentionally directs the activities of an organisation; and

(b) the organisation is a terrorist organisation; and

(c) the person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 15 years.

102.3 Membership of a terrorist organisation

(1) A person commits an offence if:

(a) the person intentionally is a member of an organisation; and

(b) the organisation is a terrorist organisation; and

(c) the person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 10 years.

(2) Subsection (1) does not apply if the person proves that he or she took all reasonable steps to cease to be a member of the organisation as soon as practicable after the person knew that the organisation was a terrorist organisation.

Note: A defendant bears a legal burden in relation to the matter in subsection (2) (see section 13.4).

102.4 Recruiting for a terrorist organisation

(1) A person commits an offence if:

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(a) the person intentionally recruits a person to join, or participate in the activities of, an organisation; and
(b) the organisation is a terrorist organisation; and
(c) the first-mentioned person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

(2) A person commits an offence if:
(a) the person intentionally recruits a person to join, or participate in the activities of, an organisation; and
(b) the organisation is a terrorist organisation; and
(c) the first-mentioned person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 15 years.

102.5 Training a terrorist organisation or receiving training from a terrorist organisation

(1) A person commits an offence if:
(a) the person intentionally provides training to, or intentionally receives training from, an organisation; and
(b) the organisation is a terrorist organisation; and
(c) the person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

(2) A person commits an offence if:
(a) the person intentionally provides training to, or intentionally receives training from, an organisation; and
(b) the organisation is a terrorist organisation that is covered by paragraph (b) of the definition of ***terrorist organisation*** in subsection 102.1(1).

Penalty: Imprisonment for 25 years.

(3) Subject to subsection (4), strict liability applies to paragraph (2)(b).

(4) Subsection (2) does not apply unless the person is reckless as to the circumstance mentioned in paragraph (2)(b).

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Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3)).

102.6 Getting funds to, from or for a terrorist organisation

(1) A person commits an offence if:

(a) the person intentionally:

(i) receives funds from, or makes funds available to, an organisation (whether directly or indirectly); or

(ii) collects funds for, or on behalf of, an organisation (whether directly or indirectly); and

(b) the organisation is a terrorist organisation; and

(c) the person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

(2) A person commits an offence if:

(a) the person intentionally:

(i) receives funds from, or makes funds available to, an organisation (whether directly or indirectly); or

(ii) collects funds for, or on behalf of, an organisation (whether directly or indirectly); and

(b) the organisation is a terrorist organisation; and

(c) the person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 15 years.

(3) Subsections (1) and (2) do not apply to the person's receipt of funds from the organisation if the person proves that he or she received the funds solely for the purpose of the provision of:

(a) legal representation for a person in proceedings relating to this Division; or

(b) assistance to the organisation for it to comply with a law of the Commonwealth or a State or Territory.

Note: A defendant bears a legal burden in relation to the matter in subsection (3) (see section 13.4).

102.7 Providing support to a terrorist organisation

(1) A person commits an offence if:

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(a) the person intentionally provides to an organisation support or resources that would help the organisation engage in an activity described in paragraph (a) of the definition of ***terrorist organisation*** in this Division; and
(b) the organisation is a terrorist organisation; and
(c) the person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

(2) A person commits an offence if:
(a) the person intentionally provides to an organisation support or resources that would help the organisation engage in an activity described in paragraph (a) of the definition of ***terrorist organisation*** in this Division; and
(b) the organisation is a terrorist organisation; and
(c) the person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 15 years.

102.8 Associating with terrorist organisations

(1) A person commits an offence if:
(a) on 2 or more occasions:
(i) the person intentionally associates with another person who is a member of, or a person who promotes or directs the activities of, an organisation; and
(ii) the person knows that the organisation is a terrorist organisation; and
(iii) the association provides support to the organisation; and
(iv) the person intends that the support assist the organisation to expand or to continue to exist; and
(v) the person knows that the other person is a member of, or a person who promotes or directs the activities of, the organisation; and
(b) the organisation is a terrorist organisation because of paragraph (b) of the definition of ***terrorist organisation*** in this Division (whether or not the organisation is a terrorist organisation because of paragraph (a) of that definition also).

Penalty: Imprisonment for 3 years.

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(2) A person commits an offence if:

(a) the person has previously been convicted of an offence against subsection (1); and

(b) the person intentionally associates with another person who is a member of, or a person who promotes or directs the activities of, an organisation; and

(c) the person knows that the organisation is a terrorist organisation; and

(d) the association provides support to the organisation; and

(e) the person intends that the support assist the organisation to expand or to continue to exist; and

(f) the person knows that the other person is a member of, or a person who promotes or directs the activities of, the organisation; and

(g) the organisation is a terrorist organisation because of paragraph (b) of the definition of ***terrorist organisation*** in this Division (whether or not the organisation is a terrorist organisation because of paragraph (a) of that definition also).

Penalty: Imprisonment for 3 years.

(3) Strict liability applies to paragraphs (1)(b) and (2)(g).

(4) This section does not apply if:

(a) the association is with a close family member and relates only to a matter that could reasonably be regarded (taking into account the person's cultural background) as a matter of family or domestic concern; or

(b) the association is in a place being used for public religious worship and takes place in the course of practising a religion; or

(c) the association is only for the purpose of providing aid of a humanitarian nature; or

(d) the association is only for the purpose of providing legal advice or legal representation in connection with:

(i) criminal proceedings or proceedings related to criminal proceedings (including possible criminal proceedings in the future); or

(ii) proceedings relating to whether the organisation in question is a terrorist organisation; or

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(iii) a decision made or proposed to be made under Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*, or proceedings relating to such a decision or proposed decision; or

(iv) a listing or proposed listing under section 15 of the *Charter of the United Nations Act 1945* or an application or proposed application to revoke such a listing, or proceedings relating to such a listing or application or proposed listing or application; or

(v) proceedings conducted by a military commission of the United States of America established under a Military Order of 13 November 2001 made by the President of the United States of America and entitled "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism"; or

(vi) proceedings for a review of a decision relating to a passport or other travel document or to a failure to issue such a passport or other travel document (including a passport or other travel document that was, or would have been, issued by or on behalf of the government of a foreign country).

Note: A defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3).

(5) This section does not apply unless the person is reckless as to the circumstance mentioned in paragraph (1)(b) and (2)(g) (as the case requires).

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

(6) This section does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.

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

(7) A person who is convicted of an offence under subsection (1) in relation to the person's conduct on 2 or more occasions is not liable to be punished for an offence under subsection (1) for other conduct of the person that takes place:

(a) at the same time as that conduct; or

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(b) within 7 days before or after any of those occasions.

Subdivision C—General provisions relating to offences

102.9 Extended geographical jurisdiction for offences

Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this Division.

102.10 Alternative verdicts

(1) This section applies if, in a prosecution for an offence (the ***prosecuted offence***) against a subsection of a section of this Division, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the ***alternative offence***) against another subsection of that section.

(2) The trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

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Division 103—Financing terrorism

103.1 Financing terrorism

(1) A person commits an offence if:

(a) the person provides or collects funds; and

(b) the person is reckless as to whether the funds will be used to facilitate or engage in a terrorist act.

Penalty: Imprisonment for life.

Note: Intention is the fault element for the conduct described in paragraph (1)(a). See subsection 5.6(1).

(2) A person commits an offence under subsection (1) even if:

(a) a terrorist act does not occur; or

(b) the funds will not be used to facilitate or engage in a specific terrorist act; or

(c) the funds will be used to facilitate or engage in more than one terrorist act.

103.2 Financing a terrorist

(1) A person commits an offence if:

(a) the person intentionally:

(i) makes funds available to another person (whether directly or indirectly); or

(ii) collects funds for, or on behalf of, another person (whether directly or indirectly); and

(b) the first-mentioned person is reckless as to whether the other person will use the funds to facilitate or engage in a terrorist act.

Penalty: Imprisonment for life.

(2) A person commits an offence under subsection (1) even if:

(a) a terrorist act does not occur; or

(b) the funds will not be used to facilitate or engage in a specific terrorist act; or

(c) the funds will be used to facilitate or engage in more than one terrorist act.

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103.3 Extended geographical jurisdiction for offences

Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this Division.

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Division 104—Control orders

Subdivision A—Object of this Division

104.1 Object of this Division

The object of this Division is to allow obligations, prohibitions and restrictions to be imposed on a person by a control order for the purpose of protecting the public from a terrorist act.

Subdivision B—Making an interim control order

104.2 Attorney-General's consent to request an interim control order

(1) A senior AFP member must not request an interim control order in relation to a person without the Attorney-General's written consent.

Note: However, in urgent circumstances, a senior AFP member may request an interim control order without first obtaining the Attorney-General's consent (see Subdivision C).

(2) A senior AFP member may only seek the Attorney-General's written consent to request an interim control order in relation to a person if the member:

(a) considers on reasonable grounds that the order in the terms to be requested would substantially assist in preventing a terrorist act; or

(b) suspects on reasonable grounds that the person has provided training to, or received training from, a listed terrorist organisation.

(3) In seeking the Attorney-General's consent, the member must give the Attorney-General a draft request that includes:

(a) a draft of the interim control order to be requested; and

(b) the following:

(i) a statement of the facts relating to why the order should be made;

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(ii) if the member is aware of any facts relating to why the order should not be made—a statement of those facts; and

(c) the following:

(i) an explanation as to why each of the obligations, prohibitions and restrictions should be imposed on the person;

(ii) if the member is aware of any facts relating to why any of those obligations, prohibitions or restrictions should not be imposed on the person—a statement of those facts; and

(d) the following:

(i) the outcomes and particulars of all previous requests for interim control orders (including the outcomes of the hearings to confirm the orders) in relation to the person;

(ii) the outcomes and particulars of all previous applications for variations of control orders made in relation to the person;

(iii) the outcomes of all previous applications for revocations of control orders made in relation to the person;

(iv) the outcomes and particulars of all previous applications for preventative detention orders in relation to the person;

(v) information (if any) that the member has about any periods for which the person has been detained under an order made under a corresponding State preventative detention law; and

(e) information (if any) that the member has about the person's age; and

(f) a summary of the grounds on which the order should be made.

Note 1: An interim control order cannot be requested in relation to a person who is under 16 years of age (see section 104.28).

Note 2: The member might commit an offence if the draft request is false or misleading (see sections 137.1 and 137.2).

(3A) To avoid doubt, paragraph (3)(f) does not require any information to be included in the summary if disclosure of that information is likely to prejudice national security (within the meaning of the

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National Security Information (Criminal and Civil Proceedings) Act 2004).

(4) The Attorney-General's consent may be made subject to changes being made to the draft request (including the draft of the interim control order to be requested).

(5) To avoid doubt, a senior AFP member may seek the Attorney-General's consent to request an interim control order in relation to a person, even if such a request has previously been made in relation to the person.

104.3 Requesting the court to make an interim control order

If the Attorney-General consents to the request under section 104.2, the senior AFP member may request the interim control order by giving an issuing court:

(a) a request:
  (i) that is the same as the draft request, except for the changes (if any) required by the Attorney-General; and
  (ii) the information in which is sworn or affirmed by the member; and

(b) a copy of the Attorney-General's consent.

Note: The member might commit an offence if the request is false or misleading (see sections 137.1 and 137.2).

104.4 Making an interim control order

(1) The issuing court may make an order under this section in relation to the person, but only if:

(a) the senior AFP member has requested it in accordance with section 104.3; and

(b) the court has received and considered such further information (if any) as the court requires; and

(c) the court is satisfied on the balance of probabilities:
  (i) that making the order would substantially assist in preventing a terrorist act; or
  (ii) that the person has provided training to, or received training from, a listed terrorist organisation; and

(d) the court is satisfied on the balance of probabilities that each of the obligations, prohibitions and restrictions to be imposed

on the person by the order is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the public from a terrorist act.

(2) In determining whether each of the obligations, prohibitions and restrictions to be imposed on the person by the order is reasonably necessary, and reasonably appropriate and adapted, the court must take into account the impact of the obligation, prohibition or restriction on the person's circumstances (including the person's financial and personal circumstances).

(3) The court need not include in the order an obligation, prohibition or restriction that was sought by the senior AFP member if the court is not satisfied as mentioned in paragraph (1)(d) in respect of that obligation, prohibition or restriction.

104.5 Terms of an interim control order

(1) If the issuing court makes the interim control order, the order must:

(a) state that the court is satisfied of the matters mentioned in paragraphs 104.4(1)(c) and (d); and

(b) specify the name of the person to whom the order relates; and

(c) specify all of the obligations, prohibitions and restrictions mentioned in subsection (3) that are to be imposed on the person by the order; and

(d) state that the order does not begin to be in force until it is served personally on the person; and

(e) specify a day on which the person may attend the court for the court to:

(i) confirm (with or without variation) the interim control order; or

(ii) declare the interim control order to be void; or

(iii) revoke the interim control order; and

(f) specify the period during which the confirmed control order is to be in force, which must not end more than 12 months after the day on which the interim control order is made; and

(g) state that the person's lawyer may attend a specified place in order to obtain a copy of the interim control order; and

(h) set out a summary of the grounds on which the order is made.

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Note 1: An interim control order made in relation to a person must be served on the person at least 48 hours before the day specified as mentioned in paragraph (1)(e) (see section 104.12).

Note 2: A confirmed control order that is made in relation to a 16- to 18-year-old must not end more than 3 months after the day on which the interim control order is made (see section 104.28).

(1A) The day specified for the purposes of paragraph (1)(e) must be as soon as practicable, but at least 72 hours, after the order is made.

(2) Paragraph (1)(f) does not prevent the making of successive control orders in relation to the same person.

(2A) To avoid doubt, paragraph (1)(h) does not require any information to be included in the summary if disclosure of that information is likely to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*).

Obligations, prohibitions and restrictions

(3) The obligations, prohibitions and restrictions that the court may impose on the person by the order are the following:

(a) a prohibition or restriction on the person being at specified areas or places;

(b) a prohibition or restriction on the person leaving Australia;

(c) a requirement that the person remain at specified premises between specified times each day, or on specified days;

(d) a requirement that the person wear a tracking device;

(e) a prohibition or restriction on the person communicating or associating with specified individuals;

(f) a prohibition or restriction on the person accessing or using specified forms of telecommunication or other technology (including the internet);

(g) a prohibition or restriction on the person possessing or using specified articles or substances;

(h) a prohibition or restriction on the person carrying out specified activities (including in respect of his or her work or occupation);

(i) a requirement that the person report to specified persons at specified times and places;

(j) a requirement that the person allow himself or herself to be photographed;

(k) a requirement that the person allow impressions of his or her fingerprints to be taken;

(l) a requirement that the person participate in specified counselling or education.

Note: Restrictions apply to the use of photographs or impressions of fingerprints taken as mentioned in paragraphs (3)(j) and (k) (see section 104.22).

Communicating and associating

(4) Subsection 102.8(4) applies to paragraph (3)(e) and the person's communication or association in the same way as that subsection applies to section 102.8 and a person's association.

(5) This section does not affect the person's right to contact, communicate or associate with the person's lawyer unless the person's lawyer is a specified individual as mentioned in paragraph (3)(e). If the person's lawyer is so specified, the person may contact, communicate or associate with any other lawyer who is not so specified.

Counselling and education

(6) A person is required to participate in specified counselling or education as mentioned in paragraph (3)(l) only if the person agrees, at the time of the counselling or education, to participate in the counselling or education.

Subdivision C—Making an urgent interim control order

104.6 Requesting an urgent interim control order by electronic means

(1) A senior AFP member may request, by telephone, fax, email or other electronic means, an issuing court to make an interim control order in relation to a person if:

(a) the member considers it necessary to use such means because of urgent circumstances; and

(b) the member either considers or suspects the matters mentioned in subsection 104.2(2) on reasonable grounds.

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(2) The Attorney-General's consent under section 104.2 is not required before the request is made.

Note: However, if the Attorney-General's consent is not obtained before the member makes the request, the Attorney-General's consent must be obtained within 4 hours of the member making the request (see section 104.10).

(3) The issuing court may require communication by voice to the extent that is practicable in the circumstances.

(4) The request must include the following:

(a) all that is required under subsection 104.2(3) in respect of an ordinary request for an interim control order (including, if the Attorney-General's consent has been obtained before making the request, the changes (if any) required by the Attorney-General);

(b) an explanation as to why the making of the interim control order is urgent;

(c) if the Attorney-General's consent has been obtained before making the request—a copy of the Attorney-General's consent.

Note: The member might commit an offence if the request is false or misleading (see sections 137.1 and 137.2).

(5) The information and the explanation included in the request must be sworn or affirmed by the member, but do not have to be sworn or affirmed before the request is made.

Note: Subsection 104.7(5) requires the information and the explanation to be sworn or affirmed within 24 hours.

104.7 Making an urgent interim control order by electronic means

(1) Before making an order in response to a request under section 104.6, the issuing court must:

(a) consider the information and the explanation included in the request; and

(b) receive and consider such further information (if any) as the court requires.

(2) If the issuing court is satisfied that an order should be made urgently, the court may complete the same form of order that would be made under sections 104.4 and 104.5.

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Procedure after urgent interim control order is made

(3) If the issuing court makes the order, the court must inform the senior AFP member, by telephone, fax, email or other electronic means, of:
  (a) the terms of the order; and
  (b) the day on which, and the time at which, it was completed.

(4) The member must then complete a form of order in terms substantially corresponding to those given by the issuing court, stating on the form:
  (a) the name of the court; and
  (b) the day on which, and the time at which, the order was completed.

(5) Within 24 hours of being informed under subsection (3), the member must give or transmit the following to the issuing court:
  (a) the form of order completed by the member;
  (b) if the information and the explanation included in the request were not already sworn or affirmed—that information and explanation duly sworn or affirmed;
  (c) if the Attorney-General's consent was not obtained before making the request—a copy of the Attorney-General's consent.

(6) The issuing court must attach to the documents provided under subsection (5) the form of order the court has completed.

104.8 Requesting an urgent interim control order in person

(1) A senior AFP member may request, in person, an issuing court to make an interim control order in relation to a person without first obtaining the Attorney-General's consent under section 104.2 if:
  (a) the member considers it necessary to request the order without the consent because of urgent circumstances; and
  (b) the member either considers or suspects the matters mentioned in subsection 104.2(2) on reasonable grounds.

Note: The Attorney-General's consent must be obtained within 4 hours of making the request (see section 104.10).

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(2) The request must include the following:

(a) all that is required under subsection 104.2(3) in respect of an ordinary request for an interim control order (including information that is sworn or affirmed by the member);

(b) an explanation that is sworn or affirmed as to why the making of the interim control order without first obtaining the Attorney-General's consent is urgent.

Note: The member might commit an offence if the request is false or misleading (see sections 137.1 and 137.2).

104.9 Making an urgent interim control order in person

(1) Before making an order in response to a request under section 104.8, the issuing court must:

(a) consider the information and the explanation included in the request; and

(b) receive and consider such further information (if any) as the court requires.

(2) If the issuing court is satisfied that an order should be made urgently, the court may make the same order that would be made under sections 104.4 and 104.5.

(3) Within 24 hours of the order being made under subsection (2), the member must:

(a) give or transmit a copy of the order to the issuing court; and

(b) either:

(i) give or transmit a copy of the Attorney-General's consent to request the order to the court; or

(ii) notify the court in writing that the Attorney-General's consent was not obtained.

Note: Section 104.10 deals with the Attorney-General's consent.

104.10 Obtaining the Attorney-General's consent within 4 hours

(1) If the Attorney-General's consent to request an interim control order was not first sought before making a request under section 104.6 or 104.8, the senior AFP member who made the request must, in accordance with subsection 104.2(3), seek that consent within 4 hours of making the request.

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(2) In any case, if the Attorney-General:

(a) refuses his or her consent to request the order; or

(b) has not given his or her consent to request the order;

within 4 hours of the request being made, the order immediately ceases to be in force.

Note: However, the senior AFP member can vary the request and seek the Attorney-General's consent to request a new interim control order in relation to the person (see subsection 104.2(5)).

(3) If the order ceases to be in force under subsection (2), the senior AFP member must, as soon as practicable:

(a) notify the court that the order has ceased to be in force; and

(b) if the order has been served on the person in relation to whom it was made:

(i) annotate the order to indicate that it has ceased to be in force; and

(ii) cause the annotated order to be served personally on the person.

104.11 Court to assume that exercise of power not authorised by urgent interim control order

If:

(a) it is material, in any proceedings, for a court to be satisfied that an interim control order was duly made under section 104.7; and

(b) the form of order completed by the relevant issuing court is not produced in evidence;

the first-mentioned court is to assume, unless the contrary is proved, that the order was not duly made.

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Subdivision D—Confirming an interim control order

104.12 Service, explanation and notification of an interim control order

Service and explanation of an interim control order

(1) As soon as practicable after an interim control order is made in relation to a person, and at least 48 hours before the day specified as mentioned in paragraph 104.5(1)(e), an AFP member:

(a) must serve the order personally on the person; and

(b) must inform the person of the following:

(i) the effect of the order;

(ii) the period for which the order (if confirmed) is in force;

(iii) the effect of sections 104.12A, 104.13, 104.14, 104.18 and 104.27 (and section 104.22 if appropriate); and

(c) must ensure that the person understands the information provided under paragraph (b) (taking into account the person's age, language skills, mental capacity and any other relevant factor).

(3) Paragraphs (1)(b) and (c) do not apply if the actions of the person in relation to whom the interim control order has been made make it impracticable for the AFP member to comply with those paragraphs.

(4) A failure to comply with paragraph (1)(c) does not make the control order ineffective to any extent.

Queensland public interest monitor to be given copy of interim control order

(5) If:

(a) the person in relation to whom the interim control order is made is a resident of Queensland; or

(b) the issuing court that made the interim control order did so in Queensland;

an AFP member must give to the Queensland public interest monitor a copy of the order.

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104.12A Election to confirm control order

(1) At least 48 hours before the day specified in an interim control order as mentioned in paragraph 104.5(1)(e), the senior AFP member who requested the order must:

(a) elect whether to confirm the order on the specified day; and

(b) give a written notification to the issuing court that made the order of the member's election.

(2) If the senior AFP member elects to confirm the order, an AFP member must:

(a) serve personally on the person in relation to whom the order is made:

(i) a copy of the notification; and

(ii) a copy of the documents mentioned in paragraphs 104.2(3)(b) and (c); and

(iii) any other details required to enable the person to understand and respond to the substance of the facts, matters and circumstances which will form the basis of the confirmation of the order; and

(b) if the person is a resident of Queensland, or the court made the order in Queensland—give the Queensland public interest monitor a copy of the documents mentioned in paragraph (a).

(3) To avoid doubt, subsection (2) does not require any information to be served or given if disclosure of that information is likely:

(a) to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*); or

(b) to be protected by public interest immunity; or

(c) to put at risk ongoing operations by law enforcement agencies or intelligence agencies; or

(d) to put at risk the safety of the community, law enforcement officers or intelligence officers.

The fact that information of a kind mentioned in this subsection is not required to be disclosed does not imply that such information is required to be disclosed in other provisions of this Part that relate to the disclosure of information.

(4) If the senior AFP member elects not to confirm the order, and the order has already been served on the person, then:

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(a) the order immediately ceases to be in force; and

(b) an AFP member must:

(i) annotate the order to indicate that it has ceased to be in force; and

(ii) cause the annotated order and a copy of the notification to be served personally on the person; and

(iii) if the person is a resident of Queensland, or the court made the order in Queensland—give the Queensland public interest monitor a copy of the annotated order and the notification.

104.13 Lawyer may request a copy of an interim control order

(1) A lawyer of the person in relation to whom an interim control order is made may attend the place specified in the order as mentioned in paragraph 104.5(1)(g) in order to obtain a copy of the order.

(2) This section does not:

(a) require more than one person to give the lawyer a copy of the order; or

(b) entitle the lawyer to request, be given a copy of, or see, a document other than the order.

104.14 Confirming an interim control order

Who may adduce evidence or make submissions

(1) If an election has been made to confirm an interim control order, then, on the day specified as mentioned in paragraph 104.5(1)(e), the following persons may adduce evidence (including by calling witnesses or producing material), or make submissions, to the issuing court in relation to the confirmation of the order:

(a) the senior AFP member who requested the interim control order;

(b) one or more other AFP members;

(c) the person in relation to whom the interim control order is made;

(d) one or more representatives of the person;

(e) if:

(i) the person is a resident of Queensland; or

(ii) the court made the interim control order in Queensland;

the Queensland public interest monitor (unless the monitor is already a representative of the person).

(2) Subsection (1) does not otherwise limit the power of the court to control proceedings in relation to the confirmation of an interim control order.

(3) Before taking action under this section, the court must consider:

(a) the original request for the interim control order; and

(b) any evidence adduced, and any submissions made, under subsection (1) in respect of the order.

Failure of person or representative etc. to attend

(4) The court may confirm the order without variation if:

(a) none of the following persons attend the court on the specified day:

(i) the person in relation to whom the order is made;

(ii) a representative of the person;

(iii) if the person is a resident of Queensland, or the court made the order in Queensland—the Queensland public interest monitor; and

(b) the court is satisfied on the balance of probabilities that the order was properly served on the person in relation to whom the order is made.

Attendance of person or representative etc.

(5) The court may take the action mentioned in subsection (6) or (7) if any of the following persons attend the court on the specified day:

(a) the person in relation to whom the order is made;

(b) a representative of the person;

(c) if the person is a resident of Queensland, or the court made the order in Queensland—the Queensland public interest monitor.

(6) The court may declare, in writing, the order to be void if the court is satisfied that, at the time of making the order, there were no grounds on which to make the order.

(7) Otherwise, the court may:

(a) revoke the order if, at the time of confirming the order, the court is not satisfied as mentioned in paragraph 104.4(1)(c); or

(b) confirm and vary the order by removing one or more obligations, prohibitions or restrictions if, at the time of confirming the order, the court is satisfied as mentioned in paragraph 104.4(1)(c) but is not satisfied as mentioned in paragraph 104.4(1)(d); or

(c) confirm the order without variation if, at the time of confirming the order, the court is satisfied as mentioned in paragraphs 104.4(1)(c) and (d).

Note: If the court confirms the interim control order, the court must make a new order under section 104.16.

104.15 When a declaration, or a revocation, variation or confirmation of a control order, is in force

(1) If the court declares the interim control order to be void under section 104.14, the order is taken never to have been in force.

(2) If the court revokes the interim control order under section 104.14, the order ceases to be in force when the court revokes the order.

(3) If the court confirms the interim control order (with or without variation) under section 104.14 then:

(a) the interim control order ceases to be in force; and

(b) the confirmed control order begins to be in force;

when the court makes a corresponding order under section 104.16.

104.16 Terms of a confirmed control order

(1) If the issuing court confirms the interim control order under section 104.14, the court must make a corresponding order that:

(a) states that the court is satisfied of the matters mentioned in paragraphs 104.4(1)(c) and (d); and

(b) specifies the name of the person to whom the order relates; and

(c) specifies all of the obligations, prohibitions and restrictions mentioned in subsection 104.5(3) that are to be imposed on the person by the order; and

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(d) specifies the period during which the order is to be in force, which must not end more than 12 months after the day on which the interim control order was made; and

(e) states that the person's lawyer may attend a specified place in order to obtain a copy of the confirmed control order.

Note: A confirmed control order that is made in relation to a 16- to 18-year-old must not end more than 3 months after the day on which the interim control order was made (see section 104.28).

(2) Paragraph (1)(d) does not prevent the making of successive control orders in relation to the same person.

104.17 Service of a declaration, or a revocation, variation or confirmation of a control order

As soon as practicable after an interim control order is declared to be void, revoked or confirmed (with or without variation) under section 104.14, an AFP member must serve the declaration, the revocation or the confirmed control order personally on the person.

Subdivision E—Rights in respect of a control order

104.18 Application by the person for a revocation or variation of a control order

(1) A person in relation to whom a confirmed control order is made may apply to an issuing court for the court to revoke or vary the order under section 104.20.

(2) The person may make the application at any time after the order is served on the person.

(3) The person must give written notice of both the application and the grounds on which the revocation or variation is sought to the following persons:

(a) the Commissioner of the Australian Federal Police;

(b) if:

(i) the person in relation to whom the order is made is a resident of Queensland; or

(ii) the court will hear the application in Queensland;

the Queensland public interest monitor.

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(4) The following persons may adduce additional evidence (including by calling witnesses or producing material), or make additional submissions, to the court in relation to the application to revoke or vary the order:
  (a) the Commissioner;
  (b) one or more other AFP members;
  (c) the person in relation to whom the order is made;
  (d) one or more representatives of the person;
  (e) if paragraph (3)(b) applies—the Queensland public interest monitor (unless the monitor is a representative of the person).

(5) Subsection (4) does not otherwise limit the power of the court to control proceedings in relation to an application to revoke or vary a confirmed control order.

104.19 Application by the AFP Commissioner for a revocation or variation of a control order

(1) While a confirmed control order is in force, the Commissioner of the Australian Federal Police must cause an application to be made to an issuing court:
  (a) to revoke the order, under section 104.20, if the Commissioner is satisfied that the grounds on which the order was confirmed have ceased to exist; and
  (b) to vary the order, under that section, by removing one or more obligations, prohibitions or restrictions, if the Commissioner is satisfied that those obligations, prohibitions or restrictions should no longer be imposed on the person.

(2) The Commissioner must cause written notice of both the application and the grounds on which the revocation or variation is sought to be given to the following persons:
  (a) the person in relation to whom the order is made;
  (b) if:
    (i) the person in relation to whom the order is made is a resident of Queensland; or
    (ii) the court will hear the application in Queensland;
  the Queensland public interest monitor.

(3) The following persons may adduce additional evidence (including by calling witnesses or producing material), or make additional

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submissions, to the court in relation to the application to revoke or vary the order:

(a) the Commissioner;

(b) one or more other AFP members;

(c) the person in relation to whom the order is made;

(d) one or more representatives of the person;

(e) if paragraph (2)(b) applies—the Queensland public interest monitor (unless the monitor is a representative of the person).

(4) Subsection (3) does not otherwise limit the power of the court to control proceedings in relation to an application to revoke or vary a confirmed control order.

104.20 Revocation or variation of a control order

(1) If an application is made under section 104.18 or 104.19 in respect of a confirmed control order, the court may:

(a) revoke the order if, at the time of considering the application, the court is not satisfied as mentioned in paragraph 104.4(1)(c); or

(b) vary the order by removing one or more obligations, prohibitions or restrictions if, at the time of considering the application, the court is satisfied as mentioned in paragraph 104.4(1)(c) but is not satisfied as mentioned in paragraph 104.4(1)(d); or

(c) dismiss the application if, at the time of considering the application, the court is satisfied as mentioned in paragraphs 104.4(1)(c) and (d).

(2) A revocation or variation begins to be in force when the court revokes or varies the order.

(3) An AFP member must serve the revocation or variation personally on the person as soon as practicable after a confirmed control order is revoked or varied.

104.21 Lawyer may request a copy of a control order

(1) If a control order is confirmed or varied under section 104.14, 104.20 or 104.24, a lawyer of the person in relation to whom the control order is made may attend the place specified in the order as

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mentioned in paragraph 104.16(1)(e) or 104.25(d) in order to obtain a copy of the order.

(2) This section does not:
  (a) require more than one person to give the lawyer a copy of the order; or
  (b) entitle the lawyer to request, be given a copy of, or see, a document other than the order.

104.22 Treatment of photographs and impressions of fingerprints

(1) A photograph, or an impression of fingerprints, taken as mentioned in paragraph 104.5(3)(j) or (k) must only be used for the purpose of ensuring compliance with the relevant control order.

(2) If:
  (a) a period of 12 months elapses after the control order ceases to be in force; and
  (b) proceedings in respect of the control order have not been brought, or have been brought and discontinued or completed, within that period;

the photograph or the impression must be destroyed as soon as practicable after the end of that period.

(3) A person commits an offence if:
  (a) the person engages in conduct; and
  (b) the conduct contravenes subsection (1).

Penalty: Imprisonment for 2 years.

Subdivision F—Adding obligations, prohibitions or restrictions to a control order

104.23 Application by the AFP Commissioner for addition of obligations, prohibitions or restrictions

(1) The Commissioner of the Australian Federal Police may cause an application to be made to an issuing court to vary, under section 104.24, a confirmed control order, by adding one or more obligations, prohibitions or restrictions mentioned in subsection 104.5(3) to the order, if the Commissioner considers on

reasonable grounds that the varied control order in the terms to be sought would substantially assist in preventing a terrorist act.

(2) The Commissioner must cause the court to be given:

(a) a copy of the additional obligations, prohibitions and restrictions to be imposed on the person by the order; and

(b) the following:

(i) an explanation as to why each of those obligations, prohibitions and restrictions should be imposed on the person; and

(ii) if the Commissioner is aware of any facts relating to why any of those obligations, prohibitions or restrictions should not be imposed on the person—a statement of those facts; and

(c) the outcomes and particulars of all previous applications under this section for variations of the order; and

(d) information (if any) that the Commissioner has about the person's age.

Note 1: A control order cannot be made in relation to a person who is under 16 years of age (see section 104.28).

Note 2: An offence might be committed if the application is false or misleading (see sections 137.1 and 137.2).

(3) The Commissioner must cause:

(a) written notice of the application and the grounds on which the variation is sought; and

(b) a copy of the documents mentioned in paragraph (2)(b); and

(c) any other details required to enable the person in relation to whom the order is made to understand and respond to the substance of the facts, matters and circumstances which will form the basis of the variation of the order;

to be given to the following persons:

(d) the person in relation to whom the order is made;

(e) if the person is a resident of Queensland, or the court will hear the application in Queensland—the Queensland public interest monitor.

(3A) To avoid doubt, subsection (3) does not require any information to be given if disclosure of that information is likely:

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(a) to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*); or

(b) to be protected by public interest immunity; or

(c) to put at risk ongoing operations by law enforcement agencies or intelligence agencies; or

(d) to put at risk the safety of the community, law enforcement officers or intelligence officers.

The fact that information of a kind mentioned in this subsection is not required to be disclosed does not imply that such information is required to be disclosed in other provisions of this Part that relate to the disclosure of information.

(4) The following persons may adduce additional evidence (including by calling witnesses or producing material), or make additional submissions, to the court in relation to the application to vary the order:

(a) the Commissioner;

(b) one or more other AFP members;

(c) the person in relation to whom the order is made;

(d) one or more representatives of the person;

(e) if paragraph (3)(b) applies—the Queensland public interest monitor (unless the monitor is a representative of the person).

(5) Subsection (4) does not otherwise limit the power of the court to control proceedings in relation to an application to vary a confirmed control order.

104.24 Varying a control order

(1) If an application is made under section 104.23, the issuing court may vary the control order, but only if:

(a) an application has been made in accordance with section 104.23; and

(b) the court is satisfied on the balance of probabilities that each of the additional obligations, prohibitions and restrictions to be imposed on the person by the order is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the public from a terrorist act.

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(2) In determining whether each of the additional obligations, prohibitions and restrictions to be imposed on the person by the order is reasonably necessary, and reasonably appropriate and adapted, the court must take into account the impact of the obligation, prohibition or restriction on the person's circumstances (including the person's financial and personal circumstances).

(3) The court need not include in the order an obligation, prohibition or restriction that was sought if the court is not satisfied as mentioned in paragraph (1)(b) in respect of that obligation, prohibition or restriction.

104.25 Terms of a varied control order

If the issuing court varies the control order under section 104.24, the following must be included in the order:

(a) a statement that the court is satisfied of the matter mentioned in paragraph 104.24(1)(b); and

(b) the additional obligations, prohibitions and restrictions that are to be imposed on the person by the varied order; and

(c) a statement that the variation of the order does not begin to be in force until the varied order is served personally on the person; and

(d) a statement that the person's lawyer may attend a specified place in order to obtain a copy of the varied order.

104.26 Service and explanation of a varied control order

(1) As soon as practicable after a control order is varied under section 104.24, an AFP member:

(a) must serve the varied order personally on the person; and

(b) must inform the person that the order has been varied to impose additional obligations, prohibitions and restrictions; and

(c) must inform the person of the following:

(i) the effect of the additional obligations, prohibitions and restrictions;

(ii) the effect of sections 104.18, 104.21 and 104.27 (and section 104.22 if appropriate); and

(d) must ensure that the person understands the information provided under paragraph (c) (taking into account the

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person's age, language skills, mental capacity and any other relevant factor).

(3) Paragraphs (1)(c) and (d) do not apply if the actions of the person in relation to whom the interim control order has been made make it impracticable for the AFP member to comply with those paragraphs.

(4) A failure to comply with paragraph (1)(d) does not make the control order ineffective to any extent.

Subdivision G—Contravening a control order

104.27 Offence for contravening a control order

A person commits an offence if:

(a) a control order is in force in relation to the person; and

(b) the person contravenes the order.

Penalty: Imprisonment for 5 years.

Subdivision H—Miscellaneous

104.28 Special rules for young people

Rule for persons under 16

(1) A control order cannot be requested, made or confirmed in relation to a person who is under 16 years of age.

Rule for persons who are at least 16 but under 18

(2) If an issuing court is satisfied that a person in relation to whom an interim control order is being made or confirmed is at least 16 but under 18, the period during which the confirmed control order is to be in force must not end more than 3 months after the day on which the interim control order is made by the court.

(3) Subsection (2) does not prevent the making of successive control orders in relation to the same person.

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104.28A Interlocutory proceedings

(1) Proceedings in relation to a request under section 104.3, 104.6 or 104.8 to make an interim control order are taken to be interlocutory proceedings for all purposes (including for the purpose of section 75 of the *Evidence Act 1995*).

(2) The following proceedings are taken not to be interlocutory proceedings for any purpose (including for the purpose of section 75 of the *Evidence Act 1995*):

(a) proceedings in relation to the confirmation under section 104.14 of an interim control order;

(b) proceedings in relation to an application under section 104.18, 104.19 or 104.23 to revoke or vary a confirmed control order.

104.29 Reporting requirements

(1) The Attorney-General must, as soon as practicable after each 30 June, cause to be prepared a report about the operation of this Division during the year ended on that 30 June.

(2) Without limiting subsection (1), a report relating to a year must include the following matters:

(a) the number of interim control orders made under:

(i) section 104.4; and

(ii) section 104.7; and

(iii) section 104.9;

(aa) the number of interim control orders in respect of which an election was made under section 104.12A not to confirm the order;

(b) the number of control orders confirmed under section 104.14;

(c) the number of control orders declared to be void under section 104.14;

(d) the number of control orders revoked under sections 104.14 and 104.20;

(e) the number of control orders varied under sections 104.14, 104.20 and 104.24;

(f) particulars of:

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(i) any complaints made or referred to the Commonwealth Ombudsman that related to control orders; and

(ii) any information given under section 40SA of the *Australian Federal Police Act 1979* that related to control orders and raised an AFP conduct or practices issue (within the meaning of that Act).

(3) The Attorney-General must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the report is completed.

104.30 Requirement to notify Attorney-General of declarations, revocations or variations

The Commissioner must cause:

(a) the Attorney-General to be notified in writing if:

(i) a control order is declared to be void under section 104.14; or

(ii) a control order is revoked under section 104.14 or 104.20; or

(iii) a control order is varied under section 104.14, 104.20 or 104.24; and

(b) the Attorney-General to be given a copy of the varied order (if appropriate).

104.31 Queensland public interest monitor functions and powers not affected

This Division does not affect a function or power that the Queensland public interest monitor, or a Queensland deputy public interest monitor, has under a law of Queensland.

104.32 Sunset provision

(1) A control order that is in force at the end of 10 years after the day on which this Division commences ceases to be in force at that time.

(2) A control order cannot be requested, made or confirmed after the end of 10 years after the day on which this Division commences.

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Division 105—Preventative detention orders

Subdivision A—Preliminary

105.1 Object

The object of this Division is to allow a person to be taken into custody and detained for a short period of time in order to:

(a) prevent an imminent terrorist act occurring; or

(b) preserve evidence of, or relating to, a recent terrorist act.

Note: Section 105.42 provides that, while a person is being detained under a preventative detention order, the person may only be questioned for very limited purposes.

105.2 Issuing authorities for continued preventative detention orders

(1) The Minister may, by writing, appoint as an issuing authority for continued preventative detention orders:

(a) a person who is a judge of a State or Territory Supreme Court; or

(b) a person who is a Judge; or

(d) a person who:

(i) has served as a judge in one or more superior courts for a period of 5 years; and

(ii) no longer holds a commission as a judge of a superior court; or

(e) a person who:

(i) holds an appointment to the Administrative Appeals Tribunal as President or Deputy President; and

(ii) is enrolled as a legal practitioner of a federal court or of the Supreme Court of a State or Territory; and

(iii) has been enrolled for at least 5 years.

(2) The Minister must not appoint a person unless:

(a) the person has, by writing, consented to being appointed; and

(b) the consent is in force.

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105.3 Police officer detaining person under a preventative detention order

If:

(a) a number of police officers are detaining, or involved in the detention of, a person under a preventative detention order at a particular time; and

(b) an obligation is expressed in this Division to be imposed on the police officer detaining the person;

the obligation is imposed at that time on:

(c) if those police officers include only one AFP member—that AFP member; or

(d) if those police officers include 2 or more AFP members—the most senior of those AFP members; or

(e) if those police officers do not include an AFP member—the most senior of those police officers.

Note: See also paragraph 105.27(2)(c).

Subdivision B—Preventative detention orders

105.4 Basis for applying for, and making, preventative detention orders

(1) An AFP member may apply for a preventative detention order in relation to a person only if the AFP member meets the requirements of subsection (4) or (6).

(2) An issuing authority may make a preventative detention order in relation to a person only if the issuing authority meets the requirements of subsection (4) or (6).

Note: For the definition of ***issuing authority***, see subsection 100.1(1) and section 105.2.

(3) The person in relation to whom the preventative detention order is applied for, or made, is the ***subject*** for the purposes of this section.

(4) A person meets the requirements of this subsection if the person is satisfied that:

(a) there are reasonable grounds to suspect that the subject:

(i) will engage in a terrorist act; or

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(ii) possesses a thing that is connected with the preparation for, or the engagement of a person in, a terrorist act; or

(iii) has done an act in preparation for, or planning, a terrorist act; and

(b) making the order would substantially assist in preventing a terrorist act occurring; and

(c) detaining the subject for the period for which the person is to be detained under the order is reasonably necessary for the purpose referred to in paragraph (b).

(5) A terrorist act referred to in subsection (4):

(a) must be one that is imminent; and

(b) must be one that is expected to occur, in any event, at some time in the next 14 days.

(6) A person meets the requirements of this subsection if the person is satisfied that:

(a) a terrorist act has occurred within the last 28 days; and

(b) it is necessary to detain the subject to preserve evidence of, or relating to, the terrorist act; and

(c) detaining the subject for the period for which the person is to be detained under the order is reasonably necessary for the purpose referred to in paragraph (b).

(7) An issuing authority may refuse to make a preventative detention order unless the AFP member applying for the order gives the issuing authority any further information that the issuing authority requests concerning the grounds on which the order is sought.

105.5 No preventative detention order in relation to person under 16 years of age

(1) A preventative detention order cannot be applied for, or made, in relation to a person who is under 16 years of age.

Note: See also section 105.39 and subsections 105.43(4) to (9) and (11) for the special rules for people who are under 18 years of age.

(2) If:

(a) a person is being detained under a preventative detention order or a purported preventative detention order; and

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(b) the police officer who is detaining the person is satisfied on reasonable grounds that the person is under 16 years of age;

the police officer must:

(c) if the police officer is an AFP member—release the person, as soon as practicable, from detention under the order or purported order; or

(d) if the police officer is not an AFP member—inform a senior AFP member, as soon as practicable, of the police officer's reasons for being satisfied that the person is under 16 years of age.

(3) If:

(a) a senior AFP member is informed by a police officer under paragraph (2)(d); and

(b) the senior AFP member is satisfied on reasonable grounds that the person being detained is under 16 years of age;

the senior AFP member must arrange to have the person released, as soon as practicable, from detention under the order or purported order.

105.5A Special assistance for person with inadequate knowledge of English language or disability

If the police officer who is detaining a person under a preventative detention order has reasonable grounds to believe that the person is unable, because of inadequate knowledge of the English language or a disability, to communicate with reasonable fluency in that language:

(a) the police officer has an obligation under subsection 105.31(3) to arrange for the assistance of an interpreter in informing the person about:

(i) the effect of the order or any extension, or further extension, of the order; and

(ii) the person's rights in relation to the order; and

(b) the police officer has an obligation under subsection 105.37(3A) to give the person reasonable assistance to:

(i) choose a lawyer to act for the person in relation to the order; and

(ii) contact the lawyer.

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105.6 Restrictions on multiple preventative detention orders

Preventative detention orders under this Division

(1) If:

(a) an initial preventative detention order is made in relation to a person on the basis of assisting in preventing a terrorist act occurring within a particular period; and

(b) the person is taken into custody under the order;

another initial preventative detention order cannot be applied for, or made, in relation to the person on the basis of assisting in preventing the same terrorist act occurring within that period.

Note: It will be possible to apply for, and make, another initial preventative detention order in relation to the person on the basis of preserving evidence of, or relating to, the terrorist act if it occurs.

(2) If:

(a) an initial preventative detention order is made in relation to a person on the basis of assisting in preventing a terrorist act occurring within a particular period; and

(b) the person is taken into custody under the order;

another initial preventative detention order cannot be applied for, or made, in relation to the person on the basis of assisting in preventing a different terrorist act occurring within that period unless the application, or the order, is based on information that became available to be put before an issuing authority only after the initial preventative detention order referred to in paragraph (a) was made.

(3) If:

(a) an initial preventative detention order is made in relation to a person on the basis of preserving evidence of, or relating to, a terrorist act; and

(b) the person is taken into custody under the order;

another initial preventative detention order cannot be applied for, or made, in relation to the person on the basis of preserving evidence of, or relating to, the same terrorist act.

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Detention orders under corresponding State preventative detention laws

(4) If:

(a) an order for a person's detention is made under a corresponding State preventative detention law on the basis of assisting in preventing a terrorist act occurring within a particular period; and

(b) the person is taken into custody under that order;

an initial preventative detention order cannot be applied for, or made, under this Division in relation to the person on the basis of assisting in preventing the same terrorist act occurring within that period.

(5) If:

(a) an order for a person's detention is made under a corresponding State preventative detention law on the basis of assisting in preventing a terrorist act occurring within a particular period; and

(b) the person is taken into custody under that order;

an initial preventative detention order cannot be applied for, or made, under this Division in relation to the person on the basis of assisting in preventing a different terrorist act occurring within that period unless the application, or the order, is based on information that became available to be put before an issuing authority only after the order referred to in paragraph (a) was made.

(6) If:

(a) an order for a person's detention is made under a corresponding State preventative detention law on the basis of preserving evidence of, or relating to, a terrorist act; and

(b) the person is taken into custody under that order;

an initial preventative detention order cannot be applied for, or made, under this Division in relation to the person on the basis of preserving evidence of, or relating to, the same terrorist act.

105.7 Application for initial preventative detention order

(1) An AFP member may apply to an issuing authority for an initial preventative detention order in relation to a person.

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Note 1: Senior AFP members are issuing authorities for initial preventative detention orders (see the definition of ***issuing authority*** in subsection 100.1(1)).

Note 2: For the definition of ***senior AFP member***, see subsection 100.1(1).

(2) The application must:

(a) be made in writing; and

(b) set out the facts and other grounds on which the AFP member considers that the order should be made; and

(c) specify the period for which the person is to be detained under the order and set out the facts and other grounds on which the AFP member considers that the person should be detained for that period; and

(d) set out the information (if any) that the applicant has about the person's age; and

(e) set out the following:

(i) the outcomes and particulars of all previous applications for preventative detention orders in relation to the person;

(ii) the outcomes and particulars of all previous requests for interim control orders (including the outcomes of the hearings to confirm the orders) in relation to the person;

(iii) the outcomes and particulars of all previous applications for variations of control orders made in relation to the person;

(iv) the outcomes of all previous applications for revocations of control orders made in relation to the person; and

(f) set out the information (if any) that the applicant has about any periods for which the person has been detained under an order made under a corresponding State preventative detention law; and

(g) set out a summary of the grounds on which the AFP member considers that the order should be made.

Note: Sections 137.1 and 137.2 create offences for providing false or misleading information or documents.

(2A) To avoid doubt, paragraph (2)(g) does not require any information to be included in the summary if disclosure of that information is likely to prejudice national security (within the meaning of the

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National Security Information (Criminal and Civil Proceedings) Act 2004).

(3) If:

(a) an initial preventative detention order is made in relation to a person on the basis of assisting in preventing a terrorist act occurring within a particular period; and

(b) the person is taken into custody under the order; and

(c) an application is made for another initial preventative detention order in relation to the person on the basis of assisting in preventing a different terrorist act occurring within that period;

the application must also identify the information on which the application is based that became available to be put before an issuing authority only after the initial preventative detention order referred to in paragraph (a) was made.

Note: See subsection 105.6(2).

(4) If:

(a) an order for a person's detention is made under a corresponding State preventative detention law on the basis of assisting in preventing a terrorist act occurring within a particular period; and

(b) the person is taken into custody under that order; and

(c) an application is made for an initial preventative detention order in relation to the person on the basis of assisting in preventing a different terrorist act occurring within that period;

the application must also identify the information on which the application is based that became available to be put before an issuing authority only after the order referred to in paragraph (a) was made.

Note: See subsection 105.6(5).

105.8 Senior AFP member may make initial preventative detention order

(1) On application by an AFP member, an issuing authority may make an initial preventative detention order under this section in relation to a person.

Note 1: Senior AFP members are issuing authorities for initial preventative detention orders (see the definition of ***issuing authority*** in subsection 100.1(1)).

Note 2: For the definition of ***senior AFP member***, see subsection 100.1(1).

(2) Subsection (1) has effect subject to sections 105.4, 105.5 and 105.6.

(3) An initial preventative detention order under this section is an order that the person specified in the order may be:

(a) taken into custody; and

(b) detained during the period that:

(i) starts when the person is first taken into custody under the order; and

(ii) ends a specified period of time after the person is first taken into custody under the order.

(4) The order must be in writing.

(5) The period of time specified in the order under subparagraph (3)(b)(ii) must not exceed 24 hours.

(6) An initial preventative detention order under this section must set out:

(a) the name of the person in relation to whom it is made; and

(b) the period during which the person may be detained under the order; and

(c) the date on which, and the time at which, the order is made; and

(d) the date and time after which the person may not be taken into custody under the order; and

(e) a summary of the grounds on which the order is made.

Note: Paragraph (d)—see subsection 105.9(2).

(6A) To avoid doubt, paragraph (6)(e) does not require any information to be included in the summary if disclosure of that information is likely to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*).

(7) If the person in relation to whom the order is made is:

(a) under 18 years of age; or

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(b) incapable of managing his or her affairs;

the order may provide that the period each day for which the person is entitled to have contact with another person under subsection 105.39(2) is the period of more than 2 hours that is specified in the order.

(8) The senior AFP member nominated under subsection 105.19(5) in relation to the initial preventative detention order must:

(a) notify the Commonwealth Ombudsman in writing of the making of the order; and

(b) give the Commonwealth Ombudsman a copy of the order; and

(c) if the person in relation to whom the order is made is taken into custody under the order—notify the Commonwealth Ombudsman in writing that the person has been taken into custody under the order.

105.9 Duration of initial preventative detention order

(1) An initial preventative detention order in relation to a person starts to have effect when it is made.

Note: The order comes into force when it is made and authorises the person to be taken into custody (see paragraph 105.8(3)(a)). The period for which the person may then be detained under the order only starts to run when the person is first taken into custody under the order (see subparagraph 105.8(3)(b)(i)).

(2) An initial preventative detention order in relation to a person ceases to have effect at the end of the period of 48 hours after the order is made if the person has not been taken into custody under the order within that period.

(3) If the person is taken into custody under the order within 48 hours after the order is made, the order ceases to have effect when whichever of the following first occurs:

(a) the end of:

(i) the period specified in the order as the period during which the person may be detained under the order; or

(ii) if that period is extended or further extended under section 105.10—that period as extended or further extended;

(b) the revocation of the order under section 105.17.

Note 1: The order does not cease to have effect merely because the person is released from detention under the order.

Note 2: An AFP member may apply under section 105.11 for a continued preventative detention order in relation to the person to allow the person to continue to be detained for up to 48 hours after the person is first taken into custody under the initial preventative detention order.

105.10 Extension of initial preventative detention order

(1) If:

(a) an initial preventative detention order is made in relation to a person; and

(b) the order is in force in relation to the person;

an AFP member may apply to an issuing authority for initial preventative detention orders for an extension, or a further extension, of the period for which the order is to be in force in relation to the person.

(2) The application must:

(a) be made in writing; and

(b) set out the facts and other grounds on which the AFP member considers that the extension, or further extension, is reasonably necessary for the purpose for which the order was made; and

(c) set out the outcomes and particulars of all previous applications for extensions, or further extensions, of the order.

Note: Paragraph (b)—see subsections 105.4(4) and (6) for the purpose for which a preventative detention order may be made.

(3) The issuing authority may extend, or further extend, the period for which the order is to be in force in relation to the person if the issuing authority is satisfied that detaining the person under the order for the period as extended, or further extended, is reasonably necessary for the purpose for which the order was made.

(4) The extension, or further extension, must be made in writing.

(5) The period as extended, or further extended, must end no later than 24 hours after the person is first taken into custody under the order.

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105.10A Notice of application for continued preventative detention order

An AFP member who proposes to apply for a continued preventative detention order in relation to a person under section 105.11 must, before applying for the order:

(a) notify the person of the proposed application; and

(b) inform the person that, when the proposed application is made, any material that the person gives the AFP member in relation to the proposed application will be put before the issuing authority for continued preventative detention orders to whom the application is made.

Note: The AFP member who applies for the order must put the material before the issuing authority—see subsection 105.11(5).

105.11 Application for continued preventative detention order

(1) If an initial preventative detention order is in force in relation to a person in relation to a terrorist act, an AFP member may apply to an issuing authority in relation to continued preventative detention orders for a continued preventative detention order in relation to the person in relation to the terrorist act.

Note: Certain judges, AAT members and retired judges are issuing authorities for continued preventative detention orders (see the definition of ***issuing authority*** in subsection 100.1(1) and section 105.2).

(2) The application must:

(a) be made in writing; and

(b) set out the facts and other grounds on which the AFP member considers that the order should be made; and

(c) specify the period for which the person is to continue to be detained under the order and set out the facts and other grounds on which the AFP member considers that the person should continue to be detained for that period; and

(d) set out the information (if any) that the applicant has about the person's age; and

(e) set out the following:

(i) the outcomes and particulars of all previous applications for preventative detention orders in relation to the person;

(ii) the outcomes and particulars of all previous requests for interim control orders (including the outcomes of the hearings to confirm the orders) in relation to the person;

(iii) the outcomes and particulars of all previous applications for variations of control orders made in relation to the person;

(iv) the outcomes of all previous applications for revocations of control orders made in relation to the person; and

(f) set out the information (if any) that the applicant has about any periods for which the person has been detained under an order made under a corresponding State preventative detention law; and

(g) set out a summary of the grounds on which the AFP member considers that the order should be made.

Note: Sections 137.1 and 137.2 create offences for providing false or misleading information or documents.

(3) Subparagraph (2)(e)(i) does not require the application to set out details in relation to the application that was made for the initial preventative detention order in relation to which the continued preventative detention order is sought.

(3A) To avoid doubt, paragraph (2)(g) does not require any information to be included in the summary if disclosure of that information is likely to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*).

(4) The information in the application must be sworn or affirmed by the AFP member.

(5) The AFP member applying for the continued preventative detention order in relation to the person must put before the issuing authority to whom the application is made any material in relation to the application that the person has given the AFP member.

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Section 105.12

105.12 Judge, AAT member or retired judge may make continued preventative detention order

(1) On application by an AFP member, an issuing authority may make a continued preventative detention order under this section in relation to a person if:

(a) an initial preventative detention order is in force in relation to the person; and

(b) the person has been taken into custody under the order (whether or not the person is being detained under the order).

Note: Certain judges, AAT members and retired judges are issuing authorities for continued preventative detention orders (see the definition of ***issuing authority*** in subsection 100.1(1) and section 105.2).

(2) Subsection (1) has effect subject to sections 105.4, 105.5 and 105.6. Section 105.4 requires the issuing authority to consider afresh the merits of making the order and to be satisfied, after taking into account relevant information (including any information that has become available since the initial preventative detention order was made), of the matters referred to in subsection 105.4(4) or (6) before making the order.

(3) A continued preventative detention order under this section is an order that the person specified in the order may be detained during a further period that:

(a) starts at the end of the period during which the person may be detained under the initial preventative detention order; and

(b) ends a specified period of time after the person is first taken into custody under the initial preventative detention order.

(4) The order must be in writing.

(5) The period of time specified under paragraph (3)(b) must not exceed 48 hours.

(6) A continued preventative detention order under this section must set out:

(a) the name of the person in relation to whom it is made; and

(b) the further period during which the person may be detained under the order; and

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(c) the date on which, and the time at which, the order is made; and

(d) a summary of the grounds on which the order is made.

(6A) To avoid doubt, paragraph (6)(d) does not require any information to be included in the summary if disclosure of that information is likely to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*).

(7) If the person in relation to whom the order is made is:

(a) under 18 years of age; or

(b) incapable of managing his or her affairs;

the order may provide that the period each day for which the person is entitled to have contact with another person under subsection 105.39(2) is the period of more than 2 hours that is specified in the order.

(8) The senior AFP member nominated under subsection 105.19(5) in relation to the continued preventative detention order must:

(a) notify the Commonwealth Ombudsman in writing of the making of the order; and

(b) give the Commonwealth Ombudsman a copy of the order.

105.13 Duration of continued preventative detention order

(1) A continued preventative detention order in relation to a person starts to have effect when it is made.

Note: The order comes into force when it is made. The period for which the person may be detained under the order, however, only starts to run when the period during which the person may be detained under the initial preventative detention order ends (see paragraph 105.12(3)(a)).

(2) A continued preventative detention order in relation to a person ceases to have effect when whichever of the following first occurs:

(a) the end of:

(i) the period specified in the order as the further period during which the person may be detained; or

(ii) if that period is extended or further extended under section 105.14—that period as extended or further extended;

(b) the revocation of the order under section 105.17.

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Note: The order does not cease to have effect merely because the person is released from detention under the order.

105.14 Extension of continued preventative detention order

(1) If:

(a) an initial preventative detention order is made in relation to a person; and

(b) a continued preventative detention order is made in relation to the person in relation to that initial preventative detention order; and

(c) the continued preventative detention order is in force in relation to the person;

an AFP member may apply to an issuing authority for continued preventative detention orders for an extension, or a further extension, of the period for which the continued preventative detention order is to be in force in relation to the person.

(2) The application must:

(a) be made in writing; and

(b) set out the facts and other grounds on which the AFP member considers that the extension, or further extension, is reasonably necessary for the purpose for which the order was made; and

(c) set out the outcomes and particulars of all previous applications for extensions, or further extensions, of the continued preventative detention order.

Note: Paragraph (b)—see subsections 105.4(4) and (6) for the purpose for which a preventative detention order may be made.

(3) The information in the application must be sworn or affirmed by the AFP member.

(4) The issuing authority may extend, or further extend, the period for which the continued preventative detention order is to be in force in relation to the person if the issuing authority is satisfied that detaining the person under the order for the period as extended, or further extended, is reasonably necessary for the purpose for which the order was made.

(5) The extension, or further extension, must be made in writing.

(6) The period as extended, or further extended, must end no later than 48 hours after the person is first taken into custody under the initial preventative detention order.

105.14A Basis for applying for, and making, prohibited contact order

(1) An AFP member may apply for a prohibited contact order in relation to a person only if the AFP member meets the requirements of subsection (4).

(2) An issuing authority for initial preventative detention orders, or continued preventative detention orders, may make a prohibited contact order in relation to a person's detention under a preventative detention order only if the issuing authority meets the requirements of subsection (4).

(3) The person in relation to whose detention the prohibited contact order is applied for, or made, is the ***subject*** for the purposes of this section.

(4) A person meets the requirements of this subsection if the person is satisfied that making the prohibited contact order is reasonably necessary:

(a) to avoid a risk to action being taken to prevent a terrorist act occurring; or

(b) to prevent serious harm to a person; or

(c) to preserve evidence of, or relating to, a terrorist act; or

(d) to prevent interference with the gathering of information about:

(i) a terrorist act; or

(ii) the preparation for, or the planning of, a terrorist act; or

(e) to avoid a risk to:

(i) the arrest of a person who is suspected of having committed an offence against this Part; or

(ii) the taking into custody of a person in relation to whom a preventative detention order is in force, or in relation to whom a preventative detention order is likely to be made; or

(iii) the service on a person of a control order.

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(5) An issuing authority may refuse to make a prohibited contact order unless the AFP member applying for the order gives the issuing authority any further information that the issuing authority requests concerning the grounds on which the order is sought.

105.15 Prohibited contact order (person in relation to whom preventative detention order is being sought)

(1) An AFP member who applies to an issuing authority for a preventative detention order in relation to a person (the ***subject***) may also apply for a prohibited contact order under this section in relation to the subject's detention under the preventative detention order.

(2) The application must set out:
  (a) the terms of the order sought; and
  (b) the facts and other grounds on which the AFP member considers that the order should be made.

(3) If a continued preventative detention order is being applied for, the information in the application for the prohibited contact order must be sworn or affirmed by the AFP member.

(4) If the issuing authority makes the preventative detention order, the issuing authority may make a prohibited contact order under this section that the subject is not, while being detained under the preventative detention order, to contact the person specified in the prohibited contact order.

Note: Section 105.14A sets out the basis on which the order may be made.

(5) The prohibited contact order must be in writing.

(6) The senior AFP member nominated under subsection 105.19(5) in relation to the preventative detention order must:
  (a) notify the Commonwealth Ombudsman in writing of the making of the prohibited contact order; and
  (b) give the Commonwealth Ombudsman a copy of the prohibited contact order.

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105.16 Prohibited contact order (person in relation to whom preventative detention order is already in force)

(1) If a preventative detention order is in force in relation to a person (the ***subject***), an AFP member may apply to an issuing authority for preventative detention orders of that kind for a prohibited contact order under this section in relation to the subject's detention under the preventative detention order.

(2) The application must set out:
  (a) the terms of the order sought; and
  (b) the facts and other grounds on which the AFP member considers that the order should be made.

(3) If the preventative detention order is a continued preventative detention order, the information in the application for the prohibited contact order must be sworn or affirmed by the AFP member.

(4) The issuing authority may make a prohibited contact order under this section that the subject is not, while being detained under the preventative detention order, to contact the person specified in the prohibited contact order.

  Note: Section 105.14A sets out the basis on which the order may be made.

(5) The prohibited contact order must be in writing.

(6) The senior AFP member nominated under subsection 105.19(5) in relation to the preventative detention order must:
  (a) notify the Commonwealth Ombudsman in writing of the making of the prohibited contact order; and
  (b) give the Commonwealth Ombudsman a copy of the prohibited contact order.

105.17 Revocation of preventative detention order or prohibited contact order

Preventative detention order

(1) If:
  (a) a preventative detention order is in force in relation to a person; and

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(b) the police officer who is detaining the person under the order is satisfied that the grounds on which the order was made have ceased to exist;

the police officer must:

(c) if the police officer is an AFP member—apply to an issuing authority for preventative detention orders of that kind for the revocation of the order; or

(d) if the police officer is not an AFP member—inform a senior AFP member of the police officer's reasons for being satisfied that the grounds on which the order was made have ceased to exist.

(2) If:

(a) a senior AFP member is informed by a police officer under paragraph (1)(d); and

(b) the senior AFP member is satisfied that the grounds on which the preventative detention order was made have ceased to exist;

the senior AFP member must apply to an issuing authority for preventative detention orders of that kind for the revocation of the order.

(3) If:

(a) a preventative detention order is in force in relation to a person; and

(b) an issuing authority for preventative detention orders of that kind is satisfied, on application by an AFP member, that the grounds on which the order was made have ceased to exist;

the issuing authority must revoke the order.

Prohibited contact order

(4) If:

(a) a prohibited contact order is in force in relation to a person's detention under a preventative detention order; and

(b) the police officer who is detaining the person under the preventative detention order is satisfied that the grounds on which the prohibited contact order was made have ceased to exist;

the police officer must:

(c) if the police officer is an AFP member—apply to an issuing authority for preventative detention orders of that kind for the revocation of the prohibited contact order; or

(d) if the police officer is not an AFP member—inform a senior AFP member of the police officer's reasons for being satisfied that the grounds on which the prohibited contact order was made have ceased to exist.

(5) If:

(a) a senior AFP member is informed by a police officer under paragraph (4)(d); and

(b) the senior AFP member is satisfied that the grounds on which the prohibited contact order was made in relation to the person's detention under the preventative detention order have ceased to exist;

the senior AFP member must apply to an issuing authority for preventative detention orders of that kind for the revocation of the prohibited contact order.

(6) If:

(a) a prohibited contact order is in force in relation to a person's detention under a preventative detention order; and

(b) an issuing authority for preventative detention orders of that kind is satisfied, on application by an AFP member, that the grounds on which the prohibited contact order was made have ceased to exist;

the issuing authority must revoke the prohibited contact order.

Detainee's right to make representations about revocation of preventative detention order

(7) A person being detained under a preventative detention order may make representations to the senior AFP member nominated under subsection 105.19(5) in relation to the order with a view to having the order revoked.

105.18 Status of person making continued preventative detention order

(1) An issuing authority who makes:

(a) a continued preventative detention order; or

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(b) a prohibited contact order in relation to a person's detention under a continued preventative detention order;

has, in the performance of his or her duties under this Subdivision, the same protection and immunity as a Justice of the High Court.

(2) A function of:

(a) making or revoking a continued preventative detention order; or

(b) extending, or further extending, the period for which a continued preventative detention order is to be in force; or

(c) making or revoking a prohibited contact order in relation to a person's detention under a continued preventative detention order;

that is conferred on a judge or a member of the Administrative Appeals Tribunal is conferred on the judge or member of the Administrative Appeals Tribunal in a personal capacity and not as a court or a member of a court.

Subdivision C—Carrying out preventative detention orders

105.19 Power to detain person under preventative detention order

General powers given by preventative detention order

(1) While a preventative detention order is in force in relation to a person:

(a) any police officer may take the person into custody; and

(b) any police officer may detain the person.

(2) A police officer, in taking a person into custody under and in detaining a person under a preventative detention order, has the same powers and obligations as the police officer would have if the police officer were arresting the person, or detaining the person, for an offence.

(3) In subsection (2):

offence means:

(a) if the police officer is an AFP member—an offence against a law of the Commonwealth; or

(b) if the police officer is not an AFP member—an offence against a law of the State or Territory of whose police force the police officer is a member.

(4) Subsection (2) does not apply to the extent to which particular powers, and the obligations associated with those powers, are provided for in this Subdivision or Subdivision D or E.

Nominated senior AFP member

(5) If a preventative detention order is made in relation to person, the Commissioner of the Australian Federal Police must nominate a senior AFP member (the ***nominated senior AFP member***) to oversee the exercise of powers under, and the performance of obligations in relation to, the preventative detention order.

(6) The nominated senior AFP member must be someone who was not involved in the making of the application for the preventative detention order.

(7) The nominated senior AFP member must:

(a) oversee the exercise of powers under, and the performance of obligations in relation to, the preventative detention order; and

(b) without limiting paragraph (a), ensure that the provisions of section 105.17 (which deals with revocation of preventative detention orders and prohibited contact orders) are complied with in relation to the preventative detention order; and

(c) receive and consider any representations that are made under subsection (8).

(8) The following persons:

(a) the person being detained under the preventative detention order;

(b) a lawyer acting for that person in relation to the preventative detention order;

(c) a person with whom that person has contact under subsection 105.39(2);

are entitled to make representations to the nominated senior AFP member in relation to:

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(d) the exercise of powers under, and the performance of obligations in relation to, the preventative detention order; and

(e) without limiting paragraph (a), compliance with the provisions of section 105.17 (which deals with revocation of preventative detention orders and prohibited contact orders) in relation to the preventative detention order; and

(f) the person's treatment in connection with the person's detention under the preventative detention order.

(9) The Commissioner of the Australian Federal Police may, in writing, delegate to a senior AFP member the Commissioner's powers under subsection (5).

105.20 Endorsement of order with date and time person taken into custody

As soon as practicable after a person is first taken into custody under an initial preventative detention order, the police officer who is detaining the person under the order must endorse on the order the date on which, and time at which, the person is first taken into custody under the order.

105.21 Requirement to provide name etc.

(1) If a police officer believes on reasonable grounds that a person whose name or address is, or whose name and address are, unknown to the police officer may be able to assist the police officer in executing a preventative detention order, the police officer may request the person to provide his or her name or address, or name and address, to the police officer.

(2) If a police officer:

(a) makes a request of a person under subsection (1); and

(b) informs the person of the reason for the request; and

(c) if the police officer is not in uniform—shows the person evidence that the police officer is a police officer; and

(d) complies with subsection (4) if the person makes a request under that subsection;

the person must not:

(e) refuse or fail to comply with the request; or

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(f) give a name or address that is false in a material particular.

Penalty: 20 penalty units.

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

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3)).

(4) If a police officer who makes a request of a person under subsection (1) is requested by the person to provide to the person any of the following:

(a) his or her name;

(b) the address of his or her place of duty;

(c) his or her identification number if he or she has an identification number;

(d) his or her rank if he or she does not have an identification number;

the police officer must not:

(e) refuse or fail to comply with the request; or

(f) give a name, address, number or rank that is false in a material particular.

Penalty: 5 penalty units.

105.22 Power to enter premises

(1) Subject to subsection (2), if:

(a) a preventative detention order is in force in relation to a person; and

(b) a police officer believes on reasonable grounds that the person is on any premises;

the police officer may enter the premises, using such force as is necessary and reasonable in the circumstances and with such assistance from other police officers as is necessary, at any time of the day or night for the purpose of searching the premises for the person or taking the person into custody.

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(2) A police officer must not enter a dwelling house under subsection (1) at any time during the period commencing at 9 pm on a day and ending at 6 am on the following day unless the police officer believes on reasonable grounds that:

(a) it would not be practicable to take the person into custody, either at the dwelling house or elsewhere, at another time; or

(b) it is necessary to do so in order to prevent the concealment, loss or destruction of evidence of, or relating to, a terrorist act.

(3) In subsection (2):

dwelling house includes a conveyance, and a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night.

105.23 Power to conduct a frisk search

A police officer who takes a person into custody under a preventative detention order, or who is present when the person is taken into custody, may, if the police officer suspects on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying any seizable items:

(a) conduct a frisk search of the person at, or soon after, the time when the person is taken into custody; and

(b) seize any seizable items found as a result of the search.

105.24 Power to conduct an ordinary search

A police officer who takes a person into custody under a preventative detention order, or who is present when the person is taken into custody, may, if the police officer suspects on reasonable grounds that the person is carrying:

(a) evidence of, or relating to, a terrorist act; or

(b) a seizable item;

conduct an ordinary search of the person at, or soon after, the time when the person is taken into custody, and seize any such thing found as a result of the search.

105.25 Warrant under Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*

(1) This section applies if:

(a) a person is being detained under a preventative detention order; and

(b) a warrant under Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979* is in force in relation to the person; and

(c) a copy of the warrant is given to the police officer who is detaining the person under the preventative detention order.

(2) The police officer must take such steps as are necessary to ensure that the person may be dealt with in accordance with the warrant.

(3) Without limiting subsection (2), the police officer may, under section 105.26, release the person from detention under the preventative detention order so that the person may be dealt with in accordance with the warrant.

Note: If the police officer is not an AFP member, the police officer will need to obtain the approval of a senior AFP member before releasing the person from detention (see subsection 105.26(2)).

(4) To avoid doubt, the fact that the person is released from detention under the preventative detention order so that the person may be:

(a) questioned before a prescribed authority under the warrant; or

(b) detained under the warrant in connection with that questioning;

does not extend the period for which the preventative detention order remains in force in relation to the person.

Note: See paragraph 105.26(7)(a).

105.26 Release of person from preventative detention

(1) The police officer who is detaining a person under a preventative detention order may release the person from detention under the order.

Note: A person may be released, for example, so that the person may be arrested and otherwise dealt with under the provisions of Division 4 of Part IAA, and Part IC, of the *Crimes Act 1914*.

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Section 105.26

(2) If the police officer detaining the person under the order is not an AFP member:

(a) the police officer must not release the person from detention without the approval of a senior AFP member; and

(b) the senior AFP member must approve the person's release if the person is being released so that the person may be dealt with in accordance with a warrant under Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*.

(3) The police officer who releases the person from detention under the preventative detention order must give the person a written statement that the person is being released from that detention. The statement must be signed by the police officer.

(4) Subsection (3) does not apply if the police officer releases the person from detention so that the person may be dealt with:

(a) in accordance with a warrant under Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*; or

(b) under the provisions of Division 4 of Part IAA, and Part IC, of the *Crimes Act 1914*.

(5) To avoid doubt, a person may be taken to have been released from detention under a preventative detention order even if:

(a) the person is informed that he or she is being released from detention under the order; and

(b) the person is taken into custody on some other basis immediately after the person is informed that he or she is being released from detention under the order.

(6) To avoid doubt, a person is taken not to be detained under a preventative detention order during a period during which the person is released from detention under the order.

Note: During this period, the provisions of this Division that apply to a person who is being detained under a preventative detention order (for example, section 105.34 which deals with the people the person may contact) do not apply to the person.

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(7) To avoid doubt:

(a) the release of the person under subsection (1) from detention under the preventative detention order does not extend the period for which the preventative detention order remains in force; and

(b) a person released under subsection (1) from detention under a preventative detention order may again be taken into custody and detained under the order at any time while the order remains in force in relation to the person.

Note: Paragraph (a)—this means that the time for which the person may be detained under the order continues to run while the person is released.

105.27 Arrangement for detainee to be held in State or Territory prison or remand centre

(1) A senior AFP member may arrange for a person (the ***subject***) who is being detained under a preventative detention order to be detained under the order at a prison or remand centre of a State or Territory.

(2) If an arrangement is made under subsection (1):

(a) the preventative detention order is taken to authorise the person in charge of the prison or remand centre to detain the subject at the prison or remand centre while the order is in force in relation to the subject; and

(b) section 105.33 applies in relation to the subject's detention under the order at the prison or remand centre as if:

(i) the person in charge of that prison or remand centre; or

(ii) any other person involved in the subject's detention at that prison or remand centre;

were a person exercising authority under the order or implementing or enforcing the order; and

(c) the senior AFP member who makes the arrangement is taken, while the subject is detained at the prison or remand centre, to be the AFP member detaining the subject for the purposes of Subdivisions D and E of this Division.

(3) The arrangement under subsection (1) may include provision for the Commonwealth meeting the expenses of the subject's detention at the prison or remand centre.

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Subdivision D—Informing person detained about preventative detention order

105.28 Effect of initial preventative detention order to be explained to person detained

(1) As soon as practicable after a person is first taken into custody under an initial preventative detention order, the police officer who is detaining the person under the order must inform the person of the matters covered by subsection (2).

Note 1: A contravention of this subsection may be an offence under section 105.45.

Note 2: A contravention of this subsection does not affect the lawfulness of the person's detention under the order (see subsection 105.31(5)).

(2) The matters covered by this subsection are:

(a) the fact that the preventative detention order has been made in relation to the person; and

(b) the period during which the person may be detained under the order; and

(c) the restrictions that apply to the people the person may contact while the person is being detained under the order; and

(d) the fact that an application may be made under section 105.11 for an order that the person continue to be detained for a further period; and

(da) the person's entitlement under subsection 105.17(7) to make representations to the senior AFP member nominated under subsection 105.19(5) in relation to the order with a view to having the order revoked; and

(e) any right the person has to make a complaint to the Commonwealth Ombudsman under the *Ombudsman Act 1976* in relation to:

(i) the application for, or the making of, the preventative detention order; or

(ii) the treatment of the person by an AFP member in connection with the person's detention under the order; and

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(ea) any right the person has to give information under section 40SA of the *Australian Federal Police Act 1979* in relation to:

(i) the application for, or the making of, the preventative detention order; or

(ii) the treatment of the person by an AFP member in connection with the person's detention under the order; and

(f) any right the person has to complain to an officer or authority of a State or Territory in relation to the treatment of the person by a member of the police force of that State or Territory in connection with the person's detention under the order; and

(g) the fact that the person may seek from a federal court a remedy relating to:

(i) the order; or

(ii) the treatment of the person in connection with the person's detention under the order; and

(h) the person's entitlement under section 105.37 to contact a lawyer; and

(i) the name and work telephone number of the senior AFP member who has been nominated under subsection 105.19(5) to oversee the exercise of powers under, and the performance of obligations in relation to, the order.

Note: Paragraph (g)—see section 105.51.

(2A) Without limiting paragraph (2)(c), the police officer detaining the person under the order must inform the person under that paragraph about the persons that he or she may contact under section 105.35 or 105.39.

(3) Paragraph (2)(c) does not require the police officer to inform the person being detained of:

(a) the fact that a prohibited contact order has been made in relation to the person's detention; or

(b) the name of a person specified in a prohibited contact order that has been made in relation to the person's detention.

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105.29 Effect of continued preventative detention order to be explained to person detained

(1) As soon as practicable after a continued preventative detention order (the ***continued order***) is made in relation to a person, the police officer who is detaining the person must inform the person of the matters covered by subsection (2).

Note 1: A contravention of this subsection may be an offence under section 105.45.

Note 2: A contravention of this subsection does not affect the lawfulness of the person's detention under the order (see subsection 105.31(5)).

(2) The matters covered by this subsection are:

(a) the fact that the continued order has been made in relation to the person; and

(b) the further period during which the person may continue to be detained under the continued order; and

(c) the restrictions that apply to the people the person may contact while the person is being detained under the continued order; and

(ca) the person's entitlement under subsection 105.17(7) to make representations to the senior AFP member nominated under subsection 105.19(5) in relation to the order with a view to having the order revoked; and

(d) any right the person has to make a complaint to the Commonwealth Ombudsman under the *Ombudsman Act 1976* in relation to:

(i) the application for the continued order; or

(ii) the treatment of the person by an AFP member in connection with the person's detention under the continued order; and

(da) any right the person has to give information under section 40SA of the *Australian Federal Police Act 1979* in relation to:

(i) the application for the continued order; or

(ii) the treatment of the person by an AFP member in connection with the person's detention under the continued order; and

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(e) any right the person has to complain to an officer or authority of a State or Territory about the treatment of the person by a member of the police force of that State or Territory in connection with the person's detention under the continued order; and

(f) the fact that the person may seek from a federal court a remedy relating to:

(i) the continued order; or

(ii) the treatment of the person in connection with the person's detention under the continued order; and

(g) the person's entitlement under section 105.37 to contact a lawyer; and

(h) the name and work telephone number of the senior AFP member who has been nominated under subsection 105.19(5) to oversee the exercise of powers under, and the performance of obligations in relation to, the continued order.

Note: Paragraph (f)—see section 105.51.

(2A) Without limiting paragraph (2)(c), the police officer detaining the person under the order must inform the person under that paragraph about the persons that he or she may contact under section 105.35 or 105.39.

(3) Paragraph (2)(c) does not require the police officer to inform the person being detained of:

(a) the fact that a prohibited contact order has been made in relation to the person's detention; or

(b) the name of a person specified in a prohibited contact order that has been made in relation to the person's detention.

105.30 Person being detained to be informed of extension of preventative detention order

If a preventative detention order is extended, or further extended, under section 105.10 or 105.14, the police officer detaining the person under the order must inform the person of the extension, or further extension, as soon as practicable after the extension, or further extension, is made.

Note 1: A contravention of this subsection may be an offence under section 105.45.

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Note 2: A contravention of this subsection does not affect the lawfulness of the person's detention under the order (see subsection 105.31(5)).

105.31 Compliance with obligations to inform

(1) Subsection 105.28(1) or 105.29(1) or section 105.30 does not apply if the actions of the person being detained under the preventative detention order make it impracticable for the police officer to comply with that subsection.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1) (see subsection 13.3(3)).

(2) The police officer detaining the person under the preventative detention order complies with subsection 105.28(1) or 105.29(1) if the police officer informs the person in substance of the matters covered by subsection 105.28(2) or 105.29(2) (even if this is not done in language of a precise or technical nature).

(3) The police officer who is detaining the person under the preventative detention order must arrange for the assistance of an interpreter in complying with subsection 105.28(1) or 105.29(1) or section 105.30 if the police officer has reasonable grounds to believe that the person is unable, because of inadequate knowledge of the English language or a disability, to communicate with reasonable fluency in that language.

(4) Without limiting subsection (3), the assistance of the interpreter may be provided by telephone.

(5) The lawfulness of a person's detention under a preventative detention order is not affected by a failure to comply with subsection 105.28(1) or 105.29(1), section 105.30 or subsection (3) of this section.

105.32 Copy of preventative detention order

(1) As soon as practicable after a person is first taken into custody under an initial preventative detention order, the police officer who is detaining the person under the order must give the person a copy of the order.

(3) Despite subsection 105.19(2), a police officer does not need to have a copy of the order with him or her, or to produce a copy of the order to the person being taken into custody, when the police officer takes the person into custody.

(4) As soon as practicable after a continued preventative detention order is made in relation to a person in relation to whom an initial preventative detention order is in force, the police officer who is detaining the person under the initial preventative detention order, or the continued preventative detention order, must give the person a copy of the continued preventative detention order.

(5) As soon as practicable after a preventative detention order is extended, or further extended, under section 105.10 or 105.14, the police officer who is detaining the person under the preventative detention order must give the person a copy of the extension or further extension.

(6) A person who is being detained under a preventative detention order may request a police officer who is detaining the person to arrange for a copy of:

(a) the order; or

(c) any extension or further extension of the order under section 105.10 or 105.14;

to be given to a lawyer acting for the person in relation to the order.

Note 1: Section 105.37 deals with the person's right to contact a lawyer and the obligation of the police officer detaining the person to give the person assistance to choose a lawyer.

Note 2: Section 105.40 prevents the person from contacting a lawyer who is specified in a prohibited contact order.

(7) The police officer must make arrangements for a copy of the order, or the extension or further extension, to be given to the lawyer as soon as practicable after the request is made.

(8) Without limiting subsection (7), the copy of the order, or the extension, may be faxed or emailed to the lawyer.

(9) To avoid doubt, subsection (7) does not entitle the lawyer to be given a copy of, or see, a document other than the order, or the extension or further extension.

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(10) Nothing in this section requires a copy of a prohibited contact order to be given to a person.

(11) The police officer who gives:

(a) the person being detained under an initial preventative detention order; or

(b) a lawyer acting for the person;

a copy of the initial preventative detention order under this section must endorse on the copy the date on which, and time at which, the person was first taken into custody under the order.

(12) The lawfulness of a person's detention under a preventative detention order is not affected by a failure to comply with subsection (1), (4), (5), (7) or (11).

Subdivision E—Treatment of person detained

105.33 Humane treatment of person being detained

A person being taken into custody, or being detained, under a preventative detention order:

(a) must be treated with humanity and with respect for human dignity; and

(b) must not be subjected to cruel, inhuman or degrading treatment;

by anyone exercising authority under the order or implementing or enforcing the order.

Note: A contravention of this section may be an offence under section 105.45.

105.33A Detention of persons under 18

(1) Subject to subsection (2), the police officer detaining a person who is under 18 years of age under a preventative detention order must ensure that the person is not detained together with persons who are 18 years of age or older.

Note: A contravention of this subsection may be an offence under section 105.45.

(2) Subsection (1) does not apply if a senior AFP member approves the person being detained together with persons who are 18 years of age or older.

(3) The senior AFP member may give an approval under subsection (2) only if there are exceptional circumstances justifying the giving of the approval.

(4) An approval under subsection (2) must:
  (a) be given in writing; and
  (b) set out the exceptional circumstances that justify the giving of the approval.

105.34 Restriction on contact with other people

Except as provided by sections 105.35, 105.36, 105.37 and 105.39, while a person is being detained under a preventative detention order, the person:
  (a) is not entitled to contact another person; and
  (b) may be prevented from contacting another person.

Note 1: This section will not apply to the person if the person is released from detention under the order (even though the order may still be in force in relation to the person).

Note 2: A person's entitlement to contact other people under sections 105.35, 105.37 and 105.39 may be subject to a prohibited contact order made under section 105.15 or 105.16 (see section 105.40).

105.35 Contacting family members etc.

(1) The person being detained is entitled to contact:
  (a) one of his or her family members; and
  (b) if he or she:
    (i) lives with another person and that other person is not a family member of the person being detained; or
    (ii) lives with other people and those other people are not family members of the person being detained;

  that other person or one of those other people; and
  (c) if he or she is employed—his or her employer; and
  (d) if he or she employs people in a business—one of the people he or she employs in that business; and

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(e) if he or she engages in a business together with another person or other people—that other person or one of those other people; and

(f) if the police officer detaining the person being detained agrees to the person contacting another person—that person;

by telephone, fax or email but solely for the purposes of letting the person contacted know that the person being detained is safe but is not able to be contacted for the time being.

(2) To avoid doubt, the person being detained is not entitled, under subsection (1), to disclose:

(a) the fact that a preventative detention order has been made in relation to the person; or

(b) the fact that the person is being detained; or

(c) the period for which the person is being detained.

(3) In this section:

family member of a person means:

(a) the person's spouse or de facto partner; or

(b) a parent, step-parent or grandparent of the person; or

(c) a child, step-child or grandchild of the person; or

(d) a brother, sister, step-brother or step-sister of the person; or

(e) a guardian or carer of the person.

(4) For the purposes of this section, the family members of a person are taken to include the following (without limitation):

(a) a de facto partner of the person;

(b) someone who is the child of the person, or of whom the person is the child, because of the definition of ***child*** in the Dictionary;

(c) anyone else who would be a member of the person's family if someone mentioned in paragraph (a) or (b) is taken to be a family member of the person.

105.36 Contacting Ombudsman etc.

(1) The person being detained is entitled to contact:

(a) the Commonwealth Ombudsman in accordance with subsections 7(3) to (5) of the *Ombudsman Act 1976*; or

(b) a person referred to in subsection 40SA(1) of the *Australian Federal Police Act 1979* in accordance with section 40SB of that Act.

Note 1: Subsections 7(3) to (5) of the *Ombudsman Act 1976* provide for the manner in which a person who is in custody may make a complaint to the Commonwealth Ombudsman under that Act.

Note 2: Section 40SB of the *Australian Federal Police Act 1979* provides for the manner in which a person who is in custody may give information under section 40SA of that Act.

(2) If the person being detained has the right, under a law of a State or Territory, to complain to an officer or authority of the State or Territory about the treatment of the person by a member of the police force of that State or Territory in connection with the person's detention under the order, the person is entitled to contact that officer or authority to make a complaint in accordance with that law.

105.37 Contacting lawyer

(1) The person being detained is entitled to contact a lawyer but solely for the purpose of:

(a) obtaining advice from the lawyer about the person's legal rights in relation to:

(i) the preventative detention order; or

(ii) the treatment of the person in connection with the person's detention under the order; or

(b) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, proceedings in a federal court for a remedy relating to:

(i) the preventative detention order; or

(ii) the treatment of the person in connection with the person's detention under the order; or

(c) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, a complaint to the Commonwealth Ombudsman under the *Ombudsman Act 1976* in relation to:

(i) the application for, or the making of, the preventative detention order; or

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(ii) the treatment of the person by an AFP member in connection with the person's detention under the order; or

(ca) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, the giving of information under section 40SA of the *Australian Federal Police Act 1979* in relation to:

(i) the application for, or the making of, the preventative detention order; or

(ii) the treatment of the person by an AFP member in connection with the person's detention under the order; or

(d) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, a complaint to an officer or authority of a State or Territory about the treatment of the person by a member of the police force of that State or Territory in connection with the person's detention under the order; or

(e) arranging for the lawyer to act for the person in relation to an appearance, or hearing, before a court that is to take place while the person is being detained under the order.

(2) The form of contact that the person being detained is entitled to have with a lawyer under subsection (1) includes:

(a) being visited by the lawyer; and

(b) communicating with the lawyer by telephone, fax or email.

(3) If:

(a) the person being detained asks to be allowed to contact a particular lawyer under subsection (1); and

(b) either:

(i) the person is not entitled to contact that lawyer because of section 105.40 (prohibited contact order); or

(ii) the person is not able to contact that lawyer;

the police officer who is detaining the person must give the person reasonable assistance to choose another lawyer for the person to contact under subsection (1).

(3A) If the police officer who is detaining a person under a preventative detention order has reasonable grounds to believe that:

(a) the person is unable, because of inadequate knowledge of the English language, or a disability, to communicate with reasonable fluency in that language; and

(b) the person may have difficulties in choosing or contacting a lawyer because of that inability;

the police officer must give the person reasonable assistance (including, if appropriate, by arranging for the assistance of an interpreter) to choose and contact a lawyer under subsection (1).

(4) In recommending lawyers to the person being detained as part of giving the person assistance under subsection (3) or (3A), the police officer who is detaining the person may give priority to lawyers who have been given a security clearance at an appropriate level by the Department.

(5) Despite subsection (4) but subject to section 105.40, the person being detained is entitled under this section to contact a lawyer who does not have a security clearance of the kind referred to in subsection (4).

105.38 Monitoring contact under section 105.35 or 105.37

(1) The contact the person being detained has with another person under section 105.35 or 105.37 may take place only if it is conducted in such a way that the contact, and the content and meaning of the communication that takes place during the contact, can be effectively monitored by a police officer exercising authority under the preventative detention order.

(2) The contact may take place in a language other than English only if the content and meaning of the communication that takes place during the contact can be effectively monitored with the assistance of an interpreter.

(3) Without limiting subsection (2), the interpreter referred to in that subsection may be a police officer.

(4) If the person being detained indicates that he or she wishes the contact to take place in a language other than English, the police officer who is detaining the person must:

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(a) arrange for the services of an appropriate interpreter to be provided if it is reasonably practicable to do so during the period during which the person is being detained; and

(b) if it is reasonably practicable to do so—arrange for those services to be provided as soon as practicable.

(5) Any communication between:

(a) a person who is being detained under a preventative detention order; and

(b) a lawyer;

for a purpose referred to in paragraph 105.37(1)(a), (b), (c), (ca), (d) or (e) is not admissible in evidence against the person in any proceedings in a court.

105.39 Special contact rules for person under 18 or incapable of managing own affairs

(1) This section applies if the person being detained under a preventative detention order:

(a) is under 18 years of age; or

(b) is incapable of managing his or her affairs.

(2) The person is entitled, while being detained under the order, to have contact with:

(a) a parent or guardian of the person; or

(b) another person who:

(i) is able to represent the person's interests; and

(ii) is, as far as practicable in the circumstances, acceptable to the person and to the police officer who is detaining the person; and

(iii) is not an AFP member; and

(iv) is not an AFP employee (within the meaning of the *Australian Federal Police Act 1979*); and

(v) is not a member (however described) of a police force of a State or Territory; and

(vi) is not an officer or employee of the Australian Security Intelligence Organisation.

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(3) To avoid doubt:

(a) if the person being detained (the ***detainee***) has 2 parents or 2 or more guardians, the detainee is entitled, subject to section 105.40, to have contact under subsection (2) with each of those parents or guardians; and

(b) the detainee is entitled to disclose the following to a person with whom the detainee has contact under subsection (2):

(i) the fact that a preventative detention order has been made in relation to the detainee;

(ii) the fact that the detainee is being detained;

(iii) the period for which the detainee is being detained.

(4) The form of contact that the person being detained is entitled to have with another person under subsection (2) includes:

(a) being visited by that other person; and

(b) communicating with that other person by telephone, fax or email.

(5) The period for which the person being detained is entitled to have contact with another person each day under subsection (2) is:

(a) 2 hours; or

(b) such longer period as is specified in the preventative detention order.

Note: Paragraph (b)—see subsections 105.8(7) and 105.12(7).

(6) Despite subsection (5), the police officer who is detaining the person may permit the person to have contact with a person under subsection (2) for a period that is longer than the period provided for in subsection (5).

(7) The contact that the person being detained has with another person under subsection (2) must be conducted in such a way that the content and meaning of any communication that takes place during the contact can be effectively monitored by a police officer exercising authority under the preventative detention order.

(8) If the communication that takes place during the contact takes place in a language other than English, the contact may continue only if the content and meaning of the communication in that language can be effectively monitored with the assistance of an interpreter.

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(9) Without limiting subsection (8), the interpreter referred to in that subsection may be a police officer.

(10) If the person being detained indicates that he or she wishes the communication that takes place during the contact to take place in a language other than English, the police officer who is detaining the person must:

(a) arrange for the services of an appropriate interpreter to be provided if it is reasonably practicable to do so during the period during which the person is being detained; and

(b) if it is reasonably practicable to do so—arrange for those services to be provided as soon as practicable.

105.40 Entitlement to contact subject to prohibited contact order

Sections 105.35, 105.37 and 105.39 have effect subject to any prohibited contact order made in relation to the person's detention.

105.41 Disclosure offences

Person being detained

(1) A person (the ***subject***) commits an offence if:

(a) the subject is being detained under a preventative detention order; and

(b) the subject discloses to another person:

(i) the fact that a preventative detention order has been made in relation to the subject; or

(ii) the fact that the subject is being detained; or

(iii) the period for which the subject is being detained; and

(c) the disclosure occurs while the subject is being detained under the order; and

(d) the disclosure is not one that the subject is entitled to make under section 105.36, 105.37 or 105.39.

Penalty: Imprisonment for 5 years.

Lawyer

(2) A person (the ***lawyer***) commits an offence if:

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(a) a person being detained under a preventative detention order (the ***detainee***) contacts the lawyer under section 105.37; and

(b) the lawyer discloses to another person:

(i) the fact that a preventative detention order has been made in relation to the detainee; or

(ii) the fact that the detainee is being detained; or

(iii) the period for which the detainee is being detained; or

(iv) any information that the detainee gives the lawyer in the course of the contact; and

(c) the disclosure occurs while the detainee is being detained under the order; and

(d) the disclosure is not made for the purposes of:

(i) proceedings in a federal court for a remedy relating to the preventative detention order or the treatment of the detainee in connection with the detainee's detention under the order; or

(ii) a complaint to the Commonwealth Ombudsman under the *Ombudsman Act 1976* in relation to the application for, or making of, the preventative detention order or the treatment of the detainee by an AFP member in connection with the detainee's detention under the order; or

(iia) the giving of information under section 40SA of the *Australian Federal Police Act 1979* in relation to the application for, or making of, the preventative detention order or the treatment of the detainee by an AFP member in connection with the detainee's detention under the order; or

(iii) a complaint to an officer or authority of a State or Territory about the treatment of the detainee by a member of the police force of that State or Territory in connection with the detainee's detention under the order; or

(iv) making representations to the senior AFP member nominated under subsection 105.19(5) in relation to the order, or another police officer involved in the detainee's detention, about the exercise of powers under the order, the performance of obligations in relation to the order or the treatment of the detainee in connection with the detainee's detention under the order.

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Penalty: Imprisonment for 5 years.

Person having special contact with detainee who is under 18 years of age or incapable of managing own affairs

(3) A person (the ***parent/guardian***) commits an offence if:

(a) a person being detained under a preventative detention order (the ***detainee***) has contact with the parent/guardian under section 105.39; and

(b) the parent/guardian discloses to another person:

(i) the fact that a preventative detention order has been made in relation to the detainee; or

(ii) the fact that the detainee is being detained; or

(iii) the period for which the detainee is being detained; or

(iv) any information that the detainee gives the parent/guardian in the course of the contact; and

(c) the other person is not a person the detainee is entitled to have contact with under section 105.39; and

(d) the disclosure occurs while the detainee is being detained under the order; and

(e) the disclosure is not made for the purposes of:

(i) a complaint to the Commonwealth Ombudsman under *the Ombudsman Act 1976* in relation to the application for, or the making of, the preventative detention order or the treatment of the detainee by an AFP member in connection with the detainee's detention under the order; or

(ia) the giving of information under section 40SA of the *Australian Federal Police Act 1979* in relation to the application for, or the making of, the preventative detention order or the treatment of the detainee by an AFP member in connection with the detainee's detention under the order; or

(ii) a complaint to an officer or authority of a State or Territory about the treatment of the detainee by a member of the police force of that State or Territory in connection with the detainee's detention under the order; or

(iii) making representations to the senior AFP member nominated under subsection 105.19(5) in relation to the

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order, or another police officer involved in the detainee's detention, about the exercise of powers under the order, the performance of obligations in relation to the order or the treatment of the detainee in connection with the detainee's detention under the order.

Penalty: Imprisonment for 5 years.

(4) To avoid doubt, a person does not contravene subsection (3) merely by letting another person know that the detainee is safe but is not able to be contacted for the time being.

(4A) A person (the ***parent/guardian***) commits an offence if:

(a) the parent/guardian is a parent or guardian of a person who is being detained under a preventative detention order (the ***detainee***); and

(b) the detainee has contact with the parent/guardian under section 105.39; and

(c) while the detainee is being detained under the order, the parent/guardian discloses information of the kind referred to in paragraph (3)(b) to another parent or guardian of the detainee (the ***other parent/guardian***); and

(d) when the disclosure is made, the detainee has not had contact with the other parent/guardian under section 105.39 while being detained under the order; and

(e) the parent/guardian does not, before making the disclosure, inform the senior AFP member nominated under subsection 105.19(5) in relation to the order that the parent/guardian is proposing to disclose information of that kind to the other parent/guardian.

Penalty: Imprisonment for 5 years.

(4B) If:

(a) a person (the ***parent/guardian***) is a parent or guardian of a person being detained under a preventative detention order (the ***detainee***); and

(b) the parent/guardian informs the senior AFP member nominated under subsection 105.19(5) in relation to the order that the parent/guardian proposes to disclose information of the kind referred to in paragraph (3)(b) to another parent or guardian of the detainee (the ***other parent/guardian***);

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that senior AFP member may inform the parent/guardian that the detainee is not entitled to contact the other parent/guardian under section 105.39.

Note: The parent/guardian may commit an offence against subsection (2) if the other parent/guardian is a person the detainee is not entitled to have contact with under section 105.39 and the parent/guardian does disclose information of that kind to the other parent/guardian. This is because of the operation of paragraph (3)(c).

Interpreter assisting in monitoring contact with detainee

(5) A person (the ***interpreter***) commits an offence if:

(a) the interpreter is an interpreter who assists in monitoring the contact that a person being detained under a preventative detention order (the ***detainee***) has with someone while the detainee is being detained under the order; and

(b) the interpreter discloses to another person:

(i) the fact that a preventative detention order has been made in relation to the detainee; or

(ii) the fact that the detainee is being detained; or

(iii) the period for which the detainee is being detained; or

(iv) any information that interpreter obtains in the course of assisting in the monitoring of that contact; and

(c) the disclosure occurs while the detainee is being detained under the order.

Penalty: Imprisonment for 5 years.

Passing on improperly disclosed information

(6) A person (the ***disclosure recipient***) commits an offence if:

(a) a person (the ***earlier discloser***) discloses to the disclosure recipient:

(i) the fact that a preventative detention order has been made in relation to a person; or

(ii) the fact that a person is being detained under a preventative detention order; or

(iii) the period for which a person is being detained under a preventative detention order; or

(iv) any information that a person who is being detained under a preventative detention order communicates to a

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person while the person is being detained under the order; and

(b) the disclosure by the earlier discloser to the disclosure recipient contravenes:
  (i) subsection (1), (2), (3) or (5); or
  (ii) this subsection; and
(c) the disclosure recipient discloses that information to another person; and
(d) the disclosure by the disclosure recipient occurs while the person referred to in subparagraph (a)(i), (ii), (iii) or (iv) is being detained under the order.

Penalty: Imprisonment for 5 years.

Police officer or interpreter monitoring contact with lawyer

(7) A person (the ***monitor***) commits an offence if:
(a) the monitor is:
  (i) a police officer who monitors; or
  (ii) an interpreter who assists in monitoring;
contact that a person being detained under a preventative detention order (the ***detainee***) has with a lawyer under section 105.37 while the detainee is being detained under the order; and
(b) information is communicated in the course of that contact; and
(c) the information is communicated for one of the purposes referred to in subsection 105.37(1); and
(d) the monitor discloses that information to another person.

Penalty: Imprisonment for 5 years.

Note: See also subsection 105.38(5).

105.42 Questioning of person prohibited while person is detained

(1) A police officer must not question a person while the person is being detained under a preventative detention order except for the purposes of:
(a) determining whether the person is the person specified in the order; or

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(b) ensuring the safety and well-being of the person being detained; or

(c) allowing the police officer to comply with a requirement of this Division in relation to the person's detention under the order.

Note 1: This subsection will not apply to the person if the person is released from detention under the order (even though the order may still be in force in relation to the person).

Note 2: A contravention of this subsection may be an offence under section 105.45.

(2) An officer or employee of the Australian Security Intelligence Organisation must not question a person while the person is being detained under a preventative detention order.

Note 1: This subsection will not apply to the person if the person is released from detention under the order (even though the order may still be in force in relation to the person).

Note 2: A contravention of this subsection may be an offence under section 105.45.

(3) An AFP member, or an officer or employee of the Australian Security Intelligence Organisation, must not question a person while the person is being detained under an order made under a corresponding State preventative detention law.

Note 1: This subsection will not apply to the person if the person is released from detention under the order (even though the order may still be in force in relation to the person).

Note 2: A contravention of this subsection may be an offence under section 105.45.

(4) If a police officer questions a person while the person is being detained under a preventative detention order, the police officer who is detaining the person must ensure that:

(a) a video recording is made of the questioning if it is practicable to do so; or

(b) an audio recording is made of the questioning if it is not practicable for a video recording to be made of the questioning.

Note: A contravention of this subsection may be an offence under section 105.45.

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(5) Subsection (4) does not apply if:

(a) the questioning occurs to:

(i) ensure the safety and well being of the person being detained; or

(ii) determine whether the person is the person specified in the order; and

(b) complying with subsection (4) is not practicable because of the seriousness and urgency of the circumstances in which the questioning occurs.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3)).

(6) A recording made under subsection (4) must be kept for the period of 12 months after the recording is made.

105.43 Taking fingerprints, recordings, samples of handwriting or photographs

(1) A police officer must not take identification material from a person who is being detained under a preventative detention order except in accordance with this section.

Note: A contravention of this subsection may be an offence under section 105.45.

(2) A police officer who is of the rank of sergeant or higher may take identification material from the person, or cause identification material from the person to be taken, if:

(a) the person consents in writing; or

(b) the police officer believes on reasonable grounds that it is necessary to do so for the purpose of confirming the person's identity as the person specified in the order.

(3) A police officer may use such force as is necessary and reasonable in the circumstances to take identification material from a person under this section.

(4) Subject to this section, a police officer must not take identification material (other than hand prints, fingerprints, foot prints or toe prints) from the person if the person:

(a) is under 18 years of age; or

(b) is incapable of managing his or her affairs;

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unless a Judge of the Federal Circuit Court of Australia orders that the material be taken.

Note: A contravention of this subsection may be an offence under section 105.45.

(5) In deciding whether to make such an order, the Judge of the Federal Circuit Court of Australia must have regard to:

(a) the age, or any disability, of the person; and

(b) such other matters as the Judge of the Federal Circuit Court of Australia thinks fit.

(6) The taking of identification material from a person who:

(a) is under 18 years of age; or

(b) is incapable of managing his or her affairs;

must be done in the presence of:

(c) a parent or guardian of the person; or

(d) if a parent or guardian of the person is not acceptable to the person—another appropriate person.

Note 1: For ***appropriate person***, see subsection (11).

Note 2: A contravention of this subsection may be an offence under section 105.45.

(7) Despite this section, identification material may be taken from a person who is under 18 years of age and is capable of managing his or her affairs if:

(a) subsections (8) and (9) are satisfied; or

(b) subsection (8) or (9) is satisfied (but not both) and a Judge of the Federal Circuit Court of Australia orders that the material be taken.

In deciding whether to make such an order, the Judge of the Federal Circuit Court of Australia must have regard to the matters set out in subsection (5).

(8) This subsection applies if the person agrees in writing to the taking of the material.

(9) This subsection applies if either:

(a) a parent or guardian of the person; or

(b) if a parent or guardian is not acceptable to the person—another appropriate person;

agrees in writing to the taking of the material.

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Note: For ***appropriate person***, see subsection (11).

(10) Despite this section, identification material may be taken from a person who:

(a) is at least 18 years of age; and

(b) is capable of managing his or her affairs;

if the person consents in writing.

(11) A reference in this section to an ***appropriate person*** in relation to a person (the ***subject***) who is under 18 years of age, or incapable of managing his or her affairs, is a reference to a person who:

(a) is capable of representing the subject's interests; and

(b) as far as is practicable in the circumstances, is acceptable to the subject and the police officer who is detaining the subject; and

(c) is none of the following:

(i) an AFP member;

(ii) an AFP employee (within the meaning of the *Australian Federal Police Act 1979*);

(iii) a member (however described) of a police force of a State or Territory;

(iv) an officer or employee of the Australian Security Intelligence Organisation.

105.44 Use of identification material

(1) This section applies if identification material is taken under section 105.43 from a person being detained under a preventative detention order.

(2) The material may be used only for the purpose of determining whether the person is the person specified in the order.

Note: A contravention of this subsection may be an offence under section 105.45.

(3) If:

(a) a period of 12 months elapses after the identification material is taken; and

(b) proceedings in respect of:

(i) the preventative detention order; or

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(ii) the treatment of the person in connection with the person's detention under the order;

have not been brought, or have been brought and discontinued or completed, within that period;

the material must be destroyed as soon as practicable after the end of that period.

105.45 Offences of contravening safeguards

A person commits an offence if:

(a) the person engages in conduct; and

(b) the conduct contravenes:

(i) subsection 105.28(1); or

(ii) subsection 105.29(1); or

(iii) section 105.30; or

(iv) section 105.33; or

(iva) subsection 105.33A(1); or

(v) subsection 105.42(1), (2), (3) or (4); or

(vi) subsection 105.43(1), (4) or (6); or

(vii) subsection 105.44(2).

Penalty: Imprisonment for 2 years.

Subdivision F—Miscellaneous

105.46 Nature of functions of Federal Circuit Court Judge

(1) A function of making an order conferred on a Judge of the Federal Circuit Court of Australia by section 105.43 is conferred on the Judge of the Federal Circuit Court of Australia in a personal capacity and not as a court or a member of a court.

(2) Without limiting the generality of subsection (1), an order made by a Judge of the Federal Circuit Court of Australia under section 105.43 has effect only by virtue of this Act and is not to be taken by implication to be made by a court.

(3) A Judge of the Federal Circuit Court of Australia performing a function of, or connected with, making an order under section 105.43 has the same protection and immunity as if he or

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she were performing that function as, or as a member of, the Federal Circuit Court of Australia.

105.47 Annual report

(1) The Attorney-General must, as soon as practicable after each 30 June, cause to be prepared a report about the operation of this Division during the year ended on that 30 June.

(2) Without limiting subsection (1), a report relating to a year must include the following matters:

(a) the number of initial preventative detention orders made under section 105.8 during the year;

(b) the number of continued preventative detention orders made under section 105.12 during the year;

(c) whether a person was taken into custody under each of those orders and, if so, how long the person was detained for;

(d) particulars of:

(i) any complaints made or referred to the Commonwealth Ombudsman during the year that related to the detention of a person under a preventative detention order; and

(ii) any information given under section 40SA of the *Australian Federal Police Act 1979* during the year that related to the detention of a person under a preventative detention order and raised an AFP conduct or practices issue (within the meaning of that Act);

(e) the number of prohibited contact orders made under sections 105.15 and 105.16 during the year;

(f) the number of preventative detention orders, and the number of prohibited contact orders, that a court has found not to have been validly made or that the Administrative Appeals Tribunal has declared to be void.

(3) The Attorney-General must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the report is completed.

105.48 Certain functions and powers not affected

This Division does not affect:

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(a) a function or power of the Commonwealth Ombudsman under the *Ombudsman Act 1976*; or

(b) a function or power of a person under Part V of the *Australian Federal Police Act 1979*.

105.49 Queensland public interest monitor functions and powers not affected

This Division does not affect a function or power that the Queensland public interest monitor, or a Queensland deputy public interest monitor, has under a law of Queensland.

105.50 Law relating to legal professional privilege not affected

To avoid doubt, this Division does not affect the law relating to legal professional privilege.

105.51 Legal proceedings in relation to preventative detention orders

(1) Subject to subsections (2) and (4), proceedings may be brought in a court for a remedy in relation to:

(a) a preventative detention order; or

(b) the treatment of a person in connection with the person's detention under a preventative detention order.

(2) A court of a State or Territory does not have jurisdiction in proceedings for a remedy if:

(a) the remedy relates to:

(i) a preventative detention order; or

(ii) the treatment of a person in connection with the person's detention under a preventative detention order; and

(b) the proceedings are commenced while the order is in force.

(3) Subsection (2) has effect despite any other law of the Commonwealth (whether passed or made before or after the commencement of this section).

(4) An application cannot be made under the *Administrative Decisions (Judicial Review) Act 1977* in relation to a decision made under this Division.

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Note: See paragraph (dac) of Schedule 1 to the *Administrative Decisions (Judicial Review) Act 1977*.

(5) An application may be made to the Administrative Appeals Tribunal for review of:

(a) a decision by an issuing authority under section 105.8 or 105.12 to make a preventative detention order; or

(b) a decision by an issuing authority in relation to a preventative detention order to extend or further extend the period for which the order is in force in relation to a person.

The application cannot be made while the order is in force.

(6) The power of the Administrative Appeals Tribunal to review a decision referred to in subsection (5) may be exercised by the Tribunal only in the Security Appeals Division of the Tribunal.

(7) The Administrative Appeals Tribunal may:

(a) declare a decision referred to in subsection (5) in relation to a preventative detention order in relation to a person to be void if the Tribunal would have set the decision aside if an application for review of the decision had been able to be made to the Tribunal while the order was in force; and

(b) determine that the Commonwealth should compensate the person in relation to the person's detention under the order if the Tribunal declares the decision to be void under paragraph (a).

(8) If the Administrative Appeals Tribunal makes a determination under paragraph (7)(b), the Commonwealth is liable to pay the compensation determined by the Tribunal.

(9) The provisions of the *Administrative Appeals Tribunal Act 1975* apply in relation to an application to the Administrative Appeals Tribunal for review of a decision referred to in subsection (5) with the modifications specified in the regulations made under this Act.

105.52 Review by State and Territory courts

(1) This section applies if:

(a) a person is detained under a preventative detention order (the ***Commonwealth order***) that is made on the basis of:

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(i) assisting in preventing a terrorist act occurring within a period; or

(ii) preserving evidence of, or relating to, a terrorist act; and

(b) the person is detained under an order (the ***State order***) that is made under a corresponding State preventative detention law on the basis of:

(i) assisting in preventing the same terrorist act, or a different terrorist act, occurring within that period; or

(ii) preserving evidence of, or relating to, the same terrorist act; and

(c) the person brings proceedings before a court of a State or Territory in relation to:

(i) the application for, or the making of, the State order; or

(ii) the person's treatment in connection with the person's detention under the State order.

(2) The court may:

(a) review the application for, or the making of, the Commonwealth order, or the person's treatment in connection with the person's detention under the Commonwealth order, on the same grounds as those on which the court may review the application for, or the making of, the State order, or the person's treatment in connection with the person's detention under the State order; and

(b) grant the same remedies in relation to the application for, or the making of, the Commonwealth order, or the person's treatment in connection with the person's detention under the Commonwealth order, as those the court can grant in relation to the application for, or the making of, the State order, or the person's treatment in connection with the person's detention under the State order.

(3) If:

(a) the person applies to the court for:

(i) review of the application for, or the making of, the Commonwealth order or the person's treatment in connection with the person's detention under the Commonwealth order; or

(ii) a remedy in relation to the application for, or the making of, the Commonwealth order or the person's treatment in connection with the person's detention under the Commonwealth order; and

(b) the person applies to the court for an order under this subsection;

the court may order the Commissioner of the Australian Federal Police to give the court, and the parties to the proceedings, the information that was put before the person who issued the Commonwealth order when the application for the Commonwealth order was made.

(4) Subsection (3) does not require information to be given to the court, or the parties to the proceedings, if the disclosure of the information is likely to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*).

(5) This section has effect:

(a) without limiting subsection 105.51(1); and

(b) subject to subsection 105.51(2).

(6) Nothing in this section affects the operation of the *National Security Information (Criminal and Civil Proceedings) Act 2004* in relation to the proceedings.

105.53 Sunset provision

(1) A preventative detention order, or a prohibited contact order, that is in force at the end of 10 years after the day on which this Division commences ceases to be in force at that time.

(2) A preventative detention order, and a prohibited contact order, cannot be applied for, or made, after the end of 10 years after the day on which this Division commences.

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Division 106—Transitional provisions

106.1 Saving—regulations originally made for the purposes of paragraph (c) of the definition of *terrorist organisation*

(1) If:

(a) regulations were made before commencement for the purposes of paragraph (c) of the definition of ***terrorist organisation*** in subsection 102.1(1), as in force before commencement; and

(b) the regulations were in force immediately before commencement;

the regulations have effect, after commencement, as if they had been made for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in subsection 102.1(1), as in force after commencement.

(2) In this section, ***commencement*** means the commencement of this section.

106.2 Saving—regulations made for the purposes of paragraph (a) of the definition of *terrorist organisation*

(1) If:

(a) regulations were made before commencement for the purposes of paragraph (a) of the definition of ***terrorist organisation*** in subsection 102.1(1), as in force before commencement; and

(b) the regulations were in force immediately before commencement;

the regulations continue to have effect, after commencement, as if they had been made for the purposes of that paragraph, as in force after commencement.

(2) In this section, ***commencement*** means the commencement of this section.

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106.3 Application provision

The amendments to this Code made by Schedule 1 to the *Anti-Terrorism Act 2005* apply to offences committed:

(a) before the commencement of this section (but not before the commencement of the particular section of the Code being amended); and

(b) after the commencement of this section.

106.4 Saving—Federal Magistrates

(1) An appointment that is in force immediately before the commencement of this section under subsection 105.2(1) in respect of a Federal Magistrate continues in force, after that commencement, as an appointment in respect of a Judge of the Federal Circuit Court of Australia under that subsection.

(2) A consent that is in force immediately before the commencement of this section under subsection 105.2(2) in respect of a Federal Magistrate continues in force, after that commencement, as a consent in respect of a Judge of the Federal Circuit Court of Australia.

(3) A thing done by, or in relation to, a Federal Magistrate, as an issuing authority for continued preventative detention orders, under Division 105 before the commencement of this section has effect, after that commencement, as if it had been done by, or in relation to, a Judge of the Federal Circuit Court of Australia, as an issuing authority for continued preventative detention orders, under that Division.

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Part 5.4—Harming Australians

Division 115—Harming Australians

115.1 Murder of an Australian citizen or a resident of Australia

(1) A person is guilty of an offence if:
  (a) the person engages in conduct outside Australia; and
  (b) the conduct causes the death of another person; and
  (c) the other person is an Australian citizen or a resident of Australia; and
  (d) the first-mentioned person intends to cause, or is reckless as to causing, the death of the Australian citizen or resident of Australia or any other person by the conduct.

Penalty: Imprisonment for life.

(2) Absolute liability applies to paragraph (1)(c).

115.2 Manslaughter of an Australian citizen or a resident of Australia

(1) A person is guilty of an offence if:
  (a) the person engages in conduct outside Australia; and
  (b) the conduct causes the death of another person; and
  (c) the other person is an Australian citizen or a resident of Australia; and
  (d) the first-mentioned person intends that the conduct will cause serious harm, or is reckless as to a risk that the conduct will cause serious harm, to the Australian citizen or resident of Australia or any other person.

Penalty: Imprisonment for 25 years.

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

115.3 Intentionally causing serious harm to an Australian citizen or a resident of Australia

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

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(a) the person engages in conduct outside Australia; and
(b) the conduct causes serious harm to another person; and
(c) the other person is an Australian citizen or a resident of Australia; and
(d) the first-mentioned person intends to cause serious harm to the Australian citizen or resident of Australia or any other person by the conduct.

Penalty: Imprisonment for 20 years.

(2) Absolute liability applies to paragraph (1)(c).

115.4 Recklessly causing serious harm to an Australian citizen or a resident of Australia

(1) A person is guilty of an offence if:
(a) the person engages in conduct outside Australia; and
(b) the conduct causes serious harm to another person; and
(c) the other person is an Australian citizen or a resident of Australia; and
(d) the first-mentioned person is reckless as to causing serious harm to the Australian citizen or resident of Australia or any other person by the conduct.

Penalty: Imprisonment for 15 years.

(2) Absolute liability applies to paragraph (1)(c).

115.5 Saving of other laws

This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or of a State or Territory.

115.6 Bringing proceedings under this Division

(1) Proceedings for an offence under this Division must not be commenced without the Attorney-General's written consent.

(2) However, a person may be arrested, charged, remanded in custody, or released on bail, in connection with an offence under this Division before the necessary consent has been given.

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115.7 Ministerial certificates relating to proceedings

(1) A Minister who administers one or more of the following Acts:

(a) the *Australian Citizenship Act 2007*;

(b) the *Migration Act 1958*;

(c) the *Australian Passports Act 2005*;

may issue a certificate stating that a person is or was an Australian citizen or a resident of Australia at a particular time.

(2) In any proceedings, a certificate under this section is prima facie evidence of the matters in the certificate.

115.8 Geographical jurisdiction

Each offence against this Division applies:

(a) whether or not a result of the conduct constituting the alleged offence occurs in Australia; and

(b) if the alleged offence is an ancillary offence and the conduct to which the ancillary offence relates occurs outside Australia—whether or not the conduct constituting the ancillary offence occurs in Australia.

115.9 Meaning of *causes* death or harm

In this Division, a person's conduct ***causes*** death or harm if it substantially contributes to the death or harm.

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Chapter 7—The proper administration of Government

Part 7.1—Preliminary

Division 130—Preliminary

130.1 Definitions

In this Chapter:

duty:

(a) in relation to a person who is a Commonwealth public official—means any authority, duty, function or power that:

(i) is conferred on the person as a Commonwealth public official; or

(ii) the person holds himself or herself out as having as a Commonwealth public official; and

(b) in relation to a person who is a public official—means any authority, duty, function or power that:

(i) is conferred on the person as a public official; or

(ii) the person holds himself or herself out as having as a public official.

gain means:

(a) a gain in property, whether temporary or permanent; or

(b) a gain by way of the supply of services;

and includes keeping what one has.

loss means a loss in property, whether temporary or permanent, and includes not getting what one might get.

obtaining includes:

(a) obtaining for another person; and

(b) inducing a third person to do something that results in another person obtaining.

property includes:

(a) real property; and

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(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.

services includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities, but does not include rights or benefits being the supply of goods.

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

Note: The expression ***person*** includes a Commonwealth entity. This is the combined effect of subsection 2C(1) of the *Acts Interpretation Act 1901* (which provides that ***person*** includes a body politic or corporate), and the definition of ***person*** in the Dictionary.

130.2 When property belongs to a person

(1) For the purposes of this Chapter, 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) (which deal with money transfers).

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130.3 Dishonesty

For the purposes of this Chapter, ***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: The following provisions affect the meaning of ***dishonesty***:

(a) section 131.2 (theft);

(b) section 134.1 (obtaining property by deception).

130.4 Determination of dishonesty to be a matter for the trier of fact

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

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Part 7.2—Theft and other property offences

Division 131—Theft

131.1 Theft

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

(a) the person dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property; and

(b) the property belongs to a Commonwealth entity.

Penalty: Imprisonment for 10 years.

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

(3) Absolute liability applies to the paragraph (1)(b) element of the offence of theft.

(4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

Note: For alternative verdicts, see sections 132.1 and 134.1.

131.2 Special rules about the meaning of dishonesty

(1) For the purposes of this Division, 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 Division, 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.

131.3 Appropriation of property

(1) For the purposes of this Division, 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 Division, 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.

131.4 Theft of land or things forming part of land

(1) For the purposes of this Division, 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.

131.5 Trust property

(1) For the purposes of this Division, 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.

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(2) Accordingly, for the purposes of this Division, an intention to defeat the trust is an intention to deprive any such person of the property.

131.6 Obligation to deal with property in a particular way

For the purposes of this Division, 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.

131.7 Property obtained because of fundamental mistake

(1) For the purposes of this Division, 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, its proceeds or value;

then, to the extent of that obligation, the property or proceeds belongs (as against the person) to the person entitled to restoration.

(2) For the purposes of this Division, 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.

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(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.

131.8 Property of a corporation sole

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

131.9 Property belonging to 2 or more persons

If property belongs to 2 or more persons, a reference in this Division (other than paragraph 131.1(1)(b)) to the person to whom the property belongs is a reference to all of those persons.

131.10 Intention of permanently depriving a person of property

(1) For the purposes of this Division, 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;

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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 131.7(2)(a).

131.11 General deficiency

(1) For the purposes of this Division, 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 Division, 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.

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Division 132—Other property offences

132.1 Receiving

(1) A person is guilty of an offence if the person dishonestly receives stolen property, knowing or believing the property to be stolen.

Penalty: Imprisonment for 10 years.

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

(2A) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew or believed that the property belonged to a Commonwealth entity.

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

(aa) it is previously received property (as defined by subsection (5A)); or

(b) it is tainted property (as defined by subsection (7)).

This subsection has effect subject to subsections (4) and (6).

(4) For the purposes of this section, ***stolen property*** does not include land obtained in the course of an offence against section 134.1.

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

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(b) property, or a part of property, that:

(i) was obtained in the course of an offence against section 134.1 (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

(5A) 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.

(6) 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

(7) 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—the person who so appropriated the original stolen property; or

(ii) if the original stolen property was obtained in the course of an offence against section 134.1—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

(8) For the purposes of this section, if, as a result of the application of subsection 134.1(9) or (10), an amount credited to an account held by a person is property obtained in the course of an offence against section 134.1:

(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 (6) of this section does not apply to the property.

Note: Subsections 134.1(9) and (10) deal with money transfers.

Alternative verdicts

(9) If, in a prosecution for an offence of theft or an offence against section 134.1, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence of receiving, the trier of fact may find the defendant not guilty of the offence of theft or the section 134.1 offence but guilty of the offence of receiving, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

(10) If, in a prosecution for an offence of receiving, the trier of fact is not satisfied that the defendant is guilty of the offence, but is

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satisfied beyond reasonable doubt that the defendant is guilty of an offence of theft or an offence against section 134.1, the trier of fact may find the defendant not guilty of the offence of receiving but guilty of the offence of theft or the section 134.1 offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Receiving property stolen before commencement

(11) For the purposes of this section:

(a) it is to be assumed that sections 131.1 and 134.1 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 in force at that time.

Obtaining

(12) The definition of ***obtaining*** in section 130.1 does not apply to this section.

Note: See subsection 134.1(3).

Definition

(13) In this section:

account has the same meaning as in section 133.1.

132.2 Robbery

(1) A person is guilty of an offence if the person commits theft and:

(a) immediately before committing theft, the person:

(i) uses force on another person; or

(ii) threatens to use force then and there on another person;

with intent to commit theft or to escape from the scene; or

(b) at the time of committing theft, or immediately after committing theft, the person:

(i) uses force on another person; or

(ii) threatens to use force then and there on another person;

with intent to commit theft or to escape from the scene.

Penalty: Imprisonment for 15 years.

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

Note: ***Theft*** means an offence against section 131.1. Under section 131.1, an element of the offence of theft is that the property belongs to a Commonwealth entity.

(3) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the property belonged to a Commonwealth entity.

132.3 Aggravated robbery

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

(a) commits a robbery in company with one or more other persons; or

(b) commits a robbery and, at the time of the robbery, has an offensive weapon with him or her.

Penalty: Imprisonment for 20 years.

(2) For the purposes of this Code, an offence against subsection (1) is to be known as the offence of aggravated robbery.

Note: ***Robbery*** means an offence against section 132.2. Under section 132.2, an element of the offence of robbery is that the defendant commits theft. ***Theft*** means an offence against section 131.1. Under section 131.1, an element of the offence of theft is that the property belongs to a Commonwealth entity.

(2A) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the property belonged to a Commonwealth entity.

(3) In this section:

offensive weapon includes:

(a) an article made or adapted for use for causing injury to, or incapacitating, a person; or

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(b) an article where the person who has the article intends, or threatens to use, the article to cause injury to, or to incapacitate, another person.

132.4 Burglary

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

(a) the person enters, or remains in, a building, as a trespasser, with intent to commit theft of a particular item of property in the building; and

(b) the property belongs to a Commonwealth entity.

Penalty: Imprisonment for 13 years.

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

(2A) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the property belonged to a Commonwealth entity.

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

(a) the person enters, or remains in, a building, as a trespasser, with intent to commit an offence in the building that involves causing harm to another person or damage to property; and

(aa) the offence referred to in paragraph (a) is an offence against a law of the Commonwealth; and

(b) the offence referred to in paragraph (a) is punishable by imprisonment for life or for a term of 5 years or more.

Penalty: Imprisonment for 13 years.

(3A) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the offence referred to in paragraph (3)(a) is an offence against a law of the Commonwealth.

(4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the offence referred to in paragraph (3)(a) is punishable by imprisonment for life or for a term of 5 years or more.

(5) For the purposes of this Code, an offence against subsection (3) is also to be known as the offence of burglary.

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

(a) the person enters, or remains in, a building, as a trespasser, with intent to commit an offence in the building that involves causing harm to another person or damage to property; and

(aa) the offence referred to in paragraph (a) is an offence against a law of the Commonwealth, a State or a Territory; and

(b) the offence referred to in paragraph (a) is punishable by imprisonment for life or for a term of 5 years or more; and

(c) the building is owned or occupied by a Commonwealth entity.

Penalty: Imprisonment for 13 years.

(6A) In a prosecution for an offence against subsection (6), it is not necessary to prove that the defendant knew that the offence referred to in paragraph (6)(a) is an offence against a law of the Commonwealth, a State or a Territory.

(7) In a prosecution for an offence against subsection (6), it is not necessary to prove that the defendant knew that the offence referred to in paragraph (6)(a) is punishable by imprisonment for life or for a term of 5 years or more.

(8) Absolute liability applies to the paragraph (6)(c) element of the offence.

(9) For the purposes of this Code, an offence against subsection (6) is also to be known as the offence of burglary.

(10) For the purposes of this section, a person is taken not to be a trespasser:

(a) merely because the person is permitted to enter, or remain in, a building for a purpose that is not the person's intended purpose; or

(b) if the person is permitted to enter, or remain in, a building as a result of fraud, misrepresentation or another person's mistake.

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(12) In this section:

building includes:

(a) a part of a building; or

(b) a mobile home or a caravan; or

(c) a structure (whether or not movable), a vehicle, or a vessel, that is used, designed or adapted for residential purposes.

132.5 Aggravated burglary

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

(a) commits a burglary in company with one or more other persons; or

(b) commits a burglary, and at the time of the burglary, has an offensive weapon with him or her.

Penalty: Imprisonment for 17 years.

(2) For the purposes of this Code, an offence against subsection (1) is to be known as the offence of aggravated burglary.

(3) In a prosecution for an offence against subsection (1) in relation to the offence of burglary created by subsection 132.4(1), it is not necessary to prove that the defendant knew that the property concerned belonged to a Commonwealth entity.

(4) In a prosecution for an offence against subsection (1) in relation to the offence of burglary created by subsection 132.4(3), it is not necessary to prove that:

(a) the defendant knew that the offence referred to in paragraph 132.4(3)(a) is an offence against a law of the Commonwealth; or

(b) the defendant knew that the offence referred to in paragraph 132.4(3)(a) is punishable by imprisonment for life or for a term of 5 years or more.

(5) In a prosecution for an offence against subsection (1) in relation to the offence of burglary created by subsection 132.4(6), it is not necessary to prove that:

(a) the defendant knew that the offence referred to in paragraph 132.4(6)(a) is an offence against a law of the Commonwealth, a State or a Territory; or

(b) the defendant knew that the offence referred to in paragraph 132.4(6)(a) is punishable by imprisonment for life or for a term of 5 years or more; or

(c) the defendant knew that the building was owned or occupied by a Commonwealth entity.

(6) In this section:

offensive weapon includes:

(a) an article made or adapted for use for causing injury to, or incapacitating, a person; or

(b) an article where the person who has the article intends, or threatens to use, the article to cause injury to, or to incapacitate, another person.

132.6 Making off without payment

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

(a) the person, knowing that immediate payment for any goods or services supplied by another person is required or expected from him or her, dishonestly makes off:

(i) without having paid; and

(ii) with intent to avoid payment of the amount due; and

(b) the other person is a Commonwealth entity.

Penalty: Imprisonment for 2 years.

(2) Absolute liability applies to the paragraph (1)(b) element of the offence.

(3) For the purposes of this section, ***immediate payment*** includes payment at the time of collecting goods in respect of which a service has been provided.

132.7 Going equipped for theft or a property offence

(1) A person is guilty of an offence if the person, when not at home, has with him or her any article with intent to use it in the course of, or in connection with, theft or a property offence.

Penalty: Imprisonment for 3 years.

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(2) In a prosecution for an offence against subsection (1) in relation to:
  (a) theft; or
  (b) robbery; or
  (c) aggravated robbery; or
  (d) the offence of burglary created by subsection 132.4(1); or
  (e) the offence of aggravated burglary that relates to the offence of burglary created by subsection 132.4(1); or
  (f) an offence against section 134.1;

it is not necessary to prove that the defendant knew that the property concerned belonged to a Commonwealth entity.

(3) In a prosecution for an offence against subsection (1) in relation to:
  (a) the offence of burglary created by subsection 132.4(3); or
  (b) the offence of aggravated burglary that relates to the offence of burglary created by subsection 132.4(3);

it is not necessary to prove that:
  (c) the defendant knew that the offence referred to in paragraph 132.4(3)(a) is an offence against a law of the Commonwealth; or
  (d) the defendant knew that the offence referred to in paragraph 132.4(3)(a) is punishable by imprisonment for life or for a term of 5 years or more.

(4) In a prosecution for an offence against subsection (1) in relation to:
  (a) the offence of burglary created by subsection 132.4(6); or
  (b) the offence of aggravated burglary that relates to the offence of burglary created by subsection 132.4(6);

it is not necessary to prove that:
  (c) the defendant knew that the offence referred to in paragraph 132.4(6)(a) is an offence against a law of the Commonwealth, a State or a Territory; or
  (d) the defendant knew that the offence referred to in paragraph 132.4(6)(a) is punishable by imprisonment for life or for a term of 5 years or more; or
  (e) the defendant knew that the building was owned or occupied by a Commonwealth entity.

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(5) In this section:

property offence means:

(a) robbery; or

(b) aggravated robbery; or

(c) burglary; or

(d) aggravated burglary; or

(e) an offence against subsection 132.8(1); or

(f) an offence against section 134.1.

Note: It is an element of the offence of theft, and of each property offence, that the property belongs to a Commonwealth entity.

132.8 Dishonest taking or retention of property

Taking

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

(a) on a particular occasion, dishonestly takes one or more items of property belonging to a Commonwealth entity, where:

(i) the value or total value of the property is $500 or more; or

(ii) the absence of the property from the possession, custody or control of the person who would otherwise have had possession, custody or control would be likely to cause substantial disruption to activities carried on by or on behalf of a Commonwealth entity; and

(b) does not have consent to do so from the person who has authority to give consent.

Penalty: Imprisonment for 2 years.

Retention

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

(a) on a particular occasion, takes one or more items of property belonging to a Commonwealth entity; and

(b) dishonestly retains any or all of those items; and

(c) does not have consent to the retention from the person who has authority to give consent; and

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(d) either:

(i) at the time of the taking of the property, the value or total value of the property was $500 or more; or

(ii) the absence of the property from the possession, custody or control of the person who would otherwise have had possession, custody or control is likely to cause substantial disruption to activities carried on by or on behalf of a Commonwealth entity.

Penalty: Imprisonment for 2 years.

132.9 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to each offence against this Division.

Part 7.3—Fraudulent conduct

Division 133—Preliminary

133.1 Definitions

In this Part:

account means an account (including a loan account, a credit card account or a similar account) with a bank or other financial institution.

deception means an intentional or reckless deception, whether by words or other conduct, and whether as to fact or as to law, and includes:

(a) a deception as to the intentions of the person using the deception or any other person; and

(b) conduct by a person that causes a computer, a machine or an electronic device to make a response that the person is not authorised to cause it to do.

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Division 134—Obtaining property or a financial advantage by deception

134.1 Obtaining property by deception

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

(a) the person, by a deception, dishonestly obtains property belonging to another with the intention of permanently depriving the other of the property; and

(b) the property belongs to a Commonwealth entity.

Penalty: Imprisonment for 10 years.

(2) Absolute liability applies to the paragraph (1)(b) element of the offence.

Obtaining property

(3) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), a person (the ***first person***) is taken to have ***obtained*** property if, and only if:

(a) the first person obtains ownership, possession or control of it for himself or herself or for another person; or

(b) the first person enables ownership, possession or control of it to be retained by himself or herself; or

(c) the first person induces a third person to pass ownership, possession or control of it to another person; or

(d) the first person induces a third person to enable another person to retain ownership, possession or control of it; or

(e) subsection (9) or (10) applies.

(4) The definition of ***obtaining*** in section 130.1 does not apply for the purposes of this section (or for the purposes of the application of section 132.1 to this section).

(5) For the purposes of this section, a person's obtaining of property belonging to another may be dishonest even if the person or another person is willing to pay for the property.

Intention of permanently depriving a person of property

(6) For the purposes of this section, if:
   (a) a person obtains 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.

(7) For the purposes of subsection (6), 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.

(8) For the purposes of subsection (6), 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.

Money transfers

(9) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), if a person (the ***first person***) causes an amount to be transferred from an account held by another person (the ***second person***) to an account held by the first person:
   (a) the amount is taken to have been property that belonged to the second person; and
   (b) the first person is taken to have obtained the property for himself or herself with the intention of permanently depriving the second person of the property.

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(10) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), if a person (the ***first person***) causes an amount to be transferred from an account held by another person (the ***second person***) to an account held by a third person:

(a) the amount is taken to have been property that belonged to the second person; and

(b) the first person is taken to have obtained the property for the third person with the intention of permanently depriving the second person of the property.

(11) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), if:

(a) a credit is made to an account (the ***credited account***); and

(b) a debit is made to another account (the ***debited account***); and

(c) either:

(i) the credit results from the debit; or

(ii) the debit results from the credit;

the amount of the credit is taken to be transferred from the debited account to the credited account.

(12) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), a person is taken to cause an amount to be transferred from an account if the person induces another person to transfer the amount from the account (whether or not the other person is the holder of the account).

General deficiency

(13) A person may be convicted of an offence against this section involving 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 obtained over a period of time.

(14) A person may be convicted of an offence against this section involving 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 obtained over a period of time.

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Alternative verdicts

(15) If, in a prosecution for an offence of theft, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against this section, the trier of fact may find the defendant not guilty of the offence of theft but guilty of the offence against this section, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

(16) If, in a prosecution for an offence against this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence of theft, the trier of fact may find the defendant not guilty of the offence against this section but guilty of the offence of theft, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

134.2 Obtaining a financial advantage by deception

(1) A person is guilty of an offence if:
  (a) the person, by a deception, dishonestly obtains a financial advantage from another person; and
  (b) the other person is a Commonwealth entity.

Penalty: Imprisonment for 10 years.

(2) Absolute liability applies to the paragraph (1)(b) element of the offence.

134.3 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to each offence against this Division.

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Division 135—Other offences involving fraudulent conduct

135.1 General dishonesty

Obtaining a gain

(1) A person is guilty of an offence if:
  (a) the person does anything with the intention of dishonestly obtaining a gain from another person; and
  (b) the other person is a Commonwealth entity.

Penalty: Imprisonment for 5 years.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the other person was a Commonwealth entity.

Causing a loss

(3) A person is guilty of an offence if:
  (a) the person does anything with the intention of dishonestly causing a loss to another person; and
  (b) the other person is a Commonwealth entity.

Penalty: Imprisonment for 5 years.

(4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the other person was a Commonwealth entity.

(5) A person is guilty of an offence if:
  (a) the person dishonestly causes a loss, or dishonestly causes a risk of loss, to another person; and
  (b) the first-mentioned person knows or believes that the loss will occur or that there is a substantial risk of the loss occurring; and
  (c) the other person is a Commonwealth entity.

Penalty: Imprisonment for 5 years.

(6) Absolute liability applies to the paragraph (5)(c) element of the offence.

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Influencing a Commonwealth public official

(7) A person is guilty of an offence if:
  (a) the person does anything with the intention of dishonestly influencing a public official in the exercise of the official's duties as a public official; and
  (b) the public official is a Commonwealth public official; and
  (c) the duties are duties as a Commonwealth public official.

Penalty: Imprisonment for 5 years.

(8) In a prosecution for an offence against subsection (7), it is not necessary to prove that the defendant knew:
  (a) that the official was a Commonwealth public official; or
  (b) that the duties were duties as a Commonwealth public official.

135.2 Obtaining financial advantage

(1) A person is guilty of an offence if:
  (a) the person engages in conduct; and
  (aa) as a result of that conduct, the person obtains a financial advantage for himself or herself from another person; and
  (ab) the person knows or believes that he or she is not eligible to receive that financial advantage; and
  (b) the other person is a Commonwealth entity.

Penalty: Imprisonment for 12 months.

(1A) Absolute liability applies to the paragraph (1)(b) element of the offence.

(2) A person is guilty of an offence if:
  (a) the person engages in conduct; and
  (aa) as a result of that conduct, the person obtains a financial advantage for another person from a third person; and
  (ab) the person knows or believes that the other person is not eligible to receive that financial advantage; and
  (b) the third person is a Commonwealth entity.

Penalty: Imprisonment for 12 months.

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(2A) Absolute liability applies to the paragraph (2)(b) element of the offence.

(3) For the purposes of subsection (2), a person is taken to have obtained a financial advantage for another person from a Commonwealth entity if the first-mentioned person induces the Commonwealth entity to do something that results in the other person obtaining the financial advantage.

(4) The definition of ***obtaining*** in section 130.1 does not apply to this section.

135.4 Conspiracy to defraud

Obtaining a gain

(1) A person is guilty of an offence if:
  (a) the person conspires with another person with the intention of dishonestly obtaining a gain from a third person; and
  (b) the third person is a Commonwealth entity.

Penalty: Imprisonment for 10 years.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the third person was a Commonwealth entity.

Causing a loss

(3) A person is guilty of an offence if:
  (a) the person conspires with another person with the intention of dishonestly causing a loss to a third person; and
  (b) the third person is a Commonwealth entity.

Penalty: Imprisonment for 10 years.

(4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the third person was a Commonwealth entity.

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

(a) the person conspires with another person to dishonestly cause a loss, or to dishonestly cause a risk of loss, to a third person; and
(b) the first-mentioned person knows or believes that the loss will occur or that there is a substantial risk of the loss occurring; and
(c) the third person is a Commonwealth entity.

Penalty: Imprisonment for 10 years.

(6) In a prosecution for an offence against subsection (5), it is not necessary to prove that the defendant knew that the third person was a Commonwealth entity.

Influencing a Commonwealth public official

(7) A person is guilty of an offence if:
(a) the person conspires with another person with the intention of dishonestly influencing a public official in the exercise of the official's duties as a public official; and
(b) the public official is a Commonwealth public official; and
(c) the duties are duties as a Commonwealth public official.

Penalty: Imprisonment for 10 years.

(8) In a prosecution for an offence against subsection (7), it is not necessary to prove that the defendant knew:
(a) that the official was a Commonwealth public official; or
(b) that the duties were duties as a Commonwealth public official.

General provisions

(9) For a person to be guilty of an offence against this section:
(a) the person must have entered into an agreement with one or more other persons; and
(b) the person and at least one other party to the agreement must have intended to do the thing pursuant to the agreement; and
(c) the person or at least one other party to the agreement must have committed an overt act pursuant to the agreement.

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(10) A person may be found guilty of an offence against this section even if:

(a) obtaining the gain, causing the loss, causing the risk of loss, or influencing the Commonwealth public official, as the case may be, is impossible; or

(b) the only other party to the agreement is a body corporate; or

(c) each other party to the agreement is a person who is not criminally responsible; or

(d) subject to subsection (11), all other parties to the agreement have been acquitted of the offence.

(11) A person cannot be found guilty of an offence against this section if:

(a) all other parties to the agreement have been acquitted of such an offence; and

(b) a finding of guilt would be inconsistent with their acquittal.

(12) A person cannot be found guilty of an offence against this section if, before the commission of an overt act pursuant to the agreement, the person:

(a) withdrew from the agreement; and

(b) took all reasonable steps to prevent the doing of the thing.

(13) A court may dismiss a charge of an offence against this section if the court thinks that the interests of justice require the court to do so.

(14) Proceedings for an offence against this section must not be commenced without the consent of the Director of Public Prosecutions. However, before the necessary consent has been given, a person may be:

(a) arrested for an offence against this section; or

(b) charged with an offence against this section; or

(c) remanded in custody or released on bail in connection with an offence against this section.

135.5 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to each offence against this Division.

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Part 7.4—False or misleading statements

Division 136—False or misleading statements in applications

136.1 False or misleading statements in applications

Knowledge

(1) A person 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 person does so knowing that the statement:

(i) is false or misleading; or

(ii) omits any matter or thing without which the statement is misleading; and

(c) the statement is made in, or in connection with:

(i) an application for a licence, permit or authority; or

(ii) an application for registration; or

(iii) an application or claim for a benefit; and

(d) any of the following subparagraphs applies:

(i) the statement is made to a Commonwealth entity;

(ii) the statement is made to a person who is exercising powers or performing functions under, or in connection with, a law of the Commonwealth;

(iii) the statement is made in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

(1A) Absolute liability applies to each of the subparagraph (1)(d)(i), (ii) and (iii) elements of the offence.

(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).

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(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).

Recklessness

(4) A person 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 person does so reckless as to whether the statement:

(i) is false or misleading; or

(ii) omits any matter or thing without which the statement is misleading; and

(c) the statement is made in, or in connection with:

(i) an application for a licence, permit or authority; or

(ii) an application for registration; or

(iii) an application or claim for a benefit; and

(d) any of the following subparagraphs applies:

(i) the statement is made to a Commonwealth entity;

(ii) the statement is made to a person who is exercising powers or performing functions under, or in connection with, a law of the Commonwealth;

(iii) the statement is made in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 6 months.

(4A) Absolute liability applies to each of the subparagraph (4)(d)(i), (ii) and (iii) elements of the offence.

(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).

(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).

Alternative verdicts

(7) If, in a prosecution for an offence against subsection (1), the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against subsection (4), the trier of fact may find the defendant not guilty of the offence against subsection (1) but guilty of the offence against subsection (4), so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Geographical jurisdiction

(8) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1) or (4).

Definitions

(9) In this section:

benefit includes any advantage and is not limited to property.

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Division 137—False or misleading information or documents

137.1 False or misleading information

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

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

(b) the person does so knowing that the information:

(i) is false or misleading; or

(ii) omits any matter or thing without which the information is misleading; and

(c) any of the following subparagraphs applies:

(i) the information is given to a Commonwealth entity;

(ii) the information is given to a person who is exercising powers or performing functions under, or in connection with, a law of the Commonwealth;

(iii) the information is given in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

(1A) Absolute liability applies to each of the subparagraph (1)(c)(i), (ii) and (iii) elements of the offence.

(2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the information 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).

(3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the information did not omit any matter or thing without which the information 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).

(4) Subsection (1) does not apply as a result of subparagraph (1)(c)(i) if, before the information was given by a person to the Commonwealth entity, the Commonwealth entity did not take reasonable steps to inform the person of the existence of the offence against subsection (1).

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Note: A defendant bears an evidential burden in relation to the matter in subsection (4). See subsection 13.3(3).

(5) Subsection (1) does not apply as a result of subparagraph (1)(c)(ii) if, before the information was given by a person (the ***first person***) to the person mentioned in that subparagraph (the ***second person***), the second person did not take reasonable steps to inform the first person of the existence of the offence against subsection (1).

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

(6) For the purposes of subsections (4) and (5), it is sufficient if the following form of words is used:

"Giving false or misleading information is a serious offence".

137.2 False or misleading documents

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

(a) the person produces a document to another person; and

(b) the person does so knowing that the document is false or misleading; and

(c) the document is produced in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

(2) Subsection (1) does not apply if the document 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).

(3) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:

(a) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and

(b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

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

137.3 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to each offence against this Division.

Part 7.5—Unwarranted demands

Division 138—Preliminary

138.1 Unwarranted demand with menaces

(1) For the purposes of this Part, a person (the ***first person***) makes an ***unwarranted demand with menaces*** of another person if, and only if:

(a) the first person makes a demand with menaces of the other person; and

(b) the first person does not believe that he or she has reasonable grounds for making the demand; and

(c) the first person does not reasonably believe that the use of the menaces is a proper means of reinforcing the demand.

(2) This Part applies to a demand whether or not it is for property.

(3) This Part applies to a demand with menaces, whether or not the menaces relate to conduct to be engaged in by the person making the demand.

138.2 Menaces

(1) For the purposes of this Part, ***menaces*** includes:

(a) a threat (whether express or implied) of conduct that is detrimental or unpleasant to another person; or

(b) a general threat of detrimental or unpleasant conduct that is implied because of the status, office or position of the maker of the threat.

Threat against an individual

(2) For the purposes of this Part, a threat against an individual is taken not to be ***menaces*** unless:

(a) both:

(i) the threat would be likely to cause the individual to act unwillingly; and

(ii) the maker of the threat is aware of the vulnerability of the individual to the threat; or

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(b) the threat would be likely to cause a person of normal stability and courage to act unwillingly.

Threat against a person who is not an individual

(3) For the purposes of this Part, a threat against a person who is not an individual is taken not to be ***menaces*** unless:

(a) the threat would ordinarily cause an unwilling response; or

(b) the threat would be likely to cause an unwilling response because of a particular vulnerability of which the maker of the threat is aware.

Division 139—Unwarranted demands

139.1 Unwarranted demands of a Commonwealth public official

A person is guilty of an offence if:

(a) the person makes an unwarranted demand with menaces of another person; and

(b) the demand or the menaces are directly or indirectly related to:

(i) the other person's capacity as a Commonwealth public official; or

(ii) any influence the other person has in the other person's capacity as a Commonwealth public official; and

(c) the first-mentioned person does so with the intention of:

(i) obtaining a gain; or

(ii) causing a loss; or

(iii) influencing the official in the exercise of the official's duties as a Commonwealth public official.

Penalty: Imprisonment for 12 years.

139.2 Unwarranted demands made by a Commonwealth public official

A Commonwealth public official is guilty of an offence if:

(a) the official makes an unwarranted demand with menaces of another person; and

(b) the demand or the menaces are directly or indirectly related to:

(i) the official's capacity as a Commonwealth public official; or

(ii) any influence the official has in the official's capacity as a Commonwealth public official; and

(c) the official does so with the intention of:

(i) obtaining a gain; or

(ii) causing a loss; or

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(iii) influencing another Commonwealth public official in the exercise of the other official's duties as a Commonwealth public official.

Penalty: Imprisonment for 12 years.

139.3 Geographical jurisdiction

Section 15.3 (extended geographical jurisdiction—category C) applies to each offence against this Division.

Part 7.6—Bribery and related offences

Division 140—Preliminary

140.1 Definition

In this Part:

benefit includes any advantage and is not limited to property.

140.2 Obtaining

(1) For the purposes of this Part, a person is taken to have obtained a benefit for another person if the first-mentioned person induces a third person to do something that results in the other person obtaining the benefit.

(2) The definition of ***obtaining*** in section 130.1 does not apply to this Part.

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Division 141—Bribery

141.1 Bribery of a Commonwealth public official

Giving a bribe

(1) A person is guilty of an offence if:
  (a) the person dishonestly:
    (i) provides a benefit to another person; or
    (ii) causes a benefit to be provided to another person; or
    (iii) offers to provide, or promises to provide, a benefit to another person; or
    (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and
  (b) the person does so with the intention of influencing a public official (who may be the other person) in the exercise of the official's duties as a public official; and
  (c) the public official is a Commonwealth public official; and
  (d) the duties are duties as a Commonwealth public official.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew:
  (a) that the official was a Commonwealth public official; or
  (b) that the duties were duties as a Commonwealth public official.

Receiving a bribe

(3) A Commonwealth public official is guilty of an offence if:
  (a) the official dishonestly:
    (i) asks for a benefit for himself, herself or another person; or
    (ii) receives or obtains a benefit for himself, herself or another person; or
    (iii) agrees to receive or obtain a benefit for himself, herself or another person; and

(b) the official does so with the intention:

(i) that the exercise of the official's duties as a Commonwealth public official will be influenced; or

(ii) of inducing, fostering or sustaining a belief that the exercise of the official's duties as a Commonwealth public official will be influenced.

Geographical jurisdiction

(4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1) or (3).

Penalty for individual

(5) An offence against subsection (1) or (3) committed by an individual is punishable on conviction by imprisonment for not more than 10 years, a fine not more than 10,000 penalty units, or both.

Penalty for body corporate

(6) An offence against subsection (1) or (3) committed by a body corporate is punishable on conviction by a fine not more than the greatest of the following:

(a) 100,000 penalty units;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the conduct constituting the offence—3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the period (the ***turnover period***) of 12 months ending at the end of the month in which the conduct constituting the offence occurred.

(7) For the purposes of this section, the ***annual turnover*** of a body corporate, during the turnover period, is the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during that period, other than the following supplies:

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(a) supplies made from any of those bodies corporate to any other of those bodies corporate;
(b) supplies that are input taxed;
(c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*);
(d) supplies that are not made in connection with an enterprise that the body corporate carries on.

(8) Expressions used in subsection (7) that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning in that subsection as they have in that Act.

(9) The question whether 2 bodies corporate are related to each other is to be determined for the purposes of this section in the same way as for the purposes of the *Corporations Act 2001*.

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Division 142—Offences relating to bribery

142.1 Corrupting benefits given to, or received by, a Commonwealth public official

Giving a corrupting benefit

(1) A person is guilty of an offence if:
  (a) the person dishonestly:
    (i) provides a benefit to another person; or
    (ii) causes a benefit to be provided to another person; or
    (iii) offers to provide, or promises to provide, a benefit to another person; or
    (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and
  (b) the receipt, or expectation of the receipt, of the benefit would tend to influence a public official (who may be the other person) in the exercise of the official's duties as a public official; and
  (c) the public official is a Commonwealth public official; and
  (d) the duties are duties as a Commonwealth public official.

Penalty: Imprisonment for 5 years.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew:
  (a) that the official was a Commonwealth public official; or
  (b) that the duties were duties as a Commonwealth public official.

Receiving a corrupting benefit

(3) A Commonwealth public official is guilty of an offence if:
  (a) the official dishonestly:
    (i) asks for a benefit for himself, herself or another person; or
    (ii) receives or obtains a benefit for himself, herself or another person; or

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(iii) agrees to receive or obtain a benefit for himself, herself or another person; and

(b) the receipt, or expectation of the receipt, of the benefit would tend to influence a Commonwealth public official (who may be the first-mentioned official) in the exercise of the official's duties as a Commonwealth public official.

Penalty: Imprisonment for 5 years.

Benefit in the nature of a reward

(4) For the purposes of subsections (1) and (3), it is immaterial whether the benefit is in the nature of a reward.

142.2 Abuse of public office

(1) A Commonwealth public official is guilty of an offence if:

(a) the official:

(i) exercises any influence that the official has in the official's capacity as a Commonwealth public official; or

(ii) engages in any conduct in the exercise of the official's duties as a Commonwealth public official; or

(iii) uses any information that the official has obtained in the official's capacity as a Commonwealth public official; and

(b) the official does so with the intention of:

(i) dishonestly obtaining a benefit for himself or herself or for another person; or

(ii) dishonestly causing a detriment to another person.

Penalty: Imprisonment for 5 years.

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

(a) the person has ceased to be a Commonwealth public official in a particular capacity; and

(b) the person uses any information that the person obtained in that capacity as a Commonwealth public official; and

(c) the person does so with the intention of:

(i) dishonestly obtaining a benefit for himself or herself or for another person; or

(ii) dishonestly causing a detriment to another person.

Penalty: Imprisonment for 5 years.

(3) Paragraph (2)(a) applies to a cessation by a person:
(a) whether or not the person continues to be a Commonwealth public official in some other capacity; and
(b) whether the cessation occurred before, at or after the commencement of this section.

142.3 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to each offence against this Division.

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Part 7.7—Forgery and related offences

Division 143—Preliminary

143.1 Definitions

(1) In this Part:

document includes:

(a) any paper or other material on which there is writing; or

(b) any paper or other material on which there are marks, figures, symbols or perforations that are:

(i) capable of being given a meaning by persons qualified to interpret them; or

(ii) capable of being responded to by a computer, a machine or an electronic device; or

(c) any article or material (for example, a disk or a tape) from which information is capable of being reproduced with or without the aid of any other article or device.

false Commonwealth document has the meaning given by section 143.3.

false document has the meaning given by section 143.2.

information means information, whether in the form of data, text, sounds, images or in any other form.

(2) The following are examples of things covered by the definition of ***document*** in subsection (1):

(a) a credit card;

(b) a debit card;

(c) a card by means of which property can be obtained.

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143.2 False documents

(1) For the purposes of this Part, a document is a ***false document*** if, and only if:

(a) the document, or any part of the document:

(i) purports to have been made in the form in which it is made by a person who did not make it in that form; or

(ii) purports to have been made in the form in which it is made on the authority of a person who did not authorise its making in that form; or

(b) the document, or any part of the document:

(i) purports to have been made in the terms in which it is made by a person who did not make it in those terms; or

(ii) purports to have been made in the terms in which it is made on the authority of a person who did not authorise its making in those terms; or

(c) the document, or any part of the document:

(i) purports to have been altered in any respect by a person who did not alter it in that respect; or

(ii) purports to have been altered in any respect on the authority of a person who did not authorise its alteration in that respect; or

(d) the document, or any part of the document:

(i) purports to have been made or altered by a person who did not exist; or

(ii) purports to have been made or altered on the authority of a person who did not exist; or

(e) the document, or any part of the document, purports to have been made or altered on a date on which, at a time at which, at a place at which, or otherwise in circumstances in which, it was not made or altered.

(2) For the purposes of this Part, a person is taken to ***make*** a false document if the person alters a document so as to make it a false document (whether or not it was already a false document before the alteration).

(3) This section has effect as if a document that purports to be a true copy of another document were the original document.

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Section 143.3

143.3 False Commonwealth documents

(1) For the purposes of this Part, a document is a ***false Commonwealth document*** if, and only if:

(a) the document, or any part of the document:

(i) purports to have been made in the form in which it is made by a Commonwealth entity, or a Commonwealth public official, who did not make it in that form; or

(ii) purports to have been made in the form in which it is made on the authority of a Commonwealth entity, or a Commonwealth public official, who did not authorise its making in that form; or

(b) the document, or any part of the document:

(i) purports to have been made in the terms in which it is made by a Commonwealth entity, or a Commonwealth public official, who did not make it in those terms; or

(ii) purports to have been made in the terms in which it is made on the authority of a Commonwealth entity, or a Commonwealth public official, who did not authorise its making in those terms; or

(c) the document, or any part of the document:

(i) purports to have been altered in any respect by a Commonwealth entity, or a Commonwealth public official, who did not alter it in that respect; or

(ii) purports to have been altered in any respect on the authority of a Commonwealth entity, or a Commonwealth public official, who did not authorise its alteration in that respect; or

(d) the document, or any part of the document:

(i) purports to have been made or altered by a Commonwealth entity, or a Commonwealth public official, who did not exist; or

(ii) purports to have been made or altered on the authority of a Commonwealth entity, or a Commonwealth public official, who did not exist; or

(e) the document, or any part of the document, purports to have been made or altered by a Commonwealth entity, or a Commonwealth public official, on a date on which, at a time at which, at a place at which, or otherwise in circumstances in which, it was not made or altered.

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(2) For the purposes of this Part, a person is taken to ***make*** a false Commonwealth document if the person alters a document so as to make it a false Commonwealth document (whether or not it was already a false Commonwealth document before the alteration).

(3) This section has effect as if a document that purports to be a true copy of another document were the original document.

(4) A reference in this section to a ***Commonwealth public official*** is a reference to a person in the person's capacity as a Commonwealth public official.

143.4 Inducing acceptance of false documents

If it is necessary for the purposes of this Part to prove an intent to induce a person in the person's capacity as a public official to accept a false document as genuine, it is not necessary to prove that the defendant intended so to induce a particular person in the person's capacity as a public official.

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Division 144—Forgery

144.1 Forgery

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

(a) the person makes a false document with the intention that the person or another will use it:

(i) to dishonestly induce a third person in the third person's capacity as a public official to accept it as genuine; and

(ii) if it is so accepted, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the capacity is a capacity as a Commonwealth public official.

Penalty: Imprisonment for 10 years.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the capacity was a capacity as a Commonwealth public official.

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

(a) the person makes a false document with the intention that the person or another will use it:

(i) to dishonestly cause a computer, a machine or an electronic device to respond to the document as if the document were genuine; and

(ii) if it is so responded to, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the response is in connection with the operations of a Commonwealth entity.

Penalty: Imprisonment for 10 years.

(4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the response was in connection with the operations of a Commonwealth entity.

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

(a) the person makes a false document with the intention that the person or another will use it:

(i) to dishonestly induce a third person to accept it as genuine; and

(ii) if it is so accepted, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.

(6) In a prosecution for an offence against subsection (5), it is not necessary to prove that the defendant knew that the false document was a false Commonwealth document.

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

(a) the person makes a false document with the intention that the person or another will use it:

(i) to dishonestly cause a computer, a machine or an electronic device to respond to the document as if the document were genuine; and

(ii) if it is so responded to, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.

(8) In a prosecution for an offence against subsection (7), it is not necessary to prove that the defendant knew that the false document was a false Commonwealth document.

(9) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1), (3), (5) or (7).

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Division 145—Offences relating to forgery

145.1 Using forged document

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

(a) the person knows that a document is a false document and uses it with the intention of:

(i) dishonestly inducing another person in the other person's capacity as a public official to accept it as genuine; and

(ii) if it is so accepted, dishonestly obtaining a gain, dishonestly causing a loss, or dishonestly influencing the exercise of a public duty or function; and

(b) the capacity is a capacity as a Commonwealth public official.

Penalty: Imprisonment for 10 years.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the capacity was a capacity as a Commonwealth public official.

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

(a) the person knows that a document is a false document and uses it with the intention of:

(i) dishonestly causing a computer, a machine or an electronic device to respond to the document as if the document were genuine; and

(ii) if it is so responded to, dishonestly obtaining a gain, dishonestly causing a loss, or dishonestly influencing the exercise of a public duty or function; and

(b) the response is in connection with the operations of a Commonwealth entity.

Penalty: Imprisonment for 10 years.

(4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the response was in connection with the operations of a Commonwealth entity.

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

(a) the person knows that a document is a false document and uses it with the intention of:

(i) dishonestly inducing another person to accept it as genuine; and

(ii) if it is so accepted, dishonestly obtaining a gain, dishonestly causing a loss, or dishonestly influencing the exercise of a public duty or function; and

(b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.

(6) In a prosecution for an offence against subsection (5), it is not necessary to prove that the defendant knew that the false document was a false Commonwealth document.

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

(a) the person knows that a document is a false document and uses it with the intention of:

(i) dishonestly causing a computer, a machine or an electronic device to respond to the document as if the document were genuine; and

(ii) if it is so responded to, dishonestly obtaining a gain, dishonestly causing a loss, or dishonestly influencing the exercise of a public duty or function; and

(b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.

(8) In a prosecution for an offence against subsection (7), it is not necessary to prove that the defendant knew that the false document was a false Commonwealth document.

145.2 Possession of forged document

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

(a) the person knows that a document is a false document and has it in his or her possession with the intention that the person or another will use it:

(i) to dishonestly induce a third person in the third person's capacity as a public official to accept it as genuine; and

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(ii) if it is so accepted, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the capacity is a capacity as a Commonwealth public official.

Penalty: Imprisonment for 10 years.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the capacity was a capacity as a Commonwealth public official.

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

(a) the person knows that a document is a false document and has it in his or her possession with the intention that the person or another will use it:

(i) to dishonestly cause a computer, a machine or an electronic device to respond to the document as if the document were genuine; and

(ii) if it is so responded to, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the response is in connection with the operations of a Commonwealth entity.

Penalty: Imprisonment for 10 years.

(4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the response was in connection with the operations of a Commonwealth entity.

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

(a) the person knows that a document is a false document and has it in his or her possession with the intention that the person or another will use it:

(i) to dishonestly induce a third person to accept it as genuine; and

(ii) if it is so accepted, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.

(6) In a prosecution for an offence against subsection (5), it is not necessary to prove that the defendant knew that the false document was a false Commonwealth document.

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

(a) the person knows that a document is a false document and has it in his or her possession with the intention that the person or another will use it:

(i) to dishonestly cause a computer, a machine or an electronic device to respond to the document as if the document were genuine; and

(ii) if it is so responded to, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.

(8) In a prosecution for an offence against subsection (7), it is not necessary to prove that the defendant knew that the false document was a false Commonwealth document.

145.3 Possession, making or adaptation of devices etc. for making forgeries

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

(a) the person knows that a device, material or other thing is designed or adapted for the making of a false document (whether or not the device, material or thing is designed or adapted for another purpose); and

(b) the person has the device, material or thing in his or her possession with the intention that the person or another person will use it to commit an offence against section 144.1.

Penalty: Imprisonment for 10 years.

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

(a) the person makes or adapts a device, material or other thing; and

(b) the person knows that the device, material or other thing is designed or adapted for the making of a false document

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(whether or not the device, material or thing is designed or adapted for another purpose); and

(c) the person makes or adapts the device, material or thing with the intention that the person or another person will use it to commit an offence against section 144.1.

Penalty: Imprisonment for 10 years.

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

(a) the person knows that a device, material or other thing is designed or adapted for the making of a false Commonwealth document (whether or not the device, material or thing is designed or adapted for another purpose); and

(b) the person has the device, material or thing in his or her possession; and

(c) the person does not have a reasonable excuse for having the device, material or thing in his or her possession.

Penalty: Imprisonment for 2 years.

Note: A defendant bears an evidential burden in relation to the matter in paragraph (3)(c). See subsection 13.3(3).

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

(a) the person makes or adapts a device, material or other thing; and

(b) the person knows that the device, material or other thing is designed or adapted for the making of a false Commonwealth document (whether or not the device, material or thing is designed or adapted for another purpose).

Penalty: Imprisonment for 2 years.

Note: See also section 10.5 (lawful authority).

145.4 Falsification of documents etc.

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

(a) the person dishonestly damages, destroys, alters, conceals or falsifies a document; and

(b) the document is:

(i) kept, retained or issued for the purposes of a law of the Commonwealth; or

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(ii) made by a Commonwealth entity or a person in the capacity of a Commonwealth public official; or

(iii) held by a Commonwealth entity or a person in the capacity of a Commonwealth public official; and

(c) the first-mentioned person does so with the intention of:

(i) obtaining a gain; or

(ii) causing a loss.

Penalty: Imprisonment for 7 years.

(1A) Absolute liability applies to the paragraph (1)(b) element of the offence.

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

(a) the person dishonestly damages, destroys, alters, conceals or falsifies a document; and

(b) the person does so with the intention of:

(i) obtaining a gain from another person; or

(ii) causing a loss to another person; and

(c) the other person is a Commonwealth entity.

Penalty: Imprisonment for 7 years.

(3) In a prosecution for an offence against subsection (2), it is not necessary to prove that the defendant knew that the other person was a Commonwealth entity.

145.5 Giving information derived from false or misleading documents

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

(a) the person dishonestly gives information to another person; and

(b) the information was derived, directly or indirectly, from a document that, to the knowledge of the first-mentioned person, is false or misleading in a material particular; and

(c) the document is:

(i) kept, retained or issued for the purposes of a law of the Commonwealth; or

(ii) made by a Commonwealth entity or a person in the capacity of a Commonwealth public official; or

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(iii) held by a Commonwealth entity or a person in the capacity of a Commonwealth public official; and

(d) the first-mentioned person does so with the intention of:

(i) obtaining a gain; or

(ii) causing a loss.

Penalty: Imprisonment for 7 years.

(1A) Absolute liability applies to the paragraph (1)(c) element of the offence.

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

(a) the person dishonestly gives information to another person; and

(b) the information was derived, directly or indirectly, from a document that, to the knowledge of the first-mentioned person, is false or misleading in a material particular; and

(c) the first-mentioned person does so with the intention of:

(i) obtaining a gain from another person; or

(ii) causing a loss to another person; and

(d) the other person is a Commonwealth entity.

Penalty: Imprisonment for 7 years.

(3) In a prosecution for an offence against subsection (2), it is not necessary to prove that the defendant knew that the other person was a Commonwealth entity.

145.6 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to each offence against this Division.

Part 7.8—Causing harm to, and impersonation and obstruction of, Commonwealth public officials

Division 146—Preliminary

146.1 Definitions

In this Part:

Commonwealth law enforcement officer means a person who is:

(a) a member or special member of the Australian Federal Police; or

(aa) the Integrity Commissioner (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*); or

(ab) a staff member of ACLEI (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*); or

(b) a member of the Board of the Australian Crime Commission established under section 7B of the *Australian Crime Commission Act 2002*; or

(ba) an examiner (within the meaning of that Act); or

(c) a member of the staff of the ACC (within the meaning of that Act); or

(d) the Chief Executive Officer of Customs; or

(da) the Commissioner of the Anti-Dumping Commission established under section 269SMB of the *Customs Act 1901*; or

(e) a person employed in Customs.

fear includes apprehension.

harm means:

(a) physical harm (whether temporary or permanent); or

(b) harm to a person's mental health (whether temporary or permanent);

but does not include being subjected to a force or impact that is within the limits of what is reasonably acceptable as incidental to:

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(c) social interaction; or
(d) life in the community.

harm to a person's mental health includes significant psychological harm to the person, but does not include a reference to ordinary emotional reactions (for example, distress, grief, fear or anger).

physical harm includes:
(a) unconsciousness; and
(b) pain; and
(c) disfigurement; and
(d) infection with a disease; and
(e) any physical contact with a person that the person might reasonably object to in the circumstances (whether or not the person was aware of it at the time).

serious harm means any harm (including the cumulative effect of more than one harm) that:
(a) endangers, or is likely to endanger, a person's life; or
(b) is, or is likely to be, significant and longstanding.

146.2 Causing harm

For the purposes of this Part, a person's conduct is taken to cause harm if it substantially contributes to harm.

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Division 147—Causing harm to Commonwealth public officials

147.1 Causing harm to a Commonwealth public official etc.

Causing harm to a Commonwealth public official

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

(a) the first person engages in conduct; and

(b) the first person's conduct causes harm to a public official; and

(c) the first person intends that his or her conduct cause harm to the official; and

(d) the harm is caused without the consent of the official; and

(e) the first person engages in his or her conduct because of:

(i) the official's status as a public official; or

(ii) any conduct engaged in by the official in the official's capacity as a public official; and

(ea) the public official is a Commonwealth public official; and

(eb) if subparagraph (e)(i) applies—the status mentioned in that subparagraph was status as a Commonwealth public official; and

(ec) if subparagraph (e)(ii) applies—the conduct mentioned in that subparagraph was engaged in by the official in the official's capacity as a Commonwealth public official.

Penalty:

(f) if the official is a Commonwealth judicial officer or a Commonwealth law enforcement officer—imprisonment for 13 years; or

(g) in any other case—imprisonment for 10 years.

(1A) Absolute liability applies to the paragraphs (1)(ea), (eb) and (ec) elements of the offence.

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(1B) If:

(a) a person is charged with an offence against subsection (1); and

(b) the public official concerned is a Commonwealth judicial officer or a Commonwealth law enforcement officer;

a court of summary jurisdiction may, with the consent of the defendant and the prosecutor and if the court is satisfied that it is proper to do so, determine the charge summarily.

(1C) If a court of summary jurisdiction convicts a person of an offence against subsection (1) in accordance with subsection (1B), the penalty that the court may impose is a sentence of imprisonment not exceeding 2 years or a fine not exceeding 120 penalty units, or both.

Causing harm to a former Governor-General, former Minister or former Parliamentary Secretary

(2) A person (the ***first person***) is guilty of an offence if:

(a) the first person engages in conduct; and

(b) the first person's conduct causes harm to another person; and

(c) the other person is a former Governor-General, a former Minister or a former Parliamentary Secretary; and

(d) the first person intends that his or her conduct cause harm to the other person; and

(e) the harm is caused without the consent of the other person; and

(f) the first person engages in his or her conduct because of:

(i) the other person's status as a former Governor-General, former Minister or former Parliamentary Secretary; or

(ii) any conduct engaged in by the other person in the other person's former capacity as a Governor-General, Minister or Parliamentary Secretary.

Penalty: Imprisonment for 10 years.

147.2 Threatening to cause harm to a Commonwealth public official etc.

Threatening to cause serious harm

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

(a) the first person makes to another person (the ***second person***) a threat to cause serious harm to the second person or to a third person; and

(b) the second person or the third person is a public official; and

(c) the first person:

(i) intends the second person to fear that the threat will be carried out; or

(ii) is reckless as to causing the second person to fear that the threat will be carried out; and

(d) the first person makes the threat because of:

(i) the official's status as a public official; or

(ii) any conduct engaged in by the official in the official's capacity as a public official; and

(da) the official is a Commonwealth public official; and

(db) if subparagraph (d)(i) applies—the status mentioned in that subparagraph was status as a Commonwealth public official; and

(dc) if subparagraph (d)(ii) applies—the conduct mentioned in that subparagraph was engaged in by the official in the official's capacity as a Commonwealth public official.

Penalty:

(e) if the official is a Commonwealth judicial officer or a Commonwealth law enforcement officer—imprisonment for 9 years; or

(f) in any other case—imprisonment for 7 years.

(1A) Absolute liability applies to the paragraphs (1)(da), (db) and (dc) elements of the offence.

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Threatening to cause harm

(2) A person (the ***first person***) is guilty of an offence if:

(a) the first person makes to another person (the ***second person***) a threat to cause harm to the second person or to a third person; and

(b) the second person or the third person is a public official; and

(c) the first person:

(i) intends the second person to fear that the threat will be carried out; or

(ii) is reckless as to causing the second person to fear that the threat will be carried out; and

(d) the first person makes the threat because of:

(i) the official's status as a public official; or

(ii) any conduct engaged in by the official in the official's capacity as a public official; and

(e) the official is a Commonwealth public official; and

(f) if subparagraph (d)(i) applies—the status mentioned in that subparagraph was status as a Commonwealth public official; and

(g) if subparagraph (d)(ii) applies—the conduct mentioned in that subparagraph was engaged in by the official in the official's capacity as a Commonwealth public official.

Penalty: Imprisonment for 2 years

(2A) Absolute liability applies to the paragraphs (2)(e), (f) and (g) elements of the offence.

Threatening to cause serious harm to a former Governor-General, former Minister or former Parliamentary Secretary

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

(a) the first person makes to another person (the ***second person***) a threat to cause serious harm to the second person or to a third person; and

(b) the second person or the third person is a former Governor-General, a former Minister or a former Parliamentary Secretary; and

(c) the first person:
  (i) intends the second person to fear that the threat will be carried out; or
  (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
(d) the first person makes the threat because of:
  (i) the second or third person's status as a former Governor-General, a former Minister or a former Parliamentary Secretary; or
  (ii) any conduct engaged in by the second or third person in the second or third person's former capacity as a Governor-General, a Minister or a Parliamentary Secretary.

Penalty: Imprisonment for 7 years.

Threats

(4) For the purposes of this section, a ***threat*** may be:
(a) express or implied; or
(b) conditional or unconditional.

Unnecessary to prove that a threatened person actually feared harm

(5) In a prosecution for an offence against this section, it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

147.3 Geographical jurisdiction

Section 15.3 (extended geographical jurisdiction—category C) applies to each offence against this Division.

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Division 148—Impersonation of Commonwealth public officials

148.1 Impersonation of an official by a non-official

(1) A person other than a Commonwealth public official is guilty of an offence if:

(a) on a particular occasion, the person impersonates another person in that other person's capacity as a Commonwealth public official; and

(b) the first-mentioned person does so knowing it to be in circumstances when the official is likely to be on duty; and

(c) the first-mentioned person does so with intent to deceive.

Penalty: Imprisonment for 2 years.

(2) A person other than a Commonwealth public official is guilty of an offence if:

(a) the person falsely represents himself or herself to be a Commonwealth public official in a particular capacity; and

(b) the person does so in the course of doing an act, or attending a place, in the assumed capacity of such an official.

Penalty: Imprisonment for 2 years.

(2A) For the purposes of subsection (2), it is immaterial whether that capacity as a Commonwealth public official exists or is fictitious.

(3) A person other than a Commonwealth public official is guilty of an offence if:

(a) the person:

(i) impersonates another person in that other person's capacity as a Commonwealth public official; or

(ii) falsely represents himself or herself to be a Commonwealth public official in a particular capacity; and

(b) the first-mentioned person does so with the intention of:

(i) obtaining a gain; or

(ii) causing a loss; or

(iii) influencing the exercise of a public duty or function; and

(c) if subparagraph (a)(i) applies—the first-mentioned person also does so with intent to deceive.

Penalty: Imprisonment for 5 years.

(3A) For the purposes of subparagraph (3)(a)(ii), it is immaterial whether that capacity as a Commonwealth public official exists or is fictitious.

(4) The definition of ***duty*** in section 130.1 does not apply to this section.

(5) To avoid doubt, for the purposes of this section:

(a) ***impersonation*** does not include conduct engaged in solely for satirical purposes; and

(b) ***false representation*** does not include conduct engaged in solely for satirical purposes.

148.2 Impersonation of an official by another official

(1) A Commonwealth public official is guilty of an offence if:

(a) on a particular occasion, the official impersonates another person in that other person's capacity as a Commonwealth public official; and

(b) the first-mentioned official does so knowing it to be in circumstances when the other official is likely to be on duty; and

(c) the first-mentioned official does so with intent to deceive.

Penalty: Imprisonment for 2 years.

(2) A Commonwealth public official is guilty of an offence if:

(a) the official falsely represents himself or herself to be a Commonwealth public official in a particular capacity; and

(b) the official does so in the course of doing an act, or attending a place, in the assumed capacity of such an official.

Penalty: Imprisonment for 2 years.

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(2A) For the purposes of subsection (2), it is immaterial whether that capacity as a Commonwealth public official exists or is fictitious.

(3) A Commonwealth public official is guilty of an offence if:

(a) the official:

(i) impersonates another person in the other person's capacity as a Commonwealth public official; or

(ii) falsely represents himself or herself to be a Commonwealth public official in a particular capacity; and

(b) the first-mentioned official does so with the intention of:

(i) obtaining a gain; or

(ii) causing a loss; or

(iii) influencing the exercise of a public duty or function; and

(c) if subparagraph (a)(i) applies—the first-mentioned official also does so with intent to deceive.

Penalty: Imprisonment for 5 years.

(3A) For the purposes of subparagraph (3)(a)(ii), it is immaterial whether that capacity as a Commonwealth public official exists or is fictitious.

(4) The definition of ***duty*** in section 130.1 does not apply to this section.

(5) To avoid doubt, for the purposes of this section:

(a) ***impersonation*** does not include conduct engaged in solely for satirical purposes; and

(b) ***false representation*** does not include conduct engaged in solely for satirical purposes.

148.3 Geographical jurisdiction

Section 15.3 (extended geographical jurisdiction—category C) applies to each offence against this Division.

Division 149—Obstruction of Commonwealth public officials

149.1 Obstruction of Commonwealth public officials

(1) A person is guilty of an offence if:
  (a) the person knows that another person is a public official; and
  (b) the first-mentioned person obstructs, hinders, intimidates or resists the official in the performance of the official's functions; and
  (c) the official is a Commonwealth public official; and
  (d) the functions are functions as a Commonwealth public official.

Penalty: Imprisonment for 2 years.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew:
  (a) that the official was a Commonwealth public official; or
  (b) that the functions were functions as a Commonwealth public official.

(3) For the purposes of this section, it is immaterial whether the defendant was aware that the public official was performing the official's functions.

(4) Section 15.3 (extended geographical jurisdiction—category C) applies to an offence against subsection (1).

(5) The definition of ***duty*** in section 130.1 does not apply to this section.

(6) In this section:

function:
  (a) in relation to a person who is a public official—means any authority, duty, function or power that is conferred on the person as a public official; or

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(b) in relation to a person who is a Commonwealth public official—means any authority, duty, function or power that is conferred on the person as a Commonwealth public official.

Part 7.20—Miscellaneous

Division 261—Miscellaneous

261.1 Saving of other laws

This Chapter is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

261.2 Contempt of court

This Chapter does not limit the power of a court to punish a contempt of the court.

261.3 Ancillary offences

To avoid doubt, subsection 11.6(2) does not apply to the following provisions:

(a) subsection 131.1(2) (theft);
(b) subsection 132.1(2) (receiving);
(c) subsection 132.2(2) (robbery);
(d) subsection 132.3(2) (aggravated robbery);
(e) subsections 132.4(2), (5) and (9) (burglary);
(f) subsection 132.5(2) (aggravated burglary);
(g) the definitions of ***aggravated burglary***, ***aggravated robbery***, ***burglary***, ***receiving***, ***robbery*** and ***theft*** in the Dictionary.

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Chapter 8—Offences against humanity and related offences

Division 268—Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Subdivision A—Introductory

268.1 Purpose of Division

(1) The purpose of this Division is to create certain offences that are of international concern and certain related offences.

(2) It is the Parliament's intention that the jurisdiction of the International Criminal Court is to be complementary to the jurisdiction of Australia with respect to offences in this Division that are also crimes within the jurisdiction of that Court.

(3) Accordingly, the *International Criminal Court Act 2002* does not affect the primacy of Australia's right to exercise its jurisdiction with respect to offences created by this Division that are also crimes within the jurisdiction of the International Criminal Court.

268.2 Outline of offences

(1) Subdivision B creates offences each of which is called ***genocide***.

(2) Subdivision C creates offences each of which is called a ***crime against humanity***.

(3) Subdivisions D, E, F, G and H create offences each of which is called a ***war crime***.

(4) Subdivision J creates offences each of which is called a ***crime against the administration of the justice of the International Criminal Court***.

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Subdivision B—Genocide

268.3 Genocide by killing

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes the death of one or more persons; and

(b) the person or persons belong to a particular national, ethnical, racial or religious group; and

(c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.

Penalty: Imprisonment for life.

268.4 Genocide by causing serious bodily or mental harm

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes serious bodily or mental harm to one or more persons; and

(b) the person or persons belong to a particular national, ethnical, racial or religious group; and

(c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.

Penalty: Imprisonment for life.

(2) In subsection (1):

causes serious bodily or mental harm includes, but is not restricted to, commits acts of torture, rape, sexual violence or inhuman or degrading treatment.

268.5 Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator inflicts certain conditions of life upon one or more persons; and

(b) the person or persons belong to a particular national, ethnical, racial or religious group; and

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(c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such; and
(d) the conditions of life are intended to bring about the physical destruction of that group, in whole or in part.

Penalty: Imprisonment for life.

(2) In subsection (1):

conditions of life includes, but is not restricted to, intentional deprivation of resources indispensable for survival, such as deprivation of food or medical services, or systematic expulsion from homes.

268.6 Genocide by imposing measures intended to prevent births

A person (the ***perpetrator***) commits an offence if:
(a) the perpetrator imposes certain measures upon one or more persons; and
(b) the person or persons belong to a particular national, ethnical, racial or religious group; and
(c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such; and
(d) the measures imposed are intended to prevent births within that group.

Penalty: Imprisonment for life.

268.7 Genocide by forcibly transferring children

(1) A person (the ***perpetrator***) commits an offence if:
(a) the perpetrator forcibly transfers one or more persons; and
(b) the person or persons belong to a particular national, ethnical, racial or religious group; and
(c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such; and
(d) the transfer is from that group to another national, ethnical, racial or religious group; and
(e) the person or persons are under the age of 18 years; and

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(f) the perpetrator knows that, or is reckless as to whether, the person or persons are under that age.

Penalty: Imprisonment for life.

(2) In subsection (1):

forcibly transfers one or more persons includes transfers one or more persons:

(a) by threat of force or coercion (such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power) against the person or persons or against another person; or

(b) by taking advantage of a coercive environment.

Subdivision C—Crimes against humanity

268.8 Crime against humanity—murder

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes the death of one or more persons; and

(b) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for life.

268.9 Crime against humanity—extermination

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes the death of one or more persons; and

(b) the perpetrator's conduct constitutes, or takes place as part of, a mass killing of members of a civilian population; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for life.

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(2) In subsection (1):

causes the death of includes causes death by intentionally inflicting conditions of life (such as the deprivation of access to food or medicine) intended to bring about the destruction of part of a population.

268.10 Crime against humanity—enslavement

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator exercises any or all of the powers attaching to the right of ownership over one or more persons (including the exercise of a power in the course of trafficking in persons, in particular women and children); and

(b) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

exercises any or all of the powers attaching to the right of ownership over a person includes purchases, sells, lends or barters a person or imposes on a person a similar deprivation of liberty and also includes exercise a power arising from a debt incurred or contract made by a person.

268.11 Crime against humanity—deportation or forcible transfer of population

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator forcibly displaces one or more persons, by expulsion or other coercive acts, from an area in which the person or persons are lawfully present to another country or location; and

(b) the forcible displacement is contrary to paragraph 4 of article 12 or article 13 of the Covenant; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish the lawfulness of the presence of the person or persons in the area; and

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(d) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 17 years.

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

(3) In subsection (1):

forcibly displaces one or more persons includes displaces one or more persons:

(a) by threat of force or coercion (such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power) against the person or persons or against another person; or

(b) by taking advantage of a coercive environment.

268.12 Crime against humanity—imprisonment or other severe deprivation of physical liberty

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator imprisons one or more persons or otherwise severely deprives one or more persons of physical liberty; and

(b) the perpetrator's conduct violates article 9, 14 or 15 of the Covenant; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 17 years.

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

268.13 Crime against humanity—torture

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator inflicts severe physical or mental pain or suffering upon one or more persons who are in the custody or under the control of the perpetrator; and

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(b) the pain or suffering does not arise only from, and is not inherent in or incidental to, lawful sanctions; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

268.14 Crime against humanity—rape

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator sexually penetrates another person without the consent of that person; and

(b) the perpetrator knows of, or is reckless as to, the lack of consent; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes another person to sexually penetrate the perpetrator without the consent of the other person; and

(b) the perpetrator knows of, or is reckless as to, the lack of consent; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

(3) In this section:

consent means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;

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(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;
(d) the person is incapable of understanding the essential nature of the act;
(e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);
(f) the person submits to the act because of psychological oppression or abuse of power;
(g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

(4) In this section:

sexually penetrate means:
(a) penetrate (to any extent) the genitalia or anus of a person by any part of the body of another person or by any object manipulated by that other person; or
(b) penetrate (to any extent) the mouth of a person by the penis of another person; or
(c) continue to sexually penetrate as defined in paragraph (a) or (b).

(5) In this section, being ***reckless*** as to a lack of consent to sexual penetration includes not giving any thought to whether or not the person is consenting to sexual penetration.

(6) In this section, the genitalia or other parts of the body of a person include surgically constructed genitalia or other parts of the body of the person.

268.15 Crime against humanity—sexual slavery

(1) A person (the ***perpetrator***) commits an offence if:
(a) the perpetrator causes another person to enter into or remain in sexual slavery; and
(b) the perpetrator intends to cause, or is reckless as to causing, that sexual slavery; and
(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

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(2) For the purposes of this section, ***sexual slavery*** is the condition of a person who provides sexual services and who, because of the use of force or threats:

(a) is not free to cease providing sexual services; or

(b) is not free to leave the place or area where the person provides sexual services.

(3) In this section:

threat means:

(a) a threat of force; or

(b) a threat to cause a person's deportation; or

(c) a threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of sexual services by a person.

268.16 Crime against humanity—enforced prostitution

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes one or more persons to engage in one or more acts of a sexual nature without the consent of the person or persons, including by being reckless as to whether there is consent; and

(b) the perpetrator intends that he or she, or another person, will obtain pecuniary or other advantage in exchange for, or in connection with, the acts of a sexual nature; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

consent means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;

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(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;
(d) the person is incapable of understanding the essential nature of the act;
(e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);
(f) the person submits to the act because of psychological oppression or abuse of power;
(g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

threat of force or coercion includes:

(a) a threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power; or
(b) taking advantage of a coercive environment.

(3) In subsection (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person or persons are consenting to engaging in the act or acts of a sexual nature.

268.17 Crime against humanity—forced pregnancy

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator unlawfully confines one or more women forcibly made pregnant; and
(b) the perpetrator intends to affect the ethnic composition of any population or to destroy, wholly or partly, a national, ethnical, racial or religious group, as such; and
(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

forcibly made pregnant includes made pregnant by a consent that was affected by deception or by natural, induced or age-related incapacity.

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(3) To avoid doubt, this section does not affect any other law of the Commonwealth or any law of a State or Territory.

268.18 Crime against humanity—enforced sterilisation

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator deprives one or more persons of biological reproductive capacity; and

(b) the deprivation is not effected by a birth-control measure that has a non-permanent effect in practice; and

(c) the perpetrator's conduct is neither justified by the medical or hospital treatment of the person or persons nor carried out with the consent of the person or persons; and

(d) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

consent does not include consent effected by deception or by natural, induced or age-related incapacity.

268.19 Crime against humanity—sexual violence

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator does either of the following:

(i) commits an act or acts of a sexual nature against one or more persons;

(ii) causes one or more persons to engage in an act or acts of a sexual nature;

without the consent of the person or persons, including by being reckless as to whether there is consent; and

(b) the perpetrator's conduct is of a gravity comparable to the offences referred to in sections 268.14 to 268.18; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

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

(3) In subsection (1):

consent means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;

(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;

(d) the person is incapable of understanding the essential nature of the act;

(e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);

(f) the person submits to the act because of psychological oppression or abuse of power;

(g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

threat of force or coercion includes:

(a) a threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power; or

(b) taking advantage of a coercive environment.

(4) In subsection (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person is consenting to the act or acts of a sexual nature.

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268.20 Crime against humanity—persecution

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator severely deprives one or more persons of any of the rights referred to in paragraph (b); and

(b) the rights are those guaranteed in articles 6, 7, 8 and 9, paragraph 2 of article 14, article 18, paragraph 2 of article 20, paragraph 2 of article 23 and article 27 of the Covenant; and

(c) the perpetrator targets the person or persons by reason of the identity of a group or collectivity or targets the group or collectivity as such; and

(d) the grounds on which the targeting is based are political, racial, national, ethnic, cultural, religious, gender or other grounds that are recognised in paragraph 1 of article 2 of the Covenant; and

(e) the perpetrator's conduct is committed in connection with another act that is:

(i) a proscribed inhumane act; or

(ii) genocide; or

(iii) a war crime; and

(f) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 17 years.

(2) Strict liability applies to:

(a) the physical element of the offence referred to in paragraph (1)(a) that the rights are those referred to in paragraph (1)(b); and

(b) paragraphs (1)(b) and (d).

268.21 Crime against humanity—enforced disappearance of persons

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator arrests, detains or abducts one or more persons; and

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(b) the arrest, detention or abduction is carried out by, or with the authorisation, support or acquiescence of, the government of a country or a political organisation; and

(c) the perpetrator intends to remove the person or persons from the protection of the law for a prolonged period of time; and

(d) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population; and

(e) after the arrest, detention or abduction, the government or organisation refuses to acknowledge the deprivation of freedom of, or to give information on the fate or whereabouts of, the person or persons.

Penalty: Imprisonment for 17 years.

(2) A person (the ***perpetrator***) commits an offence if:

(a) one or more persons have been arrested, detained or abducted; and

(b) the arrest, detention or abduction was carried out by, or with the authorisation, support or acquiescence of, the government of a country or a political organisation; and

(c) the perpetrator refuses to acknowledge the deprivation of freedom, or to give information on the fate or whereabouts, of the person or persons; and

(d) the refusal occurs with the authorisation, support or acquiescence of the government of the country or the political organisation; and

(e) the perpetrator knows that, or is reckless as to whether, the refusal was preceded or accompanied by the deprivation of freedom; and

(f) the perpetrator intends that the person or persons be removed from the protection of the law for a prolonged period of time; and

(g) the arrest, detention or abduction occurred, and the refusal occurs, as part of a widespread or systematic attack directed against a civilian population; and

(h) the perpetrator knows that the refusal is part of, or intends the refusal to be part of, such an attack.

Penalty: Imprisonment for 17 years.

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268.22 Crime against humanity—apartheid

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator commits against one or more persons an act that is a proscribed inhumane act (as defined by the Dictionary) or an act that is of a nature and gravity similar to any such proscribed inhumane act; and

(b) the perpetrator's conduct is committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish the character of the act; and

(d) the perpetrator intends to maintain the regime by the conduct; and

(e) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 17 years.

268.23 Crime against humanity—other inhumane act

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act; and

(b) the act is of a character similar to another proscribed inhumane act as defined by the Dictionary; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

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Subdivision D—War crimes that are grave breaches of the Geneva Conventions and of Protocol I to the Geneva Conventions

268.24 War crime—wilful killing

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes the death of one or more persons; and

(b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

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

268.25 War crime—torture

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator inflicts severe physical or mental pain or suffering upon one or more persons; and

(b) the perpetrator inflicts the pain or suffering for the purpose of:

(i) obtaining information or a confession; or

(ii) a punishment, intimidation or coercion; or

(iii) a reason based on discrimination of any kind; and

(c) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and

(d) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and

(e) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

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Penalty: Imprisonment for 25 years.

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

268.26 War crime—inhumane treatment

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator inflicts severe physical or mental pain or suffering upon one or more persons; and

(b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

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

268.27 War crime—biological experiments

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to a particular biological experiment; and

(b) the experiment seriously endangers the physical or mental health or integrity of the person or persons; and

(c) the perpetrator's conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and

(e) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and

(f) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

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

268.28 War crime—wilfully causing great suffering

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes great physical or mental pain or suffering to, or serious injury to body or health of, one or more persons; and

(b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

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

268.29 War crime—destruction and appropriation of property

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator destroys or appropriates property; and

(b) the destruction or appropriation is not justified by military necessity; and

(c) the destruction or appropriation is extensive and carried out unlawfully and wantonly; and

(d) the property is protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and

(e) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the property is so protected; and

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(f) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

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

268.30 War crime—compelling service in hostile forces

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator coerces one or more persons, by act or threat:

(i) to take part in military operations against that person's or those persons' own country or forces; or

(ii) otherwise to serve in the forces of an adverse power; and

(b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 10 years.

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

268.31 War crime—denying a fair trial

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator deprives one or more persons of a fair and regular trial by denying to the person any of the judicial guarantees referred to in paragraph (b); and

(b) the judicial guarantees are those defined in articles 84, 99 and 105 of the Third Geneva Convention and articles 66 and 71 of the Fourth Geneva Convention; and

(c) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and

(d) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and
(e) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 10 years.

(2) Strict liability applies to:
(a) the physical element of the offence referred to in paragraph (1)(a) that the judicial guarantees are those referred to in paragraph (1)(b); and
(b) paragraphs (1)(b) and (c).

268.32 War crime—unlawful deportation or transfer

(1) A person (the ***perpetrator***) commits an offence if:
(a) the perpetrator unlawfully deports or transfers one or more persons to another country or to another location; and
(b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and
(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and
(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

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

268.33 War crime—unlawful confinement

(1) A person (the ***perpetrator***) commits an offence if:
(a) the perpetrator unlawfully confines or continues to confine one or more persons to a certain location; and
(b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and

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(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and
(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

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

268.34 War crime—taking hostages

(1) A person (the ***perpetrator***) commits an offence if:
(a) the perpetrator seizes, detains or otherwise holds hostage one or more persons; and
(b) the perpetrator threatens to kill, injure or continue to detain the person or persons; and
(c) the perpetrator intends to compel the government of a country, an international organisation or a person or group of persons to act or refrain from acting as an explicit or implicit condition for either the safety or the release of the person or persons; and
(d) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and
(e) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and
(f) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

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

Subdivision E—Other serious war crimes that are committed in the course of an international armed conflict

268.35 War crime—attacking civilians

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator directs an attack; and
(b) the object of the attack is a civilian population as such or individual civilians not taking direct part in hostilities; and
(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.36 War crime—attacking civilian objects

A person (the ***perpetrator***) commits an offence if:
(a) the perpetrator directs an attack; and
(b) the object of the attack is not a military objective; and
(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

268.37 War crime—attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission

(1) A person (the ***perpetrator***) commits an offence if:
(a) the perpetrator directs an attack; and
(b) the object of the attack is personnel involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations; and
(c) the personnel are entitled to the protection given to civilians under the Geneva Conventions or Protocol I to the Geneva Conventions; and
(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:
(a) the perpetrator directs an attack; and
(b) the object of the attack is installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations; and

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(c) the installations, material, units or vehicles are entitled to the protection given to civilian objects under the Geneva Conventions or Protocol I to the Geneva Conventions; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 20 years.

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

268.38 War crime—excessive incidental death, injury or damage

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator launches an attack; and

(b) the perpetrator knows that the attack will cause incidental death or injury to civilians; and

(c) the perpetrator knows that the death or injury will be of such an extent as to be excessive in relation to the concrete and direct military advantage anticipated; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator launches an attack; and

(b) the perpetrator knows that the attack will cause:

(i) damage to civilian objects; or

(ii) widespread, long-term and severe damage to the natural environment; and

(c) the perpetrator knows that the damage will be of such an extent as to be excessive in relation to the concrete and direct military advantage anticipated; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 20 years.

268.39 War crime—attacking undefended places

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator attacks or bombards one or more towns, villages, dwellings or buildings; and

(b) the towns, villages, dwellings or buildings are open for unresisted occupation; and

(c) the towns, villages, dwellings or buildings do not constitute military objectives; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.40 War crime—killing or injuring a person who is *hors de combat*

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator kills one or more persons; and

(b) the person or persons are *hors de combat*; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are *hors de combat*; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator injures one or more persons; and

(b) the person or persons are *hors de combat*; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are *hors de combat*; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 25 years.

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268.41 War crime—improper use of a flag of truce

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator uses a flag of truce; and

(b) the perpetrator uses the flag in order to feign an intention to negotiate when there is no such intention on the part of the perpetrator; and

(c) the perpetrator knows of, or is reckless as to, the illegal nature of such use of the flag; and

(d) the perpetrator's conduct results in death or serious personal injury; and

(e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.42 War crime—improper use of a flag, insignia or uniform of the adverse party

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator uses a flag, insignia or uniform of the adverse party; and

(b) the perpetrator uses the flag, insignia or uniform while engaged in an attack or in order to shield, favour, protect or impede military operations; and

(c) the perpetrator knows of, or is reckless as to, the illegal nature of such use of the flag, insignia or uniform; and

(d) the perpetrator's conduct results in death or serious personal injury; and

(e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.43 War crime—improper use of a flag, insignia or uniform of the United Nations

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator uses a flag, insignia or uniform of the United Nations; and

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(b) the perpetrator uses the flag, insignia or uniform without the authority of the United Nations; and

(c) the perpetrator knows of, or is reckless as to, the illegal nature of such use of the flag, insignia or uniform; and

(d) the perpetrator's conduct results in death or serious personal injury; and

(e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.44 War crime—improper use of the distinctive emblems of the Geneva Conventions

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator uses an emblem; and

(b) the emblem is one of the distinctive emblems of the Geneva Conventions; and

(c) the perpetrator uses the emblem for combatant purposes to invite the confidence of an adversary in order to lead him or her to believe that the perpetrator is entitled to protection, or that the adversary is obliged to accord protection to the perpetrator, with intent to betray that confidence; and

(d) the perpetrator knows of, or is reckless as to, the illegal nature of such use; and

(e) the perpetrator's conduct results in death or serious personal injury; and

(f) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

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

(3) In this section:

emblem means any emblem, identity card, sign, signal, insignia or uniform.

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268.45 War crime—transfer of population

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator:

(i) authorises, organises or directs, or participates in the authorisation, organisation or direction of, or participates in, the transfer, directly or indirectly, of parts of the civilian population of the perpetrator's own country into territory that the country occupies; or

(ii) authorises, organises or directs, or participates in the authorisation, organisation or direction of, or participates in, the deportation or transfer of all or parts of the population of territory occupied by the perpetrator's own country within or outside that territory; and

(b) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

268.46 War crime—attacking protected objects

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator directs an attack; and

(b) the object of the attack is any one or more of the following that are not military objectives:

(i) buildings dedicated to religion, education, art, science or charitable purposes;

(ii) historic monuments;

(iii) hospitals or places where the sick and wounded are collected; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 20 years.

(2) The definitions of ***charitable purpose*** in subsection 12(1) of the *Charities Act 2013* and section 2B of the *Acts Interpretation Act 1901* do not apply to this section.

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268.47 War crime—mutilation

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling or removing organs or appendages of, the person or persons; and

(b) the perpetrator's conduct causes the death of the person or persons; and

(c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are in the power of an adverse party; and

(e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling or removing organs or appendages of, the person or persons; and

(b) the perpetrator's conduct seriously endangers the physical or mental health, or the integrity, of the person or persons; and

(c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are in the power of an adverse party; and

(e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 25 years.

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268.48 War crime—medical or scientific experiments

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to a medical or scientific experiment; and

(b) the experiment causes the death of the person or persons; and

(c) the perpetrator's conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are in the power of an adverse party; and

(e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to a medical or scientific experiment; and

(b) the experiment seriously endangers the physical or mental health, or the integrity, of the person or persons; and

(c) the perpetrator's conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are in the power of an adverse party; and

(e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 25 years.

268.49 War crime—treacherously killing or injuring

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator invites the confidence or belief of one or more persons that the perpetrator is entitled to protection, or that

the person or persons are obliged to accord protection to the perpetrator; and

(b) the perpetrator kills the person or persons; and

(c) the perpetrator makes use of that confidence or belief in killing the person or persons; and

(d) the person or persons belong to an adverse party; and

(e) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator invites the confidence or belief of one or more persons that the perpetrator is entitled to protection, or that the person or persons are obliged to accord protection to the perpetrator; and

(b) the perpetrator injures the person or persons; and

(c) the perpetrator makes use of that confidence or belief in injuring the person or persons; and

(d) the person or persons belong to an adverse party; and

(e) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 25 years.

268.50 War crime—denying quarter

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator declares or orders that there are to be no survivors; and

(b) the declaration or order is given with the intention of threatening an adversary or conducting hostilities on the basis that there are to be no survivors; and

(c) the perpetrator is in a position of effective command or control over the subordinate forces to which the declaration or order is directed; and

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(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.51 War crime—destroying or seizing the enemy's property

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator destroys or seizes certain property; and

(b) the property is property of an adverse party; and

(c) the property is protected from the destruction or seizure under article 18 of the Third Geneva Convention, article 53 of the Fourth Geneva Convention or article 54 of Protocol I to the Geneva Conventions; and

(d) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the property is so protected; and

(e) the destruction or seizure is not justified by military necessity; and

(f) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

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

268.52 War crime—depriving nationals of the adverse power of rights or actions

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator effects the abolition, suspension or termination of admissibility in a court of law of certain rights or actions; and

(b) the abolition, suspension or termination is directed at the nationals of an adverse party; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 10 years.

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268.53 War crime—compelling participation in military operations

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator coerces one or more persons by act or threat to take part in military operations against that person's or those persons' own country or forces; and

(b) the person or persons are nationals of an adverse party; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 10 years.

(2) It is not a defence to a prosecution for an offence against subsection (1) that the person or persons were in the service of the perpetrator at a time before the beginning of the international armed conflict.

268.54 War crime—pillaging

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator appropriates certain property; and

(b) the perpetrator intends to deprive the owner of the property and to appropriate it for private or personal use; and

(c) the appropriation is without the consent of the owner; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

268.55 War crime—employing poison or poisoned weapons

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator employs a substance or employs a weapon that releases a substance as a result of its employment; and

(b) the substance is such that it causes death or serious damage to health in the ordinary course of events through its toxic properties; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

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268.56 War crime—employing prohibited gases, liquids, materials or devices

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator employs a gas or other analogous substance or device; and

(b) the gas, substance or device is such that it causes death or serious damage to health in the ordinary course of events through its asphyxiating or toxic properties; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

268.57 War crime—employing prohibited bullets

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator employs certain bullets; and

(b) the bullets are such that their use violates the Hague Declaration because they expand or flatten easily in the human body; and

(c) the perpetrator knows that, or is reckless as to whether, the nature of the bullets is such that their employment will uselessly aggravate suffering or the wounding effect; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

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

268.58 War crime—outrages upon personal dignity

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator severely humiliates, degrades or otherwise violates the dignity of one or more persons; and

(b) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

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(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator severely humiliates, degrades or otherwise violates the dignity of the body or bodies of one or more dead persons; and

(b) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

268.59 War crime—rape

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator sexually penetrates another person without the consent of that person; and

(b) the perpetrator knows about, or is reckless as to, the lack of consent; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes another person to sexually penetrate the perpetrator without the consent of the other person; and

(b) the perpetrator knows about, or is reckless as to, the lack of consent; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(3) In this section:

consent means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;

(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;

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(d) the person is incapable of understanding the essential nature of the act;
(e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);
(f) the person submits to the act because of psychological oppression or abuse of power;
(g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

(4) In this section:

sexually penetrate means:
(a) penetrate (to any extent) the genitalia or anus of a person by any part of the body of another person or by any object manipulated by that other person; or
(b) penetrate (to any extent) the mouth of a person by the penis of another person; or
(c) continue to sexually penetrate as defined in paragraph (a) or (b).

(5) In this section, being ***reckless*** as to a lack of consent to sexual penetration includes not giving any thought to whether or not the person is consenting to sexual penetration.

(6) In this section, the genitalia or other parts of the body of a person include surgically constructed genitalia or other parts of the body of the person.

268.60 War crime—sexual slavery

(1) A person (the ***perpetrator***) commits an offence if:
(a) the perpetrator causes another person to enter into or remain in sexual slavery; and
(b) the perpetrator intends to cause, or is reckless as to causing, that sexual slavery; and
(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

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(2) For the purposes of this section, ***sexual slavery*** is the condition of a person who provides sexual services and who, because of the use of force or threats:

(a) is not free to cease providing sexual services; or

(b) is not free to leave the place or area where the person provides sexual services.

(3) In this section:

threat means:

(a) a threat of force; or

(b) a threat to cause a person's deportation; or

(c) a threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of sexual services by a person.

268.61 War crime—enforced prostitution

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes one or more persons to engage in one or more acts of a sexual nature without the consent of the person or persons, including by being reckless as to whether there is consent; and

(b) the perpetrator intends that he or she, or another person, will obtain pecuniary or other advantage in exchange for, or in connection with, the acts of a sexual nature; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

consent means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;

(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;

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(d) the person is incapable of understanding the essential nature of the act;
(e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);
(f) the person submits to the act because of psychological oppression or abuse of power;
(g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

threat of force or coercion includes:

(a) a threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power; or
(b) taking advantage of a coercive environment.

(3) In subsection (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person is consenting to the act or acts of a sexual nature.

268.62 War crime—forced pregnancy

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator unlawfully confines one or more women forcibly made pregnant; and
(b) the perpetrator intends to affect the ethnic composition of any population or to destroy, wholly or partly, a national, ethnical, racial or religious group, as such; and
(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

forcibly made pregnant includes made pregnant by a consent that was effected by deception or by natural, induced or age-related incapacity.

(3) To avoid doubt, this section does not affect any other law of the Commonwealth or any law of a State or Territory.

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268.63 War crime—enforced sterilisation

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator deprives one or more persons of biological reproductive capacity; and

(b) the deprivation is not effected by a birth-control measure that has a non-permanent effect in practice; and

(c) the perpetrator's conduct is neither justified by the medical or hospital treatment of the person or persons nor carried out with the consent of the person or persons; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

consent does not include consent effected by deception or by natural, induced or age-related incapacity.

268.64 War crime—sexual violence

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator does either of the following:

(i) commits an act or acts of a sexual nature against one or more persons;

(ii) causes one or more persons to engage in an act or acts of a sexual nature;

without the consent of the person or persons, including by being reckless as to whether there is consent; and

(b) the perpetrator's conduct is of a gravity comparable to the offences referred to in sections 268.59 to 268.63; and

(c) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

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

(3) In subsection (1):

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consent means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;

(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;

(d) the person is incapable of understanding the essential nature of the act;

(e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);

(f) the person submits to the act because of psychological oppression or abuse of power;

(g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

threat of force or coercion includes:

(a) a threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power; or

(b) taking advantage of a coercive environment.

(4) In subsection (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person is consenting to the act or acts of a sexual nature.

268.65 War crime—using protected persons as shields

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator uses the presence of one or more civilians, prisoners of war, military, medical or religious personnel or persons who are *hors de combat*; and

(b) the perpetrator intends the perpetrator's conduct to render a military objective immune from attack or to shield, favour or impede military operations; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty:

(a) if the conduct results in the death of any of the persons referred to in paragraph (a)—imprisonment for life; or

(b) otherwise—imprisonment for 17 years.

(2) In this section:

religious personnel includes non-confessional, non-combatant military personnel carrying out a similar function to religious personnel.

268.66 War crime—attacking persons or objects using the distinctive emblems of the Geneva Conventions

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator attacks one or more persons; and

(b) the person or persons are using, in conformity with the Geneva Conventions or the Protocols to the Geneva Conventions, any of the distinctive emblems of the Geneva Conventions; and

(c) the perpetrator intends the persons so using such an emblem to be the object of the attack; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator attacks one or more buildings, medical units or transports or other objects; and

(b) the buildings, units or transports or other objects are using, in conformity with the Geneva Conventions or the Protocols to the Geneva Conventions, any of the distinctive emblems of the Geneva Conventions; and

(c) the perpetrator intends the buildings, units or transports or other objects so using such an emblem to be the object of the attack; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 20 years.

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

268.67 War crime—starvation as a method of warfare

(1) A person (the ***perpetrator***) commits an offence if:
  (a) the perpetrator uses as a method of warfare:
    (i) any intentional deprivation of civilians of objects indispensable to their survival; or
    (ii) without limiting subparagraph (i)—the wilful impeding of relief supplies for civilians; and
  (b) if subparagraph (a)(ii) applies—the relief supplies are provided for under the Geneva Conventions; and
  (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

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

268.68 War crime—using, conscripting or enlisting children

National armed forces

(1) A person (the ***perpetrator***) commits an offence if:
  (a) the perpetrator uses one or more persons to participate actively in hostilities as members of the national armed forces; and
  (b) the person or persons are under the age of 15 years; and
  (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

(2) A person (the ***perpetrator***) commits an offence if:
  (a) the perpetrator conscripts one or more persons into the national armed forces; and
  (b) the person or persons are under the age of 15 years; and
  (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

(3) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator enlists one or more persons into the national armed forces; and

(b) the person or persons are under the age of 15 years; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 10 years.

Other armed forces and groups

(4) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator uses one or more persons to participate actively in hostilities other than as members of the national armed forces; and

(b) the person or persons are under the age of 18 years; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

(5) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator conscripts one or more persons into an armed force or group other than the national armed forces; and

(b) the person or persons are under the age of 18 years; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

(6) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator enlists one or more persons into an armed force or group other than the national armed forces; and

(b) the person or persons are under the age of 18 years; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 10 years.

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Subdivision F—War crimes that are serious violations of article 3 common to the Geneva Conventions and are committed in the course of an armed conflict that is not an international armed conflict

268.69 Definition of religious personnel

In this Subdivision:

religious personnel includes non-confessional, non-combatant military personnel carrying out a similar function to religious personnel.

268.70 War crime—murder

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes the death of one or more persons; and

(b) the person or persons are not taking an active part in the hostilities; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

(2) To avoid doubt, a reference in subsection (1) to a person or persons who are not taking an active part in the hostilities includes a reference to:

(a) a person or persons who are *hors de combat*; or

(b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

268.71 War crime—mutilation

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling

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or removing organs or appendages of, the person or persons; and

(b) the perpetrator's conduct causes the death of the person or persons; and

(c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are not taking an active part in the hostilities; and

(e) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and

(f) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling or removing organs or appendages of, the person or persons; and

(b) the perpetrator's conduct seriously endangers the physical or mental health, or the integrity, of the person or persons; and

(c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are not taking an active part in the hostilities; and

(e) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and

(f) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

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(3) To avoid doubt, a reference in subsection (1) or (2) to a person or persons who are not taking an active part in the hostilities includes a reference to:
  (a) a person or persons who are *hors de combat*; or
  (b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

268.72 War crime—cruel treatment

(1) A person (the ***perpetrator***) commits an offence if:
  (a) the perpetrator inflicts severe physical or mental pain or suffering upon one or more persons; and
  (b) the person or persons are not taking an active part in the hostilities; and
  (c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and
  (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) To avoid doubt, a reference in subsection (1) to a person or persons who are not taking an active part in the hostilities includes a reference to:
  (a) a person or persons who are *hors de combat*; or
  (b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

268.73 War crime—torture

(1) A person (the ***perpetrator***) commits an offence if:
  (a) the perpetrator inflicts severe physical or mental pain or suffering upon one or more persons; and
  (b) the perpetrator inflicts the pain or suffering for the purpose of:
    (i) obtaining information or a confession; or
    (ii) a punishment, intimidation or coercion; or

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(iii) a reason based on discrimination of any kind; and

(c) the person or persons are not taking an active part in the hostilities; and

(d) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and

(e) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) To avoid doubt, a reference in subsection (1) to a person or persons who are not taking an active part in the hostilities includes a reference to:

(a) a person or persons who are *hors de combat*; or

(b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

268.74 War crime—outrages upon personal dignity

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator severely humiliates, degrades or otherwise violates the dignity of one or more persons; and

(b) the person or persons are not taking an active part in the hostilities; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator severely humiliates, degrades or otherwise violates the dignity of the body or bodies of one or more dead persons; and

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(b) the dead person or dead persons were not, before his, her or their death, taking an active part in the hostilities; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the dead person or dead persons were not, before his, her or their death, taking an active part in the hostilities; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.

(3) To avoid doubt, a reference in this section to a person or persons who are not, or a dead person or dead persons who were not before his, her or their death, taking an active part in the hostilities includes a reference to:

(a) a person or persons who:

(i) are *hors de combat*; or

(ii) are civilians, medical personnel or religious personnel who are not taking an active part in the hostilities; or

(b) a dead person or dead persons who, before his, her or their death:

(i) were *hors de combat*; or

(ii) were civilians, medical personnel or religious personnel who were not taking an active part in the hostilities;

as the case may be.

268.75 War crime—taking hostages

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator seizes, detains or otherwise holds hostage one or more persons; and

(b) the perpetrator threatens to kill, injure or continue to detain the person or persons; and

(c) the perpetrator intends to compel the government of a country, an international organisation or a person or group of persons to act or refrain from acting as an explicit or implicit condition for either the safety or the release of the person or persons; and

(d) the person or persons are not taking an active part in the hostilities; and

(e) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and

(f) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.

(2) To avoid doubt, a reference in subsection (1) to a person or persons who are not taking an active part in the hostilities includes a reference to:

(a) a person or persons who are *hors de combat*; or

(b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

268.76 War crime—sentencing or execution without due process

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator passes a sentence on one or more persons; and

(b) the person or persons are not taking an active part in the hostilities; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and

(d) either of the following applies:

(i) there was no previous judgment pronounced by a court;

(ii) the court that rendered judgment did not afford the essential guarantees of independence and impartiality or other judicial guarantees; and

(e) if the court did not afford other judicial guarantees—those guarantees are guarantees set out in articles 14, 15 and 16 of the Covenant; and

(f) the perpetrator knows of:

(i) if subparagraph (d)(i) applies—the absence of a previous judgment; or

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(ii) if subparagraph (d)(ii) applies—the failure to afford the relevant guarantees and the fact that they are indispensable to a fair trial; and

(g) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 10 years.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator executes one or more persons; and

(b) the person or persons are not taking an active part in the hostilities; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and

(d) either of the following applies:

(i) there was no previous judgment pronounced by a court;

(ii) the court that rendered judgment did not afford the essential guarantees of independence and impartiality or other judicial guarantees; and

(e) if the court did not afford other judicial guarantees—those guarantees are guarantees set out in articles 14, 15 and 16 of the Covenant; and

(f) the perpetrator knows of:

(i) if subparagraph (d)(i) applies—the absence of a previous judgment; or

(ii) if subparagraph (d)(ii) applies—the failure to afford the relevant guarantees and the fact that they are indispensable to a fair trial; and

(g) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

(3) Strict liability applies to paragraphs (1)(e) and (2)(e).

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(4) To avoid doubt, a reference in subsection (1) or (2) to a person or persons who are not taking an active part in the hostilities includes a reference to:

(a) a person or persons who are *hors de combat*; or

(b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

Subdivision G—War crimes that are other serious violations of the laws and customs applicable in an armed conflict that is not an international armed conflict

268.77 War crime—attacking civilians

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator directs an attack; and

(b) the object of the attack is a civilian population as such or individual civilians not taking direct part in hostilities; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

268.78 War crime—attacking persons or objects using the distinctive emblems of the Geneva Conventions

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator attacks one or more persons; and

(b) the person or persons are using, in conformity with the Geneva Conventions or the Protocols to the Geneva Conventions, any of the distinctive emblems of the Geneva Conventions; and

(c) the perpetrator intends the persons so using such an emblem to be the object of the attack; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

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(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator attacks one or more buildings, medical units or transports or other objects; and

(b) the buildings, units or transports or other objects are using, in conformity with the Geneva Conventions or the Protocols to the Geneva Conventions, any of the distinctive emblems of the Geneva Conventions; and

(c) the perpetrator intends the buildings, units or transports or other objects so using such an emblem to be the object of the attack; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 20 years.

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

268.79 War crime—attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator directs an attack; and

(b) the object of the attack is personnel involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations; and

(c) the personnel are entitled to the protection given to civilians under the Geneva Conventions or Protocol II to the Geneva Conventions; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator directs an attack; and

(b) the object of the attack is installations, material, units or vehicles involved in a humanitarian assistance or

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peacekeeping mission in accordance with the Charter of the United Nations; and

(c) the installations, material, units or vehicles are entitled to the protection given to civilian objects under the Geneva Conventions and Protocol II to the Geneva Conventions; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 20 years.

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

268.80 War crime—attacking protected objects

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator directs an attack; and

(b) the object of the attack is any one or more of the following that are not military objectives:

(i) buildings dedicated to religion, education, art, science or charitable purposes;

(ii) historic monuments;

(iii) hospitals or places where the sick and wounded are collected; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 20 years.

(2) The definitions of ***charitable purpose*** in subsection 12(1) of the *Charities Act 2013* and section 2B of the *Acts Interpretation Act 1901* do not apply to this section.

268.81 War crime—pillaging

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator appropriates certain property; and

(b) the perpetrator intends to deprive the owner of the property and to appropriate it for private or personal use; and

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(c) the appropriation is without the consent of the owner; and
(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 20 years.

268.82 War crime—rape

(1) A person (the ***perpetrator***) commits an offence if:
(a) the perpetrator sexually penetrates another person without the consent of that person; and
(b) the perpetrator knows of, or is reckless as to, the lack of consent; and
(c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) A person (the ***perpetrator***) commits an offence if:
(a) the perpetrator causes another person to sexually penetrate the perpetrator without the consent of the other person; and
(b) the perpetrator knows of, or is reckless as to, the lack of consent; and
(c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

(3) In this section:

consent means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:
(a) the person submits to the act because of force or the fear of force to the person or to someone else;
(b) the person submits to the act because the person is unlawfully detained;
(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;

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(d) the person is incapable of understanding the essential nature of the act;

(e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);

(f) the person submits to the act because of psychological oppression or abuse of power;

(g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

(4) In this section:

sexually penetrate means:

(a) penetrate (to any extent) the genitalia or anus of a person by any part of the body of another person or by any object manipulated by that other person; or

(b) penetrate (to any extent) the mouth of a person by the penis of another person; or

(c) continue to sexually penetrate as defined in paragraph (a) or (b).

(5) In this section, being ***reckless*** as to a lack of consent to sexual penetration includes not giving any thought to whether or not the person is consenting to sexual penetration.

(6) In this section, the genitalia or other parts of the body of a person include surgically constructed genitalia or other parts of the body of the person.

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268.83 War crime—sexual slavery

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes another person to enter into or remain in sexual slavery; and

(b) the perpetrator intends to cause, or is reckless as to causing, that sexual slavery; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) For the purposes of this section, ***sexual slavery*** is the condition of a person who provides sexual services and who, because of the use of force or threats:

(a) is not free to cease providing sexual services; or

(b) is not free to leave the place or area where the person provides sexual services.

(3) In this section:

threat means:

(a) a threat of force; or

(b) a threat to cause a person's deportation; or

(c) a threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of sexual services by a person.

268.84 War crime—enforced prostitution

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes one or more persons to engage in one or more acts of a sexual nature without the consent of the person or persons, including by being reckless as to whether there is consent; and

(b) the perpetrator intends that he or she, or another person, will obtain pecuniary or other advantage in exchange for, or in connection with, the acts of a sexual nature; and

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(c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

consent means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;

(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;

(d) the person is incapable of understanding the essential nature of the act;

(e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);

(f) the person submits to the act because of psychological oppression or abuse of power;

(g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

threat of force or coercion includes:

(a) a threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power; or

(b) taking advantage of a coercive environment.

(3) In subsection (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person is consenting to the act or acts of a sexual nature.

268.85 War crime—forced pregnancy

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator unlawfully confines one or more women forcibly made pregnant; and

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(b) the perpetrator intends to affect the ethnic composition of any population or to destroy, wholly or partly, a national, ethnical, racial or religious group as such; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

forcibly made pregnant includes made pregnant by a consent that was affected by deception or by natural, induced or age-related incapacity.

(3) To avoid doubt, this section does not affect any other law of the Commonwealth or any law of a State or Territory.

268.86 War crime—enforced sterilisation

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator deprives one or more persons of biological reproductive capacity; and

(b) the deprivation is not effected by a birth-control measure that has a non-permanent effect in practice; and

(c) the perpetrator's conduct is neither justified by the medical or hospital treatment of the person or persons nor carried out with the consent of the person or persons; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

consent does not include consent effected by deception or by natural, induced or age-related incapacity.

268.87 War crime—sexual violence

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator does either of the following:

(i) commits an act or acts of a sexual nature against one or more persons;

(ii) causes one or more persons to engage in an act or acts of a sexual nature;

without the consent of the person or persons, including by being reckless as to whether there is consent; and

(b) the perpetrator's conduct is of a gravity comparable to the offences referred to in sections 268.82 to 268.87; and

(c) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

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

(3) In subsection (1):

consent means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;

(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;

(d) the person is incapable of understanding the essential nature of the act;

(e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);

(f) the person submits to the act because of psychological oppression or abuse of power;

(g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

threat of force or coercion includes:

(a) a threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against the person or another person; or

(b) taking advantage of a coercive environment.

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(4) In subsection (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person is consenting to the act or acts of a sexual nature.

268.88 War crime—using, conscripting or enlisting children

National armed forces

(1) A person (the ***perpetrator***) commits an offence if:
  (a) the perpetrator uses one or more persons to participate actively in hostilities as members of the national armed forces; and
  (b) the person or persons are under the age of 15 years; and
  (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.

(2) A person (the ***perpetrator***) commits an offence if:
  (a) the perpetrator conscripts one or more persons into the national armed forces; and
  (b) the person or persons are under the age of 15 years; and
  (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 15 years.

(3) A person (the ***perpetrator***) commits an offence if:
  (a) the perpetrator enlists one or more persons into the national armed forces; and
  (b) the person or persons are under the age of 15 years; and
  (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 10 years.

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Other armed forces and groups

(4) A person (the ***perpetrator***) commits an offence if:
  (a) the perpetrator uses one or more persons to participate actively in hostilities other than as members of the national armed forces; and
  (b) the person or persons are under the age of 18 years; and
  (c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.

(5) A person (the ***perpetrator***) commits an offence if:
  (a) the perpetrator conscripts one or more persons into an armed force or group other than the national armed forces; and
  (b) the person or persons are under the age of 18 years; and
  (c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 15 years.

(6) A person (the ***perpetrator***) commits an offence if:
  (a) the perpetrator enlists one or more persons into an armed force or group other than the national armed forces; and
  (b) the person or persons are under the age of 18 years; and
  (c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 10 years.

268.89 War crime—displacing civilians

A person (the ***perpetrator***) commits an offence if:
  (a) the perpetrator orders a displacement of a civilian population; and
  (b) the order is not justified by the security of the civilians involved or by imperative military necessity; and

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(c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.

268.90 War crime—treacherously killing or injuring

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator invites the confidence or belief of one or more persons that the perpetrator is entitled to protection, or that the person or persons are obliged to accord protection to the perpetrator; and

(b) the perpetrator kills the person or persons; and

(c) the perpetrator makes use of that confidence or belief in killing the person or persons; and

(d) the person or persons belong to an adverse party; and

(e) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator invites the confidence or belief of one or more persons that the perpetrator is entitled to protection, or that the person or persons are obliged to accord protection to the perpetrator; and

(b) the perpetrator injures the person or persons; and

(c) the perpetrator makes use of that confidence or belief in injuring the person or persons; and

(d) the person or persons belong to an adverse party; and

(e) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 25 years.

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268.91 War crime—denying quarter

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator declares or orders that there are to be no survivors; and

(b) the declaration or order is given with the intention of threatening an adversary or conducting hostilities on the basis that there are to be no survivors; and

(c) the perpetrator is in a position of effective command or control over the subordinate forces to which the declaration or order is directed; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

268.92 War crime—mutilation

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling or removing organs or appendages of, the person or persons; and

(b) the perpetrator's conduct causes the death of the person or persons; and

(c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are in the power of another party to the conflict; and

(e) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling

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or removing organs or appendages of, the person or persons; and

(b) the perpetrator's conduct seriously endangers the physical or mental health, or the integrity, of the person or persons; and

(c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are in the power of another party to the conflict; and

(e) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 25 years.

268.93 War crime—medical or scientific experiments

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to a medical or scientific experiment; and

(b) the experiment causes the death of the person or persons; and

(c) the perpetrator's conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are in the power of another party to the conflict; and

(e) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to a medical or scientific experiment; and

(b) the experiment seriously endangers the physical or mental health, or the integrity, of the person or persons; and

(c) the perpetrator's conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are in the power of another party to the conflict; and

(e) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 25 years.

268.94 War crime—destroying or seizing an adversary's property

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator destroys or seizes certain property; and

(b) the property is property of an adversary; and

(c) the property is protected from the destruction or seizure under article 14 of Protocol II to the Geneva Conventions; and

(d) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the property is so protected; and

(e) the destruction or seizure is not justified by military necessity; and

(f) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 15 years

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

Subdivision H—War crimes that are grave breaches of Protocol I to the Geneva Conventions

268.95 War crime—medical procedure

A person (the ***perpetrator***) commits an offence if:

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(a) the perpetrator subjects one or more persons to a medical procedure; and
(b) the procedure seriously endangers the physical or mental health, or the integrity, of the person or persons; and
(c) the perpetrator's conduct is not justified by the state of health of the person or persons; and
(d) the perpetrator knows that, or is reckless as to whether, the conduct is consistent with generally accepted medical standards that would be applied under similar medical circumstances to persons who are of the same nationality as the perpetrator and are in no way deprived of liberty; and
(e) the person or persons are in the power of, or are interned, detained or otherwise deprived of liberty by, the country of the perpetrator as a result of an international armed conflict; and
(f) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

268.96 War crime—removal of blood, tissue or organs for transplantation

(1) A person (the ***perpetrator***) commits an offence if:
(a) the perpetrator removes from one or more persons blood, tissue or organs for transplantation; and
(b) in the case of the removal of blood—the removal:
(i) is not for transfusion; or
(ii) is for transfusion without the consent of the person or persons; and
(c) in the case of the removal of skin—the removal:
(i) is not for grafting; or
(ii) is for grafting without the consent of the person or persons; and
(d) the intent of the removal is non-therapeutic; and
(e) the removal is not carried out under conditions consistent with generally accepted medical standards and controls designed for the benefit of the person or persons and of the recipient; and

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(f) the person or persons are in the power of, or are interned, detained or otherwise deprived of liberty by, an adverse party as a result of an international armed conflict; and

(g) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

consent means consent given voluntarily and without any coercion or inducement.

268.97 War crime—attack against works or installations containing dangerous forces resulting in excessive loss of life or injury to civilians

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator launches an attack against works or installations containing dangerous forces; and

(b) the attack is such that it will cause loss of life, injury to civilians, or damage to civilian objects, to such an extent as to be excessive in relation to the concrete and direct military advantage anticipated; and

(c) the perpetrator knows that the attack will cause loss of life, injury to civilians, or damage to civilian objects, to such an extent; and

(d) the attack results in death or serious injury to body or health; and

(e) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.98 War crime—attacking undefended places or demilitarized zones

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator attacks one or more towns, villages, dwellings, buildings or demilitarized zones; and

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(b) the towns, villages, dwellings or buildings are open for unresisted occupation; and

(c) the attack results in death or serious injury to body or health; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.99 War crime—unjustifiable delay in the repatriation of prisoners of war or civilians

(1) A person (the ***perpetrator***) commits an offence if:

(a) one or more persons are in the power of, or are interned, detained or otherwise deprived of liberty by, an adverse party as a result of an international armed conflict; and

(b) the perpetrator unjustifiably delays the repatriation of the person or persons to the person's own country or the persons' own countries; and

(c) the delay is in violation of Part IV of the Third Geneva Convention or Chapter XII of Section IV of Part III of the Fourth Geneva Convention.

Penalty: Imprisonment for 10 years.

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

268.100 War crime—apartheid

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator commits against one or more persons an act that is a proscribed inhumane act or is of a nature and gravity similar to any proscribed inhumane act; and

(b) the perpetrator knows of, or is reckless at to, the factual circumstances that establish the character of the act; and

(c) the perpetrator's conduct is committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups; and

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(d) the perpetrator intends to maintain the regime by the conduct; and

(e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

268.101 War crime—attacking protected objects

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator directs an attack; and

(b) the object of the attack is any one or more of the following that are not used in support of the military effort and are not located in the immediate proximity of military objectives:

(i) clearly recognised historic monuments;

(ii) works of art;

(iii) places of worship; and

(c) the monuments, works of art and places of worship constitute the cultural or spiritual heritage of peoples and have been given special protection by special arrangement (for example, within the framework of a competent international organisation); and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 20 years.

Subdivision J—Crimes against the administration of the justice of the International Criminal Court

268.102 Perjury

(1) A person commits the offence of perjury if:

(a) the person makes a sworn statement in or for the purposes of a proceeding before the International Criminal Court; and

(b) the statement is false.

Penalty: Imprisonment for 10 years.

(2) A person who is an interpreter commits the offence of perjury if:

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(a) the person, by a sworn statement, gives an interpretation of a statement or other thing in or for the purposes of a proceeding before the International Criminal Court; and
(b) the interpretation is false or misleading.

Penalty: Imprisonment for 10 years.

268.103 Falsifying evidence

(1) A person commits an offence if the person makes false evidence with the intention of:
(a) influencing a decision on the institution of a proceeding before the International Criminal Court; or
(b) influencing the outcome of such a proceeding.

Penalty: Imprisonment for 7 years.

(2) A person commits an offence if the person:
(a) uses evidence that is false evidence and that the person believes is false evidence; and
(b) is reckless as to whether or not the use of the evidence could:
(i) influence a decision on the institution of a proceeding before the International Criminal Court; or
(ii) influence the outcome of such a proceeding.

Penalty: Imprisonment for 7 years.

(3) For the purposes of this section, ***making*** evidence includes altering evidence, but does not include perjury.

268.104 Destroying or concealing evidence

(1) A person commits an offence if the person destroys or conceals evidence with the intention of:
(a) influencing a decision on the institution of a proceeding before the International Criminal Court; or
(b) influencing the outcome of such a proceeding.

Penalty: Imprisonment for 7 years.

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(2) For the purposes of this section, ***destroying*** evidence includes making the evidence illegible, indecipherable or otherwise incapable of being identified.

268.105 Deceiving witnesses

A person commits an offence if the person deceives another person with the intention that the other person or a third person will:

(a) give false evidence in a proceeding before the International Criminal Court; or

(b) withhold true evidence at such a proceeding.

Penalty: Imprisonment for 5 years.

268.106 Corrupting witnesses or interpreters

(1) A person commits an offence if the person provides, or offers or promises to provide, a benefit to another person with the intention that the other person or a third person will:

(a) not attend as a witness at a proceeding before the International Criminal Court; or

(b) give false evidence at such a proceeding; or

(c) withhold true evidence at such a proceeding.

Penalty: Imprisonment for 5 years.

(2) A person commits an offence if the person asks for, or receives or agrees to receive, a benefit for himself, herself or another person with the intention that he, she or another person will:

(a) not attend as a witness at a proceeding before the International Criminal Court; or

(b) give false evidence at such a proceeding; or

(c) withhold true evidence at such a proceeding.

Penalty: Imprisonment for 5 years.

(3) A person commits an offence if the person provides, or offers or promises to provide, a benefit to another person with the intention that the other person or a third person will:

(a) not attend as an interpreter at a proceeding before the International Criminal Court; or

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(b) give a false or misleading interpretation as an interpreter at such a proceeding.

Penalty: Imprisonment for 5 years.

268.107 Threatening witnesses or interpreters

(1) A person commits an offence if the person causes or threatens to cause any detriment to another person with the intention that the other person or a third person will:

(a) not attend as a witness at a proceeding before the International Criminal Court; or

(b) give false evidence at such a proceeding; or

(c) withhold true evidence at such a proceeding.

Penalty: Imprisonment for 7 years.

(2) A person commits an offence if the person causes or threatens to cause any detriment to another person with the intention that the other person or a third person will:

(a) not attend as an interpreter at a proceeding before the International Criminal Court; or

(b) give a false or misleading interpretation as an interpreter in such a proceeding.

Penalty: Imprisonment for 7 years.

268.108 Preventing witnesses or interpreters

(1) A person commits an offence if the person, by his or her conduct, intentionally prevents another person from attending as a witness or interpreter at a proceeding before the International Criminal Court.

Penalty: Imprisonment for 5 years.

(2) This section does not apply to conduct that constitutes an offence against section 268.105, 268.106, 268.107, 268.109 or 268.110.

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268.109 Preventing production of things in evidence

A person commits an offence if the person, by his or her conduct, intentionally prevents another person from producing in evidence at a proceeding before the International Criminal Court a thing that is legally required to be produced.

Penalty: Imprisonment for 5 years.

268.110 Reprisals against witnesses

(1) A person commits an offence if the person causes or threatens to cause any detriment to another person who was a witness in a proceeding before the International Criminal Court:

(a) because of anything done by the other person in or for the purposes of the proceeding; and

(b) in the belief that the other person was a witness who had done that thing.

Penalty: Imprisonment for 5 years.

(2) It is a defence to a prosecution for an offence against subsection (1) that:

(a) the detriment to the witness was not (apart from this section) an offence; and

(b) the witness committed perjury in the proceeding before the International Criminal Court.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3).

(3) In this section:

witness includes:

(a) a person who attends at a proceeding before the International Criminal Court as a witness but is not called as a witness; or

(b) an interpreter.

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268.111 Reprisals against officials of the International Criminal Court

(1) A person commits an offence if the person causes or threatens to cause any detriment to another person who is an official of the International Criminal Court:

(a) because of anything done by the other person; and

(b) in the belief that the other person was an official of that Court who had done that thing for the purposes of a proceeding before that Court.

Penalty: Imprisonment for 5 years.

(2) A person commits an offence if the person causes or threatens to cause any detriment to another person who is an official of the International Criminal Court:

(a) because of anything done by a third person who is an official of that Court; and

(b) in the belief that the third person was an official of that Court who had done that thing for the purposes of a proceeding before that Court.

Penalty: Imprisonment for 5 years.

268.112 Perverting the course of justice

(1) A person commits an offence if the person, by his or her conduct, intentionally perverts the course of justice in respect of the International Criminal Court.

Penalty: Imprisonment for 5 years.

(2) This section does not apply to conduct that constitutes the publication of any matter.

(3) In this section:

perverts includes obstructs, prevents or defeats.

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268.113 Receipt of a corrupting benefit by an official of the International Criminal Court

(1) A person who is an official of the International Criminal Court commits an offence if:

(a) the person:

(i) asks for a benefit for himself, herself or another person; or

(ii) receives or obtains a benefit for himself, herself or another person; or

(iii) agrees to receive or obtain a benefit for himself, herself or another person; and

(b) the person does so with the intention that the exercise of the person's duties as an official of the International Criminal Court will be influenced.

Penalty: Imprisonment for 10 years.

(2) For the purposes of subsection (1), it is immaterial whether the benefit is in the nature of a reward.

268.114 Subdivision not to apply to certain conduct

(1) This Subdivision does not apply to a person in respect of:

(a) conduct that results in a failure or refusal to issue a certificate under section 22 or 29 of the *International Criminal Court Act 2002*; or

(b) a failure or refusal to issue such a certificate; or

(c) conduct engaged in reliance on the absence of such a certificate.

(2) In this section:

conduct includes any one or more acts or omissions.

Subdivision K—Miscellaneous

268.115 Responsibility of commanders and other superiors

(1) The criminal responsibility imposed by this section is in addition to other grounds of criminal responsibility under the law in force in

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Australia for acts or omissions that are offences under this Division.

(2) A military commander or person effectively acting as a military commander is criminally responsible for offences under this Division committed by forces under his or her effective command and control, or effective authority and control, as the case may be, as a result of his or her failure to exercise control properly over those forces, where:

(a) the military commander or person either knew or, owing to the circumstances at the time, was reckless as to whether the forces were committing or about to commit such offences; and

(b) the military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(3) With respect to superior and subordinate relationships not described in subsection (2), a superior is criminally responsible for offences against this Division committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over those subordinates, where:

(a) the superior either knew, or consciously disregarded information that clearly indicated, that the subordinates were committing or about to commit such offences; and

(b) the offences concerned activities that were within the effective responsibility and control of the superior; and

(c) the superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

268.116 Defence of superior orders

(1) The fact that genocide or a crime against humanity has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, does not relieve the person of criminal responsibility.

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(2) Subject to subsection (3), the fact that a war crime has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, does not relieve the person of criminal responsibility.

(3) It is a defence to a war crime that:
  (a) the war crime was committed by a person pursuant to an order of a Government or of a superior, whether military or civilian; and
  (b) the person was under a legal obligation to obey the order; and
  (c) the person did not know that the order was unlawful; and
  (d) the order was not manifestly unlawful.

Note: A defendant bears an evidential burden in establishing the elements in subsection (3). See subsection 13.3(3).

268.117 Geographical jurisdiction

(1) Section 15.4 (extended geographical jurisdiction—Category D) applies to genocide, crimes against humanity and war crimes.

(2) Section 15.3 (extended geographical jurisdiction—Category C) applies to crimes against the administration of the justice of the International Criminal Court.

268.118 Double jeopardy

A person cannot be tried by a federal court or a court of a State or Territory for an offence under this Division if the person has already been convicted or acquitted by the International Criminal Court for an offence constituted by substantially the same conduct as constituted the offence under this Division.

268.119 Offences related to exercise of jurisdiction of International Criminal Court

(1) A person must not:
  (a) intentionally contravene an order that the International Criminal Court makes while sitting in Australia; or
  (b) otherwise intentionally hinder the International Criminal Court in performing its functions while sitting in Australia.

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Penalty: Imprisonment for 2 years.

(2) In this section:

Australia includes all the external Territories.

268.120 Saving of other laws

This Division is not intended to exclude or limit any other law of the Commonwealth or any law of a State or Territory.

268.121 Bringing proceedings under this Division

(1) Proceedings for an offence under this Division must not be commenced without the Attorney-General's written consent.

(2) An offence against this Division may only be prosecuted in the name of the Attorney-General.

(3) However, a person may be arrested, charged, remanded in custody, or released on bail, in connection with an offence under this Division before the necessary consent has been given.

268.122 Attorney-General's decisions in relation to consents to be final

(1) Subject to any jurisdiction of the High Court under the Constitution, a decision by the Attorney-General to give, or to refuse to give, a consent under section 268.121:
  (a) is final; and
  (b) must not be challenged, appealed against, reviewed, quashed or called in question; and
  (c) is not subject to prohibition, mandamus, injunction, declaration or certiorari.

(2) The reference in subsection (1) to a decision includes a reference to the following:
  (a) a decision to vary, suspend, cancel or revoke a consent that has been given;

(b) a decision to impose a condition or restriction in connection with the giving of, or a refusal to give, a consent or to remove a condition or restriction so imposed;

(c) a decision to do anything preparatory to the making of a decision to give, or to refuse to give, a consent or preparatory to the making of a decision referred to in paragraph (a) or (b), including a decision for the taking of evidence or the holding of an inquiry or investigation;

(d) a decision doing or refusing to do anything else in connection with a decision to give, or to refuse to give, a consent or a decision referred to in paragraph (a), (b) or (c);

(e) a failure or refusal to make a decision whether or not to give a consent or a decision referred to in a paragraph (a), (b), (c) or (d).

(3) Any jurisdiction of the High Court referred to in subsection (1) is exclusive of the jurisdiction of any other court.

268.123 Legal representation

The provisions of section 12 (other than subsection 12(2)) of the *Geneva Conventions Act 1957* apply in relation to the trial of a person for an offence against this Division in the same way as they apply in relation to the trial of a protected prisoner of war.

268.124 Proof of application of Geneva Conventions or Protocol I to the Geneva Conventions

If, in proceedings under this Division in respect of a grave breach of any of the Geneva Conventions or of Protocol I to the Geneva Conventions, a question arises under:

(a) Article 2 of the Geneva Convention concerned (which relates to the circumstances in which the Convention applies); or

(b) Article 1 of that Protocol (which relates to the circumstances in which the Protocol applies);

a certificate signed by the Minister responsible for legislation relating to foreign affairs certifying to any matter relevant to that question is prima facie evidence of the matter so certified.

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Division 270—Slavery and slavery-like conditions

Subdivision A—Preliminary

270.1A Definitions for Division 270

In this Division:

coercion includes coercion by any of the following:

(a) force;
(b) duress;
(c) detention;
(d) psychological oppression;
(e) abuse of power;
(f) taking advantage of a person's vulnerability.

conducting a business includes:

(a) taking any part in the management of the business; and
(b) exercising control or direction over the business; and
(c) providing finance for the business.

deceive has the same meaning as in Division 271 (see section 271.1).

Note: ***Deception*** has a corresponding meaning (see section 18A of the *Acts Interpretation Act 1901*).

forced labour has the meaning given by section 270.6.

forced marriage has the meaning given by section 270.7A.

servitude has the meaning given by section 270.4.

slavery has the meaning given by section 270.1.

slavery-like offence means an offence against any of the following provisions:

(a) section 270.5 (servitude offences);
(b) section 270.6A (forced labour offences);
(c) section 270.7 (deceptive recruiting for labour or services);
(d) section 270.7B (forced marriage offences).

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threat means:

(a) a threat of coercion; or

(b) a threat to cause a person's deportation or removal from Australia; or

(c) a threat of any other detrimental action, unless there are reasonable grounds for the threat of that action in connection with the provision of labour or services by a person.

Note: ***Threat*** includes a threat made by any conduct, whether express or implied and whether conditional or unconditional (see the definition in the Dictionary).

Subdivision B—Slavery

270.1 Definition of *slavery*

For the purposes of this Division, ***slavery*** is the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person.

270.2 Slavery is unlawful

Slavery remains unlawful and its abolition is maintained, despite the repeal by the *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* of Imperial Acts relating to slavery.

270.3 Slavery offences

(1) A person who, whether within or outside Australia, intentionally:

(aa) reduces a person to slavery; or

(a) possesses a slave or exercises over a slave any of the other powers attaching to the right of ownership; or

(b) engages in slave trading; or

(c) enters into any commercial transaction involving a slave; or

(d) exercises control or direction over, or provides finance for:

(i) any act of slave trading; or

(ii) any commercial transaction involving a slave;

is guilty of an offence.

Penalty: Imprisonment for 25 years.

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(2) A person who:

(a) whether within or outside Australia:

(i) enters into any commercial transaction involving a slave; or

(ii) exercises control or direction over, or provides finance for, any commercial transaction involving a slave; or

(iii) exercises control or direction over, or provides finance for, any act of slave trading; and

(b) is reckless as to whether the transaction or act involves a slave, slavery, slave trading or the reduction of a person to slavery;

is guilty of an offence.

Penalty: Imprisonment for 17 years.

(3) In this section:

commercial transaction involving a slave includes a commercial transaction by which a person is reduced to slavery.

slave trading includes:

(a) the capture, transport or disposal of a person with the intention of reducing the person to slavery; or

(b) the purchase or sale of a slave.

(4) A person who engages in any conduct with the intention of securing the release of a person from slavery is not guilty of an offence against this section.

(5) The defendant bears a legal burden of proving the matter mentioned in subsection (4).

Subdivision C—Slavery-like conditions

270.4 Definition of *servitude*

(1) For the purposes of this Division, ***servitude*** is the condition of a person (the ***victim***) who provides labour or services, if, because of the use of coercion, threat or deception:

(a) a reasonable person in the position of the victim would not consider himself or herself to be free:

(i) to cease providing the labour or services; or

(ii) to leave the place or area where the victim provides the labour or services; and

(b) the victim is significantly deprived of personal freedom in respect of aspects of his or her life other than the provision of the labour or services.

(2) Subsection (1) applies whether the coercion, threat or deception is used against the victim or another person.

(3) The victim may be in a condition of servitude whether or not:

(a) escape from the condition is practically possible for the victim; or

(b) the victim has attempted to escape from the condition.

270.5 Servitude offences

Causing a person to enter into or remain in servitude

(1) A person commits an offence if:

(a) the person engages in conduct; and

(b) the conduct causes another person to enter into or remain in servitude.

Penalty:

(a) in the case of an aggravated offence (see section 270.8)—imprisonment for 20 years; or

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

Conducting a business involving servitude

(2) A person commits an offence if:

(a) the person conducts any business; and

(b) the business involves the servitude of another person (or persons).

Penalty:

(a) in the case of an aggravated offence (see section 270.8)—imprisonment for 20 years; or

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

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Alternative verdict of forced labour

(3) Subsection (4) applies if, in a prosecution for an offence (the ***servitude offence***) against a provision listed in column 1 of the following table, the trier of fact:

(a) is not satisfied that the defendant is guilty of that offence; but

(b) is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the ***forced labour offence***) against the corresponding provision listed in column 2 of the table.

Servitude and forced labour offences

Item	Column 1 Servitude offences	Column 2 Forced labour offences
1	Subsection (1) of this section	Subsection 270.6A(1)
2	Subsection (2) of this section	Subsection 270.6A(2)

(4) The trier of fact may find the defendant not guilty of the servitude offence, but guilty of the forced labour offence, so long as the defendant has been afforded procedural fairness in relation to that finding of guilt.

270.6 Definition of *forced labour*

(1) For the purposes of this Division, ***forced labour*** is the condition of a person (the ***victim***) who provides labour or services if, because of the use of coercion, threat or deception, a reasonable person in the position of the victim would not consider himself or herself to be free:

(a) to cease providing the labour or services; or

(b) to leave the place or area where the victim provides the labour or services.

(2) Subsection (1) applies whether the coercion, threat or deception is used against the victim or another person.

(3) The victim may be in a condition of forced labour whether or not:

(a) escape from the condition is practically possible for the victim; or

(b) the victim has attempted to escape from the condition.

270.6A Forced labour offences

Causing a person to enter into or remain in forced labour

(1) A person commits an offence if:

(a) the person engages in conduct; and

(b) the conduct causes another person to enter into or remain in forced labour.

Penalty:

(a) in the case of an aggravated offence (see section 270.8)—imprisonment for 12 years; or

(b) in any other case—imprisonment for 9 years.

Conducting a business involving forced labour

(2) A person commits an offence if:

(a) the person conducts any business; and

(b) the business involves the forced labour of another person (or persons).

Penalty:

(a) in the case of an aggravated offence (see section 270.8)—imprisonment for 12 years; or

(b) in any other case—imprisonment for 9 years.

Note: On a trial for an offence against section 270.5 (servitude offences), the trier of fact may find a defendant not guilty of that offence but guilty of the corresponding offence under this section (see subsections 270.5(3) and (4)).

270.7 Deceptive recruiting for labour or services

A person (the ***recruiter***) commits an offence if:

(a) the recruiter engages in conduct; and

(b) the recruiter engages in the conduct with the intention of inducing another person (the ***victim***) to enter into an engagement to provide labour or services; and

(c) the conduct causes the victim to be deceived about:

(i) the extent to which the victim will be free to leave the place or area where the victim provides the labour or services; or

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(ii) the extent to which the victim will be free to cease providing the labour or services; or

(iii) the extent to which the victim will be free to leave his or her place of residence; or

(iv) if there is or will be a debt owed or claimed to be owed by the victim in connection with the engagement—the quantum, or the existence, of the debt owed or claimed to be owed; or

(v) the fact that the engagement will involve exploitation, or the confiscation of the victim's travel or identity documents; or

(vi) if the engagement is to involve the provision of sexual services—that fact, or the nature of sexual services to be provided (for example, whether those services will require the victim to have unprotected sex).

Penalty:

(a) in the case of an aggravated offence (see section 270.8)—imprisonment for 9 years; or

(b) in any other case—imprisonment for 7 years.

270.7A Definition of *forced marriage*

(1) For the purposes of this Division, a marriage is a ***forced marriage*** if, because of the use of coercion, threat or deception, one party to the marriage (the ***victim***) entered into the marriage without freely and fully consenting.

(2) For the purposes of subsection (1), ***marriage*** includes the following:

(a) a registered relationship within the meaning of section 2E of the *Acts Interpretation Act 1901*;

(b) a marriage recognised under a law of a foreign country;

(c) a relationship registered (however that process is described) under a law of a foreign country, if the relationship is of the same, or a similar, type as any registered relationship within the meaning of section 2E of the *Acts Interpretation Act 1901*;

(d) a marriage (including a relationship or marriage mentioned in paragraph (a), (b) or (c)) that is void, invalid, or not recognised by law, for any reason, including the following:

(i) a party to the marriage has not freely or fully consented to the marriage (for example, because of natural, induced or age-related incapacity);

(ii) a party to the marriage is married (within the meaning of this subsection) to more than one person.

Note: Section 2E of the *Acts Interpretation Act 1901* covers relationships registered under a law of a State or Territory that are prescribed by regulations under that Act.

(3) Subsection (1) applies whether the coercion, threat or deception is used against the victim or another person.

270.7B Forced marriage offences

Causing a person to enter into a forced marriage

(1) A person (the ***first person***) commits an offence if:

(a) the first person engages in conduct; and

(b) the conduct causes another person to enter into a forced marriage as the victim of the marriage.

Penalty:

(a) in the case of an aggravated offence (see section 270.8)—imprisonment for 7 years; or

(b) in any other case—imprisonment for 4 years.

Being a party to a forced marriage

(2) A person commits an offence if:

(a) the person is a party to a marriage (within the meaning of section 270.7A); and

(b) the marriage is a forced marriage; and

(c) the person is not a victim of the forced marriage.

Penalty:

(a) in the case of an aggravated offence (see section 270.8)—imprisonment for 7 years; or

(b) in any other case—imprisonment for 4 years.

(3) Strict liability applies to paragraph (2)(c).

Note: For strict liability, see section 6.1.

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

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3)).

270.8 Slavery-like offences—aggravated offences

(1) For the purposes of this Division, a slavery-like offence committed by a person (the ***offender***) against another person (the ***victim***) is an ***aggravated offence*** if any of the following applies:

(a) the victim is under 18;

(b) the offender, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;

(c) the offender, in committing the offence:

(i) engages in conduct that gives rise to a danger of death or serious harm to the victim or another person; and

(ii) is reckless as to that danger.

(2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.

(3) If, on a trial for an aggravated offence, the trier of fact is not satisfied that the defendant is guilty of the aggravated offence, but is otherwise satisfied that the defendant is guilty of the corresponding slavery-like offence, it may find the defendant not guilty of the aggravated offence, but guilty of the corresponding slavery-like offence.

(4) Subsection (3) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the corresponding slavery-like offence.

270.9 Slavery-like offences—jurisdictional requirement

Section 15.2 (extended geographical jurisdiction—category B) applies to a slavery-like offence.

270.10 Slavery-like offences—relevant evidence

(1) For the purposes of proceedings for a slavery-like offence, the trier of fact may have regard to any of the matters covered by subsection (2) in determining whether a person (the ***alleged victim***)

against whom the offence is alleged to have been committed has been coerced, threatened or deceived.

(2) The following matters are covered by this subsection:
  (a) the economic relationship between the alleged victim and the alleged offender;
  (b) the terms of any written or oral contract or agreement between the alleged victim and the alleged offender;
  (c) the personal circumstances of the alleged victim, including but not limited to:
    (i) whether he or she is entitled to be in Australia under the *Migration Act 1958*; and
    (ii) his or her ability to speak, write and understand English or another language; and
    (iii) the extent of his or her social and physical dependence on the alleged offender.

(3) Subsection (1) does not:
  (a) prevent the leading of any other evidence in the relevant proceedings; or
  (b) limit the manner in which evidence may be given or the admissibility of evidence.

Subdivision D—Offences against Division 270: general

270.11 Offences against Division 270—no defence of victim consent or acquiescence

To avoid doubt, it is not a defence in a proceeding for an offence against this Division that a person against whom the offence is alleged to have been committed consented to, or acquiesced in, conduct constituting any element of the offence.

270.12 Offences against Division 270—other laws not excluded

(1) This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

Note: Division 279 (video link evidence) applies to a proceeding for an offence against this Division.

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(2) Without limiting subsection (1), this Division is not intended to exclude or limit the concurrent operation of any other law of the Commonwealth, or a law of a State or Territory, that makes:

(a) an act or omission that is an offence against a provision of this Division; or

(b) a similar act or omission;

an offence against the law of the Commonwealth, State or Territory.

(3) Subsection (2) applies even if the other law of the Commonwealth, or the law of the State or Territory, does any one or more of the following:

(a) provides for a penalty for the offence that differs from the penalty provided for in this Division;

(b) provides for a fault element in relation to the offence that differs from the fault elements applicable to the offence under this Division;

(c) provides for a defence in relation to the offence that differs from the defences applicable to the offence under this Division.

270.13 Offences against Division 270—double jeopardy

If a person has been convicted or acquitted in a country outside Australia of an offence against the law of that country in respect of any conduct, the person cannot be convicted of an offence against this Division in respect of that conduct.

Division 271—Trafficking in persons and debt bondage

Subdivision A—Definitions

271.1 Definitions

In this Division:

coercion has the same meaning as in Division 270 (see section 270.1A).

confiscate, in relation to a person's travel or identity document, means to take possession of the document, whether permanently or otherwise, to the exclusion of the person, or to destroy the document.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

deceive means mislead as to fact (including the intention of any person) or as to law, by words or other conduct.

Note: ***Deception*** has a corresponding meaning (see section 18A of the *Acts Interpretation Act 1901*).

exploitation has the meaning given by section 271.1A.

threat has the same meaning as in Division 270 (see section 271.1A).

271.1A Definition of *exploitation*

For the purposes of this Division, ***exploitation***, of one person (the ***victim***) by another person, occurs if the other person's conduct causes the victim to enter into any of the following conditions:

(a) slavery, or a condition similar to slavery;
(b) servitude;
(c) forced labour;
(d) forced marriage;
(e) debt bondage.

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Note: Division 270 (slavery and slavery-like offences) deals with slavery, servitude, forced labour and forced marriage. Subdivision C of this Division deals with debt bondage.

Subdivision B—Offences relating to trafficking in persons

271.2 Offence of trafficking in persons

(1) A person (the ***first person***) commits an offence of trafficking in persons if:

(a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and

(b) the first person uses coercion, threat or deception; and

(c) that use of coercion, threat or deception results in the first person obtaining the other person's compliance in respect of that entry or proposed entry or in respect of that receipt.

Penalty: Imprisonment for 12 years.

(1A) A person (the ***first person***) commits an offence of trafficking in persons if:

(a) the first person organises or facilitates the exit or proposed exit of another person from Australia; and

(b) the first person uses coercion, threat or deception; and

(c) that use of coercion, threat or deception results in the first person obtaining the other person's compliance in respect of that exit or proposed exit.

Penalty: Imprisonment for 12 years.

(1B) A person (the ***first person***) commits an offence of trafficking in persons if:

(a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and

(b) in organising or facilitating that entry or proposed entry, or that receipt, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that entry or receipt.

Penalty: Imprisonment for 12 years.

(1C) A person (the ***first person***) commits an offence of trafficking in persons if:

(a) the first person organises or facilitates the exit or proposed exit of another person from Australia; and

(b) in organising or facilitating that exit or proposed exit, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that exit.

Penalty: Imprisonment for 12 years.

(2) A person (the ***first person***) commits an offence of trafficking in persons if:

(a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and

(b) the first person deceives the other person about the fact that the other person's entry or proposed entry, the other person's receipt or any arrangements for the other person's stay in Australia, will involve the provision by the other person of sexual services or will involve the other person's exploitation or the confiscation of the other person's travel or identity documents.

Penalty: Imprisonment for 12 years.

(2A) A person (the ***first person***) commits an offence of trafficking in persons if:

(a) the first person organises or facilitates the exit or proposed exit of another person from Australia; and

(b) the first person deceives the other person about the fact that the other person's exit or proposed exit is for purposes that involve the provision by the other person of sexual services outside Australia or will involve the other person's exploitation or the confiscation of the other person's travel or identity documents.

Penalty: Imprisonment for 12 years.

(2B) A person (the ***first person***) commits an offence of trafficking in persons if:

(a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and

(b) there is an arrangement for the other person to provide sexual services in Australia; and

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(c) the first person deceives the other person about any of the following:

(i) the nature of the sexual services to be provided;

(ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;

(iii) the extent to which the other person will be free to cease providing sexual services;

(iv) the extent to which the other person will be free to leave his or her place of residence;

(v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services—the quantum, or the existence, of the debt owed or claimed to be owed.

Penalty: Imprisonment for 12 years.

(2C) A person (the ***first person***) commits an offence of trafficking in persons if:

(a) the first person organises or facilitates the exit or proposed exit of another person from Australia; and

(b) there is an arrangement for the other person to provide sexual services outside Australia; and

(c) the first person deceives the other person about any of the following:

(i) the nature of the sexual services to be provided;

(ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;

(iii) the extent to which the other person will be free to cease providing sexual services;

(iv) the extent to which the other person will be free to leave his or her place of residence;

(v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services—the quantum, or the existence, of the debt owed or claimed to be owed.

Penalty: Imprisonment for 12 years.

(3) Absolute liability applies to paragraphs (1)(c) and (1A)(c).

271.3 Trafficking in persons—aggravated offence

(1) A person (the ***first person***) commits an aggravated offence of trafficking in persons if the first person commits the offence of trafficking in persons in relation to another person (the ***victim***) and any of the following applies:

(a) the first person commits the offence intending that the victim will be exploited, either by the first person or another:

(i) if the offence of trafficking in persons is an offence against subsection 271.2(1), (1B), (2) or (2B)—after entry into Australia; or

(ii) if the offence of trafficking in persons is an offence against subsection 271.2(1A), (1C), (2A) or (2C)—after exit from Australia;

(b) the first person, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;

(c) the first person, in committing the offence:

(i) engages in conduct that gives rise to a danger of death or serious harm to the victim or another person; and

(ii) is reckless as to that danger.

Penalty: Imprisonment for 20 years.

(2) If, on a trial for an offence against this section, the court, or if the trial is before a jury, the jury, is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 271.2, it may find the defendant not guilty of the aggravated offence but guilty of an offence against that section.

(3) Subsection (2) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the offence against section 271.2.

Note: Section 271.2 provides for offences of trafficking in persons.

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271.4 Offence of trafficking in children

(1) A person (the ***first person***) commits an offence of trafficking in children if:

(a) the first person organises or facilitates the entry or proposed entry into Australia, or the receipt in Australia, of another person; and

(b) the other person is under the age of 18; and

(c) in organising or facilitating that entry or proposed entry, or that receipt, the first person:

(i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that entry or receipt; or

(ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that entry or receipt.

Penalty: Imprisonment for 25 years.

(2) A person (the ***first person***) commits an offence of trafficking in children if:

(a) the first person organises or facilitates the exit or proposed exit from Australia of another person; and

(b) the other person is under the age of 18; and

(c) in organising or facilitating that exit or proposed exit, the first person:

(i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that exit; or

(ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that exit.

Penalty: Imprisonment for 25 years.

271.5 Offence of domestic trafficking in persons

(1) A person (the ***first person***) commits an offence of domestic trafficking in persons if:

(a) the first person organises or facilitates the transportation or proposed transportation of another person from one place in Australia to another place in Australia; and

(b) the first person uses coercion, threat or deception; and

(c) that use of coercion, threat or deception results in the first person obtaining the other person's compliance in respect of that transportation or proposed transportation.

Penalty: Imprisonment for 12 years.

(2) A person (the ***first person***) commits an offence of domestic trafficking in persons if:

(a) the first person organises or facilitates the transportation or proposed transportation of another person from one place in Australia to another place in Australia; and

(b) in organising or facilitating that transportation or proposed transportation, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that transportation.

Penalty: Imprisonment for 12 years.

(2A) A person (the ***first person***) commits an offence of domestic trafficking in persons if:

(a) the first person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and

(b) the first person deceives the other person about the fact that the transportation, or any arrangements the first person has made for the other person following the transportation, will involve the provision by the other person of sexual services or will involve the other person's exploitation or the confiscation of the other person's travel or identity documents.

Penalty: Imprisonment for 12 years.

(2B) A person (the ***first person***) commits an offence of domestic trafficking in persons if:

(a) the first person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and

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(b) there is an arrangement for the other person to provide sexual services; and

(c) the first person deceives the other person about any of the following:

(i) the nature of the sexual services to be provided;

(ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;

(iii) the extent to which the other person will be free to cease providing sexual services;

(iv) the extent to which the other person will be free to leave his or her place of residence;

(v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services—the quantum, or the existence, of the debt owed or claimed to be owed.

Penalty: Imprisonment for 12 years.

(3) Absolute liability applies to paragraph (1)(c).

271.6 Domestic trafficking in persons—aggravated offence

(1) A person (the ***first person***) commits an aggravated offence of domestic trafficking in persons if the first person commits the offence of domestic trafficking in persons in relation to another person (the ***victim***) and any of the following applies:

(a) the first person commits the offence intending that the victim will be exploited, either by the first person or by another, after arrival at the place to which the person has been transported;

(b) the first person, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;

(c) the first person, in committing the offence:

(i) engages in conduct that gives rise to a danger of death or serious harm to the victim or another person; and

(ii) is reckless as to that danger.

Penalty: Imprisonment for 20 years.

(2) If, on a trial for an offence against this section, the court, or if the trial is before a jury, the jury, is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 271.5, it may find the defendant not guilty of the aggravated offence, but guilty of an offence against that section.

(3) Subsection (2) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the offence against section 271.5.

Note: Section 271.5 provides for offences of domestic trafficking in persons.

271.7 Offence of domestic trafficking in children

A person commits an offence of domestic trafficking in children if:

(a) the first-mentioned person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and

(b) the other person is under the age of 18; and

(c) in organising or facilitating that transportation, the first-mentioned person:

(i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place; or

(ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place.

Penalty: Imprisonment for 25 years.

Subdivision BA—Organ trafficking

271.7A Removal of organs contrary to this Subdivision

The removal of a person's organ is contrary to this Subdivision if:

(a) the removal, or entering into an agreement for the removal, would be contrary to the law of the State or Territory where it is, or is to be, carried out; or

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(b) neither the victim, nor the victim's guardian, consents to the removal, and it would not meet a medical or therapeutic need of the victim.

271.7B Offence of organ trafficking—entry into and exit from Australia

Entry into Australia

(1) A person (the ***offender***) commits an offence of organ trafficking if:

(a) the offender engages in conduct consisting of the organisation or facilitation of the entry or proposed entry, or the receipt, of another person (the ***victim***) into Australia; and

(b) the offender is reckless as to whether the conduct will result in the removal of an organ of the victim contrary to this Subdivision, by the offender or another person, after or in the course of that entry or receipt.

Penalty: Imprisonment for 12 years.

Note: For when the removal of an organ is contrary to this Subdivision, see section 271.7A.

Exit from Australia

(2) A person (the ***offender***) commits an offence of organ trafficking if:

(a) the offender engages in conduct consisting of the organisation or facilitation of the exit or proposed exit of another person (the ***victim***) from Australia; and

(b) the offender is reckless as to whether the conduct will result in the removal of an organ of the victim contrary to this Subdivision, by the offender or another person, after or in the course of that exit.

Penalty: Imprisonment for 12 years.

Note: For when the removal of an organ is contrary to this Subdivision, see section 271.7A.

271.7C Organ trafficking—aggravated offence

(1) A person (the ***offender***) commits an aggravated offence of organ trafficking if the offender commits an offence of organ trafficking

in relation to another person (the ***victim***) and any of the following applies:

(a) the victim is under 18;

(b) the offender commits the offence intending that an organ of the victim will be removed contrary to this Subdivision, either by the offender or another person:

(i) if the offence of organ trafficking is an offence against subsection 271.7B(1)—after or in the course of entry into Australia; or

(ii) if the offence of organ trafficking is an offence against subsection 271.7B(2)—after or in the course of exit from Australia;

(c) the offender, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;

(d) the offender, in committing the offence:

(i) engages in conduct that gives rise to a danger of death or serious harm to the victim or another person; and

(ii) is reckless as to that danger.

Penalty:

(a) if this subsection applies because the victim is under 18—imprisonment for 25 years; or

(b) in any other case—imprisonment for 20 years.

Note: For when the removal of an organ is contrary to this Subdivision, see section 271.7A.

(2) If, on a trial for an offence against this section, the court, or if the trial is before a jury, the jury, is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 271.7B, it may find the defendant not guilty of the aggravated offence but guilty of an offence against that section.

(3) Subsection (2) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the offence against section 271.7B.

Note: Section 271.7B provides for offences of organ trafficking.

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271.7D Offence of domestic organ trafficking

A person (the ***offender***) commits an offence of domestic organ trafficking if:

(a) the offender engages in conduct consisting of the organisation, or facilitation, of the transportation or proposed transportation of another person (the ***victim***) from one place in Australia to another place in Australia; and

(b) the offender is reckless as to whether the conduct will result in the removal of an organ of the victim contrary to this Subdivision, by the offender or another person, after or in the course of that transportation.

Penalty: Imprisonment for 12 years.

Note: For when the removal of an organ is contrary to this Subdivision, see section 271.7A.

271.7E Domestic organ trafficking—aggravated offence

(1) A person (the ***offender***) commits an aggravated offence of domestic organ trafficking if the offender commits an offence of domestic organ trafficking in relation to another person (the ***victim***) and any of the following applies:

(a) the victim is under 18;

(b) the offender commits the offence intending that an organ of the victim will be removed contrary to this Subdivision, either by the offender or another person, after arrival at the place to which the person has been transported, or in the course of transportation;

(c) the offender, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;

(d) the offender, in committing the offence:

(i) engages in conduct that gives rise to a danger of death or serious harm to the victim or another person; and

(ii) is reckless as to that danger.

Penalty:

(a) if this subsection applies because the victim is under 18—imprisonment for 25 years; or

(b) in any other case—imprisonment for 20 years.

Note: For when the removal of an organ is contrary to this Subdivision, see section 271.7A.

(2) If, on a trial for an offence against this section, the court, or if the trial is before a jury, the jury, is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 271.7D, it may find the defendant not guilty of the aggravated offence, but guilty of an offence against that section.

(3) Subsection (2) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the offence against section 271.7D.

Note: Section 271.7D provides for offences of domestic organ trafficking.

Subdivision BB—Harbouring a victim

271.7F Harbouring a victim

(1) A person (the ***offender***) commits an offence of harbouring a victim if:

(a) the offender harbours, receives or conceals another person (the ***victim***); and

(b) the harbouring, receipt or concealing of the victim:

(i) assists a third person in connection with any offence committed by the third person (the ***third person offence***); or

(ii) furthers a third person's purpose in relation to any offence committed by the third person (the ***third person offence***); and

(c) the third person offence is an offence against this Division (apart from this section) or Division 270.

Penalty: Imprisonment for 4 years.

(2) Recklessness applies in relation to paragraph (1)(b).

(3) Absolute liability applies in relation to paragraph (1)(c).

(4) A person may be found guilty of an offence against subsection (1) even if the third person has not been prosecuted for, or has not been found guilty, of any other offence.

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271.7G Harbouring a victim—aggravated offence

(1) A person (the ***offender***) commits an aggravated offence of harbouring a victim if:

(a) the offender commits an offence of harbouring a victim in relation to another person (the ***victim***); and

(b) the victim is under 18.

Penalty: Imprisonment for 7 years.

(2) If, on a trial for an offence against this section, the trier of fact is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that the defendant is guilty of an offence against section 271.7F, it may find the defendant not guilty of the aggravated offence, but guilty of an offence against that section.

(3) Subsection (2) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the offence against section 271.7F.

Note: Section 271.7F provides for the offence of harbouring a victim.

Subdivision C—Offences relating to debt bondage

271.8 Offence of debt bondage

A person commits an offence of debt bondage if:

(a) the person engages in conduct that causes another person to enter into debt bondage; and

(b) the person intends to cause the other person to enter into debt bondage.

Penalty: Imprisonment for 4 years.

271.9 Debt bondage—aggravated offence

(1) A person (the ***offender***) commits an offence of aggravated debt bondage if the offender commits an offence of debt bondage in relation to another person (the ***victim***) and any of the following applies:

(a) the victim is under 18;

(b) the offender, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;

(c) the offender, in committing the offence:

(i) engages in conduct that gives rise to a danger of death or serious harm to the victim or another person; and

(ii) is reckless as to that danger.

Penalty: Imprisonment for 7 years.

(2) If, on a trial for an offence against this section, the trier of fact is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that the defendant is guilty of an offence against section 271.8, it may find the defendant not guilty of the aggravated offence, but guilty of an offence against that section.

(3) Subsection (2) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the offence against section 271.8.

Note: Section 271.8 provides for the offence of debt bondage.

Subdivision D—Offences against Division 271: general

271.10 Jurisdictional requirements—offences other than domestic trafficking in persons or organs

Section 15.2 (extended geographical jurisdiction—category B) applies to an offence against section 271.2, 271.3, 271.4, 271.7B, 271.7C, 271.7F, 271.7G, 271.8 or 271.9.

271.11 Jurisdictional requirements—offences of domestic trafficking in persons or organs

A person commits an offence against section 271.5, 271.6, 271.7, 271.7D or 271.7E only if one or more of the following paragraphs applies:

(a) the conduct constituting the offence occurs to any extent outside Australia;

(b) the conduct constituting the offence involves transportation across State borders, either for reward or in connection with a commercial arrangement;

(c) the conduct constituting the offence occurs within a Territory or involves transportation to or from a Territory;

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(d) the conduct constituting the offence is engaged in by, or on behalf of, a constitutional corporation, or in circumstances where the victims of the trafficking conduct were intended to be employed by a constitutional corporation;

(e) some of the conduct constituting the offence is engaged in by communication using a postal, telegraphic or telephonic service within the meaning of paragraph 51(v) of the Constitution;

(f) the victim of the conduct constituting the offence is an alien for the purposes of paragraph 51(xix) of the Constitution.

271.11A Offences against Division 271—relevant evidence

(1) For the purposes of proceedings for an offence against this Division, the trier of fact may have regard to any of the matters covered by subsection (2) in determining whether, in relation to a person (the ***alleged victim***) against whom the offence is alleged to have been committed:

(a) in the case of an offence against Subdivision B or BB—the alleged victim has been coerced, threatened or deceived; or

(b) in the case of an offence against Subdivision BA—the alleged victim, or the alleged victim's guardian, has consented to the removal of an organ of the alleged victim; or

(c) in the case of an offence against Subdivision C—another person has caused the alleged victim to enter into debt bondage.

(2) The following matters are covered by this subsection:

(a) the economic relationship between the alleged victim and the alleged offender;

(b) the terms of any written or oral contract or agreement between the alleged victim and the alleged offender;

(c) the personal circumstances of the alleged victim, including but not limited to:

(i) whether he or she is entitled to be in Australia under the *Migration Act 1958*; and

(ii) his or her ability to speak, write and understand English or another language; and

(iii) the extent of his or her social and physical dependence on the alleged offender.

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(3) If subsection (1) applies in relation to the consent of an alleged victim's guardian to the removal of an organ of the alleged victim, a reference in subsection (2) to the alleged victim is taken to include a reference to the alleged victim's guardian.

(4) Subsection (1) does not:

(a) prevent the leading of any other evidence in the relevant proceedings; or

(b) limit the manner in which evidence may be given or the admissibility of evidence.

271.11B Offences against Division 271—no defence of victim consent or acquiescence

To avoid doubt, it is not a defence in a proceeding for an offence against this Division that a person against whom the offence is alleged to have been committed consented to, or acquiesced in, conduct constituting any element of the offence.

271.12 Offences against Division 271—other laws not excluded

(1) This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

Note: Division 279 (video link evidence) applies to a proceeding for an offence against this Division.

(2) Without limiting subsection (1), this Division is not intended to exclude or limit the concurrent operation of any other law of the Commonwealth, or a law of a State or Territory, that makes:

(a) an act or omission that is an offence against a provision of this Division; or

(b) a similar act or omission;

an offence against the law of the Commonwealth, State or Territory.

(3) Subsection (2) applies even if the other law of the Commonwealth, or the law of the State or Territory, does any one or more of the following:

(a) provides for a penalty for the offence that differs from the penalty provided for in this Division;

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(b) provides for a fault element in relation to the offence that differs from the fault elements applicable to the offence under this Division;

(c) provides for a defence in relation to the offence that differs from the defences applicable to the offence under this Division.

271.13 Double jeopardy

If a person has been convicted or acquitted in a country outside Australia of an offence against the law of that country in respect of any conduct, the person cannot be convicted of an offence against this Division in respect of that conduct.

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Division 272—Child sex offences outside Australia

Subdivision A—Preliminary

272.1 Definitions

In this Division:

cause a person to engage in sexual intercourse or other sexual activity has the meaning given by section 272.2.

offence, in the case of a reference to an offence against this Division or against a particular provision of it, has a meaning affected by section 272.5.

position of trust or authority has the meaning given by subsection 272.3(1).

sexual intercourse has the meaning given by section 272.4.

272.2 When conduct *causes* a person to engage in sexual intercourse or other sexual activity

For the purposes of this Division, a person's conduct ***causes*** another person to engage in sexual intercourse or other sexual activity if it substantially contributes to the other person engaging in sexual intercourse or other sexual activity.

272.3 Meaning of *position of trust or authority*

(1) For the purposes of this Code, a person is in a ***position of trust or authority*** in relation to another person if:

(a) the person is the other person's parent, step-parent, or grandparent; or

(b) the person is the other person's foster parent, guardian or carer; or

(c) the person is a teacher engaged in the education of the other person; or

(d) the person is a religious official or spiritual leader (however described) providing pastoral care or religious instruction to the other person; or

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(e) the person is the other person's sports coach; or

(f) the person is a medical practitioner, nurse, psychologist, other health professional (however described), counsellor or social worker providing professional services to the other person; or

(g) the person is a member of a police force or police service, or a person employed or providing services in a correctional institution (however described), performing duties in relation to the other person; or

(h) the person:

(i) is an employer of the other person; or

(ii) has the authority to determine significant aspects of the other person's terms and conditions of employment; or

(iii) has the authority to terminate the other person's employment (whether the other person is being paid in respect of that employment or is working in a voluntary capacity).

(2) Without limiting who is a grandparent of a person for the purposes of this section, a person (the ***first person***) is the ***grandparent*** of another person if the first person is a parent or step-parent of a parent or step-parent of the other person.

272.4 Meaning of *sexual intercourse*

(1) In this Code, ***sexual intercourse*** means:

(a) the penetration, to any extent, of the vagina or anus of a person by any part of the body of another person; or

(b) the penetration, to any extent, of the vagina or anus of a person, by an object, carried out by another person; or

(c) fellatio; or

(d) cunnilingus; or

(e) the continuation of any activity mentioned in paragraph (a), (b), (c) or (d).

(2) In this Code, ***sexual intercourse*** does not include an act of penetration that:

(a) is carried out for a proper medical or hygienic purpose; or

(b) is carried out for a proper law enforcement purpose.

(3) For the purposes of this section, ***vagina*** includes:

(a) any part of a female person's genitalia; and

(b) a surgically constructed vagina.

272.5 Meaning of *offence against this Division* and extension of criminal responsibility

(1) A reference in this Division (except section 272.19, which deals with encouraging an offence against this Division) to an offence against this Division, or against a particular provision of it, includes:

(a) a reference to:

(i) an offence against section 6 of the *Crimes Act 1914* (accessory after the fact); or

(ii) an offence against section 11.1 (attempt), 11.5 (conspiracy) or 272.19 of this Code;

that relates to an offence against this Division or against that provision of it; and

(b) a reference to an offence against this Division, or against that provision of it, because of section 11.2 (complicity and common purpose), 11.2A (joint commission) or 11.3 (commission by proxy).

(2) A reference in section 272.19 (encouraging offence against this Division) to an offence against this Division or against a particular provision of it does not include a reference to such an offence because of section 11.2 (complicity and common purpose) or 11.2A (joint commission).

(3) Section 11.1 (attempt) does not apply to an offence against:

(a) section 272.14 (procuring child to engage in sexual activity outside Australia); or

(b) section 272.15 ("grooming" child to engage in sexual activity outside Australia); or

(c) section 272.20 (preparing for or planning offence against this Division).

(4) Section 11.4 (incitement) does not apply to an offence against this Division.

(5) Section 11.5 (conspiracy) does not apply to an offence against section 272.19 (encouraging offence against this Division).

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272.6 Who can be prosecuted for an offence committed outside Australia

A person must not be charged with an offence against this Division that the person allegedly committed wholly outside Australia unless, at the time of the offence, the person was:

(a) an Australian citizen; or

(b) a resident of Australia; or

(c) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; or

(d) any other body corporate that carries on its activities principally in Australia.

272.7 Saving of other laws

This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

Note: Division 279 (video link evidence) applies to a proceeding for an offence against this Division.

Subdivision B—Sexual offences against children outside Australia

272.8 Sexual intercourse with child outside Australia

Engaging in sexual intercourse with child

(1) A person commits an offence if:

(a) the person engages in sexual intercourse with another person (the ***child***); and

(b) the child is under 16; and

(c) the sexual intercourse is engaged in outside Australia.

Penalty: Imprisonment for 20 years.

Causing child to engage in sexual intercourse in presence of defendant

(2) A person commits an offence if:

(a) the person engages in conduct in relation to another person (the ***child***); and
(b) that conduct causes the child to engage in sexual intercourse in the presence of the person; and
(c) the child is under 16 when the sexual intercourse is engaged in; and
(d) the sexual intercourse is engaged in outside Australia.

Penalty: Imprisonment for 20 years.

(3) The fault element for paragraph (2)(b) is intention.

(4) Absolute liability applies to paragraphs (1)(b) and (c) and (2)(c) and (d).

Note 1: For absolute liability, see section 6.2.

Note 2: For a defence based on belief about age, see section 272.16.

272.9 Sexual activity (other than sexual intercourse) with child outside Australia

Engaging in sexual activity with child

(1) A person commits an offence if:
(a) the person engages in sexual activity (other than sexual intercourse) with another person (the ***child***); and
(b) the child is under 16; and
(c) the sexual activity is engaged in outside Australia.

Penalty: Imprisonment for 15 years.

Causing child to engage in sexual activity in presence of defendant

(2) A person commits an offence if:
(a) the person engages in conduct in relation to another person (the ***child***); and
(b) that conduct causes the child to engage in sexual activity (other than sexual intercourse) in the presence of the person; and
(c) the child is under 16 when the sexual activity is engaged in; and
(d) the sexual activity is engaged in outside Australia.

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Penalty: Imprisonment for 15 years.

(3) The fault element for paragraph (2)(b) is intention.

(4) Absolute liability applies to paragraphs (1)(b) and (c) and (2)(c) and (d).

Note: For absolute liability, see section 6.2.

Defence—child present but defendant does not intend to derive gratification

(5) It is a defence to a prosecution for an offence against subsection (1) or (2) if:

(a) the conduct constituting the offence consists only of the child being in the presence of the defendant while sexual activity is engaged in; and

(b) the defendant proves that he or she did not intend to derive gratification from the presence of the child during that activity.

Note 1: A defendant bears a legal burden in relation to the matter in this subsection, see section 13.4.

Note 2: For a defence based on belief about age, see section 272.16.

272.10 Aggravated offence—child with mental impairment or under care, supervision or authority of defendant

(1) A person commits an offence against this section (the ***aggravated offence***) if:

(a) the person commits an offence (the ***underlying offence***) against one of the following provisions in relation to another person (the ***child***):

(i) subsection 272.8(1) (engaging in sexual intercourse with child outside Australia);

(ii) subsection 272.8(2) (causing child to engage in sexual intercourse in presence of defendant outside Australia);

(iii) subsection 272.9(1) (engaging in sexual activity (other than sexual intercourse) with child outside Australia);

(iv) subsection 272.9(2) (causing child to engage in sexual activity (other than sexual intercourse) in presence of defendant outside Australia); and

(b) either or both of the following apply at the time the person commits the underlying offence:

(i) the child has a mental impairment;

(ii) the person is in a position of trust or authority in relation to the child, or the child is otherwise under the care, supervision or authority of the person.

Penalty: Imprisonment for 25 years.

(2) There is no fault element for the physical element described in paragraph (1)(a) other than the fault elements (however described), if any, for the underlying offence.

(3) To avoid doubt, a person does not commit the underlying offence for the purposes of paragraph (1)(a) if the person has a defence to the underlying offence.

(4) Absolute liability applies to subparagraph (1)(b)(i).

Note: For absolute liability, see section 6.2.

(5) Strict liability applies to subparagraph (1)(b)(ii).

Note: For strict liability, see section 6.1.

Defence—belief that child did not have mental impairment

(6) Subparagraph (1)(b)(i) does not apply if the defendant proves that, at the time he or she committed the underlying offence, he or she believed that the child did not have a mental impairment.

Note: A defendant bears a legal burden in relation to the matter in this subsection, see section 13.4.

(7) In determining whether the defendant had the belief mentioned in subsection (6), the trier of fact may take into account whether the alleged belief was reasonable in the circumstances.

272.11 Persistent sexual abuse of child outside Australia

(1) A person commits an offence against this section if the person commits an offence (the ***underlying offence***) against one or more of the following provisions in relation to the same person (the ***child***) on 3 or more separate occasions during any period:

(a) subsection 272.8(1) (engaging in sexual intercourse with child outside Australia);

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(b) subsection 272.8(2) (causing child to engage in sexual intercourse in presence of defendant outside Australia);
(c) subsection 272.9(1) (engaging in sexual activity (other than sexual intercourse) with child outside Australia);
(d) subsection 272.9(2) (causing child to engage in sexual activity (other than sexual intercourse) in presence of defendant outside Australia).

Penalty: Imprisonment for 25 years.

(2) There is no fault element for any of the physical elements described in subsection (1) other than the fault elements (however described), if any, for the underlying offence.

(3) To avoid doubt, a person does not commit the underlying offence for the purposes of subsection (1) if the person has a defence to the underlying offence.

Offence or conduct need not be the same

(4) For the purposes of subsection (1), it is immaterial whether the underlying offence, or the conduct constituting the underlying offence, is the same on each occasion.

Certain matters need not be proved

(5) In proceedings for an offence against this section, it is not necessary to specify or to prove the dates or exact circumstances of the occasions on which the conduct constituting the offence against this section occurred.

Content of charge

(6) A charge of an offence against this section:
(a) must specify with reasonable particularity the period during which the offence against this section occurred; and
(b) must describe the nature of the separate offences alleged to have been committed by the person during that period.

Trier of fact to be satisfied of certain matters

(7) In order for the person to be found guilty of an offence against this section:

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(a) the trier of fact must be satisfied beyond reasonable doubt that the evidence establishes at least 3 separate occasions during the period concerned on which the person engaged in conduct constituting an offence against subsection 272.8(1) or (2) or 272.9(1) or (2), of a nature described in the charge, in relation to the child; and

(b) the trier of fact must be so satisfied about the material facts of the 3 such occasions, although the trier of fact need not be so satisfied about the dates or the order of those occasions; and

(c) if the trier of fact is a jury and more than 3 such occasions are relied on as evidence of the commission of an offence against this section—all the members of the jury must be so satisfied about the same 3 incidents.

(8) In proceedings for an offence against this section, the judge must warn the jury (if any) of the requirements of subsection (7).

Double jeopardy etc.

(9) A person who has been convicted or acquitted of an offence against this section may not be convicted of another offence against section 272.8, 272.9 or 272.10 that is alleged to have been committed in relation to the child in the period during which the person was alleged to have committed the offence against this section.

(10) However, subsection (9) does not prevent an alternative verdict under section 272.28.

(11) A person who has been convicted or acquitted of an offence against section 272.8, 272.9 or 272.10 in relation to a person (the ***child***) may not be convicted of an offence against this section in relation to the child if any of the occasions relied on as evidence of the commission of the offence against this section includes the conduct that constituted the offence of which the person was convicted or acquitted.

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272.12 Sexual intercourse with young person outside Australia—defendant in position of trust or authority

Engaging in sexual intercourse with young person

(1) A person commits an offence if:
  (a) the person engages in sexual intercourse with another person (the ***young person***); and
  (b) the young person is at least 16 but under 18; and
  (c) the person is in a position of trust or authority in relation to the young person; and
  (d) the sexual intercourse is engaged in outside Australia.

Penalty: Imprisonment for 10 years.

Causing young person to engage in sexual intercourse in presence of defendant

(2) A person commits an offence if:
  (a) the person engages in conduct in relation to another person (the ***young person***); and
  (b) that conduct causes the young person to engage in sexual intercourse in the presence of the person; and
  (c) the young person is at least 16 but under 18 when the sexual intercourse is engaged in; and
  (d) the person is in a position of trust or authority in relation to the young person; and
  (e) the sexual intercourse is engaged in outside Australia.

Penalty: Imprisonment for 10 years.

(3) The fault element for paragraph (2)(b) is intention.

(4) Absolute liability applies to paragraphs (1)(b) and (d) and (2)(c) and (e).

Note 1: For absolute liability, see section 6.2.

Note 2: For a defence based on belief about age, see section 272.16.

(5) Strict liability applies to paragraphs (1)(c) and (2)(d).

Note: For strict liability, see section 6.1.

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272.13 Sexual activity (other than sexual intercourse) with young person outside Australia—defendant in position of trust or authority

Engaging in sexual activity with young person

(1) A person commits an offence if:

(a) the person engages in sexual activity (other than sexual intercourse) with another person (the ***young person***); and

(b) the young person is at least 16 but under 18; and

(c) the person is in a position of trust or authority in relation to the young person; and

(d) the sexual activity is engaged in outside Australia.

Penalty: Imprisonment for 7 years.

Causing young person to engage in sexual activity in presence of defendant

(2) A person commits an offence if:

(a) the person engages in conduct in relation to another person (the ***young person***); and

(b) that conduct causes the young person to engage in sexual activity (other than sexual intercourse) in the presence of the person; and

(c) the young person is at least 16 but under 18 when the sexual activity is engaged in; and

(d) the person is in a position of trust or authority in relation to the young person; and

(e) the sexual activity is engaged in outside Australia.

Penalty: Imprisonment for 7 years.

(3) The fault element for paragraph (2)(b) is intention.

(4) Absolute liability applies to paragraphs (1)(b) and (d) and (2)(c) and (e).

Note 1: For absolute liability, see section 6.2.

Note 2: For a defence based on belief about age, see section 272.16.

(5) Strict liability applies to paragraphs (1)(c) and (2)(d).

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Note: For strict liability, see section 6.1.

Defence—young person present but defendant does not intend to derive gratification

(6) It is a defence to a prosecution for an offence against subsection (1) or (2) if:

(a) the conduct constituting the offence consists only of the young person being in the presence of the defendant while sexual activity is engaged in; and

(b) the defendant proves that he or she did not intend to derive gratification from the presence of the young person during that activity.

Note 1: A defendant bears a legal burden in relation to the matter in this subsection, see section 13.4.

Note 2: For a defence based on belief about age, see section 272.16.

272.14 Procuring child to engage in sexual activity outside Australia

(1) A person commits an offence if:

(a) the person engages in conduct in relation to another person (the ***child***); and

(b) the person does so with the intention of procuring the child to engage in sexual activity (whether or not with the person) outside Australia; and

(c) the child is someone:

(i) who is under 16; or

(ii) who the person believes to be under 16; and

(d) one or more of the following apply:

(i) the conduct referred to in paragraph (a) occurs wholly or partly outside Australia;

(ii) the child is outside Australia when the conduct referred to in paragraph (a) occurs;

(iii) the conduct referred to in paragraph (a) occurs wholly in Australia and the child is in Australia when that conduct occurs.

Penalty: Imprisonment for 15 years.

(2) Absolute liability applies to subparagraph (1)(c)(i) and paragraph (1)(d).

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Note 1: For absolute liability, see section 6.2.

Note 2: For a defence based on belief about age, see section 272.16.

(3) A person may be found guilty of an offence against subsection (1) even if it is impossible for the sexual activity referred to in that subsection to take place.

(4) For the purposes of subsection (1), it does not matter that the child is a fictitious person represented to the person as a real person.

272.15 "Grooming" child to engage in sexual activity outside Australia

(1) A person commits an offence if:

(a) the person engages in conduct in relation to another person (the ***child***); and

(b) the person does so with the intention of making it easier to procure the child to engage in sexual activity (whether or not with the person) outside Australia; and

(c) the child is someone:

(i) who is under 16; or

(ii) who the person believes to be under 16; and

(d) one or more of the following apply:

(i) the conduct referred to in paragraph (a) occurs wholly or partly outside Australia;

(ii) the child is outside Australia when the conduct referred to in paragraph (a) occurs;

(iii) the conduct referred to in paragraph (a) occurs wholly in Australia and the child is in Australia when that conduct occurs.

Penalty: Imprisonment for 12 years.

(2) Absolute liability applies to subparagraph (1)(c)(i) and paragraph (1)(d).

Note 1: For absolute liability, see section 6.2.

Note 2: For a defence based on belief about age, see section 272.16.

(3) A person may be found guilty of an offence against subsection (1) even if it is impossible for the sexual activity referred to in that subsection to take place.

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(4) For the purposes of subsection (1), it does not matter that the child is a fictitious person represented to the person as a real person.

272.16 Defence based on belief about age

Offences involving sexual intercourse or other sexual activity with a child—belief that child at least 16

(1) It is a defence to a prosecution for an offence against section 272.8 or 272.9 if the defendant proves that, at the time of the sexual intercourse or sexual activity, he or she believed that the child was at least 16.

Note: A defendant bears a legal burden in relation to the matter in this subsection, see section 13.4.

Offences involving sexual intercourse or other sexual activity with young person—belief that young person at least 18

(2) It is a defence to a prosecution for an offence against section 272.12 or 272.13 if the defendant proves that, at the time of the sexual intercourse or sexual activity, he or she believed that the young person was at least 18.

Note: A defendant bears a legal burden in relation to the matter in this subsection, see section 13.4.

Offences involving procuring or "grooming" child for sexual activity—belief that child at least 16

(3) It is a defence to a prosecution for an offence against section 272.14 or 272.15 if the defendant proves that, at the time the defendant engaged in the conduct constituting the offence, he or she believed that the child was at least 16.

Note: A defendant bears a legal burden in relation to the matter in this subsection, see section 13.4.

Trier of fact may take into account whether belief reasonable

(4) In determining whether the defendant had the belief mentioned in subsection (1), (2) or (3), the trier of fact may take into account whether the alleged belief was reasonable in the circumstances.

272.17 Defence based on valid and genuine marriage

Offences involving engaging in sexual intercourse or other sexual activity with child or young person

(1) It is a defence to a prosecution for an offence against subsection 272.8(1), 272.9(1), 272.12(1) or 272.13(1) if the defendant proves that:

(a) at the time of the sexual intercourse or sexual activity, there existed between the defendant and the child or the young person a marriage that was valid, or recognised as valid, under the law of:

(i) the place where the marriage was solemnised; or

(ii) the place where the offence was committed; or

(iii) the place of the defendant's residence or domicile; and

(b) when it was solemnised, the marriage was genuine.

Note: A defendant bears a legal burden in relation to the matter in this subsection, see section 13.4.

Offences involving procuring or "grooming" child for sexual activity

(2) It is a defence to a prosecution for an offence against subsection 272.14(1) or 272.15(1) if the defendant proves that:

(a) at the time he or she committed the offence, there existed between the defendant and the child a marriage that was valid, or recognised as valid, under the law of:

(i) the place where the marriage was solemnised; or

(ii) the place where the offence was committed; or

(iii) the place of the defendant's residence or domicile; and

(b) when it was solemnised, the marriage was genuine.

Note: A defendant bears a legal burden in relation to the matter in this subsection, see section 13.4.

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Subdivision C—Offences of benefiting from, encouraging or preparing for sexual offences against children outside Australia

272.18 Benefiting from offence against this Division

(1) A person commits an offence if:

(a) the person engages in conduct; and

(b) the person does so with the intention of benefiting from an offence against this Division; and

(c) the conduct is reasonably capable of resulting in the person benefiting from such an offence.

Penalty: Imprisonment for 20 years.

(2) Subsection (1) applies:

(a) whether the conduct is engaged in within or outside Australia; and

(b) whether or not the person intends to benefit financially from an offence against this Division; and

(c) whether or not an offence against this Division is in fact committed.

(3) Absolute liability applies to paragraph (1)(c).

Note: For absolute liability, see section 6.2.

272.19 Encouraging offence against this Division

(1) A person commits an offence if:

(a) the person engages in conduct; and

(b) the person does so with the intention of encouraging an offence against this Division (other than this section or section 272.20); and

(c) the conduct is reasonably capable of encouraging such an offence.

Penalty: Imprisonment for 20 years.

(2) Subsection (1) applies:

(a) whether the conduct is engaged in within or outside Australia; and

(b) whether or not an offence against this Division is in fact committed.

(3) Absolute liability applies to paragraph (1)(c).

Note: For absolute liability, see section 6.2.

(4) In this section, ***encourage*** means:

(a) encourage, incite to, or urge, by any means whatever, (including by a written, electronic or other form of communication); or

(b) aid, facilitate, or contribute to, in any way whatever.

272.20 Preparing for or planning offence against this Division

Offences involving sexual intercourse or other sexual activity with child, and benefiting offence

(1) A person commits an offence if:

(a) the person does an act; and

(b) the person does so with the intention of preparing for, or planning, an offence against section 272.8, 272.9, 272.10, 272.11 or 272.18.

Penalty: Imprisonment for 10 years.

Offences involving sexual intercourse or other sexual activity with young person

(2) A person commits an offence if:

(a) the person does an act; and

(b) the person does so with the intention of preparing for, or planning, an offence against section 272.12 or 272.13.

Penalty: Imprisonment for 5 years.

(3) Subsections (1) and (2) apply:

(a) whether the act is done within or outside Australia; and

(b) whether or not an offence against a provision referred to in paragraph (1)(b) or (2)(b) is in fact committed; and

(c) whether or not the act is done in preparation for, or planning, a specific offence against a provision referred to in paragraph (1)(b) or (2)(b); and

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(d) whether or not the act is done in preparation for, or planning, more than one offence against a provision referred to in paragraph (1)(b) or (2)(b).

Subdivision E—Other rules about conduct of trials

272.27 Evidence relating to a person's age

(1) For the purposes of this Division, evidence that a person was represented to the defendant as being under or of a particular age is, in the absence of evidence to the contrary, proof that the defendant believed that person to be under or of that age.

(2) In determining for the purposes of this Division how old a person is or was at a particular time, a jury or court may treat any of the following as admissible evidence:
  (a) the person's appearance;
  (b) medical or other scientific opinion;
  (c) a document that is or appears to be an official or medical record from a country outside Australia;
  (d) a document that is or appears to be a copy of such a record.

(3) Subsection (2) does not make any other kind of evidence inadmissible, and does not affect a prosecutor's duty to do all he or she can to adduce the best possible evidence for determining the question.

(4) If, on a trial for an offence against this Division, evidence may be treated as admissible because of subsection (2), the court must warn the jury that it must be satisfied beyond reasonable doubt in determining the question.

272.28 Alternative verdicts

If, on a trial for an offence (the ***column 1 offence***) against a provision referred to in column 1 of an item in the following table, the trier of fact:
  (a) is not satisfied that the defendant is guilty of the column 1 offence; but
  (b) is satisfied beyond reasonable doubt that he or she is guilty of an offence (the ***column 2 offence***) against a provision referred to in column 2 of that item;

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it may find the defendant not guilty of the column 1 offence but guilty of the column 2 offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Alternative verdicts

Item	Column 1	Column 2
1	subsection 272.8(1)	subsection 272.9(1)
2	subsection 272.8(2)	subsection 272.9(2)
3	subsection 272.9(1)	subsection 272.8(1)
4	subsection 272.9(2)	subsection 272.8(2)
5	subsection 272.10(1)	subsection 272.8(1), 272.8(2), 272.9(1) or 272.9(2)
6	subsection 272.11(1)	subsection 272.8(1), 272.8(2), 272.9(1), 272.9(2) or 272.10(1)
7	subsection 272.12(1)	subsection 272.13(1)
8	subsection 272.12(2)	subsection 272.13(2)
9	subsection 272.13(1)	subsection 272.12(1)
10	subsection 272.13(2)	subsection 272.12(2)

272.29 Double jeopardy

If a person has been convicted or acquitted in a country outside Australia of an offence against the law of that country in respect of any conduct, the person cannot be convicted of an offence against this Division in respect of that conduct.

272.30 Sentencing

(1) In determining the sentence to be passed, or the order to be made, in respect of a person for an offence against Subdivision B of this Division, the court must take into account the age and maturity of the person in relation to whom the offence was committed, so far as these matters are relevant and known to the court.

(2) The matters mentioned in subsection (1) are in addition to any other matters the court must take into account (for example, the matters mentioned in subsection 16A(2) of the *Crimes Act 1914*).

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272.31 Consent to commencement of proceedings where defendant under 18

(1) Proceedings for an offence against this Division must not be commenced without the consent of the Attorney-General if the defendant was under 18 at the time he or she allegedly engaged in the conduct constituting the offence.

(2) However, a person may be arrested for, charged with, or remanded in custody or on bail in connection with, such an offence before the necessary consent has been given.

Division 273—Offences involving child pornography material or child abuse material outside Australia

Subdivision A—Preliminary

273.1 Definitions

(1) Subject to subsections (2) and (3), an expression used in this Division that is defined in Part 10.6 has the same meaning in this Division as it has in that Part.

Note: These expressions include ***child abuse material*** and ***child pornography material***.

(2) A reference in this Division to a person having possession or control of material includes a reference to the person:

(a) having possession of a computer or data storage device that holds or contains the material; or

(b) having possession of a document in which the material is recorded; or

(c) having control of material held in a computer that is in the possession of another person (whether inside or outside Australia).

(3) A reference in this Division to a person producing, distributing or obtaining material includes a reference to the person:

(a) producing, distributing or obtaining material held or contained in a computer or data storage device; or

(b) producing, distributing or obtaining a document in which the material is recorded.

(4) Section 473.4 applies in relation to this Division as if the reference in that section to Part 10.6 were a reference to this Division.

Note: Section 473.4 sets out matters that may be taken into account in deciding whether particular material is offensive.

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273.2 Who can be prosecuted for an offence committed outside Australia

A person must not be charged with an offence against this Division that the person allegedly committed outside Australia unless, at the time of the offence, the person was:

(a) an Australian citizen; or

(b) a resident of Australia; or

(c) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; or

(d) any other body corporate that carries on its activities principally in Australia.

273.2A Consent to commencement of proceedings where defendant under 18

(1) Proceedings for an offence against this Division must not be commenced without the consent of the Attorney-General if the defendant was under 18 at the time he or she allegedly engaged in the conduct constituting the offence.

(2) However, a person may be arrested for, charged with, or remanded in custody or on bail in connection with, such an offence before the necessary consent has been given.

273.3 Double jeopardy

If a person has been convicted or acquitted in a country outside Australia of an offence against the law of that country in respect of any conduct, the person cannot be convicted of an offence against this Division in respect of that conduct.

273.4 Saving of other laws

This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

Note: Division 279 (video link evidence) applies to a proceeding for an offence against this Division.

Subdivision B—Offences committed overseas involving child pornography material or child abuse material

273.5 Possessing, controlling, producing, distributing or obtaining child pornography material outside Australia

(1) A person commits an offence if:

(a) the person:

(i) has possession or control of material; or

(ii) produces, distributes or obtains material; or

(iii) facilitates the production or distribution of material; and

(b) the material is child pornography material; and

(c) the conduct referred to in paragraph (a) occurs outside Australia.

Penalty: Imprisonment for 15 years.

(2) Absolute liability applies to paragraph (1)(c).

Note: For absolute liability, see section 6.2.

273.6 Possessing, controlling, producing, distributing or obtaining child abuse material outside Australia

(1) A person commits an offence if:

(a) the person:

(i) has possession or control of material; or

(ii) produces, distributes or obtains material; or

(iii) facilitates the production or distribution of material; and

(b) the material is child abuse material; and

(c) the conduct referred to in paragraph (a) occurs outside Australia.

Penalty: Imprisonment for 15 years.

(2) Absolute liability applies to paragraph (1)(c).

Note: For absolute liability, see section 6.2.

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273.7 Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people

(1) A person commits an offence against this section if:

(a) the person commits an offence against either of the following provisions on 3 or more separate occasions:

(i) section 273.5 (possessing etc. child pornography material outside Australia);

(ii) section 273.6 (possessing etc. child abuse material outside Australia); and

(b) the commission of each such offence involves 2 or more people.

Penalty: Imprisonment for 25 years.

(2) There is no fault element for any of the physical elements described in paragraph (1)(a) other than the fault elements (however described), if any, for the offence against section 273.5 or 273.6.

(3) To avoid doubt, a person does not commit an offence against section 273.5 or 273.6 for the purposes of paragraph (1)(a) if the person has a defence to that offence.

Offence or conduct need not be the same

(4) For the purposes of subsection (1), it is immaterial whether the offence, or the conduct constituting the offence, is the same on each occasion.

Double jeopardy etc.

(5) A person who has been convicted or acquitted of an offence (the ***aggravated offence***) against this section may not be convicted of an offence against section 273.5 or 273.6 in relation to the conduct that constituted the aggravated offence.

(6) Subsection (5) does not prevent an alternative verdict under section 273.8.

(7) A person who has been convicted or acquitted of an offence (the ***underlying offence***) against section 273.5 or 273.6 may not be

convicted of an offence against this section in relation to the conduct that constituted the underlying offence.

273.8 Alternative verdict if aggravated offence not proven

If, on a trial for an offence (the ***aggravated offence***) against subsection 273.7(1), the trier of fact:

(a) is not satisfied that the defendant is guilty of the aggravated offence; but

(b) is satisfied beyond reasonable doubt that he or she is guilty of an offence against section 273.5 or 273.6;

it may find the defendant not guilty of the aggravated offence but guilty of the offence against section 273.5 or 273.6, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Subdivision C—Defences

273.9 Defences to offences against this Division

(1) A person is not criminally responsible for an offence against section 273.5 or 273.6 because of engaging in particular conduct if the conduct:

(a) is of public benefit; and

(b) does not extend beyond what is of public benefit.

In determining whether the person is, under this subsection, not criminally responsible for the offence, the question whether the conduct is of public benefit is a question of fact and the person's motives in engaging in the conduct are irrelevant.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

(2) For the purposes of subsection (1), conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in:

(a) enforcing a law of the Commonwealth, a State or Territory, or a foreign country; or

(b) monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or Territory or a foreign country; or

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(c) the administration of justice (whether within or outside Australia); or

(d) conducting scientific, medical or educational research.

(3) Paragraph (2)(d) only applies if the person's conduct was, in all the circumstances, reasonable having regard to the purpose mentioned in that paragraph.

(4) A person is not criminally responsible for an offence against section 273.5 or 273.6 if:

(a) the person is, at the time of the offence:

(i) a law enforcement officer; or

(ii) an intelligence or security officer; or

(iii) an officer or employee of the government of a foreign country performing similar duties to an intelligence or security officer; and

(b) the person is acting in the course of his or her duties; and

(c) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

(5) A person is not criminally responsible for an offence against section 273.5 or 273.6 if the person engages in the conduct in good faith for the sole purpose of:

(a) assisting the Australian Communications and Media Authority to detect:

(i) prohibited content (within the meaning of Schedule 7 to the *Broadcasting Services Act 1992*); or

(ii) potential prohibited content (within the meaning of that Schedule);

in the performance of the Authority's functions under Schedule 5 or Schedule 7 to that Act; or

(b) manufacturing or developing, or updating, content filtering technology (including software) in accordance with:

(i) a recognised alternative access-prevention arrangement (within the meaning of clause 40 of Schedule 5 to the *Broadcasting Services Act 1992*); or

(ii) a designated alternative access-prevention arrangement (within the meaning of clause 60 of that Schedule).

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

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Division 274—Torture

274.1 Definitions

(1) In this Division:

Convention means the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations at New York on 10 December 1984.

Note: The text of the Convention is set out in Australian Treaty Series 1989 No. 21 ([1989] ATS 21). In 2010, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

(2) An expression that is used both in this Division and in the Convention (whether or not a particular meaning is given to it by the Convention) has, in this Division, the same meaning as it has in the Convention.

274.2 Torture

(1) A person (the ***perpetrator***) commits an offence if the perpetrator:

(a) engages in conduct that inflicts severe physical or mental pain or suffering on a person (the ***victim***); and

(b) the conduct is engaged in:

(i) for the purpose of obtaining from the victim or from a third person information or a confession; or

(ii) for the purpose of punishing the victim for an act which the victim or a third person has committed or is suspected of having committed; or

(iii) for the purpose of intimidating or coercing the victim or a third person; or

(iv) for a purpose related to a purpose mentioned in subparagraph (i), (ii) or (iii); and

(c) the perpetrator engages in the conduct:

(i) in the capacity of a public official; or

(ii) acting in an official capacity; or

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(iii) acting at the instigation, or with the consent or acquiescence, of a public official or other person acting in an official capacity.

Penalty: Imprisonment for 20 years.

(2) A person (the ***perpetrator***) commits an offence if the perpetrator:

(a) engages in conduct that inflicts severe physical or mental pain or suffering on a person; and

(b) the conduct is engaged in for any reason based on discrimination of any kind; and

(c) the perpetrator engages in the conduct:

(i) in the capacity of a public official; or

(ii) acting in an official capacity; or

(iii) acting at the instigation, or with the consent or acquiescence, of a public official or other person acting in an official capacity.

Penalty: Imprisonment for 20 years.

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

Note: For absolute liability, see section 6.2.

(4) Subsections (1) and (2) do not apply to conduct arising only from, inherent in or incidental to lawful sanctions that are not inconsistent with the Articles of the International Covenant on Civil and Political Rights (a copy of the English text of which is set out in Schedule 2 to the *Australian Human Rights Commission Act 1986*).

(5) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1) or (2).

274.3 Prosecutions

(1) Proceedings for an offence against this Division, where the conduct constituting the alleged offence occurs wholly outside Australia, must not take place except with the consent in writing of the Attorney-General.

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(2) Even though a consent in accordance with subsection (1) has not been given in relation to an offence against this Division:

(a) a person may be arrested for the offence, and a warrant for the arrest of a person for the offence may be issued and executed; and

(b) a person may be charged with the offence; and

(c) a person so charged may be remanded in custody or on bail;

but no further step in proceedings referred to in subsection (1) is to be taken until such a consent has been given.

(3) Subsection (2) does not prevent the discharge of the accused if proceedings are not continued within a reasonable time.

274.4 No defence of exceptional circumstances or superior orders

It is not a defence in a proceeding for an offence under this Division that:

(a) the conduct constituting the offence was done out of necessity arising from the existence of a state of war, a threat of war, internal political instability, a public emergency or any other exceptional circumstance; or

(b) in engaging in the conduct constituting the offence the accused acted under orders of a superior officer or public authority;

but the circumstances referred to in paragraphs (a) and (b) may, if the accused is convicted of the offence, be taken into account in determining the proper sentence.

274.5 Jurisdiction of State/Territory courts preserved

For the purposes of section 38 of the *Judiciary Act 1903*, a matter arising under this Division, including a question of interpretation of the Convention, is taken not to be a matter arising directly under a treaty.

274.6 Concurrent operation intended

This Division is not intended to exclude or limit the concurrent operation of any other law of the Commonwealth or any law of a State or Territory.

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274.7 Double jeopardy

If a person has been convicted or acquitted in a country outside Australia of an offence against the law of that country in respect of any conduct, the person cannot be convicted of an offence under this Division in respect of that conduct.

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Division 279—Video link evidence

279.1 Proceedings to which this Division applies

This Division applies to a proceeding for an offence against any of the following Divisions of this Chapter:

(a) Division 270 (slavery and slavery-like conditions);
(b) Division 271 (trafficking in persons and debt bondage);
(c) Division 272 (child sex offences outside Australia);
(d) Division 273 (offences involving child pornography material or child abuse material outside Australia).

279.2 When court may take evidence by video link

In a proceeding, the court may, on application by a party to the proceeding, direct that a witness give evidence by video link if:

(a) the witness will give the evidence from outside Australia; and
(b) the witness is not a defendant in the proceeding; and
(c) the facilities required by section 279.3 are available or can reasonably be made available; and
(d) the court is satisfied that attendance of the witness at the court to give the evidence would:
  (i) cause unreasonable expense or inconvenience; or
  (ii) cause the witness psychological harm or unreasonable distress; or
  (iii) cause the witness to become so intimidated or distressed that his or her reliability as a witness would be significantly reduced; and
(e) the court is satisfied that it is consistent with the interests of justice that the evidence be taken by video link.

279.3 Technical requirements for video link

(1) A witness can give evidence under a direction only if:
  (a) the courtroom or other place in Australia where the court is sitting (the ***Australian location***); and
  (b) the place where the evidence is given (the ***overseas location***);

are equipped with video facilities that:

(c) enable appropriate persons at the Australian location to see and hear the witness give the evidence; and

(d) enable appropriate persons at the overseas location to see and hear appropriate persons at the Australian location.

(2) In subsection (1):

appropriate persons means such persons as the court considers appropriate.

279.4 Application of laws about witnesses

A person who gives evidence under a direction is taken to give it at the courtroom or other place in Australia where the court is sitting.

Note: This section has effect, for example, for the purposes of laws relating to evidence, procedure, contempt of court and perjury.

279.5 Administration of oaths and affirmations

An oath or affirmation to be sworn or made by a witness who is to give evidence under a direction may be administered either:

(a) by means of the video link, in as nearly as practicable the same way as if the witness were to give the evidence at the courtroom or other place in Australia where the court is sitting; or

(b) as follows:

(i) on behalf of the court and as directed by it;

(ii) by a person (whether an Australian official or not) authorised by the court;

(iii) at the place where the witness is to give the evidence.

279.6 Expenses

A court may make such orders as are just for payment of expenses incurred in connection with giving evidence under a direction by the court under this Division.

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279.7 Other laws about foreign evidence not affected

This Division does not prevent any other law about taking evidence of a witness outside Australia from applying for the purposes of a proceeding.

Chapter 9—Dangers to the community

Part 9.1—Serious drug offences

Division 300—Preliminary

300.1 Purpose

(1) The purpose of this Part is to create offences relating to drug trafficking and to give effect to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on 20 December 1988 (the ***TINDAPS Convention***).

Note: The text of the Convention is set out in Australian Treaty Series 1993 No. 4. In 2005 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible through that Department's website.

(2) Subsection (1) does not limit the legislative powers of the Parliament in relation to this Part.

300.2 Definitions

In this Part:

aggravated offence has the meaning given by section 310.4.

border controlled drug has the meaning given by section 301.4.

border controlled plant has the meaning given by section 301.5.

border controlled precursor has the meaning given by section 301.6.

child means an individual who is under 18 years of age.

commercial quantity of a serious drug, controlled precursor or border controlled precursor has the meaning given by section 301.10.

conceal a thing includes conceal or disguise:

(a) the nature, source or location of the thing; or

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(b) any movement of the thing; or
(c) the rights of any person with respect to the thing; or
(d) the identity of any owner of the thing.

controlled drug has the meaning given by section 301.1.

controlled plant has the meaning given by section 301.2.

controlled precursor has the meaning given by section 301.3.

cultivate has the meaning given by subsection 303.1(1).

cultivates a plant has the meaning given by subsection 303.1(2).

cultivates a plant for a commercial purpose has the meaning given by section 303.3.

determined, in relation to a serious drug, controlled precursor or border controlled precursor, means:
(a) for a serious drug—determined by the Minister under section 301.13; or
(b) for a precursor—determined by the Minister under section 301.14.

drug analogue has the meaning given by section 301.9.

export includes take from Australia.

import, in relation to a substance, means import the substance into Australia and includes:
(a) bring the substance into Australia; and
(b) deal with the substance in connection with its importation.

listed, in relation to a serious drug, means:
(a) for a controlled drug—listed by a regulation made for the purposes of paragraph 301.1(a); or
(b) for a controlled plant—listed by a regulation made for the purposes of paragraph 301.2(a); or
(c) for a border controlled drug—listed by a regulation made for the purposes of paragraph 301.4(a); or
(d) for a border controlled plant—listed by a regulation made for the purposes of paragraph 301.5(a).

manufacture has the meaning given by subsection 305.1(1).

manufactures a substance has the meaning given by subsection 305.1(2).

manufactures a substance for a commercial purpose has the meaning given by section 305.2.

marketable quantity of a serious drug, controlled precursor or border controlled precursor has the meaning given by section 301.11.

possession of a thing includes the following:

(a) receiving or obtaining possession of the thing;

(b) having control over the disposition of the thing (whether or not the thing is in the custody of the person);

(c) having joint possession of the thing.

pre-traffics has the meaning given by section 306.1.

procures an individual to pre-traffic has the meaning given by section 309.9.

procures an individual to traffic has the meaning given by section 309.6.

product of a plant has the meaning given by section 303.2.

requisite fraction has the meaning given by subsection 312.2(3).

sell includes the following:

(a) barter or exchange;

(b) agree to sell.

serious drug means one of the following:

(a) a controlled drug;

(b) a controlled plant;

(c) a border controlled drug;

(d) a border controlled plant.

supply includes the following:

(a) supply, whether or not by way of sale;

(b) agree to supply.

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taking, in relation to a substance or plant, means taking the substance or plant, or a product of the plant, into the body.

TINDAPS Convention has the meaning given by section 300.1.

trafficable quantity of a controlled drug, or a controlled plant, has the meaning given by section 301.12.

traffics has the meaning given by section 302.1.

transport includes deliver.

300.3 Geographical jurisdiction

Section 15.2 (extended geographical jurisdiction—category B) applies to each offence against this Part.

300.4 Concurrent operation intended

(1) This Part is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

(2) Without limiting subsection (1), this Part is not intended to exclude or limit the concurrent operation of a law of a State or Territory that makes:

(a) an act or omission that is an offence against a provision of this Part; or

(b) a similar act or omission;

an offence against the law of the State or Territory.

(3) Subsection (2) applies even if the law of the State or Territory does any one or more of the following:

(a) provides for a penalty for the offence that differs from the penalty provided for in this Part;

(b) provides for a fault element in relation to the offence that differs from the fault elements applicable to the offence under this Part;

(c) provides for a defence in relation to the offence that differs from the defences applicable to the offence under this Part.

300.5 Particular identity of drugs, plants and precursors

If, in a prosecution for an offence against this Part, it is necessary for the prosecution to prove that a person knew, or was reckless as to whether, a substance or plant was a controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor, it is not necessary for the prosecution to prove that the person knew, or was reckless as to, the particular identity of the controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor.

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Division 301—Serious drugs and precursors

Subdivision A—Serious drugs and precursors: definitions

301.1 Meaning of *controlled drug*

(1) For the purposes of this Part, a ***controlled drug*** is a substance, other than a growing plant, that is:

(a) listed by a regulation as a controlled drug; or

(b) a drug analogue of a listed controlled drug; or

(c) determined by the Minister as a controlled drug under section 301.13 (which deals with emergency determinations of serious drugs).

Note: Some conditions must be satisfied before:

(a) a regulation can be made for paragraph (1)(a) (see section 301.7); or

(b) a determination can be made for paragraph (1)(c) (see subsection 301.13(2)).

(2) The purpose of subsection (1) is to permit certain substances that are covered by the TINDAPS Convention, or drug analogues of such substances, to be treated as ***controlled drugs*** for the purposes of this Part (see also section 300.1).

Note: For the meaning of ***drug analogue***, see section 301.9.

301.2 Meaning of *controlled plant*

(1) For the purposes of this Part, a ***controlled plant*** is a growing plant that is:

(a) listed by a regulation as a controlled plant; or

(b) determined by the Minister as a controlled plant under section 301.13 (which deals with emergency determinations of serious drugs).

Note: Some conditions must be satisfied before:

(a) a regulation can be made for paragraph (1)(a) (see section 301.7); or

(b) a determination can be made for paragraph (1)(b) (see subsection 301.13(2)).

(2) The purpose of subsection (1) is to permit growing plants that are covered by the TINDAPS Convention to be treated as ***controlled plants*** for the purposes of this Part (see also section 300.1).

301.3 Meaning of *controlled precursor*

(1) For the purposes of this Part, a ***controlled precursor*** is a substance (including a growing plant) that is:

(a) listed by a regulation as a controlled precursor; or

(b) a salt or ester of a controlled precursor that is so listed; or

(c) determined by the Minister as a controlled precursor under section 301.14 (which deals with emergency determinations of serious drug precursors).

Note: Some conditions must be satisfied before:

(a) a regulation can be made for paragraph (a) (see section 301.8); or

(b) a determination can be made for paragraph (c) (see subsection 301.14(2)).

(2) The purpose of subsection (1) is to permit certain substances that are covered by the TINDAPS Convention, or salts or esters of such substances, to be treated as ***controlled precursors*** for the purposes of this Part (see also section 300.1).

301.4 Meaning of *border controlled drug*

For the purposes of this Part, a ***border controlled drug*** is a substance, other than a growing plant, that is:

(a) listed by a regulation as a border controlled drug; or

(b) a drug analogue of a listed border controlled drug; or

(c) determined by the Minister as a border controlled drug under section 301.13 (which deals with emergency determinations of serious drugs).

Note 1: Some conditions must be satisfied before:

(a) a regulation can be made for paragraph (a) (see section 301.7); or

(b) a determination can be made for paragraph (c) (see subsection 301.8(2)).

Note 2: For the meaning of ***drug analogue***, see section 301.9.

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301.5 Meaning of *border controlled plant*

For the purposes of this Part, a ***border controlled plant*** is a growing plant:

(a) listed by a regulation as a border controlled plant; or

(b) determined by the Minister as a border controlled plant under section 301.13 (which deals with emergency determinations of serious drugs).

Note: Some conditions must be satisfied before:

(a) a regulation can be made for paragraph (a) (see section 301.7); or

(b) a determination can be made for paragraph (b) (see subsection 301.13(2)).

301.6 Meaning of *border controlled precursor*

(1) For the purposes of this Part, a ***border controlled precursor*** is a substance (including a growing plant) that is:

(a) listed by a regulation as a border controlled precursor; or

(b) a salt or ester of a precursor that is so listed; or

(c) an immediate precursor of a precursor that is so listed; or

(d) determined by the Minister as a border controlled precursor under section 301.14 (which deals with emergency determinations of serious drug precursors).

Note: Some conditions must be satisfied before:

(a) a regulation can be made for paragraph (a) (see section 301.8); or

(b) a determination can be made for paragraph (d) (see subsection 301.14(2)).

(2) In this section:

immediate precursor of a precursor listed for the purposes of paragraph (1)(a) means a chemical or compound (other than another precursor that is so listed) that is an immediate precursor in the manufacture by a chemical process of the listed precursor.

301.7 Serious drugs—conditions for listing by regulation

Before a regulation is made listing a substance or plant as a serious drug for the purposes of this Part, the Minister must be satisfied that:

(a) the substance or plant is likely to be taken without appropriate medical supervision; and

(b) one or more of the following conditions is met:

(i) taking the substance or plant would create a risk of death or serious harm;

(ii) taking the substance or plant would have a physical or mental effect substantially similar to that caused by taking a serious drug that is already listed;

(iii) the substance or plant has the capacity to cause physiological dependence;

(iv) possession or conduct in relation to the substance or plant is proscribed under a law of a State, a Territory or a foreign country that has purposes similar to those of this Part;

(v) the substance or plant poses a substantial risk to the health or safety of the public.

301.8 Serious drug precursors—conditions for listing by regulation

Before a regulation is made listing a substance as a controlled precursor or a border controlled precursor, the Minister must be satisfied that there is a risk that the substance will be used to unlawfully manufacture a controlled drug (other than a determined controlled drug).

301.9 Meaning of *drug analogue*

(1) For the purposes of this Part, a substance is a ***drug analogue*** of a listed controlled drug, or a listed border controlled drug, if the substance is any of the following in relation to the listed drug (or in relation to a primary analogue of the listed drug), however the substance is obtained:

(a) one of the following (a ***primary analogue***):

(i) a stereoisomer;

(ii) a structural isomer having the same constituent groups;

(iii) an alkaloid;

(b) a structural modification obtained by the addition of one or more of the following groups:

(i) alkoxy, cyclic diether, acyl, acyloxy, mono-amino or dialkylamino groups with up to 6 carbon atoms in any alkyl residue;

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(ii) alkyl, alkenyl or alkynyl groups with up to 6 carbon atoms in the group, where the group is attached to oxygen (for example, an ester or an ether group), nitrogen, sulphur or carbon;

(iii) halogen, hydroxy, nitro or amino groups;

(c) a structural modification obtained in one or more of the following ways:

(i) by the replacement of up to 2 carbocyclic or heterocyclic ring structures with different carbocyclic or heterocyclic ring structures;

(ii) by the addition of hydrogen atoms to one or more unsaturated bonds;

(iii) by the replacement of one or more of the groups specified in paragraph (b) with another such group or groups;

(iv) by the conversion of a carboxyl or an ester group into an amide group;

(d) any other homologue, analogue, chemical derivative or substance substantially similar in chemical structure.

(2) However, a ***drug analogue*** does not include a substance that is itself a listed controlled drug or a listed border controlled drug.

Subdivision B—Serious drugs and precursors: commercial, marketable and trafficable quantities

301.10 Meaning of *commercial quantity*

For the purposes of this Part, a ***commercial quantity*** of a serious drug, controlled precursor or border controlled precursor is a quantity not less than that provided by the following table:

Commercial quantities of serious drugs and precursors

Item	Serious drug or precursor	Commercial quantity (minimum)
1	A serious drug (other than a drug analogue), controlled precursor or border controlled precursor	Either: (a) the quantity listed as a commercial quantity of the drug or precursor in a regulation made for the purposes of this section; or (b) the quantity determined as a commercial

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Commercial quantities of serious drugs and precursors		
Item	**Serious drug or precursor**	**Commercial quantity (minimum)**
		quantity of the drug or precursor by the Minister under section 301.15 (which deals with emergency determinations of quantities).
2	A drug analogue of 1 or more listed controlled drugs	Either: (a) for a drug analogue of a single listed controlled drug—the commercial quantity of the listed drug; or (b) for a drug analogue of 2 or more listed controlled drugs—the smallest commercial quantity of any of the listed drugs.
3	A drug analogue of 1 or more listed border controlled drugs	Either: (a) for a drug analogue of a single listed border controlled drug—the commercial quantity of the listed drug; or (b) for a drug analogue of 2 or more listed border controlled drugs—the smallest commercial quantity of any of the listed drugs.

Note: A drug analogue of a listed controlled drug, or a listed border controlled drug, is itself a controlled drug or border controlled drug (see paragraphs 301.1(b) and 301.4(b), and the definition of ***drug analogue*** in section 301.9).

301.11 Meaning of *marketable quantity*

For the purposes of this Part, a ***marketable quantity*** of a serious drug, controlled precursor or border controlled precursor is a quantity not less than that provided by the following table:

Marketable quantities of serious drugs and precursors		
Item	**Serious drug or precursor**	**Marketable quantity (minimum)**
1	A serious drug (other than a drug analogue), controlled precursor or border controlled precursor	Either: (a) the quantity listed as a marketable quantity of the drug or precursor in a regulation made for the purposes of this section; or (b) the quantity determined as a marketable quantity of the drug or precursor by the

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Marketable quantities of serious drugs and precursors		
Item	**Serious drug or precursor**	**Marketable quantity (minimum)**
		Minister under section 301.15 (which deals with emergency determinations of quantities).
2	A drug analogue of 1 or more listed controlled drugs	Either: (a) for a drug analogue of a single listed controlled drug—the marketable quantity of the listed drug; or (b) for a drug analogue of 2 or more listed controlled drugs—the smallest marketable quantity of any of the listed drugs.
3	A drug analogue of 1 or more listed border controlled drugs	Either: (a) for a drug analogue of a single listed border controlled drug—the commercial quantity of the listed drug; or (b) for a drug analogue of 2 or more listed border controlled drugs—the smallest commercial quantity of any of the listed drugs.

Note: A drug analogue of a listed controlled drug, or a listed border controlled drug, is itself a controlled drug or border controlled drug (see paragraphs 301.1(b) and 301.4(b), and the definition of ***drug analogue*** in section 301.9).

301.12 Meaning of *trafficable quantity*

For the purposes of this Part, a ***trafficable quantity*** of a controlled drug or a controlled plant is a quantity not less than that provided by the following table:

Trafficable quantities of controlled drugs and plants		
Item	**Controlled drug or plant**	**Trafficable quantity (minimum)**
1	A controlled drug (other than a drug analogue) or a controlled plant	Either: (a) the quantity listed as a trafficable quantity of the drug or plant in a regulation made for the purposes of this section; or (b) the quantity determined as a trafficable quantity of the drug or plant by the Minister under section 301.15 (which deals with

Trafficable quantities of controlled drugs and plants		
Item	**Controlled drug or plant**	**Trafficable quantity (minimum)**
		emergency determinations of quantities).
2	A drug analogue of 1 or more listed controlled drugs	Either: (a) for a drug analogue of a single listed controlled drug—the trafficable quantity of the listed drug; or (b) for a drug analogue of 2 or more listed controlled drugs—the smallest trafficable quantity of any of the listed drugs.

Note: A drug analogue of a listed controlled drug is itself a controlled drug (see paragraph 301.1(b) and the definition of ***drug analogue*** in section 301.9).

Subdivision C—Serious drugs and precursors: emergency determinations

301.13 Emergency determinations—serious drugs

(1) The Minister may, by legislative instrument, determine that:
  (a) a substance, other than a growing plant, is a controlled drug or a border controlled drug; or
  (b) a growing plant is a controlled plant or a border controlled plant.

(2) The Minister must not make a determination under subsection (1) unless he or she is satisfied:
  (a) that there is an imminent and substantial risk that the substance or plant will be taken without appropriate medical supervision; and
  (b) one or more of the following conditions is met:
    (i) taking the substance or plant may create a risk of death or serious harm;
    (ii) taking the substance or plant may have a physical or mental effect substantially similar to that caused by taking a listed serious drug;
    (iii) there is limited or no known lawful use of the substance or plant in Australia, and the substance or plant has been

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found by a public official in the course of the performance of the official's duties;

(iv) the substance or plant may pose a substantial risk to the health or safety of the public.

(3) The Minister must not make more than one determination under this section in relation to a particular substance or plant.

301.14 Emergency determinations—serious drug precursors

(1) The Minister may, by legislative instrument, determine that a substance (including a growing plant) is a controlled precursor or a border controlled precursor.

(2) The Minister must not make a determination under subsection (1) unless he or she is satisfied that there is an imminent and substantial risk that the substance will be used to unlawfully manufacture a controlled drug.

(3) The Minister must not make more than one determination under this section in relation to a particular substance or plant.

301.15 Emergency determinations—commercial, marketable and trafficable quantities

(1) The Minister may, by legislative instrument, determine:

(a) a quantity of a serious drug as a commercial or marketable quantity of the drug; or

(b) a quantity of a controlled drug or a controlled plant as a trafficable quantity of the drug or plant; or

(c) a quantity of a controlled precursor or a border controlled precursor as a commercial or marketable quantity of the precursor.

(2) However, the Minister may only make a determination of a commercial, marketable or trafficable quantity of a serious drug, controlled precursor or border controlled precursor under subsection (1) if there is no regulation currently in force listing such a quantity of the drug or precursor.

Note: The definitions of ***commercial quantity***, ***marketable quantity*** and ***trafficable quantity*** in Subdivision B allow for regulations to list such quantities of serious drugs and precursors.

301.16 Emergency determinations—effectiveness

(1) A determination under this Subdivision in relation to a substance (including a growing plant) or a quantity of such a substance has effect:

(a) from the time the determination is registered (within the meaning of the *Legislative Instruments Act 2003*); and

(b) for the period of 12 months from that registration, or such shorter period as is specified in the determination, as extended (if at all) under subsection (2).

(2) If exceptional circumstances prevent the listing (by regulation) of the substance or quantity, to the same effect, the Minister may, by legislative instrument, extend the period during which the determination is in force by a further period or periods.

(3) The Minister must not extend the period under subsection (2) with the effect that the determination would stay in force for longer than 18 months after the time the determination is registered (within the meaning of the *Legislative Instruments Act 2003*).

(4) A determination made under this Subdivision has no effect to the extent that it is inconsistent with a regulation made for the purposes of Subdivision A.

301.17 Emergency determinations—publication

(1) The Minister must, on or before the day on which a determination under this Subdivision is registered (within the meaning of the *Legislative Instruments Act 2003*):

(a) make a public announcement of the determination; and

(b) cause a copy of the announcement to be published:

(i) on the internet; and

(ii) in a newspaper circulating in each State, the Australian Capital Territory and the Northern Territory.

(2) An announcement made under subsection (1) is not a legislative instrument.

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Division 302—Trafficking controlled drugs

302.1 Meaning of *traffics*

(1) For the purposes of this Part, a person ***traffics*** in a substance if:

(a) the person sells the substance; or

(b) the person prepares the substance for supply with the intention of selling any of it or believing that another person intends to sell any of it; or

(c) the person transports the substance with the intention of selling any of it or believing that another person intends to sell any of it; or

(d) the person guards or conceals the substance with the intention of selling any of it or assisting another person to sell any of it; or

(e) the person possesses the substance with the intention of selling any of it.

(2) For the purposes of paragraph (1)(b), preparing a substance for supply includes packaging the substance or separating the substance into discrete units.

302.2 Trafficking commercial quantities of controlled drugs

(1) A person commits an offence if:

(a) the person traffics in a substance; and

(b) the substance is a controlled drug; and

(c) the quantity trafficked is a commercial quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

(2) The fault element for paragraph (1)(b) is recklessness.

(3) Absolute liability applies to paragraph (1)(c).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

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302.3 Trafficking marketable quantities of controlled drugs

(1) A person commits an offence if:
  (a) the person traffics in a substance; and
  (b) the substance is a controlled drug; and
  (c) the quantity trafficked is a marketable quantity.

  Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

(2) The fault element for paragraph (1)(b) is recklessness.

(3) Absolute liability applies to paragraph (1)(c).

  Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

302.4 Trafficking controlled drugs

(1) A person commits an offence if:
  (a) the person traffics in a substance; and
  (b) the substance is a controlled drug.

  Penalty: Imprisonment for 10 years or 2,000 penalty units, or both.

(2) The fault element for paragraph (1)(b) is recklessness.

302.5 Presumption where trafficable quantities are involved

(1) For the purposes of proving an offence against this Division, if a person has:
  (a) prepared a trafficable quantity of a substance for supply; or
  (b) transported a trafficable quantity of a substance; or
  (c) guarded or concealed a trafficable quantity of a substance; or
  (d) possessed a trafficable quantity of a substance;

  the person is taken to have had the necessary intention or belief concerning the sale of the substance to have been trafficking in the substance.

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(2) Subsection (1) does not apply if the person proves that he or she had neither that intention nor belief.

Note 1: A defendant bears a legal burden in relation to the matters in subsection (2) (see section 13.4).

Note 2: This section does not apply where quantities are combined for the purposes of section 311.2 (see subsection 311.2(3)).

302.6 Purchase of controlled drugs is not an ancillary offence

A person does not commit:

(a) an offence against this Division because of the operation of section 11.2 or 11.2A; or

(b) an offence against section 11.4 or 11.5 that relates to an offence against this Division;

merely because the person purchases, or intends to purchase, a controlled drug from another person.

Note: A defendant bears an evidential burden in relation to the matters in this section (see subsection 13.3(3)).

Division 303—Commercial cultivation of controlled plants

303.1 Meanings of *cultivate* and *cultivates a plant*

(1) For the purposes of this Part, ***cultivate*** includes the following:
  (a) plant a seed, seedling or cutting;
  (b) transplant a plant;
  (c) nurture, tend or grow a plant;
  (d) guard or conceal a plant (including against interference or discovery by humans or natural predators);
  (e) harvest a plant, pick any part of a plant or separate any resin or other substance from a plant.

(2) For the purposes of this Part, a person ***cultivates a plant*** if the person:
  (a) engages in its cultivation; or
  (b) exercises control or direction over its cultivation; or
  (c) provides finance for its cultivation.

303.2 Meaning of *product* of a plant

For the purposes of this Part, the ***product*** of a plant includes the following:
  (a) a seed of the plant;
  (b) a part of the plant (whether alive or dead);
  (c) a substance separated from the plant.

303.3 Meaning of *cultivates a plant for a commercial purpose*

For the purposes of this Part, a person ***cultivates a plant for a commercial purpose*** if the person cultivates the plant:
  (a) with the intention of selling any of it or its products; or
  (b) believing that another person intends to sell any of it or its products.

303.4 Cultivating commercial quantities of controlled plants

(1) A person commits an offence if:
  (a) the person cultivates a plant for a commercial purpose; and

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(b) the plant is a controlled plant; and
(c) the quantity cultivated is a commercial quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

(2) The fault element for paragraph (1)(b) is recklessness.

(3) Absolute liability applies to paragraph (1)(c).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

303.5 Cultivating marketable quantities of controlled plants

(1) A person commits an offence if:
(a) the person cultivates a plant for a commercial purpose; and
(b) the plant is a controlled plant; and
(c) the quantity cultivated is a marketable quantity.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

(2) The fault element for paragraph (1)(b) is recklessness.

(3) Absolute liability applies to paragraph (1)(c).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

303.6 Cultivating controlled plants

(1) A person commits an offence if:
(a) the person cultivates a plant for a commercial purpose; and
(b) the plant is a controlled plant.

Penalty: Imprisonment for 10 years or 2,000 penalty units, or both.

(2) The fault element for paragraph (1)(b) is recklessness.

303.7 Presumption where trafficable quantities are involved

(1) For the purposes of proving an offence against this Division, if a person has cultivated a trafficable quantity of a plant, the person is taken to have had the necessary intention or belief concerning the

sale of the plant to have been cultivating the plant for a commercial purpose.

(2) Subsection (1) does not apply if the person proves that he or she had neither that intention nor belief.

Note: A defendant bears a legal burden in relation to the matters in subsection (2) (see section 13.4).

Division 304—Selling controlled plants

304.1 Selling commercial quantities of controlled plants

(1) A person commits an offence if:
  (a) the person sells a plant; and
  (b) the plant is a controlled plant; and
  (c) the quantity sold is a commercial quantity.

  Penalty: Imprisonment for life or 7,500 penalty units, or both.

(2) The fault element for paragraph (1)(b) is recklessness.

(3) Absolute liability applies to paragraph (1)(c).

  Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

304.2 Selling marketable quantities of controlled plants

(1) A person commits an offence if:
  (a) the person sells a plant; and
  (b) the plant is a controlled plant; and
  (c) the quantity sold is a marketable quantity.

  Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

(2) The fault element for paragraph (1)(b) is recklessness.

(3) Absolute liability applies to paragraph (1)(c).

  Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

304.3 Selling controlled plants

(1) A person commits an offence if:
  (a) the person sells a plant; and
  (b) the plant is a controlled plant.

  Penalty: Imprisonment for 10 years or 2,000 penalty units, or both.

(2) The fault element for paragraph (1)(b) is recklessness.

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Division 305—Commercial manufacture of controlled drugs

305.1 Meanings of *manufacture* and *manufactures a substance*

(1) For the purposes of this Part, ***manufacture*** means any process by which a substance is produced (other than the cultivation of a plant), and includes the following:

(a) the process of extracting or refining a substance;

(b) the process of transforming a substance into a different substance.

(2) For the purposes of this Part, a person ***manufactures a substance*** if the person:

(a) engages in its manufacture; or

(b) exercises control or direction over its manufacture; or

(c) provides finance for its manufacture.

305.2 Meaning of *manufactures a substance for a commercial purpose*

For the purposes of this Part, a person ***manufactures a substance for a commercial purpose*** if the person manufactures the substance:

(a) with the intention of selling any of it; or

(b) believing that another person intends to sell any of it.

305.3 Manufacturing commercial quantities of controlled drugs

(1) A person commits an offence if:

(a) the person manufactures a substance for a commercial purpose; and

(b) the substance is a controlled drug; and

(c) the quantity manufactured is a commercial quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

(2) The fault element for paragraph (1)(b) is recklessness.

(3) Absolute liability applies to paragraph (1)(c).

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Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

305.4 Manufacturing marketable quantities of controlled drugs

(1) A person commits an offence if:

(a) the person manufactures a substance for a commercial purpose; and

(b) the substance is a controlled drug; and

(c) the quantity manufactured is a marketable quantity.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 28 years or 5,600 penalty units, or both; or

(b) in any other case—imprisonment for 25 years or 5,000 penalty units, or both.

Note: The additional elements for an aggravated offence against this section are set out in subsection 310.4(2).

(2) The fault element for paragraph (1)(b) is recklessness.

(3) Absolute liability applies to paragraph (1)(c).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

305.5 Manufacturing controlled drugs

(1) A person commits an offence if:

(a) the person manufactures a substance for a commercial purpose; and

(b) the substance is a controlled drug.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 12 years or 2,400 penalty units, or both; or

(b) in any other case—imprisonment for 10 years or 2,000 penalty units, or both.

Note: The additional elements for an aggravated offence against this section are set out in subsection 310.4(2).

(2) The fault element for paragraph (1)(b) is recklessness.

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Section 305.6

305.6 Presumption where trafficable quantities are involved

(1) For the purposes of proving an offence against this Division, if a person has manufactured a trafficable quantity of a substance, the person is taken to have had the necessary intention or belief concerning the sale of the substance to have been manufacturing the substance for a commercial purpose.

(2) Subsection (1) does not apply if the person proves that he or she had neither that intention nor belief.

Note: A defendant bears a legal burden in relation to the matters in subsection (2) (see section 13.4).

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Division 306—Pre-trafficking controlled precursors

306.1 Meaning of *pre-traffics*

For the purposes of this Part, a person ***pre-traffics*** in a substance if the person:

(a) sells the substance believing that the person to whom it is sold, or another person, intends to use any of the substance to manufacture a controlled drug; or

(b) manufactures the substance:

(i) with the intention of using any of it to manufacture a controlled drug; and

(ii) with the intention of selling any of the drug so manufactured, or believing that another person intends to sell any of the drug so manufactured; or

(c) manufactures the substance:

(i) with the intention of selling any of it to another person; and

(ii) believing that the other person intends to use any of the substance to manufacture a controlled drug; or

(d) possesses the substance:

(i) with the intention of using any of it to manufacture a controlled drug; and

(ii) with the intention of selling any of the drug so manufactured, or believing that another person intends to sell any of the drug so manufactured.

306.2 Pre-trafficking commercial quantities of controlled precursors

(1) A person commits an offence if:

(a) the person pre-traffics in a substance; and

(b) the substance is a controlled precursor; and

(c) the quantity pre-trafficked is a commercial quantity.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 28 years or 5,600 penalty units, or both; or

(b) in any other case—imprisonment for 25 years or 5,000 penalty units, or both.

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Note: The additional elements for an aggravated offence against this section are set out in subsection 310.4(3).

(2) The fault element for paragraph (1)(b) is recklessness.

(3) Absolute liability applies to paragraph (1)(c).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

306.3 Pre-trafficking marketable quantities of controlled precursors

(1) A person commits an offence if:

(a) the person pre-traffics in a substance; and

(b) the substance is a controlled precursor; and

(c) the quantity pre-trafficked is a marketable quantity.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 17 years or 3,400 penalty units, or both; or

(b) in any other case—imprisonment for 15 years or 3,000 penalty units, or both.

Note: The additional elements for an aggravated offence against this section are set out in subsection 310.4(3).

(2) The fault element for paragraph (1)(b) is recklessness.

(3) Absolute liability applies to paragraph (1)(c).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

306.4 Pre-trafficking controlled precursors

(1) A person commits an offence if:

(a) the person pre-traffics in a substance; and

(b) the substance is a controlled precursor.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 9 years or 1,800 penalty units, or both; or

(b) in any other case—imprisonment for 7 years or 1,400 penalty units, or both.

Note: The additional elements for an aggravated offence against this section are set out in subsection 310.4(3).

(2) The fault element for paragraph (1)(b) is recklessness.

306.5 Presumption for pre-trafficking controlled precursors—sale

(1) For the purposes of proving an offence against subsection 306.4(1), if:

(a) a person has sold a substance; and

(b) a law of the Commonwealth or of a State or Territory required the sale to be authorised (however described); and

(c) the sale was not so authorised;

the person is taken to have sold the substance believing that the person to whom it was sold, or another person, intended to use some or all of the substance to manufacture a controlled drug.

(2) Subsection (1) does not apply if the person proves that he or she did not have that belief.

Note: A defendant bears a legal burden in relation to the matter in subsection (2) (see section 13.4).

306.6 Presumptions for pre-trafficking controlled precursors—manufacture for drug manufacture

(1) For the purposes of proving an offence against subsection 306.4(1), if:

(a) a person has manufactured a substance; and

(b) a law of the Commonwealth or of a State or Territory required the manufacture to be authorised (however described); and

(c) the manufacture was not so authorised;

the person is taken to have manufactured the substance with the intention of using some or all of it to manufacture a controlled drug.

(2) Subsection (1) does not apply if the person proves that he or she did not have that intention.

Note: A defendant bears a legal burden in relation to the matter in subsection (2) (see section 13.4).

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(3) For the purposes of proving an offence against subsection 306.4(1), if a person has manufactured a marketable quantity of a substance with the intention of using some or all of it to manufacture a controlled drug, the person is taken to have done so with the intention of selling some or all of the drug so manufactured, or believing that another person intended to sell some or all of the drug so manufactured.

(4) Subsection (3) does not apply if the person proves that he or she had neither that intention nor belief.

Note: A defendant bears a legal burden in relation to the matters in subsection (4) (see section 13.4).

306.7 Presumptions for pre-trafficking controlled precursors—manufacture for sale

(1) For the purposes of proving an offence against subsection 306.4(1), if a person has manufactured a marketable quantity of a substance, the person is taken to have done so with the intention of selling some or all of it to another person.

(2) Subsection (1) does not apply if the person proves that he or she did not have that intention.

Note: A defendant bears a legal burden in relation to the matter in subsection (2) (see section 13.4).

(3) For the purposes of proving an offence against subsection 306.4(1), if:

(a) a person has manufactured a substance with the intention of selling some or all of it to another person; and

(b) a law of the Commonwealth or of a State or Territory required the manufacture to be authorised (however described); and

(c) the manufacture was not so authorised;

the person is taken to have manufactured the substance believing that the other person intended to use some or all of the substance to manufacture a controlled drug.

(4) Subsection (3) does not apply if the person proves that he or she did not have that belief.

Note: A defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4).

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306.8 Presumptions for pre-trafficking controlled precursors—possession

(1) For the purposes of proving an offence against subsection 306.4(1), if:

(a) a person possessed a substance; and

(b) a law of the Commonwealth or of a State or Territory required the possession to be authorised (however described); and

(c) the possession was not so authorised;

the person is taken to have possessed the substance with the intention of using some or all of it to manufacture a controlled drug.

(2) Subsection (1) does not apply if the person proves that he or she did not have that intention.

Note: A defendant bears a legal burden in relation to the matter in subsection (2) (see section 13.4).

(3) For the purposes of proving an offence against subsection 306.4(1), if a person possessed a marketable quantity of a substance with the intention of using some or all of it to manufacture a controlled drug, the person is taken to have done so with the intention of selling some or all of the drug so manufactured, or believing that another person intended to sell some or all of the drug so manufactured.

(4) Subsection (3) does not apply if the person proves that he or she had neither that intention nor belief.

Note: A defendant bears a legal burden in relation to the matters in subsection (4) (see section 13.4).

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Division 307—Import-export offences

Subdivision A—Importing and exporting border controlled drugs or border controlled plants

307.1 Importing and exporting commercial quantities of border controlled drugs or border controlled plants

(1) A person commits an offence if:

(a) the person imports or exports a substance; and

(b) the substance is a border controlled drug or border controlled plant; and

(c) the quantity imported or exported is a commercial quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

(2) The fault element for paragraph (1)(b) is recklessness.

(3) Absolute liability applies to paragraph (1)(c).

307.2 Importing and exporting marketable quantities of border controlled drugs or border controlled plants

(1) A person commits an offence if:

(a) the person imports or exports a substance; and

(b) the substance is a border controlled drug or border controlled plant; and

(c) the quantity imported or exported is a marketable quantity.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

(2) The fault element for paragraph (1)(b) is recklessness.

(3) Absolute liability applies to paragraph (1)(c).

(4) Subsection (1) does not apply if the person proves that he or she neither intended, nor believed that another person intended, to sell any of the border controlled drug or any of the border controlled plant or its products.

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Note: A defendant bears a legal burden in relation to the matters in subsection (4) (see section 13.4).

307.3 Importing and exporting border controlled drugs or border controlled plants

(1) A person commits an offence if:

(a) the person imports or exports a substance; and

(b) the substance is a border controlled drug or border controlled plant.

Penalty: Imprisonment for 10 years or 2,000 penalty units, or both.

(2) The fault element for paragraph (1)(b) is recklessness.

(3) Subsection (1) does not apply if the person proves that he or she neither intended, nor believed that another person intended, to sell any of the border controlled drug or any of the border controlled plant or its products.

Note: A defendant bears a legal burden in relation to the matters in subsection (3) (see section 13.4).

307.4 Importing and exporting border controlled drugs or border controlled plants—no defence relating to lack of commercial intent

(1) A person commits an offence if:

(a) the person imports or exports a substance; and

(b) the substance is a border controlled drug or border controlled plant, other than a determined border controlled drug or a determined border controlled plant.

Penalty: Imprisonment for 2 years, or 400 penalty units, or both.

(2) The fault element for paragraph (1)(b) is recklessness.

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Subdivision B—Possessing unlawfully imported border controlled drugs or border controlled plants

307.5 Possessing commercial quantities of unlawfully imported border controlled drugs or border controlled plants

(1) A person commits an offence if:

(a) the person possesses a substance; and

(b) the substance was unlawfully imported; and

(c) the substance is a border controlled drug or border controlled plant; and

(d) the quantity possessed is a commercial quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

(2) Absolute liability applies to paragraphs (1)(b) and (d).

(3) The fault element for paragraph (1)(c) is recklessness.

(4) Subsection (1) does not apply if the person proves that he or she did not know that the border controlled drug or border controlled plant was unlawfully imported.

Note: A defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4).

307.6 Possessing marketable quantities of unlawfully imported border controlled drugs or border controlled plants

(1) A person commits an offence if:

(a) the person possesses a substance; and

(b) the substance was unlawfully imported; and

(c) the substance is a border controlled drug or border controlled plant; and

(d) the quantity possessed is a marketable quantity.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

(2) Absolute liability applies to paragraphs (1)(b) and (d).

(3) The fault element for paragraph (1)(c) is recklessness.

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(4) Subsection (1) does not apply if the person proves that he or she neither intended, nor believed that another person intended, to sell any of the border controlled drug or any of the border controlled plant or its products.

(5) Subsection (1) does not apply if the person proves that he or she did not know that the border controlled drug or border controlled plant was unlawfully imported.

Note: A defendant bears a legal burden in relation to the matters in subsections (4) and (5) (see section 13.4).

307.7 Possessing unlawfully imported border controlled drugs or border controlled plants

(1) A person commits an offence if:

(a) the person possesses a substance; and

(b) the substance was unlawfully imported; and

(c) the substance is a border controlled drug or border controlled plant, other than a determined border controlled drug or a determined border controlled plant.

Penalty: Imprisonment for 2 years or 400 penalty units, or both.

(2) Absolute liability applies to paragraph (1)(b).

(3) The fault element for paragraph (1)(c) is recklessness.

(4) Subsection (1) does not apply if the person proves that he or she did not know that the border controlled drug or border controlled plant was unlawfully imported.

Note: A defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4).

Subdivision C—Possessing border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported

307.8 Possessing commercial quantities of border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported

(1) A person commits an offence if:

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(a) the person possesses a substance; and
(b) the substance is reasonably suspected of having been unlawfully imported; and
(c) the substance is a border controlled drug or border controlled plant; and
(d) the quantity possessed is a commercial quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

(2) Absolute liability applies to paragraphs (1)(b) and (d).

(3) The fault element for paragraph (1)(c) is recklessness.

(4) Subsection (1) does not apply if the person proves that the border controlled drug or border controlled plant was not unlawfully imported.

Note: A defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4).

307.9 Possessing marketable quantities of border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported

(1) A person commits an offence if:
(a) the person possesses a substance; and
(b) the substance is reasonably suspected of having been unlawfully imported; and
(c) the substance is a border controlled drug or border controlled plant; and
(d) the quantity possessed is a marketable quantity.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

(2) Absolute liability applies to paragraphs (1)(b) and (d).

(3) The fault element for paragraph (1)(c) is recklessness.

(4) Subsection (1) does not apply if the person proves that he or she neither intended, nor believed that another person intended, to sell any of the border controlled drug or any of the border controlled plant or its products.

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(5) Subsection (1) does not apply if the person proves that the border controlled drug or border controlled plant was not unlawfully imported.

Note: A defendant bears a legal burden in relation to the matters in subsections (4) and (5) (see section 13.4).

307.10 Possessing border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported

(1) A person commits an offence if:

(a) the person possesses a substance; and

(b) the substance is reasonably suspected of having been unlawfully imported; and

(c) the substance is a border controlled drug or border controlled plant, other than a determined border controlled drug or a determined border controlled plant.

Penalty: Imprisonment for 2 years or 400 penalty units, or both.

(2) Absolute liability applies to paragraph (1)(b).

(3) The fault element for paragraph (1)(c) is recklessness.

(4) Subsection (1) does not apply if the person proves that the border controlled drug or border controlled plant was not unlawfully imported.

Note: A defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4).

Subdivision D—Importing and exporting border controlled precursors

307.11 Importing and exporting commercial quantities of border controlled precursors

(1) A person commits an offence if:

(a) the person imports or exports a substance; and

(b) either or both of the following apply:

(i) the person intends to use any of the substance to manufacture a controlled drug;

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(ii) the person believes that another person intends to use any of the substance to manufacture a controlled drug; and

(c) the substance is a border controlled precursor; and

(d) the quantity imported or exported is a commercial quantity.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

(2) The fault element for paragraph (1)(c) is recklessness.

(3) Absolute liability applies to paragraph (1)(d).

307.12 Importing and exporting marketable quantities of border controlled precursors

(1) A person commits an offence if:

(a) the person imports or exports a substance; and

(b) either or both of the following apply:

(i) the person intends to use any of the substance to manufacture a controlled drug;

(ii) the person believes that another person intends to use any of the substance to manufacture a controlled drug; and

(c) the substance is a border controlled precursor; and

(d) the quantity imported or exported is a marketable quantity.

Penalty: Imprisonment for 15 years or 3,000 penalty units, or both.

(2) The fault element for paragraph (1)(c) is recklessness.

(3) Absolute liability applies to paragraph (1)(d).

(4) Subsection (1) does not apply if:

(a) in relation to conduct covered by subparagraph (1)(b)(i)—the person proves that he or she neither intended, nor believed that another person intended, to sell any of the controlled drug so manufactured; or

(b) in relation to conduct covered by subparagraph (1)(b)(ii)—the person proves that, although he or she believed that the other person intended to use the substance to manufacture a

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controlled drug, he or she did not intend to sell any of the substance to the other person.

Note: A defendant bears a legal burden in relation to the matters in subsection (4) (see section 13.4).

307.13 Importing and exporting border controlled precursors

(1) A person commits an offence if:

(a) the person imports or exports a substance; and

(b) either or both of the following apply:

(i) the person intends to use any of the substance to manufacture a controlled drug;

(ii) the person believes that another person intends to use any of the substance to manufacture a controlled drug; and

(c) the substance is a border controlled precursor.

Penalty: Imprisonment for 7 years or 1,400 penalty units, or both.

(2) The fault element for paragraph (1)(c) is recklessness.

(3) Subsection (1) does not apply if:

(a) in relation to conduct covered by subparagraph (1)(b)(i)—the person proves that he or she neither intended, nor believed that another person intended, to sell any of the controlled drug so manufactured; or

(b) in relation to conduct covered by subparagraph (1)(b)(ii)—the person proves that, although he or she believed that the other person intended to use the substance to manufacture a controlled drug, he or she did not intend to sell any of the substance to the other person.

Note: A defendant bears a legal burden in relation to the matters in subsection (3) (see section 13.4).

307.14 Presumptions for importing and exporting border controlled precursors

(1) For the purposes of proving an offence against this Subdivision, if:

(a) a person has imported or exported a substance; and

(b) a law of the Commonwealth required the import or export to be authorised (however described); and

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(c) the import or export was not so authorised;

the person is taken to have imported or exported the substance with the intention of using some or all of the substance to manufacture a controlled drug.

(2) Subsection (1) does not apply if the person proves that he or she did not have that intention.

Note: A defendant bears a legal burden in relation to the matter in subsection (2) (see section 13.4).

(3) For the purposes of proving an offence against this Subdivision, if:

(a) a person has imported or exported a substance; and

(b) a law of the Commonwealth required the import or export to be authorised (however described); and

(c) the import or export was not so authorised;

the person is taken to have imported or exported the substance believing that another person intends to use some or all of the substance to manufacture a controlled drug.

(4) Subsection (3) does not apply if the person proves that he or she did not have that belief.

Note: A defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4).

Division 308—Possession offences

308.1 Possessing controlled drugs

(1) A person commits an offence if:

(a) the person possesses a substance; and

(b) the substance is a controlled drug, other than a determined controlled drug.

Penalty: Imprisonment for 2 years or 400 penalty units, or both.

(2) The fault element for paragraph (1)(b) is recklessness.

(3) If:

(a) a person is charged with, or convicted of, an offence against subsection (1); and

(b) the offence is alleged to have been, or was, committed in a State or Territory;

the person may be tried, punished or otherwise dealt with as if the offence were an offence against the law of the State or Territory that involved the possession or use of a controlled drug (however described).

Note: Subsection (3) allows for drug users to be diverted from the criminal justice system to receive the same education, treatment and support that is available in relation to drug offences under State and Territory laws.

(4) However, a person punished under subsection (3) must not be:

(a) sentenced to a period of imprisonment that exceeds the period set out in subsection (1); or

(b) fined an amount that exceeds the amount set out in subsection (1).

(5) Subsection (3) does not limit:

(a) Part 1B of the *Crimes Act 1914*; or

(b) section 68 or 79 of the *Judiciary Act 1903*; or

(c) any other law that provides for a law of a State or Territory to apply in relation to the exercise of federal jurisdiction.

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308.2 Possessing controlled precursors

(1) A person commits an offence if:

(a) the person possesses a substance; and

(b) the person intends to use any of the substance to manufacture a controlled drug; and

(c) the substance is a controlled precursor.

Penalty: Imprisonment for 2 years or 400 penalty units, or both.

(2) The fault element for paragraph (1)(c) is recklessness.

(3) For the purposes of proving an offence against subsection (1), if:

(a) a person possessed a substance; and

(b) a law of the Commonwealth or of a State or Territory required the possession to be authorised (however described); and

(c) the possession was not so authorised;

the person is taken to have possessed the substance with the intention of using some or all of the substance to manufacture a controlled drug.

(4) Subsection (3) does not apply if the person proves that he or she did not have that intention.

Note: A defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4).

308.3 Possessing plant material, equipment or instructions for commercial cultivation of controlled plants

A person commits an offence if:

(a) the person possesses a plant, a product of a plant, any equipment or any document containing instructions for growing a plant; and

(b) the person intends to use the plant, product, equipment or document to cultivate a controlled plant; and

(c) the person intends to sell, or believes that another person intends to sell, any of the plant so cultivated or any of its products.

Penalty: Imprisonment for 7 years or 1,400 penalty units, or both.

308.4 Possessing substance, equipment or instructions for commercial manufacture of controlled drugs

(1) A person commits an offence if:

(a) the person possesses any substance (other than a controlled precursor), any equipment or any document containing instructions for manufacturing a controlled drug; and

(b) the person intends to use the substance, equipment or document to manufacture a controlled drug; and

(c) the person intends to sell, or believes that another person intends to sell, any of the drug so manufactured.

Penalty: Imprisonment for 7 years or 1,400 penalty units, or both.

(2) For the purposes of proving an offence against subsection (1), if:

(a) a person possessed a tablet press; and

(b) a law of the Commonwealth or of a State or Territory required the possession to be authorised (however described); and

(c) the possession was not so authorised;

the person is taken to have possessed the tablet press with the intention of using it to manufacture a controlled drug.

(3) Subsection (2) does not apply if the person proves that he or she did not have that intention.

Note: A defendant bears a legal burden in relation to the matter in subsection (3) (see section 13.4).

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Division 309—Drug offences involving children

309.1 Children not criminally responsible for offences against this Division

A child is not criminally responsible for an offence against this Division.

Note: For the purposes of this Part, a ***child*** is an individual under 18 years of age (see section 300.2).

309.2 Supplying controlled drugs to children

(1) A person commits an offence if:
  (a) the person supplies a substance to an individual; and
  (b) the individual is a child; and
  (c) the substance is a controlled drug.

Penalty: Imprisonment for 15 years or 3,000 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

309.3 Supplying marketable quantities of controlled drugs to children for trafficking

(1) A person commits an offence if:
  (a) the person supplies a substance to an individual; and
  (b) the individual is a child; and
  (c) the substance is a controlled drug; and
  (d) the quantity supplied is a marketable quantity; and
  (e) the person supplies the controlled drug believing that the child intends to sell any of it.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

(4) Absolute liability applies to paragraph (1)(d).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(d).

309.4 Supplying controlled drugs to children for trafficking

(1) A person commits an offence if:
(a) the person supplies a substance to an individual; and
(b) the individual is a child; and
(c) the substance is a controlled drug; and
(d) the person supplies the controlled drug believing that the child intends to sell any of it.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

309.5 Presumption where trafficable quantities are involved

(1) For the purposes of proving an offence against section 309.3 or 309.4, if a person has supplied a trafficable quantity of a substance to a child, the person is taken to have done so believing that the child intended to sell some or all of it.

(2) Subsection (1) does not apply if the person proves that he or she did not have that belief.

Note: A defendant bears a legal burden in relation to the matter in subsection (2) (see section 13.4).

309.6 Meaning of *procures an individual to traffic*

(1) For the purposes of this Part, a person ***procures an individual to traffic*** in a substance if:
(a) the person procures the individual to sell the substance; or
(b) the person, with the intention of selling any of the substance or believing that another person intends to sell any of the substance, procures the individual to prepare the substance for supply or to transport the substance; or

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(c) the person, with the intention of selling any of the substance or assisting another person to sell any of the substance, procures the individual to guard or conceal the substance.

(2) For the purposes of paragraph (1)(b), preparing a substance for supply includes packaging the substance or separating the substance into discrete units.

309.7 Procuring children for trafficking marketable quantities of controlled drugs

(1) A person commits an offence if:

(a) the person procures an individual to traffic in a quantity of a substance; and

(b) the individual is a child; and

(c) the substance is a controlled drug; and

(d) the quantity is a marketable quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

(4) Absolute liability applies to paragraph (1)(d).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(d).

309.8 Procuring children for trafficking controlled drugs

(1) A person commits an offence if:

(a) the person procures an individual to traffic in a substance; and

(b) the individual is a child; and

(c) the substance is a controlled drug.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

309.9 Meaning of *procures an individual to pre-traffic*

For the purposes of this Part, a person ***procures an individual to pre-traffic*** in a substance if the person procures the individual to sell the substance believing that the person to whom the substance is sold intends to use any of the substance to manufacture a controlled drug.

309.10 Procuring children for pre-trafficking marketable quantities of controlled precursors

(1) A person commits an offence if:

(a) the person procures an individual to pre-traffic in a quantity of a substance; and

(b) the individual is a child; and

(c) the substance is a controlled precursor; and

(d) the quantity is a marketable quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

(4) Absolute liability applies to paragraph (1)(d).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(d).

309.11 Procuring children for pre-trafficking controlled precursors

(1) A person commits an offence if:

(a) the person procures an individual to pre-traffic in a substance; and

(b) the individual is a child; and

(c) the substance is a controlled precursor.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

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309.12 Procuring children for importing or exporting marketable quantities of border controlled drugs or border controlled plants

(1) A person commits an offence if:

(a) the person procures an individual to import or export a substance; and

(b) the individual is a child; and

(c) the substance is a border controlled drug or border controlled plant; and

(d) the quantity imported or exported is a marketable quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

(4) Absolute liability applies to paragraph (1)(d).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(d).

(5) Subsection (1) does not apply if the person proves that he or she neither intended, nor believed that another person intended, to sell any of the border controlled drug or any of the border controlled plant or its products.

Note 1: A defendant bears a legal burden in relation to the matters in subsection (5) (see section 13.4).

Note 2: A person who does not commit an offence against this section because he or she proves the matters in subsection (5) may, however, have committed an offence against section 309.2 (supplying controlled drugs to children).

309.13 Procuring children for importing or exporting border controlled drugs or border controlled plants

(1) A person commits an offence if:

(a) the person procures an individual to import or export a substance; and

(b) the individual is a child; and

(c) the substance is a border controlled drug or border controlled plant.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

(4) Subsection (1) does not apply if the person proves that he or she neither intended, nor believed that another person intended, to sell any of the border controlled drug or any of the border controlled plant or its products.

Note 1: A defendant bears a legal burden in relation to the matters in subsection (4) (see section 13.4).

Note 2: A person who does not commit an offence against this section because he or she proves the matters in subsection (4) may, however, have committed an offence against section 309.2 (supplying controlled drugs to children).

309.14 Procuring children for importing or exporting marketable quantities of border controlled precursors

(1) A person commits an offence if:
- (a) the person procures an individual to import or export a substance; and
- (b) either or both of the following apply:
  - (i) the person intends to use any of the substance to manufacture a controlled drug;
  - (ii) the person believes that another person intends to use any of the substance to manufacture a controlled drug; and
- (c) the individual is a child; and
- (d) the substance is a border controlled precursor; and
- (e) the quantity imported or exported is a marketable quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

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

(3) The fault element for paragraph (1)(d) is recklessness.

(4) Absolute liability applies to paragraph (1)(e).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(e).

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(5) Subsection (1) does not apply if:

(a) in relation to conduct covered by subparagraph (1)(b)(i)—the person proves that he or she neither intended, nor believed that another person intended, to sell any of the controlled drug so manufactured; or

(b) in relation to conduct covered by subparagraph (1)(b)(ii)—the person proves that, although he or she believed that the other person intended to use the substance to manufacture a controlled drug, he or she did not intend to sell any of the substance to the other person.

Note: A defendant bears a legal burden in relation to the matters in subsection (5) (see section 13.4).

309.15 Procuring children for importing or exporting border controlled precursors

(1) A person commits an offence if:

(a) the person procures an individual to import or export a substance; and

(b) either or both of the following apply:

(i) the person intends to use any of the substance to manufacture a controlled drug;

(ii) the person believes that another person intends to use any of the substance to manufacture a controlled drug; and

(c) the individual is a child; and

(d) the substance is a border controlled precursor.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

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

(3) The fault element for paragraph (1)(d) is recklessness.

(4) Subsection (1) does not apply if:

(a) in relation to conduct covered by subparagraph (1)(b)(i)—the person proves that he or she neither intended, nor believed that another person intended, to sell any of the controlled drug so manufactured; or

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(b) in relation to conduct covered by subparagraph (1)(b)(ii)—the person proves that, although he or she believed that the other person intended to use the substance to manufacture a controlled drug, he or she did not intend to sell any of the substance to the other person.

Note: A defendant bears a legal burden in relation to the matters in subsection (4) (see section 13.4).

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Division 310—Harm and danger to children under 14 from serious drug offences

310.1 Children not criminally responsible for offences against this Division

A child is not criminally responsible for an offence against this Division.

Note: For the purposes of this Part, a ***child*** is an individual under 18 years of age (see section 300.2).

310.2 Danger from exposure to unlawful manufacturing

(1) A person commits an offence if:

(a) the person engages in conduct; and

(b) the conduct gives rise to a danger of serious harm to an individual; and

(c) the individual is under 14 years of age; and

(d) the danger exists because the individual is exposed to the manufacture of a controlled drug or a controlled precursor; and

(e) the manufacture is an offence against this Part, or would be an offence against this Part if the manufacture were for a commercial purpose (see section 305.2).

Penalty: Imprisonment for 9 years or 1,800 penalty units, or both.

Note: A person can commit an offence against subsection (1) without being involved in the unlawful manufacture of controlled drugs or controlled precursors. The person need only expose a child under 14 to the danger of serious harm from such manufacture.

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

(3) For the purposes of subsection (1), if a person's conduct exposes another person to the risk of catching a disease that may give rise to a danger of serious harm to the other person, the conduct is taken to give rise to a danger of serious harm to the other person.

(4) For the purposes of subsection (1), a person's conduct gives rise to a danger of serious harm if the conduct is ordinarily capable of creating a real, and not merely a theoretical, danger of serious harm.

(5) For the purposes of subsection (1), a person's conduct may give rise to a danger of serious harm whatever the statistical or arithmetical calculation of the degree of risk of serious harm involved.

(6) In a prosecution for an offence against subsection (1), it is not necessary to prove:
  (a) that a person was actually placed in danger of serious harm by the conduct concerned; or
  (b) that a particular person committed the offence mentioned in paragraph (1)(e).

(7) If, in a prosecution for an offence against subsection (1), the conduct of the defendant for the purposes of paragraph (1)(a) is alleged to be an omission, the fault element for that omission is recklessness.

310.3 Harm from exposure to unlawful manufacturing

(1) A person commits an offence if:
  (a) the person engages in conduct; and
  (b) the conduct causes harm to an individual; and
  (c) the individual is under 14 years of age; and
  (d) the harm is caused because the individual is exposed to the manufacture of a controlled drug or a controlled precursor; and
  (e) the manufacture is an offence against this Part, or would be an offence against this Part if the manufacture were for a commercial purpose (see section 305.2).

Penalty: Imprisonment for 9 years or 1,800 penalty units, or both.

Note: A person can commit an offence against this section without being involved in the unlawful manufacture of controlled drugs or controlled precursors. The person need only cause harm to a child under 14 by exposing the child to such manufacture.

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

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(3) In a prosecution for an offence against subsection (1), it is not necessary to prove that a particular person committed the offence mentioned in paragraph (1)(e).

(4) If, in a prosecution for an offence against subsection (1), the conduct of the defendant for the purposes of paragraph (1)(a) is alleged to be an omission, the fault element for that omission is recklessness.

310.4 Aggravated offences—manufacturing controlled drugs and controlled precursors

(1) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.

(2) For the purposes of this Part, an offence against section 305.4 or 305.5 is an ***aggravated offence*** if:
  (a) the commission of the offence exposes an individual to the manufacture of a controlled drug; and
  (b) the individual is under 14 years of age.

(3) For the purposes of this Part, an offence against section 306.2, 306.3 or 306.4 is an ***aggravated offence*** if:
  (a) the commission of the offence exposes an individual to:
    (i) a controlled precursor intended to be used for the manufacture of a controlled drug; or
    (ii) the manufacture of a controlled precursor; and
  (b) the individual is under 14 years of age.

(4) The fault element for paragraphs (2)(a) and (3)(a) is recklessness.

(5) Strict liability applies to paragraphs (2)(b) and (3)(b).

(6) Subsections (2) and (3) do not apply if the commission of the offence does not give rise to a danger of harm to the individual.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3)).

(7) For the purposes of this section, if the commission of an offence exposes a person to the risk of catching a disease that may give rise to a danger of harm to the person, the commission of the offence is taken to give rise to a danger of harm to the person.

(8) For the purposes of this section, the commission of an offence gives rise to a danger of harm if the commission of the offence is ordinarily capable of creating a real, and not merely a theoretical, danger of harm.

(9) For the purposes of this section, the commission of an offence may give rise to a danger of harm whatever the statistical or arithmetical calculation of the degree of risk of harm involved.

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Division 311—Combining quantities of drugs, plants or precursors

Subdivision A—Combining different parcels on the same occasion

311.1 Combining different parcels on the same occasion

(1) If, on the same occasion, a person:

(a) traffics in different parcels of controlled drugs (Division 302); or

(b) cultivates different parcels of controlled plants (Division 303); or

(c) sells different parcels of controlled plants (Division 304); or

(d) manufactures different parcels of controlled drugs (Division 305); or

(e) pre-traffics in different parcels of controlled precursors (Division 306); or

(f) imports or exports different parcels of border controlled drugs or border controlled plants (Subdivision A of Division 307); or

(g) possesses different parcels of unlawfully imported border controlled drugs or border controlled plants (Subdivision B of Division 307); or

(h) possesses different parcels of border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported (Subdivision C of Division 307); or

(i) imports or exports different parcels of border controlled precursors (Subdivision D of Division 307); or

(j) supplies different parcels of controlled drugs to a child for trafficking (sections 309.3 and 309.4); or

(k) procures a child to traffic in different parcels of controlled drugs (sections 309.7 and 309.8); or

(l) procures a child to pre-traffic in different parcels of controlled precursors (sections 309.10 and 309.11); or

(m) procures a child to import or export different parcels of border controlled drugs or border controlled plants (sections 309.12 and 309.13); or

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(n) procures a child to import or export different parcels of border controlled precursors (sections 309.14 and 309.15);

the person may be charged with a single offence against this Part in respect of all or any of the different parcels of drugs, plants or precursors.

(2) The quantity of the drugs, plants or precursors for the purposes of the offence is the sum of the quantities of the drugs, plants or precursors in the different parcels.

Note: See section 312.2 for working out quantities where different kinds of controlled or border controlled drugs, plants or precursors are involved.

(3) If the prosecution intends to rely on this Subdivision, particulars of each parcel of drugs, plants or precursors must be set out in the charge.

(4) This Subdivision does not prevent a person being charged with separate offences in respect of different parcels of drugs, plants or precursors.

Subdivision B—Combining parcels from organised commercial activities

311.2 Business of trafficking controlled drugs

(1) In proceedings for an offence against:

(a) section 302.2 (trafficking commercial quantities of controlled drugs); or

(b) section 302.3 (trafficking marketable quantities of controlled drugs);

the prosecution may prove the element of the offence relating to the quantity of controlled drug by proving:

(c) that the defendant was engaged in an organised commercial activity that involved repeated trafficking in controlled drugs; and

(d) that the relevant quantity of a controlled drug, or of a combination of controlled drugs, was trafficked in the course of that activity.

Note 1: See section 312.2 for working out quantities where different kinds of controlled drugs are involved.

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Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(d).

(2) For the purposes of subsection (1) it is not necessary for the prosecution to specify or prove:

(a) the exact date of each occasion of trafficking; or

(b) the exact quantity trafficked on each occasion.

(3) Section 302.5 (presumption where trafficable quantities are involved) does not apply to an offence prosecuted in accordance with subsection (1).

311.3 Business of pre-trafficking by selling controlled precursors

(1) In proceedings for an offence against:

(a) section 306.2 (pre-trafficking commercial quantities of controlled precursors); or

(b) section 306.3 (pre-trafficking marketable quantities of controlled precursors);

where the alleged conduct of the defendant involves pre-trafficking by selling controlled precursors, the prosecution may prove the element of the offence relating to the quantity of controlled precursor by proving:

(c) that the defendant was engaged in an organised commercial activity that involved repeated pre-trafficking by selling controlled precursors; and

(d) that the relevant quantity of a controlled precursor, or of a combination of controlled precursors, was pre-trafficked by sale in the course of that activity.

Note 1: See section 312.2 for working out quantities where different kinds of controlled precursors are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(d).

(2) For the purposes of subsection (1) it is not necessary for the prosecution to specify or prove:

(a) the exact date of each occasion of pre-trafficking; or

(b) the exact quantity pre-trafficked on each occasion.

311.4 Business of importing or exporting border controlled drugs or border controlled plants

(1) In proceedings for an offence against:

(a) section 307.1 (importing and exporting commercial quantities of border controlled drugs or border controlled plants); or

(b) section 307.2 (importing and exporting marketable quantities of border controlled drugs or border controlled plants);

the prosecution may prove the element of the offence relating to the quantity of border controlled drug or border controlled plant by proving:

(c) that the defendant was engaged in an organised commercial activity that involved repeated importing or exporting of border controlled drugs or border controlled plants, or both; and

(d) that the relevant quantity of a border controlled drug or border controlled plant or both, or of a combination of border controlled drugs or border controlled plants or both, was imported or exported in the course of that activity.

Note: See section 312.2 for working out quantities where different kinds of border controlled drugs or border controlled plants are involved.

(2) For the purposes of subsection (1) it is not necessary for the prosecution to specify or prove:

(a) the exact date of each occasion of import or export; or

(b) the exact quantity imported or exported on each occasion.

311.5 Business of importing or exporting border controlled precursors

(1) In proceedings for an offence against:

(a) section 307.11 (importing and exporting commercial quantities of border controlled precursors); or

(b) section 307.12 (importing and exporting marketable quantities of border controlled precursors);

the prosecution may prove the element of the offence relating to the quantity of border controlled precursor by proving:

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(c) that the defendant was engaged in an organised commercial activity that involved repeated importing or exporting of border controlled precursors; and

(d) that the relevant quantity of a border controlled precursor, or of a combination of border controlled precursors, was imported or exported in the course of that activity.

Note: See section 312.2 for working out quantities where different kinds of border controlled precursors are involved.

(2) For the purposes of subsection (1) it is not necessary for the prosecution to specify or prove:

(a) the exact date of each occasion of import or export; or

(b) the exact quantity imported or exported on each occasion.

311.6 Business of supplying controlled drugs to children

(1) In proceedings for an offence against section 309.3 (supplying marketable quantities of controlled drugs to children for trafficking), the prosecution may prove the element of the offence relating to the quantity of controlled drug by proving:

(a) that the defendant was engaged in an organised commercial activity that involved repeated supplying of drugs to children for trafficking; and

(b) that the relevant quantity of a controlled drug, or of a combination of controlled drugs, was supplied to children in the course of that activity.

Note 1: See section 312.2 for working out quantities where different kinds of controlled drugs are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(b).

(2) For the purposes of subsection (1) it is not necessary for the prosecution to specify or prove:

(a) the exact date of each occasion of supply; or

(b) the exact quantity supplied on each occasion.

(3) Section 309.5 (presumption where trafficable quantities are involved) does not apply to an offence prosecuted in accordance with subsection (1).

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311.7 General rules—combining parcels from organised commercial activities

(1) If, in proceedings for an offence, the prosecution intends to rely on section 311.2, 311.3, 311.4, 311.5 or 311.6:

(a) the fact that it intends to do so must be set out in the charge; and

(b) a description of the conduct alleged for the purposes of that section must be set out in the charge or provided to the accused within a reasonable time before the proceedings.

(2) If:

(a) an occasion of trafficking, pre-trafficking, importing or exporting or supplying is alleged in proceedings against a person for an offence prosecuted in accordance with section 311.2, 311.3, 311.4, 311.5 or 311.6; and

(b) the person is convicted or acquitted of the offence;

that occasion must not be alleged in proceedings against the person for another offence against this Part.

(3) If:

(a) an occasion of trafficking, pre-trafficking, importing or exporting or supplying is alleged in proceedings against a person for an offence against this Part; and

(b) the person is convicted or acquitted of the offence;

that occasion must not be alleged in proceedings against the person for an offence prosecuted in accordance with section 311.2, 311.3, 311.4, 311.5 or 311.6.

(4) Subject to subsections (2) and (3), this Subdivision does not prevent a person being charged with separate offences in respect of conduct on different occasions.

Subdivision C—Combining parcels from multiple offences

311.8 Multiple offences—trafficking controlled drugs

The prosecution may prove an offence against Division 302 (trafficking controlled drugs) by proving:

(a) that the defendant committed offences against that Division on different occasions; and

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(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

(c) that the relevant quantity (in sum) of a controlled drug, or of a combination of controlled drugs, was trafficked during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled drugs are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.9 Multiple offences—cultivating controlled plants

The prosecution may prove an offence against Division 303 (commercial cultivation of controlled plants) by proving:

(a) that the defendant committed offences against that Division on different occasions; and

(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

(c) that the relevant quantity (in sum) of a controlled plant, or of a combination of controlled plants, was cultivated during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled plants are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.10 Multiple offences—selling controlled plants

The prosecution may prove an offence against Division 304 (selling controlled plants) by proving:

(a) that the defendant committed offences against that Division on different occasions; and

(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

(c) that the relevant quantity (in sum) of a controlled plant, or of a combination of controlled plants, was sold during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled plants are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.11 Multiple offences—manufacturing controlled drugs

The prosecution may prove an offence against Division 305 (commercial manufacture of controlled drugs) by proving:

(a) that the defendant committed offences against that Division on different occasions; and

(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

(c) that the relevant quantity (in sum) of a controlled drug, or of a combination of controlled drugs, was manufactured during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled drugs are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.12 Multiple offences—pre-trafficking controlled precursors

The prosecution may prove an offence against Division 306 (pre-trafficking controlled precursors) by proving:

(a) that the defendant committed offences against that Division on different occasions; and

(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

(c) that the relevant quantity (in sum) of a controlled precursor, or of a combination of controlled precursors, was pre-trafficked during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled precursors are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.13 Multiple offences—importing or exporting border controlled drugs or border controlled plants

The prosecution may prove an offence against Subdivision A of Division 307 (importing and exporting border controlled drugs or border controlled plants) by proving:

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(a) that the defendant committed offences against that Subdivision on different occasions; and

(b) that each of those offences was committed within a period of not more than 30 days from another of those offences; and

(c) that the relevant quantity (in sum) of a border controlled drug or border controlled plant or both, or of a combination of border controlled drugs or border controlled plants or both, was imported or exported during the commission of those offences.

Note: See section 312.2 for working out quantities where different kinds of border controlled drugs or border controlled plants are involved.

311.14 Multiple offences—possessing unlawfully imported border controlled drugs or border controlled plants

The prosecution may prove an offence against Subdivision B of Division 307 (possessing unlawfully imported border controlled drugs or border controlled plants) by proving:

(a) that the defendant committed offences against that Subdivision on different occasions; and

(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

(c) that the relevant quantity (in sum) of a border controlled drug or border controlled plant or both, or of a combination of border controlled drugs or border controlled plants or both, was possessed by the defendant during the commission of those offences.

Note: See section 312.2 for working out quantities where different kinds of border controlled drugs or border controlled plants are involved.

311.15 Multiple offences—possessing border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported

The prosecution may prove an offence against Subdivision C of Division 307 (possessing border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported) by proving:

(a) that the defendant committed offences against that Subdivision on different occasions; and

(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

(c) that the relevant quantity (in sum) of a border controlled drug or border controlled plant or both, or of a combination of border controlled drugs or border controlled plants or both, was possessed by the defendant during the commission of those offences.

Note: See section 312.2 for working out quantities where different kinds of border controlled drugs or border controlled plants are involved.

311.16 Multiple offences—importing or exporting border controlled precursors

The prosecution may prove an offence against Subdivision D of Division 307 (importing and exporting border controlled precursors) by proving:

(a) that the defendant committed offences against that Subdivision on different occasions; and

(b) that each of those offences was committed within a period of not more than 30 days from another of those offences; and

(c) that the relevant quantity (in sum) of a border controlled precursor, or of a combination of border controlled precursors, was imported or exported during the commission of those offences.

Note: See section 312.2 for working out quantities where different kinds of border controlled precursors are involved.

311.17 Multiple offences—supplying controlled drugs to children for trafficking

The prosecution may prove an offence against section 309.3 (supplying marketable quantities of controlled drugs to children for trafficking) by proving:

(a) that the defendant committed offences against section 309.4 (supplying controlled drugs to children for trafficking) on different occasions; and

(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

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(c) that the relevant quantity (in sum) of a controlled drug, or of a combination of controlled drugs, was supplied during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled drugs are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.18 Multiple offences—procuring children for trafficking controlled drugs

The prosecution may prove an offence against section 309.7 (procuring children for trafficking marketable quantities of controlled drugs) by proving:

(a) that the defendant committed offences against section 309.8 (procuring children for trafficking controlled drugs) on different occasions; and

(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

(c) that the relevant quantity (in sum) of a controlled drug, or of a combination of controlled drugs, was trafficked during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled drugs are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.19 Multiple offences—procuring children for pre-trafficking controlled precursors

The prosecution may prove an offence against section 309.10 (procuring children for pre-trafficking marketable quantities of controlled precursors) by proving:

(a) that the defendant committed offences against section 309.11 (procuring children for pre-trafficking controlled precursors) on different occasions; and

(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

(c) that the relevant quantity (in sum) of a controlled precursor, or of a combination of controlled precursors, was pre-trafficked during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled precursors are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.20 Multiple offences—procuring children for importing or exporting border controlled drugs or border controlled plants

The prosecution may prove an offence against section 309.12 (procuring children for importing or exporting marketable quantities of border controlled drugs or border controlled plants) by proving:

(a) that the defendant committed offences against section 309.13 (procuring children for importing or exporting border controlled drugs or border controlled plants) on different occasions; and

(b) that each of those offences was committed within a period of not more than 30 days from another of those offences; and

(c) that the relevant quantity (in sum) of a border controlled drug or border controlled plant or both, or of a combination of border controlled drugs or border controlled plants or both, was imported or exported during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of border controlled drugs or border controlled plants are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.21 Multiple offences—procuring children for importing or exporting border controlled precursors

The prosecution may prove an offence against section 309.14 (procuring children for importing or exporting marketable quantities of border controlled precursors) by proving:

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(a) that the defendant committed offences against section 309.15 (procuring children for importing or exporting border controlled precursors) on different occasions; and

(b) that each of those offences was committed within a period of not more than 30 days from another of those offences; and

(c) that the relevant quantity (in sum) of a border controlled precursor, or of a combination of border controlled precursors, was imported or exported during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of border controlled precursors are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.22 General rules—combining parcels from multiple offences

(1) If the prosecution intends to rely on a section of this Subdivision, the particulars of the offences alleged to have been committed on the different occasions must be set out in the charge.

(2) The same parcel of controlled drugs, controlled plants, controlled precursors, border controlled drugs, border controlled plants or border controlled precursors must not be counted more than once for the purposes of this Subdivision.

Example: A person is in possession of a quantity of a controlled drug for sale on one day (the first occasion) and sells that particular quantity the next day (the second occasion). Only the quantity trafficked on one of those occasions may be counted.

(3) This Subdivision does not prevent a person being charged with separate offences in respect of conduct on different occasions.

Division 312—Working out quantities of drugs, plants or precursors

312.1 Working out quantities of drugs and precursors in mixtures

(1) If an alleged offence against this Part involves a quantity of a controlled drug in a mixture of substances, the prosecution may prove the quantity of the controlled drug involved:

(a) by proving that the mixture contains that quantity of the pure form of the controlled drug; or

(b) if such a quantity is specified in Division 314 for the controlled drug in a mixture—by proving that quantity of the mixture.

(2) If an alleged offence against this Part involves a quantity of a controlled precursor in a mixture of substances, the prosecution may prove the quantity of the controlled precursor involved by proving that the mixture contains that quantity of the pure form of the controlled precursor.

(3) If an alleged offence against this Part involves a quantity of a border controlled drug in a mixture of substances, the prosecution may prove the quantity of the border controlled drug involved:

(a) by proving that the mixture contains that quantity of the pure form of the border controlled drug; or

(b) if such a quantity is specified in Division 314 for the border controlled drug in a mixture—by proving that quantity of the mixture.

(4) If an alleged offence against this Part involves a quantity of a border controlled precursor in a mixture of substances, the prosecution may prove the quantity of the border controlled precursor involved by proving that the mixture contains that quantity of the pure form of the border controlled precursor.

312.2 Working out quantities where different kinds of drugs, plants or precursors are involved

(1) This section applies if a person is charged with a single offence against this Part that involves:

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(a) trafficking in more than one kind of controlled drug; or
(b) cultivating more than one kind of controlled plant; or
(c) selling more than one kind of controlled plant; or
(d) manufacturing more than one kind of controlled drug; or
(e) pre-trafficking in more than one kind of controlled precursor; or
(f) importing or exporting more than one kind of border controlled drug or border controlled plant; or
(g) possessing more than one kind of unlawfully imported border controlled drug or border controlled plant; or
(h) possessing more than one kind of border controlled drug or border controlled plant reasonably suspected of having been unlawfully imported; or
(i) importing or exporting more than one kind of border controlled precursor; or
(j) supplying more than one kind of controlled drug to a child for trafficking; or
(k) procuring a child to traffic in more than one kind of controlled drug; or
(l) procuring a child to pre-traffic in more than one kind of controlled precursor; or
(m) procuring a child to import or export more than one kind of border controlled drug or border controlled plant; or
(n) procuring a child to import or export more than one kind of border controlled precursor.

(2) The following apply for the purposes of working out the quantity of controlled drugs, controlled plants, controlled precursors, border controlled drugs, border controlled plants or border controlled precursors involved in the offence:
(a) the quantity of the drugs or plants is a trafficable quantity if the sum of the requisite fractions of the trafficable quantity of each of those drugs or plants is equal to or greater than one;
(b) the quantity of drugs, plants or precursors is a marketable quantity if the sum of the requisite fractions of the marketable quantity of each of those drugs, plants or precursors is equal to or greater than one;
(c) the quantity of drugs, plants or precursors is a commercial quantity if the sum of the requisite fractions of the

commercial quantity of each of those drugs, plants or precursors is equal to or greater than one.

(3) For the purposes of this Part, ***requisite fraction*** means:

(a) in relation to a trafficable quantity of a controlled drug or controlled plant, the actual quantity of the drug or plant divided by the smallest trafficable quantity of the drug or plant; or

(b) in relation to a marketable quantity of a controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor, the actual quantity of the drug, plant or precursor divided by the smallest marketable quantity of the drug, plant or precursor; or

(c) in relation to a commercial quantity of a controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor, the actual quantity of the drug, plant or precursor divided by the smallest commercial quantity of the drug, plant or precursor.

(4) If this section applies in relation to a controlled drug in a mixture of substances, the requisite fraction of a trafficable, marketable or commercial quantity of the controlled drug may be calculated:

(a) on the basis of the quantity of the controlled drug in pure form; or

(b) if such a quantity is specified in Division 314 for the controlled drug in a mixture—on the basis of the quantity of the mixture.

(5) If this section applies in relation to a border controlled drug in a mixture of substances, the requisite fraction of a marketable or commercial quantity of the border controlled drug may be calculated:

(a) on the basis of the quantity of the border controlled drug in pure form; or

(b) if such a quantity is specified in Division 314 for the border controlled drug in a mixture—on the basis of the quantity of the mixture.

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Division 313—Defences and alternative verdicts

313.1 Defence—conduct justified or excused by or under a law of a State or Territory

This Part, other than Division 307, does not apply in relation to conduct if:

(a) a person engages in the conduct in a State or Territory; and

(b) the conduct is justified or excused by or under a law of that State or Territory.

Note 1: A defendant bears an evidential burden in relation to the matters in this section (see subsection 13.3(3)).

Note 2: A person is not criminally responsible for an offence against this Part if the person's conduct is justified or excused by or under another Commonwealth law (see section 10.5). In 2005, Commonwealth laws that authorised importation, possession or use of controlled drugs, controlled plants, controlled precursors, border controlled drugs, border controlled plants or border controlled precursors included the *Customs Act 1901*, the *Narcotic Drugs Act 1967* and the *Crimes Act 1914*.

313.2 Defence—reasonable belief that conduct is justified or excused by or under a law

A person is not criminally responsible for an offence against this Part if:

(a) at the time of the conduct constituting the offence, the person was under a mistaken but reasonable belief that the conduct was justified or excused by or under a law of the Commonwealth or of a State or Territory; and

(b) had the conduct been so justified or excused—the conduct would not have constituted the offence.

Note: A defendant bears an evidential burden in relation to the matter in paragraph (a) (see subsection 13.3(3)).

313.3 Alternative verdict—offence not proved

If:

(a) in a prosecution for an offence against this Part, the trier of fact:

(i) is not satisfied that the defendant is guilty of the alleged offence; but

(ii) is satisfied, beyond reasonable doubt, that the defendant is guilty of another offence against this Part; and

(b) the maximum penalty for the other offence is not greater than the maximum penalty for the alleged offence;

the trier of fact may find the defendant not guilty of the alleged offence but guilty of the other offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

313.4 Alternative verdict—mistake as to quantity of drug, plant or precursor

(1) This section applies if:

(a) an offence against this Part (other than Division 307) is prosecuted; and

(b) the offence involves a commercial quantity or a marketable quantity of a controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor; and

(c) the trier of fact would, apart from this section, have found the defendant guilty of the offence.

(2) If:

(a) the defendant proves that, at the time of the alleged offence, he or she was under a mistaken belief about the quantity of the drug, plant or precursor; and

(b) if the mistaken belief had been correct, the defendant would have been guilty of another offence against this Part; and

(c) the maximum penalty for the other offence is less than the maximum penalty for the alleged offence;

the trier of fact may find the defendant:

(d) not guilty of the alleged offence; but

(e) guilty of the other offence.

Note: A defendant bears a legal burden in relation to the matter in paragraph (2)(a) (see section 13.4).

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313.5 Alternative verdict—mistake as to identity of drug, plant or precursor

(1) This section applies if:

(a) an offence against this Part (other than Division 307) is prosecuted; and

(b) the offence involves a controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor; and

(c) the trier of fact would, apart from this section, have found the defendant guilty of the offence.

(2) If:

(a) the defendant proves that, at the time of the alleged offence, he or she was under a mistaken belief about the identity of the drug, plant or precursor; and

(b) if the mistaken belief had been correct, the defendant would have been guilty of another offence against this Part; and

(c) the maximum penalty for the other offence is less than the maximum penalty for the alleged offence;

the trier of fact may find the defendant:

(d) not guilty of the alleged offence; but

(e) guilty of the other offence.

Note: A defendant bears a legal burden in relation to the matter in paragraph (2)(a) (see section 13.4).

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Part 9.4—Dangerous weapons

Division 360—Cross-border firearms trafficking

360.1 Disposal and acquisition of a firearm

(1) For the purposes of this Division, and without limitation, a person ***disposes*** of a firearm if any of the following applies:

(a) the person sells the firearm (whether or not the person to whom the firearm is sold also acquires physical control of the firearm);

(b) the person hires, leases or rents the firearm to another person;

(c) the person passes physical control of the firearm to another person (whether or not the person to whom physical control is passed also acquires ownership of the firearm).

(2) For the purposes of this Division, and without limitation, a person ***acquires*** a firearm if any of the following applies:

(a) the person purchases the firearm (whether or not the person also acquires physical control of the firearm);

(b) the person hires, leases or rents the firearm from another person;

(c) the person obtains physical control of the firearm (whether or not the person also acquires ownership of the firearm).

360.2 Cross-border offence of disposal or acquisition of a firearm

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

(a) in the course of trade or commerce among the States, between Territories or between a Territory and a State, the person engages in conduct that constitutes an offence against a firearm law; and

(b) the primary element of the offence is:

(i) the disposal of a firearm by the person; or

(ii) the acquisition of a firearm by the person.

Penalty: Imprisonment for 10 years or a fine of 2,500 penalty units, or both.

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(2) Absolute liability applies to the paragraph (1)(a) element of the offence.

(3) In this section:

firearm means a firearm within the meaning of the firearm law concerned.

firearm law means a law of a State or Territory which is prescribed by the regulations for the purposes of this Division.

360.3 Taking or sending a firearm across borders

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

(a) in the course of trade or commerce among the States, between Territories or between a Territory and a State, the person takes or sends a firearm from one State or Territory to another State or Territory; and

(b) the person does so intending that the firearm will be disposed of in the other State or Territory (whether by the person or another); and

(c) the person knows that, or is reckless as to whether:

(i) the disposal of the firearm; or

(ii) any acquisition of the firearm that results from the disposal;

would happen in circumstances that would constitute an offence against the firearm law of that other State or Territory.

Penalty: Imprisonment for 10 years or a fine of 2,500 penalty units, or both.

(2) In this section:

firearm means a firearm within the meaning of the firearm law mentioned in paragraph (1)(c).

firearm law means a law of a State or Territory which is prescribed by the regulations for the purposes of this Division.

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360.4 Concurrent operation intended

This Division is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

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Part 9.5—Identity crime

Division 370—Preliminary

370.1 Definitions

In this Code:

deal, in identification information, includes make, supply or use any such information.

identification documentation means any document or other thing that:

(a) contains or incorporates identification information; and

(b) is capable of being used by a person for the purpose of pretending to be, or passing the person off as, another person (whether living, dead, real or fictitious).

identification information means information, or a document, relating to a person (whether living, dead, real or fictitious) that is capable of being used (whether alone or in conjunction with other information or documents) to identify or purportedly identify the person, including any of the following:

(a) a name or address;

(b) a date or place of birth, whether the person is married or has a de facto partner, relatives' identity or similar information;

(c) a driver's licence or driver's licence number;

(d) a passport or passport number;

(e) biometric data;

(f) a voice print;

(g) a credit or debit card, its number, or data stored or encrypted on it;

(h) a financial account number, user name or password;

(i) a digital signature;

(j) a series of numbers or letters (or both) intended for use as a means of personal identification;

(k) an ABN.

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370.2 Definition of *foreign indictable offence*

In Division 372:

foreign indictable offence means an offence against a law of a foreign country or part of a foreign country that is constituted by conduct that, if engaged in in Australia, would constitute an indictable offence against a law of the Commonwealth.

370.3 Concurrent operation intended

(1) This Part is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

(2) Without limiting subsection (1), this Part is not intended to exclude or limit the concurrent operation of a law of a State or Territory that makes:

(a) an act or omission that is an offence against a provision of this Part; or

(b) a similar act or omission;

an offence against the law of the State or Territory.

(3) Subsection (2) applies even if the law of the State or Territory does any one or more of the following:

(a) provides for a penalty for the offence that differs from the penalty provided for in this Part;

(b) provides for a fault element in relation to the offence that differs from the fault elements applicable to the offence under this Part;

(c) provides for a defence in relation to the offence that differs from the defences applicable to the offence under this Part.

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Division 372—Identity fraud offences

372.1 Dealing in identification information

(1) A person (the ***first person***) commits an offence if:

(a) the first person deals in identification information; and

(b) the first person intends that any person (the ***user***) (whether or not the first person) will use the identification information to pretend to be, or to pass the user off as, another person (whether living, dead, real or fictitious) for the purpose of:

(i) committing an offence; or

(ii) facilitating the commission of an offence; and

(c) the offence referred to in paragraph (b) is:

(i) an indictable offence against a law of the Commonwealth; or

(ii) a foreign indictable offence.

Penalty: Imprisonment for 5 years.

Note: ***Deal***, in identification information, includes make, supply or use any such information. See section 370.1.

(2) Absolute liability applies to the paragraph (1)(c) element of the offence.

Note: For absolute liability, see section 6.2.

(3) This section applies:

(a) even if:

(i) committing the offence referred to in paragraph (1)(b) is impossible; or

(ii) the offence referred to in paragraph (1)(b) is to be committed at a later time; and

(b) whether or not the person to whom the identification information concerned relates consented to the dealing in the identification information.

(4) This section does not apply to dealing in the first person's own identification information.

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372.1A Dealing in identification information that involves use of a carriage service

Dealing in identification information using a carriage service

(1) A person (the ***first person***) commits an offence if:

(a) the first person deals in identification information; and

(b) the first person does so using a carriage service; and

(c) the first person intends that any person (the ***user***) (whether or not the first person) will use the identification information to pretend to be, or to pass the user off as, another person (whether living, dead, real or fictitious) for the purpose of:

(i) committing an offence; or

(ii) facilitating the commission of an offence; and

(d) the offence referred to in paragraph (c) is:

(i) an indictable offence against a law of the Commonwealth; or

(ii) an indictable offence against a law of a State or Territory; or

(iii) a foreign indictable offence.

Penalty: Imprisonment for 5 years.

Note: ***Deal***, in identification information, includes make, supply or use any such information. See section 370.1.

(2) Absolute liability applies to the paragraphs (1)(b) and (d) elements of the offence.

Note: For absolute liability, see section 6.2.

Dealing in identification information obtained using a carriage service

(3) A person (the ***first person***) commits an offence if:

(a) the first person obtains identification information; and

(b) the first person does so using a carriage service; and

(c) the first person deals in the identification information; and

(d) the first person intends that any person (the ***user***) (whether or not the first person) will use the identification information to pretend to be, or to pass the user off as, another person (whether living, dead, real or fictitious) for the purpose of:

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(i) committing an offence; or

(ii) facilitating the commission of an offence; and

(e) the offence referred to in paragraph (d) is:

(i) an indictable offence against a law of the Commonwealth; or

(ii) an indictable offence against a law of a State or Territory; or

(iii) a foreign indictable offence.

Penalty: Imprisonment for 5 years.

Note: ***Deal***, in identification information, includes make, supply or use any such information. See section 370.1.

(4) Absolute liability applies to the paragraphs (3)(b) and (e) elements of the offence.

Note: For absolute liability, see section 6.2.

Presumption that conduct was engaged in using carriage service

(5) If the prosecution proves beyond reasonable doubt that a person engaged in the conduct referred to in paragraph (1)(a) or (3)(a), then it is presumed, unless the person proves to the contrary, that the person used a carriage service to engage in that conduct.

Note: A defendant bears a legal burden in relation to the matter in this subsection. See section 13.4.

Application of section

(6) This section applies:

(a) even if:

(i) committing the offence referred to in paragraph (1)(c) or (3)(d) is impossible; or

(ii) the offence referred to in paragraph (1)(c) or (3)(d) is to be committed at a later time; and

(b) whether or not the person to whom the identification information concerned relates consented to the dealing in the identification information.

(7) This section does not apply to dealing in the first person's own identification information.

372.2 Possession of identification information

(1) A person (the ***first person***) commits an offence if:

(a) the first person possesses identification information; and

(b) the first person intends that any person (whether or not the first person) will use the identification information to engage in conduct; and

(c) the conduct referred to in paragraph (b) constitutes an offence against section 372.1 or subsection 372.1A(1) or (3).

Penalty: Imprisonment for 3 years.

(2) Absolute liability applies to the paragraph (1)(c) element of the offence.

Note: For absolute liability, see section 6.2.

(3) This section applies whether or not the person to whom the identification information concerned relates consented to the possession of the identification information.

(4) This section does not apply to the possession of the first person's own identification information.

372.3 Possession of equipment used to make identification documentation

(1) A person (the ***first person***) commits an offence if:

(a) the first person possesses equipment; and

(b) the first person intends that any person (whether or not the first person) will use the equipment to make identification documentation; and

(c) the first person intends that any person (whether or not referred to in paragraph (b)) will use the identification documentation to engage in conduct; and

(d) the conduct referred to in paragraph (c) constitutes an offence against section 372.1 or subsection 372.1A(1) or (3).

Penalty: Imprisonment for 3 years.

(2) Absolute liability applies to the paragraph (1)(d) element of the offence.

Note: For absolute liability, see section 6.2.

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372.4 Extended geographical jurisdiction—category A

Section 15.1 (extended geographical jurisdiction—category A) applies to an offence against this Division.

372.5 Alternative verdict

(1) This section applies if, in a prosecution for an offence against section 372.1 or subsection 372.1A(1) or (3), the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against section 372.2.

(2) The trier of fact may find the defendant not guilty of the offence against section 372.1 or subsection 372.1A(1) or (3) (as the case requires) but guilty of the offence against section 372.2, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

372.6 Attempt

It is not an offence to attempt to commit an offence against this Division.

Division 375—Victims' certificates

375.1 Certificate may be issued by magistrate in relation to victim of identity crime

(1) A magistrate may, on application by a person (the ***victim***), issue a certificate under this section if the magistrate is satisfied, on the balance of probabilities, that:

(a) another person (the ***dealer***) has dealt in identification information; and

(b) the dealer intended that any person (the ***user***) (whether or not the dealer) would use the identification information to pretend to be, or to pass the user off as, another person (whether the victim or another person living, dead, real or fictitious) for the purpose of:

(i) committing an offence; or

(ii) facilitating the commission of an offence; and

(c) the certificate may assist with any problems the dealing has caused in relation to the victim's personal or business affairs; and

(d) the offence referred to in paragraph (b) is an indictable offence against a law of the Commonwealth.

Note: ***Deal***, in identification information, includes make, supply or use any such information. See section 370.1.

(2) This section applies:

(a) even if:

(i) committing the offence referred to in paragraph (1)(b) is impossible; or

(ii) the offence referred to in paragraph (1)(b) is to be committed at a later time; and

(b) whether or not the person to whom the identification information concerned relates consented to the dealing in the identification information.

375.2 Content of certificate

(1) A certificate issued under section 375.1 must:

(a) identify the victim; and

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(b) describe the dealing in identification information.

(2) The certificate may contain such other information as the magistrate considers appropriate.

(3) The certificate must not identify the dealer.

375.3 Relation to civil and criminal proceedings

(1) The magistrate may issue a certificate under section 375.1 whether or not:

(a) the dealer is identifiable; or

(b) subject to subsection (2)—any proceedings (whether civil or criminal) have been or can be taken against a person for or in relation to the dealing, or are pending.

(2) The magistrate must not issue a certificate under section 375.1 if doing so would prejudice any proceedings.

(3) The certificate is not admissible in any proceedings.

375.4 Power conferred on magistrate personally

(1) Power is conferred by this Division on a magistrate only in a personal capacity and not as a court or a member of a court.

(2) The magistrate need not accept the power conferred.

(3) A magistrate exercising a power under this Division has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the magistrate is a member.

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Division 376—False identity and air travel

376.1 Definitions for Division 376

In this Division:

air passenger ticket, for a flight, means a ticket, or electronic record, on the basis of which a person is treated as being entitled to travel as a passenger on:

(a) the flight; or

(b) a journey that includes the flight.

false: identification information relating to a person is ***false*** if it is false in a material particular that affects the capacity of the information to be used (whether alone or in conjunction with other information or documents) to identify the person.

Note: For the meaning of ***identification information***, see section 370.1.

376.2 False identification information—at constitutional airports

(1) A person (the ***defendant*****)** commits an offence if:

(a) the defendant uses information at a place; and

(b) the defendant does so reckless as to whether the information is used to identify the defendant as a passenger on a flight; and

(c) the information is identification information; and

(d) the information is false in relation to the defendant; and

(e) the place is a constitutional airport.

Penalty: Imprisonment for 12 months.

(2) Absolute liability applies to paragraph (1)(e).

Note: For absolute liability, see section 6.2.

(3) In this section:

constitutional airport means:

(a) a Commonwealth aerodrome within the meaning of the *Crimes (Aviation) Act 1991* (see section 3 of that Act); or

(b) another airport, if the airport is in a Territory.

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376.3 False identification information—air passenger tickets obtained using a carriage service

Carriage service offence—using information to obtain an air passenger ticket

(1) A person (the ***defendant***) commits an offence if:

(a) the defendant uses information; and

(b) the defendant does so:

(i) with the result that an air passenger ticket for a flight is obtained (whether by the defendant or another person); and

(ii) reckless as to whether the information is used to identify the defendant, or another person, as a passenger on the flight; and

(c) the information is identification information; and

(d) the information is false in relation to the person who takes, or intends to take, the flight using the ticket; and

(e) a carriage service is used (whether by the defendant or another person) to obtain the ticket; and

(f) the flight starts or ends within Australia.

Penalty: Imprisonment for 12 months.

Carriage service offence—taking a flight using an air passenger ticket

(2) A person (the ***defendant***) commits an offence if:

(a) the defendant takes a flight using an air passenger ticket; and

(b) identification information was used (whether by the defendant or another person) to obtain the ticket; and

(c) the information resulted in the identification of a person as a passenger on the flight; and

(d) the information is false in relation to the defendant; and

(e) a carriage service was used (whether by the defendant or another person) to obtain the ticket; and

(f) the flight starts or ends within Australia.

Penalty: Imprisonment for 12 months.

General

(3) In a prosecution for an offence against subsection (1) or (2), if the prosecution proves beyond reasonable doubt that an air passenger ticket was obtained, then it is presumed, unless the defendant proves to the contrary, that a carriage service was used to obtain the ticket.

Note: A defendant bears a legal burden in relation to the matter in this subsection: see section 13.4.

(4) Absolute liability applies to paragraphs (1)(e) and (f) and (2)(e) and (f).

Note: For absolute liability, see section 6.2.

376.4 False identification information—air passenger tickets for constitutional flights

Constitutional flight offence—using information to obtain an air passenger ticket

(1) A person (the ***defendant***) commits an offence if:
- (a) the defendant uses information; and
- (b) the defendant does so:
  - (i) with the result that an air passenger ticket for a flight is obtained (whether by the defendant or another person); and
  - (ii) reckless as to whether the information is used to identify the defendant, or another person, as a passenger on the flight; and
- (c) the information is identification information; and
- (d) the information is false in relation to the person who takes, or intends to take, the flight using the ticket; and
- (e) the flight is a constitutional flight.

Penalty: Imprisonment for 12 months.

Constitutional flight offence—taking a flight using an air passenger ticket

(2) A person (the ***defendant***) commits an offence if:
- (a) the defendant takes a flight using an air passenger ticket; and

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(b) identification information was used (whether by the defendant or another person) to obtain the ticket; and

(c) the information resulted in the identification of a person as a passenger on the flight; and

(d) the information is false in relation to the defendant; and

(e) the flight is a constitutional flight.

Penalty: Imprisonment for 12 months.

General

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

Note: For absolute liability, see section 6.2.

(4) In this section:

constitutional flight means:

(a) a flight that starts or ends in a Territory; or

(b) a flight between Australia and a foreign country in which an aircraft is used in the course of trade or commerce, for the carriage of passengers; or

(c) a flight between one State and another State in which an aircraft is used in the course of trade or commerce, for the carriage of passengers.

376.5 False identification information—extended jurisdiction (Category D)

Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to the offences in sections 376.3 and 376.4.

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Part 9.6—Contamination of goods

380.1 Definitions

(1) In this Part:

constitutional trade and commerce means trade and commerce:

(a) with other countries; or

(b) among the States; or

(c) between a State and a Territory; or

(d) between 2 Territories.

contaminate goods includes:

(a) interfere with the goods; or

(b) make it appear that the goods have been contaminated or interfered with.

goods includes any substance:

(a) whether or not for human consumption; and

(b) whether natural or manufactured; and

(c) whether or not incorporated or mixed with other goods.

(2) A reference in this Part to economic loss caused through public awareness of the contamination of goods includes a reference to economic loss caused through:

(a) members of the public not purchasing or using those goods or similar things; or

(b) steps taken to avoid public alarm or anxiety or to avoid harm to members of the public.

380.2 Contaminating goods

Offence based on implied nationhood power

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

(a) the person contaminates goods; and

(b) the person does so with intent:

(i) to cause public alarm or anxiety in Australia; or

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(ii) to cause widespread, or nationally significant, economic loss in Australia through public awareness of the contamination, or possible contamination, of the goods; or

(iii) to cause harm to, or create a risk of harm to, public health in Australia.

Penalty: Imprisonment for 10 years.

Offences based on other constitutional powers

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

(a) the person contaminates goods; and

(b) the person does so with intent to cause:

(i) public alarm or anxiety; or

(ii) economic loss through public awareness of the contamination, or possible contamination, of the goods; and

(c) any of the following subparagraphs applies:

(i) the loss is a loss to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);

(ii) the loss is a loss to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(iii) the goods belong to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);

(iv) the goods belong to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(v) the person is a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);

(vi) the person is a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(vii) the loss takes the form of detriment to constitutional trade and commerce;

(viii) the goods are in the course of, or intended for, constitutional trade and commerce;

(ix) the contamination occurs outside Australia and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(x) the loss is a loss to the Commonwealth or a Commonwealth authority.

Penalty: Imprisonment for 10 years.

(3) Absolute liability applies to paragraph (2)(c).

380.3 Threatening to contaminate goods

Offence based on implied nationhood power

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

(a) the person makes a threat that goods will be contaminated; and

(b) the person does so with intent:

(i) to cause public alarm or anxiety in Australia; or

(ii) to cause widespread, or nationally significant, economic loss in Australia through public awareness of the contamination, or possible contamination, of the goods; or

(iii) to cause harm to, or create a risk of harm to, public health in Australia.

Penalty: Imprisonment for 10 years.

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Section 380.3

Offences based on other constitutional powers

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

(a) the person makes a threat that goods will be contaminated; and

(b) the person does so with intent to cause:

(i) public alarm or anxiety; or

(ii) economic loss through public awareness of the contamination, or possible contamination, of the goods; and

(c) any of the following subparagraphs applies:

(i) the loss is a loss to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);

(ii) the loss is a loss to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(iii) the goods belong to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);

(iv) the goods belong to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(v) the person is a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);

(vi) the person is a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(vii) the loss takes the form of detriment to constitutional trade and commerce;

(viii) the goods are in the course of, or intended for, constitutional trade and commerce;

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(ix) the person makes the threat in Australia using a postal or other like service or an electronic communication;

(x) the person makes the threat outside Australia and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(xi) the loss is a loss to the Commonwealth or a Commonwealth authority;

(xii) the threat is made to the Commonwealth or a Commonwealth authority.

Penalty: Imprisonment for 10 years.

(3) Absolute liability applies to paragraph (2)(c).

380.4 Making false statements about contamination of goods

Offence based on implied nationhood power

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

(a) the person makes a statement that the person believes to be false; and

(b) the person does so with the intention of inducing the person to whom the statement is made or others to believe that goods have been contaminated; and

(c) the person does so with intent:

(i) to cause public alarm or anxiety in Australia; or

(ii) to cause widespread, or nationally significant, economic loss in Australia through public awareness of the contamination, or possible contamination, of the goods; or

(iii) to cause harm to, or create a risk of harm to, public health in Australia.

Penalty: Imprisonment for 10 years.

Offence based on other constitutional powers

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

(a) the person makes a statement that the person believes to be false; and

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(b) the person does so with the intention of inducing the person to whom the statement is made or others to believe that goods have been contaminated; and

(c) the person does so with intent to cause:

(i) public alarm or anxiety; or

(ii) economic loss through public awareness of the contamination, or possible contamination, of the goods; and

(d) any of the following subparagraphs applies:

(i) the loss is a loss to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);

(ii) the loss is a loss to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(iii) the goods belong to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);

(iv) the goods belong to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(v) the person is a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);

(vi) the person is a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(vii) the loss takes the form of detriment to constitutional trade and commerce;

(viii) the goods are in the course of, or intended for, constitutional trade and commerce;

(ix) the person makes the statement in Australia using a postal or other like service or an electronic communication;

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(x) the person makes the statement outside Australia and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(xi) the loss is a loss to the Commonwealth or a Commonwealth authority;

(xii) the statement is made to the Commonwealth or a Commonwealth authority.

Penalty: Imprisonment for 10 years.

(3) Absolute liability applies to paragraph (2)(d).

(4) For the purposes of this section, making a statement includes conveying information by any means.

380.5 Extended geographical jurisdiction—category D

Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection 380.2(1) or (2), 380.3(1) or (2) or 380.4(1) or (2).

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Part 9.9—Criminal associations and organisations

Division 390—Criminal associations and organisations

Subdivision A—Definitions

390.1 Definitions

(1) In this Division:

ancillary offence, in relation to a State offence (the ***primary offence***), means:

(a) a State offence of conspiring to commit the primary offence; or

(b) a State offence of aiding, abetting, counselling or procuring, or being in any way knowingly concerned in, the commission of the primary offence; or

(c) a State offence of attempting to commit the primary offence.

associate means meet or communicate (by electronic communication or otherwise).

Australian offence means an offence against a law of the Commonwealth, a State or a Territory.

close family member of a person means:

(a) the person's spouse or de facto partner; or

(b) a parent, step-parent or grandparent of the person; or

(c) a child, step-child or grandchild of the person; or

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

(e) a guardian or carer of the person.

Commonwealth place has the same meaning as in the *Commonwealth Places (Application of Laws) Act 1970*.

constitutionally covered offence punishable by imprisonment for at least 12 months means:

(a) any of the following offences that is punishable on conviction by imprisonment for at least 12 months or for life:

(i) an offence against a law of the Commonwealth;

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(ii) a State offence that has a federal aspect;
(iii) an offence against a law of a Territory; or

(b) a foreign offence that is constituted by conduct that, if engaged in in Australia, would constitute an Australian offence punishable on conviction by imprisonment for at least 12 months or for life.

constitutionally covered offence punishable by imprisonment for at least 3 years means:

(a) any of the following offences that is punishable on conviction by imprisonment for at least 3 years or for life:
(i) an offence against a law of the Commonwealth;
(ii) a State offence that has a federal aspect;
(iii) an offence against a law of a Territory; or

(b) a foreign offence that is constituted by conduct that, if engaged in in Australia, would constitute an Australian offence punishable on conviction by imprisonment for at least 3 years or for life.

electronic communication means a communication of information:

(a) whether in the form of text; or
(b) whether in the form of data; or
(c) whether in the form of speech, music or other sounds; or
(d) whether in the form of visual images (animated or otherwise); or
(e) whether in any other form; or
(f) whether in any combination of forms;

by means of guided and/or unguided electromagnetic energy.

federal aspect has the meaning given by section 390.2.

foreign offence means an offence against a law of a foreign country or part of a foreign country.

for the benefit of: an offence against any law is, or would if committed be, ***for the benefit of*** an organisation if the offence results or is likely to result in:

(a) the organisation receiving directly or indirectly a significant benefit of any kind; or

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(b) at least one member of the organisation receiving (in his or her capacity as such a member) directly or indirectly a significant benefit of any kind.

offence against any law means an Australian offence or a foreign offence.

offence against any law punishable by imprisonment for at least 3 years means:

(a) an Australian offence punishable on conviction by imprisonment for at least 3 years or for life; or

(b) a foreign offence punishable on conviction (however described) by imprisonment for at least 3 years or for life or by death.

State offence means an offence against a law of a State.

(2) For the purposes of the definition of ***close family member*** in subsection (1), if one person is the child of another person because of the definition of ***child*** in that subsection, relationships traced to or through the person are to be determined on the basis that the person is the child of the other person.

(3) To avoid doubt:

(a) a reference in this Division to an organisation is a reference to an organisation however it is organised; and

(b) a reference in this Division to a person includes a reference to a person outside Australia.

390.2 State offences that have a federal aspect

Object

(1) The object of this section is to identify State offences that have a federal aspect because:

(a) they potentially fall within Commonwealth legislative power because of the elements of the State offence; or

(b) they potentially fall within Commonwealth legislative power because of the circumstances in which the State offence is committed (whether or not those circumstances are expressed to be acts or omissions involved in committing the offence).

State offences that have a federal aspect

(2) For the purposes of this Act, a State offence has a ***federal aspect*** if, and only if:

(a) both:

(i) the State offence is not an ancillary offence; and

(ii) assuming that the provision creating the State offence had been enacted by the Parliament of the Commonwealth instead of by the Parliament of the State—the provision would have been a valid law of the Commonwealth; or

(b) both:

(i) the State offence is an ancillary offence that relates to a particular primary offence; and

(ii) assuming that the provision creating the primary offence had been enacted by the Parliament of the Commonwealth instead of by the Parliament of the State—the provision would have been a valid law of the Commonwealth; or

(c) assuming that the Parliament of the Commonwealth had enacted a provision that created an offence penalising the specific acts or omissions involved in committing the State offence—that provision would have been a valid law of the Commonwealth.

Specificity of acts or omissions

(3) For the purposes of paragraph (2)(c), the specificity of the acts or omissions involved in committing a State offence is to be determined having regard to the circumstances in which the offence is committed (whether or not those circumstances are expressed to be elements of the offence).

State offences covered by paragraph (2)(c)

(4) A State offence is taken to be covered by paragraph (2)(c) if the conduct constituting the State offence:

(a) affects the interests of:

(i) the Commonwealth; or

(ii) an authority of the Commonwealth; or

(iii) a constitutional corporation; or

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(b) was engaged in by a constitutional corporation; or
(c) was engaged in in a Commonwealth place; or
(d) involved the use of a postal service or other like service; or
(e) involved an electronic communication; or
(f) involved trade or commerce:
(i) between Australia and places outside Australia; or
(ii) among the States; or
(iii) within a Territory, between a State and a Territory or between 2 Territories; or
(g) involved:
(i) banking (other than State banking not extending beyond the limits of the State concerned); or
(ii) insurance (other than State insurance not extending beyond the limits of the State concerned); or
(h) relates to a matter outside Australia; or
(i) relates to a matter in respect of which an international agreement to which Australia is a party imposes obligations to which effect could be given by the creation of an offence against the domestic laws of the parties to the agreement; or
(j) relates to a matter that affects the relations between Australia and another country or countries or is otherwise a subject of international concern.

(5) Subsection (4) does not limit paragraph (2)(c).

Subdivision B—Offences

390.3 Associating in support of serious organised criminal activity

(1) A person (the ***first person***) commits an offence if:
(a) the first person associates on 2 or more occasions with another person (the ***second person***); and
(b) the second person engages, or proposes to engage, in conduct (the ***second person's conduct***) that constitutes, or is part of conduct constituting, an offence against any law; and
(c) the associations facilitate the engagement or proposed engagement by the second person in the second person's conduct; and

(d) the offence against any law mentioned in paragraph (b) involves 2 or more persons; and

(e) the offence against any law mentioned in paragraph (b) is a constitutionally covered offence punishable by imprisonment for at least 3 years.

Penalty: Imprisonment for 3 years.

Repeat offence

(2) A person (the ***first person***) commits an offence if:

(a) the first person has previously been convicted of an offence against subsection (1); and

(b) the first person associates with another person (the ***second person***); and

(c) the second person engages, or proposes to engage, in conduct (the ***second person's conduct***) that constitutes, or is part of conduct constituting, an offence against any law; and

(d) the association facilitates the engagement or proposed engagement by the second person in the second person's conduct; and

(e) the offence against any law mentioned in paragraph (c) involves 2 or more persons; and

(f) the offence against any law mentioned in paragraph (c) is a constitutionally covered offence punishable by imprisonment for at least 3 years.

Penalty: Imprisonment for 3 years.

Knowledge fault element for paragraphs (1)(b) and (2)(c)

(3) The fault element for paragraphs (1)(b) and (2)(c) is knowledge (by the first person).

Intention fault element for paragraphs (1)(c) and (2)(d)

(3A) The fault element for paragraphs (1)(c) and (2)(d) is intention (by the first person).

Absolute liability

(4) Absolute liability applies to paragraphs (1)(e) and (2)(f).

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Note: For absolute liability, see section 6.2.

Prosecution need not prove identity of certain persons

(5) In a prosecution for an offence against subsection (1) or (2), it is not necessary to prove the identity of any of the persons mentioned in paragraph (1)(d) or (2)(e).

Defence for certain kinds of associations

(6) This section does not apply to an association if:
  (a) the association is with a close family member and relates only to a matter that could reasonably be regarded (taking into account the person's cultural background) as a matter of family or domestic concern; or
  (b) the association is in a place being used for public religious worship and takes place in the course of practising a religion; or
  (c) the association is only for the purpose of providing aid of a humanitarian nature; or
  (d) the association is only for the purpose of providing legal advice or legal representation in connection with judicial or administrative proceedings under a law of the Commonwealth, a State, a Territory or a foreign country; or
  (e) the association is reasonable in the circumstances.

Note: A defendant bears an evidential burden in relation to the matters in subsection (6). See subsection 13.3(3).

(6A) Paragraphs (6)(a), (b), (c), (d) and (e) do not limit one another.

Other limits on this section

(7) A person who is convicted of an offence against subsection (1) or (2) in relation to the person's conduct on 2 or more occasions is not liable to be punished for an offence against subsection (1) or (2) for other conduct of the person that takes place:
  (a) at the same time as that conduct; or
  (b) within 7 days before or after any of those occasions.

(8) This section does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.

390.4 Supporting a criminal organisation

(1) A person commits an offence if:

(a) the person provides material support or resources to an organisation or a member of an organisation; and

(b) either:

(i) the provision of the support or resources aids; or

(ii) there is a risk that the provision of the support or resources will aid;

the organisation to engage in conduct constituting an offence against any law; and

(c) the organisation consists of 2 or more persons; and

(d) the organisation's aims or activities include facilitating the engagement in conduct, or engaging in conduct, constituting an offence against any law that is, or would if committed be, for the benefit of the organisation; and

(e) the offence against any law mentioned in paragraph (d) is an offence against any law punishable by imprisonment for at least 3 years; and

(f) the offence against any law mentioned in paragraph (b) is a constitutionally covered offence punishable by imprisonment for at least 12 months.

Penalty: Imprisonment for 5 years.

(2) Absolute liability applies to paragraphs (1)(e) and (f).

Note: For absolute liability, see section 6.2.

(3) To avoid doubt, a person may be convicted of an offence against subsection (1) because of a risk that the provision of the support or resources will aid the organisation as described in paragraph (1)(b) even if the provision of the support or resources does not actually aid the organisation in that way.

390.5 Committing an offence for the benefit of, or at the direction of, a criminal organisation

Offence committed for the benefit of an organisation

(1) A person commits an offence if:

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(a) the person commits an offence against any law (the ***underlying offence***); and
(b) the underlying offence is for the benefit of an organisation; and
(c) the organisation consists of 2 or more persons; and
(d) the organisation's aims or activities include facilitating the engagement in conduct, or engaging in conduct, constituting an offence against any law that is, or would if committed be, for the benefit of the organisation; and
(e) the offence against any law mentioned in paragraph (d) is an offence against any law punishable by imprisonment for at least 3 years; and
(f) the underlying offence is a constitutionally covered offence punishable by imprisonment for at least 12 months.

Penalty: Imprisonment for 7 years.

Offence committed at the direction of an organisation

(2) A person commits an offence if:
(a) the person commits an offence against any law (the ***underlying offence***); and
(b) the person engaged in the conduct constituting the underlying offence at the direction of an organisation or of a member of an organisation; and
(c) the organisation consists of 2 or more persons; and
(d) the organisation's aims or activities include facilitating the engagement in conduct, or engaging in conduct, constituting an offence against any law that is, or would if committed be, for the benefit of the organisation; and
(e) the offence against any law mentioned in paragraph (d) is an offence against any law punishable by imprisonment for at least 3 years; and
(f) the underlying offence is a constitutionally covered offence punishable by imprisonment for at least 12 months.

Penalty: Imprisonment for 7 years.

Fault elements

(3) There is no fault element for the physical elements described in paragraphs (1)(a) and (2)(a) other than the fault elements (however described), if any, for the underlying offence.

Absolute liability

(4) Absolute liability applies to paragraphs (1)(e) and (f) and (2)(e) and (f).

Note: For absolute liability, see section 6.2.

Avoiding multiplicity of proceedings and punishments

(5) To avoid doubt, the person may be convicted of an offence against subsection (1) or (2) even if the person has not:

(a) been convicted of the underlying offence; or

(b) been the subject of an order under section 19B (Discharge of offenders without proceeding to conviction) of the *Crimes Act 1914*, or a corresponding law of a State, Territory or foreign country, relating to the underlying offence.

(6) If a person has been convicted or acquitted of a foreign offence in respect of conduct, the person cannot be convicted of an offence against this section in respect of that conduct.

Note: If the underlying offence is an Australian offence, section 4C of the *Crimes Act 1914* prevents the person from being punished twice under Australian law (once under this section and once under the Commonwealth, State or Territory law creating the underlying offence) for the act or omission constituting the underlying offence.

Likely benefits

(7) To avoid doubt, the person may be convicted of an offence against subsection (1) because the underlying offence is likely to result in the organisation or at least one member receiving benefits as described in the definition of ***for the benefit of*** in subsection 390.1(1), even if the organisation or member does not actually receive such a benefit.

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390.6 Directing activities of a criminal organisation

(1) A person commits an offence if:

(a) the person directs one or more activities of an organisation; and

(b) either:

(i) the activity or activities directed aid; or

(ii) there is a risk that the activity or activities directed will aid;

the organisation to engage in conduct constituting an offence against any law; and

(c) the organisation consists of 2 or more persons; and

(d) the organisation's aims or activities include facilitating the engagement in conduct, or engaging in conduct, constituting an offence against any law that is, or would if committed be, for the benefit of the organisation; and

(e) the offence against any law mentioned in paragraph (d) is an offence against any law punishable by imprisonment for at least 3 years; and

(f) the offence against any law mentioned in paragraph (b) is a constitutionally covered offence punishable by imprisonment for at least 12 months.

Penalty: Imprisonment for 10 years.

(2) A person commits an offence if:

(a) the person directs one or more activities of an organisation; and

(b) the activity or activities directed constitute an offence against any law; and

(c) the organisation consists of 2 or more persons; and

(d) the organisation's aims or activities include facilitating the engagement in conduct, or engaging in conduct, constituting an offence against any law that is, or would if committed be, for the benefit of the organisation; and

(e) the offence against any law mentioned in paragraph (d) is an offence against any law punishable by imprisonment for at least 3 years; and

(f) the offence against any law mentioned in paragraph (b) is a constitutionally covered offence punishable by imprisonment for at least 12 months.

Penalty: Imprisonment for 15 years.

(3) Absolute liability applies to paragraphs (1)(e) and (f) and (2)(e) and (f).

Note: For absolute liability, see section 6.2.

(4) To avoid doubt, the person may be convicted of an offence against subsection (1) because of a risk that the activity or activities directed will aid the organisation as described in paragraph (1)(b) even if the activity or activities do not actually aid the organisation in that way.

390.7 Extended geographical jurisdiction—category C

Section 15.3 (extended geographical jurisdiction—category C) applies to an offence against this Division.

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Chapter 10—National infrastructure

Part 10.2—Money laundering

Division 400—Money laundering

400.1 Definitions

(1) In this Division:

ADI (authorised deposit-taking institution) means:

(a) a body corporate that is an ADI for the purposes of the *Banking Act 1959*; or

(b) the Reserve Bank of Australia; or

(c) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution.

Australian Capital Territory indictable offence means an offence against a law of the Australian Capital Territory that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

banking transaction includes:

(a) any transaction made at an ADI; and

(b) any transaction involving a money order.

Commonwealth indictable offence means an offence against a law of the Commonwealth, or a law of a Territory (other than the Australian Capital Territory and the Northern Territory), that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

deals with money or other property has the meaning given by section 400.2.

export money or other property, from Australia, includes transfer money or other property from Australia by an electronic communication.

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foreign indictable offence means an offence against a law of a foreign country constituted by conduct that, if it had occurred in Australia, would have constituted an offence against:

(a) a law of the Commonwealth; or

(b) a law of a State or Territory connected with the offence;

that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

Note: See subsection (3) for when a law of a State or Territory is connected with the offence.

import money or other property, into Australia, includes transfer money or other property to Australia by an electronic communication.

instrument of crime: money or other property is an instrument of crime if it is used in the commission of, or used to facilitate the commission of, an offence against a law of the Commonwealth, a State, a Territory or a foreign country that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

Northern Territory indictable offence means an offence against a law of the Northern Territory that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

proceeds of crime means any money or other property that is wholly or partly derived or realised, directly or indirectly, by any person from the commission of an offence against a law of the Commonwealth, a State, a Territory or a foreign country that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

property means real or personal property of every description, whether situated in Australia or elsewhere and whether tangible or intangible, and includes an interest in any such real or personal property.

State indictable offence means an offence against a law of a State that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

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(2) To avoid doubt, a reference in this Division to ***money or other property*** includes a reference to financial instruments, cards and other objects that represent money or can be exchanged for money, whether or not they have intrinsic value.

(3) For the purposes of the definition of ***foreign indictable offence*** in subsection (1), a State or Territory is connected with the offence if:

(a) a dealing in money or property takes place in the State or Territory; and

(b) the money or property would be proceeds of crime, or could become an instrument of crime, in relation to the offence if the offence were a foreign indictable offence.

400.2 Definition of *deals with money or other property*

A person ***deals with money or other property*** if the person does any of the following:

(a) receives, possesses, conceals or disposes of money or other property;

(b) imports money or other property into Australia;

(c) exports money or other property from Australia;

(d) engages in a banking transaction relating to money or other property.

400.2A Application of offences relating to possible instruments of crime

(1) This section affects the application of sections 400.3, 400.4, 400.5, 400.6, 400.7 and 400.8 so far as they relate to a person dealing with money or other property that:

(a) is intended by the person to become an instrument of crime; or

(b) is at risk of becoming an instrument of crime.

(2) Those sections apply if at least one of the circumstances described in subsections (3) and (4) exists.

(3) One circumstance is that money or other property is intended to become, or at risk of becoming, an instrument of crime in relation to an offence that is:

(a) a Commonwealth indictable offence; or

(b) a foreign indictable offence; or
(c) a State indictable offence that has a federal aspect; or
(d) an Australian Capital Territory indictable offence; or
(e) a Northern Territory indictable offence.

Note: The prosecution need not prove the existence of any fault element for the nature of the offence: see section 400.11.

(4) Another circumstance is that the dealing with the money or other property occurs:
(a) in the course of or for the purposes of importation of goods into, or exportation of goods from, Australia; or
(b) by means of a communication using a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution; or
(c) in the course of banking (other than State banking that does not extend beyond the limits of the State concerned); or
(d) outside Australia.

(5) Absolute liability applies to subsections (3) and (4).

Note: For absolute liability, see section 6.2.

400.3 Dealing in proceeds of crime etc.—money or property worth $1,000,000 or more

(1) A person is guilty of an offence if:
(a) the person deals with money or other property; and
(b) either:
(i) the money or property is, and the person believes it to be, proceeds of crime; or
(ii) the person intends that the money or property will become an instrument of crime; and
(c) at the time of the dealing, the value of the money and other property is $1,000,000 or more.

Penalty: Imprisonment for 25 years, or 1500 penalty units, or both.

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

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is proceeds of crime; or

(ii) there is a risk that the money or property will become an instrument of crime; and

(c) the person is reckless as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and

(d) at the time of the dealing, the value of the money and other property is $1,000,000 or more.

Penalty: Imprisonment for 12 years, or 720 penalty units, or both.

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

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is proceeds of crime; or

(ii) there is a risk that the money or property will become an instrument of crime; and

(c) the person is negligent as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and

(d) at the time of the dealing, the value of the money and other property is $1,000,000 or more.

Penalty: Imprisonment for 5 years, or 300 penalty units, or both.

(4) Absolute liability applies to paragraphs (1)(c), (2)(d) and (3)(d).

Note 1: Section 400.10 provides for a defence of mistake of fact in relation to these paragraphs.

Note 2: Section 400.2A affects the application of this section so far as it relates to a person dealing with money or other property that:

(a) is intended by the person to become an instrument of crime; or

(b) is at risk of becoming an instrument of crime.

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400.4 Dealing in proceeds of crime etc.—money or property worth $100,000 or more

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

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is, and the person believes it to be, proceeds of crime; or

(ii) the person intends that the money or property will become an instrument of crime; and

(c) at the time of the dealing, the value of the money and other property is $100,000 or more.

Penalty: Imprisonment for 20 years, or 1200 penalty units, or both.

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

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is proceeds of crime; or

(ii) there is a risk that the money or property will become an instrument of crime; and

(c) the person is reckless as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and

(d) at the time of the dealing, the value of the money and other property is $100,000 or more.

Penalty: Imprisonment for 10 years, or 600 penalty units, or both.

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

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is proceeds of crime; or

(ii) there is a risk that the money or property will become an instrument of crime; and

(c) the person is negligent as to the fact that the money or property is proceeds of crime or the fact that there is a risk

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that it will become an instrument of crime (as the case requires); and

(d) at the time of the dealing, the value of the money and other property is $100,000 or more.

Penalty: Imprisonment for 4 years, or 240 penalty units, or both.

(4) Absolute liability applies to paragraphs (1)(c), (2)(d) and (3)(d).

Note 1: Section 400.10 provides for a defence of mistake of fact in relation to these paragraphs.

Note 2: Section 400.2A affects the application of this section so far as it relates to a person dealing with money or other property that:
(a) is intended by the person to become an instrument of crime; or
(b) is at risk of becoming an instrument of crime.

400.5 Dealing in proceeds of crime etc.—money or property worth $50,000 or more

(1) A person is guilty of an offence if:
(a) the person deals with money or other property; and
(b) either:
(i) the money or property is, and the person believes it to be, proceeds of crime; or
(ii) the person intends that the money or property will become an instrument of crime; and
(c) at the time of the dealing, the value of the money and other property is $50,000 or more.

Penalty: Imprisonment for 15 years, or 900 penalty units, or both.

(2) A person is guilty of an offence if:
(a) the person deals with money or other property; and
(b) either:
(i) the money or property is proceeds of crime; or
(ii) there is a risk that the money or property will become an instrument of crime; and
(c) the person is reckless as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and

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(d) at the time of the dealing, the value of the money and other property is $50,000 or more.

Penalty: Imprisonment for 7 years, or 420 penalty units, or both.

(3) A person is guilty of an offence if:
(a) the person deals with money or other property; and
(b) either:
(i) the money or property is proceeds of crime; or
(ii) there is a risk that the money or property will become an instrument of crime; and
(c) the person is negligent as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
(d) at the time of the dealing, the value of the money and other property is $50,000 or more.

Penalty: Imprisonment for 3 years, or 180 penalty units, or both.

(4) Absolute liability applies to paragraphs (1)(c), (2)(d) and (3)(d).

Note 1: Section 400.10 provides for a defence of mistake of fact in relation to these paragraphs.

Note 2: Section 400.2A affects the application of this section so far as it relates to a person dealing with money or other property that:
(a) is intended by the person to become an instrument of crime; or
(b) is at risk of becoming an instrument of crime.

400.6 Dealing in proceeds of crime etc.—money or property worth $10,000 or more

(1) A person is guilty of an offence if:
(a) the person deals with money or other property; and
(b) either:
(i) the money or property is, and the person believes it to be, proceeds of crime; or
(ii) the person intends that the money or property will become an instrument of crime; and
(c) at the time of the dealing, the value of the money and other property is $10,000 or more.

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Penalty: Imprisonment for 10 years, or 600 penalty units, or both.

(2) A person is guilty of an offence if:
  (a) the person deals with money or other property; and
  (b) either:
    (i) the money or property is proceeds of crime; or
    (ii) there is a risk that the money or property will become an instrument of crime; and
  (c) the person is reckless as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
  (d) at the time of the dealing, the value of the money and other property is $10,000 or more.

Penalty: Imprisonment for 5 years, or 300 penalty units, or both.

(3) A person is guilty of an offence if:
  (a) the person deals with money or other property; and
  (b) either:
    (i) the money or property is proceeds of crime; or
    (ii) there is a risk that the money or property will become an instrument of crime; and
  (c) the person is negligent as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
  (d) at the time of the dealing, the value of the money and other property is $10,000 or more.

Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

(4) Absolute liability applies to paragraphs (1)(c), (2)(d) and (3)(d).

Note 1: Section 400.10 provides for a defence of mistake of fact in relation to these paragraphs.

Note 2: Section 400.2A affects the application of this section so far as it relates to a person dealing with money or other property that:
  (a) is intended by the person to become an instrument of crime; or
  (b) is at risk of becoming an instrument of crime.

400.7 Dealing in proceeds of crime etc.—money or property worth $1,000 or more

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

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is, and the person believes it to be, proceeds of crime; or

(ii) the person intends that the money or property will become an instrument of crime; and

(c) at the time of the dealing, the value of the money and other property is $1,000 or more.

Penalty: Imprisonment for 5 years, or 300 penalty units, or both.

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

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is proceeds of crime; or

(ii) there is a risk that the money or property will become an instrument of crime; and

(c) the person is reckless as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and

(d) at the time of the dealing, the value of the money and other property is $1,000 or more.

Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

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

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is proceeds of crime; or

(ii) there is a risk that the money or property will become an instrument of crime; and

(c) the person is negligent as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and

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(d) at the time of the dealing, the value of the money and other property is $1,000 or more.

Penalty: Imprisonment for 12 months, or 60 penalty units, or both.

(4) Absolute liability applies to paragraphs (1)(c), (2)(d) and (3)(d).

Note 1: Section 400.10 provides for a defence of mistake of fact in relation to these paragraphs.

Note 2: Section 400.2A affects the application of this section so far as it relates to a person dealing with money or other property that:
(a) is intended by the person to become an instrument of crime; or
(b) is at risk of becoming an instrument of crime.

400.8 Dealing in proceeds of crime etc.—money or property of any value

(1) A person is guilty of an offence if:
(a) the person deals with money or other property; and
(b) either:
(i) the money or property is, and the person believes it to be, proceeds of crime; or
(ii) the person intends that the money or property will become an instrument of crime.

Penalty: Imprisonment for 12 months, or 60 penalty units, or both.

(2) A person is guilty of an offence if:
(a) the person deals with money or other property; and
(b) either:
(i) the money or property is proceeds of crime; or
(ii) there is a risk that the money or property will become an instrument of crime; and
(c) the person is reckless as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires).

Penalty: Imprisonment for 6 months, or 30 penalty units, or both.

(3) A person is guilty of an offence if:
(a) the person deals with money or other property; and
(b) either:

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(i) the money or property is proceeds of crime; or

(ii) there is a risk that the money or property will become an instrument of crime; and

(c) the person is negligent as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires).

Penalty: 10 penalty units.

Note: Section 400.2A affects the application of this section so far as it relates to a person dealing with money or other property that:

(a) is intended by the person to become an instrument of crime; or

(b) is at risk of becoming an instrument of crime.

400.9 Dealing with property reasonably suspected of being proceeds of crime etc.

(1) A person commits an offence if:

(a) the person deals with money or other property; and

(b) it is reasonable to suspect that the money or property is proceeds of crime; and

(c) at the time of the dealing, the value of the money and other property is $100,000 or more.

Penalty: Imprisonment for 3 years, or 180 penalty units, or both.

(1A) A person commits an offence if:

(a) the person deals with money or other property; and

(b) it is reasonable to suspect that the money or property is proceeds of crime; and

(c) at the time of the dealing, the value of the money and other property is less than $100,000.

Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

(2) Without limiting paragraph (1)(b) or (1A)(b), that paragraph is taken to be satisfied if:

(a) the conduct referred to in paragraph (1)(a) involves a number of transactions that are structured or arranged to avoid the reporting requirements of the *Financial Transaction Reports Act 1988* that would otherwise apply to the transactions; or

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(aa) the conduct involves a number of transactions that are structured or arranged to avoid the reporting requirements of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* that would otherwise apply to the transactions; or

(b) the conduct involves using one or more accounts held with ADIs in false names; or

(ba) the conduct amounts to an offence against section 139, 140 or 141 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; or

(c) the value of the money and property involved in the conduct is, in the opinion of the trier of fact, grossly out of proportion to the defendant's income and expenditure over a reasonable period within which the conduct occurs; or

(d) the conduct involves a significant cash transaction within the meaning of the *Financial Transaction Reports Act 1988*, and the defendant:

(i) has contravened his or her obligations under that Act relating to reporting the transaction; or

(ii) has given false or misleading information in purported compliance with those obligations; or

(da) the conduct involves a threshold transaction (within the meaning of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*) and the defendant:

(i) has contravened the defendant's obligations under that Act relating to reporting the transaction; or

(ii) has given false or misleading information in purported compliance with those obligations; or

(e) the defendant:

(i) has stated that the conduct was engaged in on behalf of or at the request of another person; and

(ii) has not provided information enabling the other person to be identified and located.

(4) Absolute liability applies to paragraphs (1)(b) and (c) and (1A)(b) and (c).

(5) This section does not apply if the defendant proves that he or she had no reasonable grounds for suspecting that the money or

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property was derived or realised, directly or indirectly, from some form of unlawful activity.

Note: A defendant bears a legal burden in relation to the matter in subsection (5) (see section 13.4).

400.10 Mistake of fact as to the value of money or property

(1) A person is not criminally responsible for an offence against section 400.3, 400.4, 400.5, 400.6, 400.7 or 400.9 in relation to money or property if:

(a) at or before the time of dealing with the money or property, the person considered what was the value of the money or property, and was under a mistaken but reasonable belief about that value; and

(b) had the value been what the person believed it to be, the person's conduct would have constituted another offence against this Division for which the maximum penalty, in penalty units, is less than the maximum penalty, in penalty units, for the offence charged.

Example: Assume that a person deals with money or property that is the proceeds of crime. While the person believes it to be proceeds of crime, he or she is under a mistaken but reasonable belief that it is worth $90,000 when it is in fact worth $120,000.

That belief is a defence to an offence against subsection 400.4(1) (which deals with money or property of a value of $100,000 or more). However, the person would be guilty of an offence against subsection 400.5(1) (which deals with money or property of a value of $10,000 or more). Section 400.14 allows for an alternative verdict of guilty of an offence against subsection 400.5(1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (1) (see subsection 13.3(3)).

(2) A person may be regarded as having considered what the value of the money or property was if:

(a) he or she had considered, on a previous occasion, what the value of the money or property was in the circumstances surrounding that occasion; and

(b) he or she honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

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400.11 Proof of certain matters relating to kinds of offences not required

In a prosecution for an offence against a provision of this Division, it is not necessary to prove the existence of any fault element in relation to any of the following:

(a) whether an offence may be dealt with as an indictable offence;

(b) whether an offence is an indictable offence;

(c) whether an offence is a Commonwealth indictable offence;

(d) whether an offence is a foreign indictable offence;

(e) whether an offence is a State indictable offence;

(f) whether an offence is an Australian Capital Territory indictable offence;

(g) whether an offence is a Northern Territory indictable offence.

400.12 Combining several contraventions in a single charge

(1) A single charge of an offence against a provision of this Division may be about 2 or more instances of the defendant engaging in conduct (at the same time or different times) that constitutes an offence against a provision of this Division.

(2) If:

(a) a single charge is about 2 or more such instances; and

(b) the value of the money and other property dealt with is an element of the offence in question;

that value is taken to be the sum of the values of the money and other property dealt with in respect of each of those instances.

400.13 Proof of other offences is not required

(1) To avoid doubt, it is not necessary, in order to prove for the purposes of this Division that money or property is proceeds of crime, to establish:

(a) a particular offence was committed in relation to the money or property; or

(b) a particular person committed an offence in relation to the money or property.

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(2) To avoid doubt, it is not necessary, in order to prove for the purposes of this Division an intention or risk that money or property will be an instrument of crime, to establish that:

(a) an intention or risk that a particular offence will be committed in relation to the money or property; or

(b) an intention or risk that a particular person will commit an offence in relation to the money or property.

400.14 Alternative verdicts

If, on a trial for an offence against a provision of this Division (the ***offence charged***), the trier of fact:

(a) is not satisfied that the defendant is guilty of the offence charged; but

(b) is otherwise satisfied that the defendant is guilty of another offence against this Division for which the maximum penalty, in penalty units, is less than the maximum penalty, in penalty units, for the offence charged;

the trier of fact may find the defendant not guilty of the offence charged but guilty of the other offence, so long as the person has been accorded procedural fairness in relation to that finding of guilt.

400.15 Geographical jurisdiction

(1) A person does not commit an offence against this Division unless:

(a) the conduct constituting the alleged offence occurs:

(i) wholly or partly in Australia; or

(ii) wholly or partly on board an Australian aircraft or an Australian ship; or

(b) the conduct constituting the alleged offence occurs wholly outside Australia (but not on board an Australian aircraft or an Australian ship) and the money or other property:

(i) is proceeds of crime; or

(ii) is intended to become an instrument of crime; or

(iii) is at risk of becoming an instrument of crime;

in relation to a Commonwealth indictable offence, a State indictable offence, an Australian Capital Territory indictable offence or a Northern Territory indictable offence; or

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(c) the conduct constituting the alleged offence occurs wholly outside Australia and:
  (i) at the time of the alleged offence, the person is an Australian citizen; or
  (ii) at the time of the alleged offence, the person is a resident of Australia; or
  (iii) at the time of the alleged offence, the person is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; or

(d) all of the following conditions are satisfied:
  (i) the alleged offence is an ancillary offence;
  (ii) the conduct constituting the alleged offence occurs wholly outside Australia;
  (iii) the conduct constituting the primary offence to which the ancillary offence relates occurs, or is intended by the person to occur, wholly or partly in Australia or wholly or partly on board an Australian aircraft or an Australian ship.

Note: The expression ***offence*** is given an extended meaning by subsection 11.2(1), section 11.3 and subsection 11.6(1).

Defence—primary offence

(2) A person is not guilty of an offence against this Division if:
(a) the alleged offence is a primary offence; and
(b) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
(c) paragraph (1)(b) of this section does not apply; and
(d) the person is neither:
  (i) an Australian citizen; nor
  (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and
(e) there is not in force in:
  (i) the foreign country where the conduct constituting the alleged offence occurs; or
  (ii) the part of the foreign country where the conduct constituting the alleged offence occurs;

a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the offence against this Division.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3).

(3) For the purposes of the application of subsection 13.3(3) to an offence, subsection (2) of this section is taken to be an exception provided by the law creating the offence.

Defence—ancillary offence

(4) A person is not guilty of an offence against this Division if:

(a) the alleged offence is an ancillary offence; and

(b) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(c) the conduct constituting the primary offence to which the ancillary offence relates occurs, or is intended by the person to occur, wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(d) paragraph (1)(b) of this section does not apply (and would not apply if the conduct described in paragraph (c) of this subsection occurred as intended); and

(e) the person is neither:

(i) an Australian citizen; nor

(ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and

(f) there is not in force in:

(i) the foreign country where the conduct constituting the primary offence to which the ancillary offence relates occurs, or is intended by the person to occur; or

(ii) the part of the foreign country where the conduct constituting the primary offence to which the ancillary offence relates or is intended by the person to occur;

a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the primary offence.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3).

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(5) For the purposes of the application of subsection 13.3(3) to an offence, subsection (4) of this section is taken to be an exception provided by the law creating the offence.

Extended application of sections 16.1, 16.2 and 16.3

(6) Section 16.1, except paragraph 16.1(1)(a), applies in relation to an offence against this Division (in addition to the application of that section apart from this subsection).

Note: Section 16.1 requires the Attorney-General's consent for prosecution of an offence if the alleged conduct occurred wholly in a foreign country in certain circumstances.

(7) Sections 16.2 and 16.3 apply for the purposes of this Division in the same way as they apply for the purposes of Part 2.7.

Note: Section 16.2 treats the sending of things and electronic communications into and out of Australia as conduct occurring partly in Australia. Section 16.3 affects the meaning of ***Australia***.

400.16 Saving of other laws

This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

Part 10.5—Postal services

Division 470—Preliminary

470.1 Definitions

In this Part:

article has the same meaning as in the *Australian Postal Corporation Act 1989*.

article in the course of post means an article that is being carried by post, and includes an article that has been collected or received by or on behalf of Australia Post for carriage by post, but has not been delivered by or on behalf of Australia Post.

Australia Post means the Australian Postal Corporation.

carry, in relation to an article, has the same meaning as in the *Australian Postal Corporation Act 1989*.

carry by post has the same meaning as in the *Australian Postal Corporation Act 1989*.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

mail-receptacle means a mail-bag, package, parcel, container, wrapper, receptacle or similar thing that:

(a) belongs to, or is in the possession of, Australia Post; and

(b) is used, or intended for use, in the carriage of articles by post (whether or not it actually contains such articles).

postage stamp has the same meaning as in the *Australian Postal Corporation Act 1989*.

postal message means:

(a) a material record of an unwritten communication:

(i) carried by post; or

(ii) collected or received by Australia Post for carriage by post; or

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(b) a material record issued by Australia Post as a record of an unwritten communication:
  (i) carried by post; or
  (ii) collected or received by Australia Post for carriage by post.

postal or similar service means:
(a) a postal service (within the meaning of paragraph 51(v) of the Constitution); or
(b) a courier service, to the extent to which the service is a postal or other like service (within the meaning of paragraph 51(v) of the Constitution); or
(c) a packet or parcel carrying service, to the extent to which the service is a postal or other like service (within the meaning of paragraph 51(v) of the Constitution); or
(d) any other service that is a postal or other like service (within the meaning of paragraph 51(v) of the Constitution); or
(e) a courier service that is provided by a constitutional corporation; or
(f) a packet or parcel carrying service that is provided by a constitutional corporation; or
(g) a courier service that is provided in the course of, or in relation to, trade or commerce:
  (i) between Australia and a place outside Australia; or
  (ii) among the States; or
  (iii) between a State and a Territory or between 2 Territories; or
(h) a packet or parcel carrying service that is provided in the course of, or in relation to, trade or commerce:
  (i) between Australia and a place outside Australia; or
  (ii) among the States; or
  (iii) between a State and a Territory or between 2 Territories.

property has the same meaning as in Chapter 7.

unwritten communication has the same meaning as in the *Australian Postal Corporation Act 1989*.

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470.2 Dishonesty

For the purposes of this Part, ***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.

470.3 Determination of dishonesty to be a matter for the trier of fact

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

470.4 Meaning of expressions used in Subdivisions B and C of Division 471

(1) Subject to subsections (2) and (3), an expression used in Subdivision B or C of Division 471 that is defined in Part 10.6 has the same meaning in that Subdivision as it has in that Part.

Note: These expressions include ***child abuse material*** and ***child pornography material***.

(2) A reference in Subdivision B or C of Division 471 to a person having possession or control of material includes a reference to the person:

(a) having possession of a computer or data storage device that holds or contains the material; or

(b) having possession of a document in which the material is recorded; or

(c) having control of material held in a computer that is in the possession of another person (whether inside or outside Australia).

(3) A reference in Subdivision B or C of Division 471 to a person producing, supplying or obtaining material includes a reference to the person:

(a) producing, supplying or obtaining material held or contained in a computer or data storage device; or

(b) producing, supplying or obtaining a document in which the material is recorded.

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Section 470.4

(4) Section 473.4 applies in relation to Subdivisions B and C of Division 471 as if the reference in that section to Part 10.6 were a reference to those Subdivisions.

Note: Section 473.4 sets out matters that may be taken into account in deciding whether particular material is offensive.

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Division 471—Postal offences

Subdivision A—General postal offences

471.1 Theft of mail-receptacles, articles or postal messages

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

(a) the person dishonestly appropriates:

(i) a mail-receptacle; or

(ii) an article in the course of post (including an article that appears to have been lost or wrongly delivered by or on behalf of Australia Post or lost in the course of delivery to Australia Post); or

(iii) a postal message; and

(b) the person does so with the intention of permanently depriving another person of the mail-receptacle, article or postal message.

Penalty: Imprisonment for 10 years.

Dishonesty

(2) For the purposes of this section, a person's appropriation of a mail-receptacle, article or postal message may be dishonest even if the person or another person is willing to pay for the mail-receptacle, article or postal message.

Intention of permanently depriving a person of a mail-receptacle, article or postal message

(3) For the purposes of this section, if:

(a) a person appropriates a mail-receptacle, article or postal message without meaning another 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.

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(4) For the purposes of subsection (3), 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.

471.2 Receiving stolen mail-receptacles, articles or postal messages

(1) A person is guilty of an offence if the person dishonestly receives stolen property, knowing or believing the property to be stolen.

Penalty: Imprisonment for 10 years.

Stolen property

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

(a) it is original stolen property (as defined by subsection (3)); or

(b) it is tainted property (as defined by subsection (5)).

This subsection has effect subject to subsection (4).

Original stolen property

(3) For the purposes of this section, ***original stolen property*** is property, or a part of property, that:

(a) was appropriated in the course of an offence against section 471.1 (whether or not the property, or the part of the property, is in the state it was in when it was so appropriated); and

(b) is in the possession or custody of the person who so appropriated the property.

(4) For the purposes of this section, property ceases to be original stolen property:

(a) after the property is restored:

(i) to the person from whom it was appropriated; or

(ii) to other lawful possession or custody; or

(b) after:

(i) the person from whom the property was appropriated 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 ceases to have any right to restitution in respect of the property.

Tainted property

(5) 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, original stolen property; and

(b) is in the possession or custody of the person who so appropriated the original stolen property.

Alternative verdicts

(6) If, in a prosecution for an offence against section 471.1, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against this section, the trier of fact may find the defendant not guilty of the offence against section 471.1 but guilty of the offence against this section, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

(7) If, in a prosecution for an offence against this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against section 471.1, the trier of fact may find the defendant not guilty of the offence against this section but guilty of the offence against section 471.1, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Receiving stolen property before commencement

(8) For the purposes of this section:

(a) it is to be assumed that section 471.1 had been in force at all times before the commencement of this section; and

(b) property that was appropriated at a time before the commencement of this section does not become ***stolen property*** unless the property was appropriated in circumstances that (apart from paragraph (a)) amounted to an offence against a law of the Commonwealth in force at that time.

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471.3 Taking or concealing of mail-receptacles, articles or postal messages

A person is guilty of an offence if the person dishonestly takes or conceals:

(a) a mail-receptacle; or

(b) an article in the course of post (including an article that appears to have been lost or wrongly delivered by or on behalf of Australia Post or lost in the course of delivery to Australia Post); or

(c) a postal message.

Penalty: Imprisonment for 5 years.

471.4 Dishonest removal of postage stamps or postmarks

A person is guilty of an offence if the person dishonestly:

(a) removes any postage stamp affixed to, or printed on, an article; or

(b) removes any postmark from a postage stamp that has previously been used for postal services.

Penalty: Imprisonment for 12 months.

471.5 Dishonest use of previously used, defaced or obliterated stamps

(1) A person is guilty of an offence if the person dishonestly uses for postal services a postage stamp:

(a) that has previously been used for postal services; or

(b) that has been obliterated; or

(c) that has been defaced.

Penalty: Imprisonment for 12 months.

(2) If, in proceedings for an offence against subsection (1), it is proved that the defendant caused an article to or on which was affixed or printed a postage stamp:

(a) that had previously been used for postal services; or

(b) that had been obliterated; or

(c) that had been defaced;

to be carried by post, it is presumed, in the absence of evidence to the contrary, that the defendant used the stamp for postal services.

(3) The burden of proof in respect of evidence to the contrary is an evidential burden of proof.

471.6 Damaging or destroying mail-receptacles, articles or postal messages

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

(a) the person engages in conduct; and

(b) the person's conduct causes damage to, or the destruction of:

(i) a mail-receptacle; or

(ii) an article in the course of post (including an article that appears to have been lost or wrongly delivered by or on behalf of Australia Post or lost in the course of delivery to Australia Post); or

(iii) a postal message; and

(c) the person:

(i) intends that his or her conduct cause that damage; or

(ii) is reckless as to whether his or her conduct causes that damage.

Penalty: Imprisonment for 10 years.

(2) For the purposes of this section, a person's conduct is taken to cause the destruction of a thing if the person's conduct causes the physical loss of the thing by interfering with the thing (including by removing any restraint over the thing or abandoning the thing).

(3) For the purposes of this section, a person's conduct is taken to cause damage to a thing if:

(a) the person's conduct causes any loss of a use of the function of the thing by interfering with the thing; or

(b) the person's conduct causes the thing to be defaced.

471.7 Tampering with mail-receptacles

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

(a) opens a mail-receptacle; or

(b) tampers with a mail-receptacle.

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Penalty: Imprisonment for 5 years.

(2) A person is guilty of an offence if:
(a) the person intentionally opens a mail-receptacle; and
(b) the person is not authorised by Australia Post to open the mail-receptacle; and
(c) the person does so knowing that he or she is not authorised by Australia Post to open the mail-receptacle.

Penalty: Imprisonment for 2 years.

471.8 Dishonestly obtaining delivery of articles

A person is guilty of an offence if the person dishonestly obtains delivery of, or receipt of, an article in the course of post that is not directed to the person.

Penalty: Imprisonment for 5 years.

471.9 Geographical jurisdiction

Section 15.3 (extended geographical jurisdiction—category C) applies to an offence against section 471.1, 471.2, 471.3, 471.4, 471.5, 471.6, 471.7 or 471.8.

471.10 Hoaxes—explosives and dangerous substances

(1) A person is guilty of an offence if:
(a) the person causes an article to be carried by a postal or similar service; and
(b) the person does so with the intention of inducing a false belief that:
(i) the article consists of, encloses or contains an explosive or a dangerous or harmful substance or thing; or
(ii) an explosive, or a dangerous or harmful substance or thing, has been or will be left in any place.

Penalty: Imprisonment for 10 years.

(2) To avoid doubt, the definition of ***carry by post*** in section 470.1 does not apply to this section.

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471.11 Using a postal or similar service to make a threat

Threat to kill

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

(a) the first person uses a postal or similar service to make to another person (the ***second person***) a threat to kill the second person or a third person; and

(b) the first person intends the second person to fear that the threat will be carried out.

Penalty: Imprisonment for 10 years.

Threat to cause serious harm

(2) A person (the ***first person***) is guilty of an offence if:

(a) the first person uses a postal or similar service to make to another person (the ***second person***) a threat to cause serious harm to the second person or a third person; and

(b) the first person intends the second person to fear that the threat will be carried out.

Penalty: Imprisonment for 7 years.

Actual fear not necessary

(3) In a prosecution for an offence against this section, it is not necessary to prove that the person receiving the threat actually feared that the threat would be carried out.

Definitions

(4) In this section:

fear includes apprehension.

threat to cause serious harm to a person includes a threat to substantially contribute to serious harm to the person.

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471.12 Using a postal or similar service to menace, harass or cause offence

A person is guilty of an offence if:

(a) the person uses a postal or similar service; and

(b) the person does so in a way (whether by the method of use or the content of a communication, or both) that reasonable persons would regard as being, in all the circumstances, menacing, harassing or offensive.

Penalty: Imprisonment for 2 years.

471.13 Causing a dangerous article to be carried by a postal or similar service

Offence

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

(a) the first person causes an article to be carried by a postal or similar service; and

(b) the person does so in a way that gives rise to a danger of death or serious harm to another person; and

(c) the first person is reckless as to the danger of death or serious harm.

Penalty: Imprisonment for 10 years.

Danger of death or serious harm

(2) For the purposes of this section, if a person's conduct exposes another person to the risk of catching a disease that may give rise to a danger of death or serious harm to the other person, the conduct is taken to give rise to a danger of death or serious harm to the other person.

(3) For the purposes of this section, a person's conduct gives rise to a danger of death or serious harm if the conduct is ordinarily capable of creating a real, and not merely a theoretical, danger of death or serious harm.

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(4) For the purposes of this section, a person's conduct may give rise to a danger of death or serious harm whatever the statistical or arithmetical calculation of the degree of risk of death or serious harm involved.

(5) In a prosecution for an offence against subsection (1), it is not necessary to prove that a specific person was actually placed in danger of death or serious harm by the conduct concerned.

Definition

(6) To avoid doubt, the definition of ***carry by post*** in section 470.1 does not apply to this section.

471.14 Geographical jurisdiction

Section 15.1 (extended geographical jurisdiction—category A) applies to an offence against section 471.10, 471.11, 471.12 or 471.13.

471.15 Causing an explosive, or a dangerous or harmful substance, to be carried by post

Offence

(1) A person is guilty of an offence if:
  (a) the person causes an article to be carried by post; and
  (b) the article consists of, encloses or contains:
    (i) an explosive; or
    (ii) a dangerous or harmful substance or thing that the regulations say must not, without exception, be carried by post.

Penalty: Imprisonment for 10 years.

Geographical jurisdiction

(2) Section 15.3 (extended geographical jurisdiction—category C) applies to an offence against subsection (1).

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Subdivision B—Offences relating to use of postal or similar service for child pornography material or child abuse material

471.16 Using a postal or similar service for child pornography material

(1) A person commits an offence if:

(a) the person causes an article to be carried by a postal or similar service; and

(b) the article is, or contains, child pornography material.

Penalty: Imprisonment for 15 years.

(2) A person commits an offence if:

(a) the person requests another person to cause an article to be carried by a postal or similar service; and

(b) the article is, or contains, child pornography material.

Penalty: Imprisonment for 15 years.

471.17 Possessing, controlling, producing, supplying or obtaining child pornography material for use through a postal or similar service

(1) A person commits an offence if:

(a) the person:

(i) has possession or control of material; or

(ii) produces, supplies or obtains material; and

(b) the material is child pornography material; and

(c) the person has that possession or control, or engages in that production, supply or obtaining, with the intention that the material be used:

(i) by that person; or

(ii) by another person;

in committing an offence against section 471.16 (using a postal or similar service for child pornography material).

Penalty: Imprisonment for 15 years.

(2) A person may be found guilty of an offence against subsection (1) even if committing the offence against section 471.16 (using a postal or similar service for child pornography material) is impossible.

(3) It is not an offence to attempt to commit an offence against subsection (1).

471.18 Defences in respect of child pornography material

(1) A person is not criminally responsible for an offence against section 471.16 (using a postal or similar service for child pornography material) or 471.17 (possessing etc. child pornography material for use through a postal or similar service) because of engaging in particular conduct if the conduct:

(a) is of public benefit; and

(b) does not extend beyond what is of public benefit.

In determining whether the person is, under this subsection, not criminally responsible for the offence, the question whether the conduct is of public benefit is a question of fact and the person's motives in engaging in the conduct are irrelevant.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

(2) For the purposes of subsection (1), conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in:

(a) enforcing a law of the Commonwealth, a State or a Territory; or

(b) monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or a Territory; or

(c) the administration of justice; or

(d) conducting scientific, medical or educational research that has been approved by the Minister in writing for the purposes of this section.

(3) A person is not criminally responsible for an offence against section 471.16 (using a postal or similar service for child pornography material) or 471.17 (possessing etc. child pornography material for use through a postal or similar service) if:

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(a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and

(b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

471.19 Using a postal or similar service for child abuse material

(1) A person commits an offence if:

(a) the person causes an article to be carried by a postal or similar service; and

(b) the article is, or contains, child abuse material.

Penalty: Imprisonment for 15 years.

(2) A person commits an offence if:

(a) the person requests another person to cause an article to be carried by a postal or similar service; and

(b) the article is, or contains, child abuse material.

Penalty: Imprisonment for 15 years.

471.20 Possessing, controlling, producing, supplying or obtaining child abuse material for use through a postal or similar service

(1) A person commits an offence if:

(a) the person:

(i) has possession or control of material; or

(ii) produces, supplies or obtains material; and

(b) the material is child abuse material; and

(c) the person has that possession or control, or engages in that production, supply or obtaining, with the intention that the material be used:

(i) by that person; or

(ii) by another person;

in committing an offence against section 471.19 (using a postal or similar service for child abuse material).

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Penalty: Imprisonment for 15 years.

(2) A person may be found guilty of an offence against subsection (1) even if committing the offence against section 471.19 (using a postal or similar service for child abuse material) is impossible.

(3) It is not an offence to attempt to commit an offence against subsection (1).

471.21 Defences in respect of child abuse material

(1) A person is not criminally responsible for an offence against section 471.19 (using a postal or similar service for child abuse material) or 471.20 (possessing etc. child abuse material for use through a postal or similar service) because of engaging in particular conduct if the conduct:

(a) is of public benefit; and

(b) does not extend beyond what is of public benefit.

In determining whether the person is, under this subsection, not criminally responsible for the offence, the question whether the conduct is of public benefit is a question of fact and the person's motives in engaging in the conduct are irrelevant.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

(2) For the purposes of subsection (1), conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in:

(a) enforcing a law of the Commonwealth, a State or a Territory; or

(b) monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or a Territory; or

(c) the administration of justice; or

(d) conducting scientific, medical or educational research that has been approved by the Minister in writing for the purposes of this section.

(3) A person is not criminally responsible for an offence against section 471.19 (using a postal or similar service for child abuse material) or 471.20 (possessing etc. child abuse material for use through a postal or similar service) if:

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(a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and

(b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

471.22 Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people

(1) A person commits an offence against this section if:

(a) the person commits an offence against one or more of the following provisions on 3 or more separate occasions:

(i) section 471.16 (using a postal or similar service for child pornography material);

(ii) section 471.17 (possessing etc. child pornography material for use through a postal or similar service);

(iii) section 471.19 (using a postal or similar service for child abuse material);

(iv) section 471.20 (possessing etc. child abuse material for use through a postal or similar service); and

(b) the commission of each such offence involves 2 or more people.

Penalty: Imprisonment for 25 years.

(2) There is no fault element for any of the physical elements described in paragraph (1)(a) other than the fault elements (however described), if any, for the offence against section 471.16, 471.17, 471.19 or 471.20.

(3) To avoid doubt, a person does not commit an offence against section 471.16, 471.17, 471.19 or 471.20 for the purposes of paragraph (1)(a) if the person has a defence to that offence.

Offence or conduct need not be the same

(4) For the purposes of subsection (1), it is immaterial whether the offence, or the conduct constituting the offence, is the same on each occasion.

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Double jeopardy etc.

(5) A person who has been convicted or acquitted of an offence (the ***aggravated offence***) against this section may not be convicted of an offence against section 471.16, 471.17, 471.19 or 471.20 in relation to the conduct that constituted the aggravated offence.

(6) Subsection (5) does not prevent an alternative verdict under section 471.23.

(7) A person who has been convicted or acquitted of an offence (the ***underlying offence***) against section 471.16, 471.17, 471.19 or 471.20 may not be convicted of an offence against this section in relation to the conduct that constituted the underlying offence.

471.23 Alternative verdict if aggravated offence not proven

If, on a trial for an offence (the ***aggravated offence***) against subsection 471.22(1), the trier of fact:

(a) is not satisfied that the defendant is guilty of the aggravated offence; but

(b) is satisfied beyond reasonable doubt that he or she is guilty of an offence (the ***underlying offence***) against section 471.16, 471.17, 471.19 or 471.20;

it may find the defendant not guilty of the aggravated offence but guilty of the underlying offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Subdivision C—Offences relating to use of postal or similar service involving sexual activity with person under 16

471.24 Using a postal or similar service to procure persons under 16

(1) A person (the ***sender***) commits an offence if:

(a) the sender causes an article to be carried by a postal or similar service to another person (the ***recipient***); and

(b) the sender does this with the intention of procuring the recipient to engage in sexual activity with the sender; and

(c) the recipient is someone who is, or who the sender believes to be, under 16; and

(d) the sender is at least 18.

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Penalty: Imprisonment for 15 years.

(2) A person (the ***sender***) commits an offence if:

(a) the sender causes an article to be carried by a postal or similar service to another person (the ***recipient***); and

(b) the sender does this with the intention of procuring the recipient to engage in sexual activity with another person (the ***participant***); and

(c) the recipient is someone who is, or who the sender believes to be, under 16; and

(d) the participant is someone who is, or who the sender believes to be, at least 18.

Penalty: Imprisonment for 15 years.

(3) A person (the ***sender***) commits an offence if:

(a) the sender causes an article to be carried by a postal or similar service to another person (the ***recipient***); and

(b) the sender does this with the intention of procuring the recipient to engage in sexual activity with another person; and

(c) the recipient is someone who is, or who the sender believes to be, under 16; and

(d) the other person referred to in paragraph (b) is someone who is, or who the sender believes to be, under 18; and

(e) the sender intends that the sexual activity referred to in paragraph (b) will take place in the presence of:

(i) the sender; or

(ii) another person (the ***participant***) who is, or who the sender believes to be, at least 18.

Penalty: Imprisonment for 15 years.

471.25 Using a postal or similar service to "groom" persons under 16

(1) A person (the ***sender***) commits an offence if:

(a) the sender causes an article to be carried by a postal or similar service to another person (the ***recipient***); and

(b) the sender does this with the intention of making it easier to procure the recipient to engage in sexual activity with the sender; and

(c) the recipient is someone who is, or who the sender believes to be, under 16; and

(d) the sender is at least 18.

Penalty: Imprisonment for 12 years.

(2) A person (the ***sender***) commits an offence if:

(a) the sender causes an article to be carried by a postal or similar service to another person (the ***recipient***); and

(b) the sender does this with the intention of making it easier to procure the recipient to engage in sexual activity with another person (the ***participant***); and

(c) the recipient is someone who is, or who the sender believes to be, under 16; and

(d) the participant is someone who is, or who the sender believes to be, at least 18.

Penalty: Imprisonment for 12 years.

(3) A person (the ***sender***) commits an offence if:

(a) the sender causes an article to be carried by a postal or similar service to another person (the ***recipient***); and

(b) the sender does this with the intention of making it easier to procure the recipient to engage in sexual activity with another person; and

(c) the recipient is someone who is, or who the sender believes to be, under 16; and

(d) the other person referred to in paragraph (b) is someone who is, or who the sender believes to be, under 18; and

(e) the sender intends that the sexual activity referred to in paragraph (b) will take place in the presence of:

(i) the sender; or

(ii) another person (the ***participant***) who is, or who the sender believes to be, at least 18.

Penalty: Imprisonment for 15 years.

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471.26 Using a postal or similar service to send indecent material to person under 16

(1) A person (the ***sender***) commits an offence if:

(a) the sender causes an article to be carried by a postal or similar service to another person (the ***recipient***); and

(b) the article is, or contains, material that is indecent; and

(c) the recipient is someone who is, or who the sender believes to be, under 16; and

(d) the sender is at least 18.

Penalty: Imprisonment for 7 years.

(2) In a prosecution for an offence against subsection (1), whether material is indecent is a matter for the trier of fact.

(3) In this section:

indecent means indecent according to the standards of ordinary people.

471.27 Age-related provisions relating to offences against this Subdivision

Application of absolute liability

(1) For the purposes of an offence against this Subdivision, absolute liability applies to the physical element of circumstance of the offence that the recipient is someone who is under 16.

Note 1: For absolute liability, see section 6.2.

Note 2: For a defence based on belief about age, see section 471.29.

(2) For the purposes of an offence against subsection 471.24(2) or (3) or 471.25(2) or (3), absolute liability applies to the physical element of circumstance of the offence that the participant is at least 18.

Note 1: For absolute liability, see section 6.2.

Note 2: For a defence based on belief about age, see section 471.29.

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Proof of belief about age—evidence of representation

(3) For the purposes of this Subdivision, evidence that the recipient was represented to the sender as being under or of a particular age is, in the absence of evidence to the contrary, proof that the sender believed the recipient to be under or of that age.

(4) For the purposes of sections 471.24 and 471.25, evidence that the participant was represented to the sender as being:

(a) at least 18; or

(b) over or of a particular age;

is, in the absence of evidence to the contrary, proof that the sender believed the participant to be at least 18 or over or of that particular age.

Determining age—admissible evidence

(5) In determining for the purposes of this Subdivision how old a person is or was at a particular time, a jury or court may treat any of the following as admissible evidence:

(a) the person's appearance;

(b) medical or other scientific opinion;

(c) a document that is or appears to be an official or medical record from a country outside Australia;

(d) a document that is or appears to be a copy of such a record.

(6) Subsection (5) does not make any other kind of evidence inadmissible, and does not affect a prosecutor's duty to do all he or she can to adduce the best possible evidence for determining the question.

(7) If, on a trial for an offence against this Subdivision, evidence may be treated as admissible because of subsection (5), the court must warn the jury that it must be satisfied beyond reasonable doubt in determining the question.

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471.28 Other provisions relating to offences against this Subdivision

Impossibility of sexual activity taking place

(1) A person may be found guilty of an offence against section 471.24 or 471.25 even if it is impossible for the sexual activity referred to in that section to take place.

Fictitious recipient

(2) For the purposes of an offence against this Subdivision, it does not matter that the recipient to whom the sender believes the sender is causing an article to be carried is a fictitious person represented to the sender as a real person.

Attempt not offence

(3) It is not an offence to attempt to commit an offence against section 471.24 or 471.25.

471.29 Defences to offences against this Subdivision

Belief that recipient at least 16

(1) It is a defence to a prosecution for an offence against this Subdivision if the defendant proves that, at the time he or she caused the article to be carried, the defendant believed that the recipient was at least 16.

Note: A defendant bears a legal burden in relation to the matter in this subsection, see section 13.4.

Offences involving procuring or "grooming" child for sexual activity with other participant—belief that participant under 18

(2) It is a defence to a prosecution for an offence against subsection 471.24(2) or (3) or 471.25(2) or (3) if the defendant proves that, at the time he or she caused the article to be carried, the defendant believed that the participant was under 18.

Note: A defendant bears a legal burden in relation to the matter in this subsection, see section 13.4.

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Trier of fact may take into account whether belief reasonable

(3) In determining whether the defendant had the belief mentioned in subsection (1) or (2), the trier of fact may take into account whether the alleged belief was reasonable in the circumstances.

Subdivision D—Miscellaneous

471.30 Geographical jurisdiction

Section 15.1 (extended geographical jurisdiction—category A) applies to an offence against Subdivision B or C of this Division.

471.31 Definition of *carry by post* does not apply

To avoid doubt, the definition of ***carry by post*** in section 470.1 does not apply in relation to Subdivision B or C of this Division.

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Division 472—Miscellaneous

472.1 Saving of other laws

This Part is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

472.2 Interpretation of other laws

In determining the meaning of a provision of:

(a) Part VIIA of the *Crimes Act 1914*; or

(b) the *Australian Postal Corporation Act 1989*;

this Part is to be disregarded.

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Part 10.6—Telecommunications Services

Division 473—Preliminary

473.1 Definitions

In this Part:

access in relation to material includes:

(a) the display of the material by a computer or any other output of the material from a computer; or

(b) the copying or moving of the material to any place in a computer or to a data storage device; or

(c) in the case of material that is a program—the execution of the program.

account identifier means:

(a) something that:

(i) contains subscription-specific secure data; and

(ii) is installed, or capable of being installed, in a mobile telecommunications device; or

(b) anything else that:

(i) allows a particular mobile telecommunications account to be identified; and

(ii) is prescribed by the regulations as an account identifier for the purposes of this Part.

Note: Paragraph (a)—This would include a SIM card.

carriage service provider has the same meaning as in the *Telecommunications Act 1997*.

Note: See also section 474.3 respecting persons who are taken to be carriage service providers in relation to certain matters.

carrier has the same meaning as in the *Telecommunications Act 1997*.

Note: See also section 474.3 respecting persons who are taken to be carriers in relation to certain matters.

carry includes transmit, switch and receive.

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child abuse material means:

(a) material that depicts a person, or a representation of a person, who:

(i) is, or appears to be, under 18 years of age; and

(ii) is, or appears to be, a victim of torture, cruelty or physical abuse;

and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

(b) material that describes a person who:

(i) is, or is implied to be, under 18 years of age; and

(ii) is, or is implied to be, a victim of torture, cruelty or physical abuse;

and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive.

child pornography material means:

(a) material that depicts a person, or a representation of a person, who is, or appears to be, under 18 years of age and who:

(i) is engaged in, or appears to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or

(ii) is in the presence of a person who is engaged in, or appears to be engaged in, a sexual pose or sexual activity;

and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

(b) material the dominant characteristic of which is the depiction, for a sexual purpose, of:

(i) a sexual organ or the anal region of a person who is, or appears to be, under 18 years of age; or

(ii) a representation of such a sexual organ or anal region; or

(iii) the breasts, or a representation of the breasts, of a female person who is, or appears to be, under 18 years of age;

in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

(c) material that describes a person who is, or is implied to be, under 18 years of age and who:

(i) is engaged in, or is implied to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or

(ii) is in the presence of a person who is engaged in, or is implied to be engaged in, a sexual pose or sexual activity;

and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

(d) material that describes:

(i) a sexual organ or the anal region of a person who is, or is implied to be, under 18 years of age; or

(ii) the breasts of a female person who is, or is implied to be, under 18 years of age;

and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive.

communication in the course of telecommunications carriage means a communication that is being carried by a carrier or carriage service provider, and includes a communication that has been collected or received by a carrier or carriage service provider for carriage, but has not yet been delivered by the carrier or carriage service provider.

connected, in relation to a telecommunications network, includes connection otherwise than by means of physical contact (for example, a connection by means of radiocommunication).

control of data, or material that is in the form of data, has the meaning given by section 473.2.

Defence Department means the Department of State that deals with defence and that is administered by the Minister administering section 1 of the *Defence Act 1903*.

depict includes contain data from which a visual image (whether still or moving) can be generated.

describe includes contain data from which text or sounds can be generated.

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emergency call person has the same meaning as in the *Telecommunications Act 1997*.

emergency service number has the same meaning as in the *Telecommunications Act 1997*.

emergency service organisation has the same meaning as in section 147 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

facility has the same meaning as in the *Telecommunications Act 1997*.

intelligence or security officer means an officer or employee of:

(a) the Australian Security Intelligence Organisation; or

(b) the Australian Secret Intelligence Service; or

(c) the Office of National Assessments; or

(d) that part of the Defence Department known as the Defence Signals Directorate; or

(e) that part of the Defence Department known as the Defence Intelligence Organisation;

and includes a staff member (within the meaning of the *Intelligence Services Act 2001*) of the Australian Security Intelligence Organisation, the Australian Secret Intelligence Service or the Defence Signals Directorate.

interception device means an apparatus or device that:

(a) is of a kind that is capable of being used to enable a person to intercept a communication passing over a telecommunications system; and

(b) could reasonably be regarded as having been designed:

(i) for the purpose of; or

(ii) for purposes including the purpose of;

using it in connection with the interception of communications passing over a telecommunications system; and

(c) is not designed principally for the reception of communications transmitted by radiocommunications.

Terms used in this definition that are defined in the *Telecommunications (Interception and Access) Act 1979* have the same meaning in this definition as they have in that Act.

internet content host has the same meaning as in Schedule 5 to the *Broadcasting Services Act 1992*.

internet service provider has the same meaning as in Schedule 5 to the *Broadcasting Services Act 1992*.

law enforcement officer means any of the following:

(a) the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*);

(b) a member, or employee, of the police force of a State or Territory;

(c) a member of the staff of the Australian Crime Commission (within the meaning of the *Australian Crime Commission Act 2002*);

(d) a member of a police force, or other law enforcement agency, of a foreign country;

(e) the Director of Public Prosecutions or a person performing a similar function under a law of a State or Territory;

(f) a member of the staff of the Office of the Director of Public Prosecutions (within the meaning of the *Director of Public Prosecutions Act 1983*) or of a similar body established under a law of a State or Territory;

(g) a member of the New South Wales Crime Commission or a member of the staff of that Commission;

(h) an officer of the Independent Commission Against Corruption of New South Wales, being a person who is an officer as defined by the *Independent Commission Against Corruption Act 1988* of New South Wales;

(i) the Commissioner of the Police Integrity Commission of New South Wales, an Assistant Commissioner of that Commission or a member of the staff of that Commission;

(j) an officer of the Corruption and Crime Commission of Western Australia within the meaning of the *Corruption and Crime Commission Act 2003* of Western Australia;

(k) an authorised commission officer of the Crime and Misconduct Commission of Queensland within the meaning of the *Crime and Misconduct Act 2001* of Queensland.

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loss means a loss in property, whether temporary or permanent, and includes not getting what one might get.

material includes material in any form, or combination of forms, capable of constituting a communication.

mobile telecommunications account means an account with a carriage service provider for the supply of a public mobile telecommunications service to an end-user.

mobile telecommunications device means an item of customer equipment (within the meaning of the *Telecommunications Act 1997*) that is used, or is capable of being used, in connection with a public mobile telecommunications service.

National Relay Service has the same meaning as in the *Telecommunications Universal Service Management Agency Act 2012*.

nominated carrier has the same meaning as in the *Telecommunications Act 1997*.

NRS provider means:

(a) a person who:
  (i) is a contractor (within the meaning of the *Telecommunications Universal Service Management Agency Act 2012*); and
  (ii) provides the whole or a part of the National Relay Service; or

(b) a person who:
  (i) is a grant recipient (within the meaning of the *Telecommunications Universal Service Management Agency Act 2012*); and
  (ii) provides the whole or a part of the National Relay Service.

obtaining includes:

(a) obtaining for another person; and
(b) inducing a third person to do something that results in another person obtaining.

obtaining data, or material that is in the form of data, has the meaning given by section 473.3.

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possession of data, or material that is in the form of data, has the meaning given by section 473.2.

producing data, or material that is in the form of data, has the meaning given by section 473.3.

property has the same meaning as in Chapter 7.

public mobile telecommunications service has the same meaning as in the *Telecommunications Act 1997*.

radiocommunication has the same meaning as in the *Radiocommunications Act 1992*.

serious offence against a foreign law means an offence against a law of a foreign country constituted by conduct that, if it had occurred in Australia, would have constituted a serious offence against a law of the Commonwealth, a State or a Territory.

serious offence against a law of the Commonwealth, a State or a Territory means an offence against a law of the Commonwealth, a State or a Territory that is punishable by imprisonment:

(a) for life; or

(b) for a period of 5 or more years.

subscription-specific secure data means data that is used, or is capable of being used, to:

(a) allow a carrier to identify a particular mobile telecommunications account (whether an existing account or an account that may be set up in the future); and

(b) allow a mobile telecommunications device in which an account identifier that contains the data is installed to access the public mobile telecommunication service to which that account relates.

supplying data, or material that is in the form of data, has the meaning given by section 473.3.

telecommunications device identifier means:

(a) an electronic identifier of a mobile telecommunications device that is:

(i) installed in the device by the manufacturer; and

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(ii) is capable of being used to distinguish that particular device from other mobile telecommunications devices; or

(b) any other form of identifier that is prescribed by the regulations as a telecommunications device identifier for the purposes of this Part.

Note: Paragraph (a)—For example, GSM mobile phones use an industry-recognised International Mobile Equipment Identity (IMEI) number. This number identifies the particular phone, as compared to the SIM card number which identifies a particular telecommunications account. Carriers are able to block service to lost and stolen mobile phones based on their IMEI numbers.

telecommunications network has the same meaning as in the *Telecommunications Act 1997*.

use, a carriage service, has a meaning affected by section 473.5.

473.2 Possession or control of data or material in the form of data

A reference in this Part to a person having possession or control of data, or material that is in the form of data, includes a reference to the person:

(a) having possession of a computer or data storage device that holds or contains the data; or

(b) having possession of a document in which the data is recorded; or

(c) having control of data held in a computer that is in the possession of another person (whether inside or outside Australia).

473.3 Producing, supplying or obtaining data or material in the form of data

A reference in this Part to a person producing, supplying or obtaining data, or material that is in the form of data, includes a reference to the person:

(a) producing, supplying or obtaining data held or contained in a computer or data storage device; or

(b) producing, supplying or obtaining a document in which the data is recorded.

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473.4 Determining whether material is offensive

The matters to be taken into account in deciding for the purposes of this Part whether reasonable persons would regard particular material, or a particular use of a carriage service, as being, in all the circumstances, offensive, include:

(a) the standards of morality, decency and propriety generally accepted by reasonable adults; and

(b) the literary, artistic or educational merit (if any) of the material; and

(c) the general character of the material (including whether it is of a medical, legal or scientific character).

473.5 Use of a carriage service

For the purposes of this Part, a person is taken not to use a carriage service by engaging in particular conduct if:

(a) the person is a carrier and, in engaging in that conduct, is acting solely in the person's capacity as a carrier; or

(b) the person is a carriage service provider and, in engaging in that conduct, is acting solely in the person's capacity as a carriage service provider; or

(c) the person is an internet service provider and, in engaging in that conduct, is acting solely in the person's capacity as an internet service provider; or

(d) the person is an internet content host and, in engaging in that conduct, is acting solely in the person's capacity as an internet content host.

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Division 474—Telecommunications offences

Subdivision A—Dishonesty with respect to carriage services

474.1 Dishonesty

(1) 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.

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

474.2 General dishonesty with respect to a carriage service provider

Obtaining a gain

(1) A person is guilty of an offence if the person does anything with the intention of dishonestly obtaining a gain from a carriage service provider by way of the supply of a carriage service.

Penalty: Imprisonment for 5 years.

Causing a loss

(2) A person is guilty of an offence if the person does anything with the intention of dishonestly causing a loss to a carriage service provider in connection with the supply of a carriage service.

Penalty: Imprisonment for 5 years.

(3) A person is guilty of an offence if:
  (a) the person dishonestly causes a loss, or dishonestly causes a risk of loss, to a carriage service provider in connection with the supply of a carriage service; and
  (b) the person knows or believes that the loss will occur or that there is a substantial risk of the loss occurring.

Penalty: Imprisonment for 5 years.

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Subdivision B—Interference with telecommunications

474.3 Person acting for a carrier or carriage service provider

(1) For the purposes of this Subdivision, a person who does any thing for or on behalf of a carrier, or on behalf of persons at least one of whom is a carrier, is, in respect of:

(a) the doing by that person of that thing; or

(b) any rental, fee or charge payable for or in relation to the doing by that person of that thing; or

(c) the operation by that person of a facility in connection with the doing of that thing; or

(d) a facility belonging to that person; or

(e) the operation by that person of a satellite;

taken to be a carrier.

(2) For the purposes of this Subdivision, a person who does any thing for or on behalf of a carriage service provider, or on behalf of persons at least one of whom is a carriage service provider, is, in respect of:

(a) the doing by that person of that thing; or

(b) any rental, fee or charge payable for or in relation to the doing by that person of that thing; or

(c) the operation by that person of a facility in connection with the doing of that thing; or

(d) a facility belonging to that person; or

(e) the operation by that person of a satellite;

taken to be a carriage service provider.

474.4 Interception devices

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

(a) the person:

(i) manufactures; or

(ii) advertises, displays or offers for sale; or

(iii) sells; or

(iv) possesses;

an apparatus or device (whether in an assembled or unassembled form); and

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(b) the apparatus or device is an interception device.

Penalty: Imprisonment for 5 years.

(2) A person is not criminally responsible for an offence against subsection (1) if the person possesses the interception device in the course of the person's duties relating to the interception of communications that does not constitute a contravention of subsection 7(1) of the *Telecommunications (Interception and Access) Act 1979*.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

(3) A person is not criminally responsible for an offence against subsection (1) if the applicable conduct mentioned in subparagraphs (1)(a)(i) to (iv) is in circumstances specified in regulations made for the purposes of this subsection.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

474.5 Wrongful delivery of communications

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

(a) a communication is in the course of telecommunications carriage; and

(b) the person causes the communication to be received by a person or carriage service other than the person or service to whom it is directed.

Penalty: Imprisonment for 1 year.

(2) A person is not criminally responsible for an offence against subsection (1) if the person engages in the conduct referred to in paragraph (1)(b) with the consent or authorisation of the person to whom, or the person operating the carriage service to which, the communication is directed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

474.6 Interference with facilities

(1) A person is guilty of an offence if the person tampers with, or interferes with, a facility owned or operated by:
  (a) a carrier; or
  (b) a carriage service provider; or
  (c) a nominated carrier.

  Penalty: Imprisonment for 1 year.

(2) For the purposes of an offence against subsection (1), absolute liability applies to the physical element of circumstance of the offence, that the facility is owned or operated by a carrier, a carriage service provider or a nominated carrier.

(3) A person is guilty of an offence if:
  (a) the person tampers with, or interferes with, a facility owned or operated by:
    (i) a carrier; or
    (ii) a carriage service provider; or
    (iii) a nominated carrier; and
  (b) this conduct results in hindering the normal operation of a carriage service supplied by a carriage service provider.

  Penalty: Imprisonment for 2 years.

(4) For the purposes of an offence against subsection (3), absolute liability applies to the following physical elements of circumstance of the offence:
  (a) that the facility is owned or operated by a carrier, a carriage service provider or a nominated carrier;
  (b) that the carriage service is supplied by a carriage service provider.

(5) A person is guilty of an offence if:
  (a) the person uses or operates any apparatus or device (whether or not it is comprised in, connected to or used in connection with a telecommunications network); and
  (b) this conduct results in hindering the normal operation of a carriage service supplied by a carriage service provider.

  Penalty: Imprisonment for 2 years.

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(6) For the purposes of an offence against subsection (5), absolute liability applies to the physical element of circumstance of the offence, that the carriage service is supplied by a carriage service provider.

(7) A person is not criminally responsible for an offence against subsection (5) if:

(a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in good faith in the course of his or her duties; and

(b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note 1: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

Note 2: See also subsection 475.1(2) for the interaction between this defence and the *Radiocommunications Act 1992*.

(8) For the purposes of this section, a facility is taken to be owned or operated by a nominated carrier if the *Telecommunications Act 1997* applies, under section 81A of that Act, as if that facility were owned or operated by the nominated carrier.

474.7 Modification etc. of a telecommunications device identifier

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

(a) modifies a telecommunications device identifier; or

(b) interferes with the operation of a telecommunications device identifier.

Penalty: Imprisonment for 2 years.

(2) A person is not criminally responsible for an offence against subsection (1) if the person is:

(a) the manufacturer of the mobile telecommunications device in which the telecommunications device identifier is installed; or

(b) an employee or agent of the manufacturer who is acting on behalf of the manufacturer; or

(c) acting with the consent of the manufacturer.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

(3) A person is not criminally responsible for an offence against subsection (1) if:

(a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and

(b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note 1: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

Note 2: This subsection merely creates a defence to an offence against subsection (1) and does not operate to authorise any conduct that requires a warrant under some other law.

474.8 Possession or control of data or a device with intent to modify a telecommunications device identifier

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

(a) the person has possession or control of any thing or data; and

(b) the person has that possession or control with the intention that the thing or data be used:

(i) by the person; or

(ii) by another person;

in committing an offence against subsection 474.7(1) (modification of a telecommunications device identifier).

Penalty: Imprisonment for 2 years.

(2) A person may be found guilty of an offence against subsection (1) even if committing the offence against subsection 474.7(1) (modification of a telecommunications device identifier) is impossible.

(3) It is not an offence to attempt to commit an offence against subsection (1).

(4) A person is not criminally responsible for an offence against subsection (1) if the person is:

(a) the manufacturer of the mobile telecommunications device in which the telecommunications device identifier is installed; or

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(b) an employee or agent of the manufacturer who is acting on behalf of the manufacturer; or

(c) acting with the consent of the manufacturer.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

(5) A person is not criminally responsible for an offence against subsection (1) if:

(a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and

(b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note 1: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

Note 2: This subsection merely creates a defence to an offence against subsection (1) and does not operate to authorise any conduct that requires a warrant under some other law.

474.9 Producing, supplying or obtaining data or a device with intent to modify a telecommunications device identifier

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

(a) the person produces, supplies or obtains any thing or data; and

(b) the person does so with the intention that the thing or data be used:

(i) by the person; or

(ii) by another person;

in committing an offence against subsection 474.7(1) (modification of a telecommunications device identifier).

Penalty: Imprisonment for 2 years.

(2) A person may be found guilty of an offence against subsection (1) even if committing the offence against subsection 474.7(1) (modification of a telecommunications device identifier) is impossible.

(3) It is not an offence to attempt to commit an offence against subsection (1).

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(4) A person is not criminally responsible for an offence against subsection (1) if the person is:

(a) the manufacturer of the mobile telecommunications device in which the telecommunications device identifier is installed; or

(b) an employee or agent of the manufacturer who is acting on behalf of the manufacturer; or

(c) acting with the consent of the manufacturer.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

(5) A person is not criminally responsible for an offence against subsection (1) if:

(a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and

(b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note 1: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

Note 2: This subsection merely creates a defence to an offence against subsection (1) and does not operate to authorise any conduct that requires a warrant under some other law.

474.10 Copying subscription-specific secure data

Copying subscription-specific secure data from an existing account identifier

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

(a) copies the subscription-specific secure data from an account identifier; and

(b) does so with the intention that the data will be copied (whether by the person or by someone else) onto something that:

(i) is an account identifier; or

(ii) will, once the data is copied onto it, be capable of operating as an account identifier.

Penalty: Imprisonment for 2 years.

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Copying subscription-specific secure data onto a new account identifier

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

(a) subscription-specific secure data is copied from an account identifier (whether by the person or by someone else); and

(b) the person copies that data onto something that:

(i) is an account identifier; or

(ii) will, once the data is copied onto it, be capable of operating as an account identifier.

This is so whether or not the person knows which particular account identifier the subscription-specific secure data is copied from.

Penalty: Imprisonment for 2 years.

Defences

(3) A person is not criminally responsible for an offence against subsection (1) or (2) if the person is:

(a) the carrier who operates the facilities used, or to be used, in the supply of the public mobile telecommunications service to which the subscription-specific secure data relates; or

(b) an employee or agent of that carrier who is acting on behalf of that carrier; or

(c) acting with the consent of that carrier.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

(4) A person is not criminally responsible for an offence against subsection (1) or (2) if:

(a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and

(b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note 1: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

Note 2: This subsection merely creates a defence to an offence against subsection (1) or (2) and does not operate to authorise any conduct that requires a warrant under some other law.

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474.11 Possession or control of data or a device with intent to copy an account identifier

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

(a) the person has possession or control of any thing or data; and

(b) the person has that possession or control with the intention that the thing or data be used:

(i) by the person; or

(ii) by another person;

in committing an offence against subsection 474.10(1) (copying subscription-specific secure data from an account identifier) or 474.10(2) (copying subscription-specific secure data onto an account identifier).

Penalty: Imprisonment for 2 years.

(2) A person may be found guilty of an offence against subsection (1) even if committing the offence against subsection 474.10(1) (copying subscription-specific secure data from an account identifier) or 474.10(2) (copying subscription-specific secure data onto an account identifier) is impossible.

(3) It is not an offence to attempt to commit an offence against subsection (1).

Defences

(4) A person is not criminally responsible for an offence against subsection (1) if the person is:

(a) the carrier who operates the facilities used, or to be used, in the supply of the public mobile telecommunications service to which the subscription-specific secure data relates; or

(b) an employee or agent of that carrier who is acting on behalf of that carrier; or

(c) acting with the consent of that carrier.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

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(5) A person is not criminally responsible for an offence against subsection (1) if:

(a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and

(b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note 1: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

Note 2: This subsection merely creates a defence to an offence against subsection (1) and does not operate to authorise any conduct that requires a warrant under some other law.

474.12 Producing, supplying or obtaining data or a device with intent to copy an account identifier

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

(a) the person produces, supplies or obtains any thing or data; and

(b) the person does so with the intention that the thing or data be used:

(i) by the person; or

(ii) by another person;

in committing an offence against subsection 474.10(1) (copying subscription-specific secure data from an account identifier) or 474.10(2) (copying subscription-specific secure data onto an account identifier).

Penalty: Imprisonment for 2 years.

(2) A person may be found guilty of an offence against subsection (1) even if committing the offence against subsection 474.10(1) (copying subscription-specific secure data from an account identifier) or 474.10(2) (copying subscription-specific secure data onto an account identifier) is impossible.

(3) It is not an offence to attempt to commit an offence against subsection (1).

Defences

(4) A person is not criminally responsible for an offence against subsection (1) if the person is:

(a) the carrier who operates the facilities used, or to be used, in the supply of the public mobile telecommunications service to which the subscription-specific secure data relates; or

(b) an employee or agent of that carrier who is acting on behalf of that carrier; or

(c) acting with the consent of that carrier.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

(5) A person is not criminally responsible for an offence against subsection (1) if:

(a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and

(b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note 1: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

Note 2: This subsection merely creates a defence to an offence against subsection (1) and does not operate to authorise any conduct that requires a warrant under some other law.

Subdivision C—General offences relating to use of telecommunications

474.14 Using a telecommunications network with intention to commit a serious offence

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

(a) the person:

(i) connects equipment to a telecommunications network; and

(ii) intends by this to commit, or to facilitate the commission of, an offence (whether by that person or another person); and

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(b) the offence is:

(i) a serious offence against a law of the Commonwealth, a State or a Territory; or

(ii) a serious offence against a foreign law.

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

(a) the person uses equipment connected to a telecommunications network in the commission of, or to facilitate the commission of, an offence (whether by that person or another person); and

(b) the offence is:

(i) a serious offence against a law of the Commonwealth, a State or a Territory; or

(ii) a serious offence against a foreign law.

(3) A person who is guilty of an offence against subsection (1) or (2) is punishable, on conviction, by a penalty not exceeding the penalty applicable to the serious offence.

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

Note: For ***absolute liability***, see section 6.2.

(5) A person may be found guilty of an offence against subsection (1) or (2) even if committing the serious offence is impossible.

(6) It is not an offence to attempt to commit an offence against subsection (1) or (2).

474.15 Using a carriage service to make a threat

Threat to kill

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

(a) the first person uses a carriage service to make to another person (the ***second person***) a threat to kill the second person or a third person; and

(b) the first person intends the second person to fear that the threat will be carried out.

Penalty: Imprisonment for 10 years.

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Threat to cause serious harm

(2) A person (the ***first person***) is guilty of an offence if:
  (a) the first person uses a carriage service to make to another person (the ***second person***) a threat to cause serious harm to the second person or a third person; and
  (b) the first person intends the second person to fear that the threat will be carried out.

Penalty: Imprisonment for 7 years.

Actual fear not necessary

(3) In a prosecution for an offence against this section, it is not necessary to prove that the person receiving the threat actually feared that the threat would be carried out.

Definitions

(4) In this section:

fear includes apprehension.

threat to cause serious harm to a person includes a threat to substantially contribute to serious harm to the person.

474.16 Using a carriage service for a hoax threat

A person is guilty of an offence if:
  (a) the person uses a carriage service to send a communication; and
  (b) the person does so with the intention of inducing a false belief that an explosive, or a dangerous or harmful substance or thing, has been or will be left in any place.

Penalty: Imprisonment for 10 years.

474.17 Using a carriage service to menace, harass or cause offence

(1) A person is guilty of an offence if:
  (a) the person uses a carriage service; and
  (b) the person does so in a way (whether by the method of use or the content of a communication, or both) that reasonable

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persons would regard as being, in all the circumstances, menacing, harassing or offensive.

Penalty: Imprisonment for 3 years.

(2) Without limiting subsection (1), that subsection applies to menacing, harassing or causing offence to:
  (a) an employee of an NRS provider; or
  (b) an emergency call person; or
  (c) an employee of an emergency service organisation; or
  (d) an APS employee in the Attorney-General's Department acting as a National Security Hotline call taker.

474.18 Improper use of emergency call service

(1) A person is guilty of an offence if the person:
  (a) makes a call to an emergency service number; and
  (b) does so with the intention of inducing a false belief that an emergency exists.

Penalty: Imprisonment for 3 years.

(2) A person is guilty of an offence if:
  (a) the person makes a call to an emergency service number; and
  (b) the person makes the call otherwise than for the purpose of reporting an emergency; and
  (c) the call is a vexatious one.

Penalty: Imprisonment for 3 years.

(3) In determining whether a call by a person to an emergency service number is a vexatious one, have regard to:
  (a) the content of the call; and
  (b) the number, frequency and content of previous calls the person has made to emergency service numbers otherwise than for the purpose of reporting emergencies; and
  (c) any other relevant matter.

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Subdivision D—Offences relating to use of carriage service for child pornography material or child abuse material

474.19 Using a carriage service for child pornography material

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

(a) the person:

(i) accesses material; or

(ii) causes material to be transmitted to himself or herself; or

(iii) transmits, makes available, publishes, distributes, advertises or promotes material; or

(iv) solicits material; and

(aa) the person does so using a carriage service; and

(b) the material is child pornography material.

Penalty: Imprisonment for 15 years.

(2) To avoid doubt, the following are the fault elements for the physical elements of an offence against subsection (1):

(a) intention is the fault element for the conduct referred to in paragraph (1)(a);

(b) recklessness is the fault element for the circumstances referred to in paragraph (1)(b).

Note: For the meaning of ***intention*** and ***recklessness*** see sections 5.2 and 5.4.

(2A) Absolute liability applies to paragraph (1)(aa).

Note: For absolute liability, see section 6.2.

(3) As well as the general defences provided for in Part 2.3, defences are provided for under section 474.21 in relation to this section.

474.20 Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service

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

(a) the person:

(i) has possession or control of material; or

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(ii) produces, supplies or obtains material; and

(b) the material is child pornography material; and

(c) the person has that possession or control, or engages in that production, supply or obtaining, with the intention that the material be used:

(i) by that person; or

(ii) by another person;

in committing an offence against section 474.19 (using a carriage service for child pornography material).

Penalty: Imprisonment for 15 years.

(2) A person may be found guilty of an offence against subsection (1) even if committing the offence against section 474.19 (using a carriage service for child pornography material) is impossible.

(3) It is not an offence to attempt to commit an offence against subsection (1).

474.21 Defences in respect of child pornography material

(1) A person is not criminally responsible for an offence against section 474.19 (using a carriage service for child pornography material) or 474.20 (possessing etc. child pornography material for use through a carriage service) because of engaging in particular conduct if the conduct:

(a) is of public benefit; and

(b) does not extend beyond what is of public benefit.

In determining whether the person is, under this subsection, not criminally responsible for the offence, the question whether the conduct is of public benefit is a question of fact and the person's motives in engaging in the conduct are irrelevant.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

(2) For the purposes of subsection (1), conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in:

(a) enforcing a law of the Commonwealth, a State or a Territory; or

(b) monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or a Territory; or

(c) the administration of justice; or

(d) conducting scientific, medical or educational research that has been approved by the Minister in writing for the purposes of this section.

(3) A person is not criminally responsible for an offence against section 474.19 (using a carriage service for child pornography material) or 474.20 (possessing etc. child pornography material for use through a carriage service) if:

(a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and

(b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

(4) A person is not criminally responsible for an offence against section 474.19 (using a carriage service for child pornography material) or 474.20 (possessing etc. child pornography material for use through a carriage service) if the person engages in the conduct in good faith for the sole purpose of:

(a) assisting the Australian Communications and Media Authority to detect:

(i) prohibited content (within the meaning of Schedule 7 to the *Broadcasting Services Act 1992*); or

(ii) potential prohibited content (within the meaning of that Schedule);

in the performance of the Authority's functions under Schedule 5 or Schedule 7 to that Act; or

(b) manufacturing or developing, or updating, content filtering technology (including software) in accordance with:

(i) a recognised alternative access-prevention arrangement (within the meaning of clause 40 of Schedule 5 to the *Broadcasting Services Act 1992*); or

(ii) a designated alternative access-prevention arrangement (within the meaning of clause 60 of that Schedule).

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

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474.22 Using a carriage service for child abuse material

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

(a) the person:

(i) accesses material; or

(ii) causes material to be transmitted to himself or herself; or

(iii) transmits, makes available, publishes, distributes, advertises or promotes material; or

(iv) solicits material; and

(aa) the person does so using a carriage service; and

(b) the material is child abuse material.

Penalty: Imprisonment for 15 years.

(2) To avoid doubt, the following are the fault elements for the physical elements of an offence against subsection (1):

(a) intention is the fault element for the conduct referred to in paragraph (1)(a);

(b) recklessness is the fault element for the circumstances referred to in paragraph (1)(b).

Note: For the meaning of ***intention*** and ***recklessness*** see sections 5.2 and 5.4.

(2A) Absolute liability applies to paragraph (1)(aa).

Note: For absolute liability, see section 6.2.

(3) As well as the general defences provided for in Part 2.3, defences are provided for under section 474.24 in relation to this section.

474.23 Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service

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

(a) the person:

(i) has possession or control of material; or

(ii) produces, supplies or obtains material; and

(b) the material is child abuse material; and

(c) the person has that possession or control, or engages in that production, supply or obtaining, with the intention that the material be used:

(i) by that person; or

(ii) by another person;

in committing an offence against section 474.22 (using a carriage service for child abuse material).

Penalty: Imprisonment for 15 years.

(2) A person may be found guilty of an offence against subsection (1) even if committing the offence against section 474.22 (using a carriage service for child abuse material) is impossible.

(3) It is not an offence to attempt to commit an offence against subsection (1).

474.24 Defences in respect of child abuse material

(1) A person is not criminally responsible for an offence against section 474.22 (using a carriage service for child abuse material) or 474.23 (possessing etc. child abuse material for use through a carriage service) because of engaging in particular conduct if the conduct:

(a) is of public benefit; and

(b) does not extend beyond what is of public benefit.

In determining whether the person is, under this subsection, not criminally responsible for the offence, the question whether the conduct is of public benefit is a question of fact and the person's motives in engaging in the conduct are irrelevant.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

(2) For the purposes of subsection (1), conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in:

(a) enforcing a law of the Commonwealth, a State or a Territory; or

(b) monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or a Territory; or

(c) the administration of justice; or

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(d) conducting scientific, medical or educational research that has been approved by the Minister in writing for the purposes of this section.

(3) A person is not criminally responsible for an offence against section 474.22 (using a carriage service for child abuse material) or 474.23 (possessing etc. child abuse material for use through a carriage service) if:

(a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and

(b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

(4) A person is not criminally responsible for an offence against section 474.22 (using a carriage service for child abuse material) or 474.23 (possessing etc. child abuse material for use through a carriage service) if the person engages in the conduct in good faith for the sole purpose of:

(a) assisting the Australian Communications and Media Authority to detect:

(i) prohibited content (within the meaning of Schedule 7 to the *Broadcasting Services Act 1992*); or

(ii) potential prohibited content (within the meaning of that Schedule);

in the performance of the Authority's functions under Schedule 5 or Schedule 7 to that Act; or

(b) manufacturing or developing, or updating, content filtering technology (including software) in accordance with:

(i) a recognised alternative access-prevention arrangement (within the meaning of clause 40 of Schedule 5 to the *Broadcasting Services Act 1992*); or

(ii) a designated alternative access-prevention arrangement (within the meaning of clause 60 of that Schedule).

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

474.24A Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people

(1) A person commits an offence against this section if:

(a) the person commits an offence against one or more of the following provisions on 3 or more separate occasions:

(i) section 474.19 (using a carriage service for child pornography material);

(ii) section 474.20 (possessing etc. child pornography material for use through a carriage service);

(iii) section 474.22 (using a carriage service for child abuse material);

(iv) section 474.23 (possessing etc. child abuse material for use through a carriage service); and

(b) the commission of each such offence involves 2 or more people.

Penalty: Imprisonment for 25 years.

(2) There is no fault element for any of the physical elements described in paragraph (1)(a) other than the fault elements (however described), if any, for the offence against section 474.19, 474.20, 474.22 or 474.23.

(3) To avoid doubt, a person does not commit an offence against section 474.19, 474.20, 474.22 or 474.23 for the purposes of paragraph (1)(a) if the person has a defence to that offence.

Offence or conduct need not be the same

(4) For the purposes of subsection (1), it is immaterial whether the offence, or the conduct constituting the offence, is the same on each occasion.

Double jeopardy etc.

(5) A person who has been convicted or acquitted of an offence (the ***aggravated offence***) against this section may not be convicted of an offence against section 474.19, 474.20, 474.22 or 474.23 in relation to the conduct that constituted the aggravated offence.

(6) Subsection (5) does not prevent an alternative verdict under section 474.24B.

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(7) A person who has been convicted or acquitted of an offence (the ***underlying offence***) against section 474.19, 474.20, 474.22 or 474.23 may not be convicted of an offence against this section in relation to the conduct that constituted the underlying offence.

474.24B Alternative verdict if aggravated offence not proven

If, on a trial for an offence (the ***aggravated offence***) against subsection 474.24A(1), the trier of fact:

(a) is not satisfied that the defendant is guilty of the aggravated offence; but

(b) is satisfied beyond reasonable doubt that he or she is guilty of an offence (the ***underlying offence***) against section 474.19, 474.20, 474.22 or 474.23;

it may find the defendant not guilty of the aggravated offence but guilty of the underlying offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

474.24C Consent to commencement of proceedings where defendant under 18

(1) Proceedings for an offence against this Subdivision must not be commenced without the consent of the Attorney-General if the defendant was under 18 at the time he or she allegedly engaged in the conduct constituting the offence.

(2) However, a person may be arrested for, charged with, or remanded in custody or on bail in connection with, such an offence before the necessary consent has been given.

Subdivision E—Offence relating to obligations of internet service providers and internet content hosts

474.25 Obligations of internet service providers and internet content hosts

A person commits an offence if the person:

(a) is an internet service provider or an internet content host; and

(b) is aware that the service provided by the person can be used to access particular material that the person has reasonable grounds to believe is:

(i) child pornography material; or

(ii) child abuse material; and

(c) does not refer details of the material to the Australian Federal Police within a reasonable time after becoming aware of the existence of the material.

Penalty: 100 penalty units.

Subdivision F—Offences relating to use of carriage service involving sexual activity with person under 16

474.25A Using a carriage service for sexual activity with person under 16 years of age

Engaging in sexual activity with child using a carriage service

(1) A person commits an offence if:

(a) the person engages in sexual activity with another person (the ***child***) using a carriage service; and

(b) the child is under 16 years of age; and

(c) the person is at least 18 years of age.

Penalty: Imprisonment for 15 years.

Causing child to engage in sexual activity with another person

(2) A person (the ***defendant***) commits an offence if:

(a) the defendant engages in conduct in relation to another person (the ***child***); and

(b) that conduct causes the child to engage in sexual activity with another person (the ***participant***) using a carriage service; and

(c) the child is under 16 years of age when the sexual activity is engaged in; and

(d) the participant is at least 18 years of age when the sexual activity is engaged in.

Penalty: Imprisonment for 15 years.

(3) The fault element for paragraph (2)(b) is intention.

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Defence—child present but defendant does not intend to derive gratification

(4) It is a defence to a prosecution for an offence against subsection (1) or (2) if:

(a) the conduct constituting the offence consists only of the child being in the presence of a person while sexual activity is engaged in; and

(b) the defendant proves that he or she did not intend to derive gratification from the presence of the child during that activity.

Note 1: A defendant bears a legal burden in relation to the matter in this subsection, see section 13.4.

Note 2: For other defences relating to this offence, see section 474.29.

474.25B Aggravated offence—child with mental impairment or under care, supervision or authority of defendant

(1) A person commits an offence against this section if:

(a) the person commits an offence against either of the following provisions in relation to another person (the ***child***):

(i) subsection 474.25A(1) (engaging in sexual activity with child using a carriage service);

(ii) subsection 474.25A(2) (causing child to engage in sexual activity with another person); and

(b) either or both of the following apply at the time the person commits the offence:

(i) the child has a mental impairment;

(ii) the person is in a position of trust or authority in relation to the child, or the child is otherwise under the care, supervision or authority of the person.

Penalty: Imprisonment for 25 years.

(2) To avoid doubt, a person does not commit the offence against subsection 474.25A(1 or (2) for the purposes of paragraph (1)(a) if the person has a defence to that offence.

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Alternative verdicts

(3) If, on a trial for an offence (the ***aggravated offence***) against subsection (1), the trier of fact:

(a) is not satisfied that the defendant is guilty of the aggravated offence; but

(b) is satisfied beyond reasonable doubt that he or she is guilty of an offence (the ***underlying offence***) against subsection 474.25A(1) or (2);

it may find the defendant not guilty of the aggravated offence but guilty of the underlying offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

474.26 Using a carriage service to procure persons under 16 years of age

(1) A person (the ***sender***) commits an offence if:

(a) the sender uses a carriage service to transmit a communication to another person (the ***recipient***); and

(b) the sender does this with the intention of procuring the recipient to engage in sexual activity with the sender; and

(c) the recipient is someone who is, or who the sender believes to be, under 16 years of age; and

(d) the sender is at least 18 years of age.

Penalty: Imprisonment for 15 years.

(2) A person (the ***sender***) commits an offence if:

(a) the sender uses a carriage service to transmit a communication to another person (the ***recipient***); and

(b) the sender does this with the intention of procuring the recipient to engage in sexual activity with another person (the ***participant***); and

(c) the recipient is someone who is, or who the sender believes to be, under 16 years of age; and

(d) the participant is someone who is, or who the sender believes to be, at least 18 years of age.

Penalty: Imprisonment for 15 years.

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(3) A person (the ***sender***) commits an offence if:

(a) the sender uses a carriage service to transmit a communication to another person (the ***recipient***); and

(b) the sender does this with the intention of procuring the recipient to engage in sexual activity with another person; and

(c) the recipient is someone who is, or who the sender believes to be, under 16 years of age; and

(d) the other person referred to in paragraph (b) is someone who is, or who the sender believes to be, under 18 years of age; and

(e) the sender intends that the sexual activity referred to in paragraph (b) will take place in the presence of:

(i) the sender; or

(ii) another person (the ***participant***) who is, or who the sender believes to be, at least 18 years of age.

Penalty: Imprisonment for 15 years.

474.27 Using a carriage service to "groom" persons under 16 years of age

(1) A person (the ***sender***) commits an offence if:

(a) the sender uses a carriage service to transmit a communication to another person (the ***recipient***); and

(c) the sender does this with the intention of making it easier to procure the recipient to engage in sexual activity with the sender; and

(d) the recipient is someone who is, or who the sender believes to be, under 16 years of age; and

(e) the sender is at least 18 years of age.

Penalty: Imprisonment for 12 years.

(2) A person (the ***sender***) commits an offence if:

(a) the sender uses a carriage service to transmit a communication to another person (the ***recipient***); and

(c) the sender does this with the intention of making it easier to procure the recipient to engage in sexual activity with another person (the ***participant***); and

(d) the recipient is someone who is, or who the sender believes to be, under 16 years of age; and

(e) the participant is someone who is, or who the sender believes to be, at least 18 years of age.

Penalty: Imprisonment for 12 years.

(3) A person (the ***sender***) commits an offence if:

(a) the sender uses a carriage service to transmit a communication to another person (the ***recipient***); and

(c) the sender does this with the intention of making it easier to procure the recipient to engage in sexual activity with another person; and

(d) the recipient is someone who is, or who the sender believes to be, under 16 years of age; and

(e) the other person referred to in paragraph (c) is someone who is, or who the sender believes to be, under 18 years of age; and

(f) the sender intends that the sexual activity referred to in paragraph (c) will take place in the presence of:

(i) the sender; or

(ii) another person (the ***participant***) who is, or who the sender believes to be, at least 18 years of age.

Penalty: Imprisonment for 15 years.

474.27A Using a carriage service to transmit indecent communication to person under 16 years of age

(1) A person (the ***sender***) commits an offence if:

(a) the sender uses a carriage service to transmit a communication to another person (the ***recipient***); and

(b) the communication includes material that is indecent; and

(c) the recipient is someone who is, or who the sender believes to be, under 16 years of age; and

(d) the sender is at least 18 years of age.

Penalty: Imprisonment for 7 years.

(2) In a prosecution for an offence against subsection (1), whether material is indecent is a matter for the trier of fact.

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(3) In this section:

indecent means indecent according to the standards of ordinary people.

474.28 Provisions relating to offences against this Subdivision

Age-related issues—application of absolute liability

(1) For the purposes of an offence against this Subdivision, absolute liability applies to the physical element of circumstance of the offence that:

(a) in the case of an offence against section 474.25A—the child is under 16 years of age; and

(b) in the case of an offence against section 474.26, 474.27 or 474.27A—the recipient is someone who is under 16 years of age.

Note 1: For ***absolute liability***, see section 6.2.

Note 2: For a defence based on belief about age, see section 474.29.

(2) For the purposes of an offence against subsection 474.25A(2), 474.26(2) or (3) or 474.27(2) or (3), absolute liability applies to the physical elements of circumstance of the offence that the participant is at least 18 years of age.

Note 1: For ***absolute liability***, see section 6.2.

Note 2: For a defence based on belief about age, see section 474.29.

Proof of belief about age—evidence of representation

(3) For the purposes of sections 474.26, 474.27 and 474.27A, evidence that the recipient was represented to the sender as being under or of a particular age is, in the absence of evidence to the contrary, proof that the sender believed the recipient to be under or of that age.

(4) For the purposes of sections 474.25A, 474.26 and 474.27, evidence that the participant was represented to the sender as being:

(a) at least 18 years of age; or

(b) over or of a particular age;

is, in the absence of evidence to the contrary, proof that the sender believed the participant to be at least 18 years of age or over or of that age.

Determining age—admissible evidence

(5) In determining for the purposes of this Subdivision how old a person is or was at a particular time, a jury or court may treat any of the following as admissible evidence:
  (a) the person's appearance;
  (b) medical or other scientific opinion;
  (c) a document that is or appears to be an official or medical record from a country outside Australia;
  (d) a document that is or appears to be a copy of such a record.

(6) Subsection (5) does not make any other kind of evidence inadmissible, and does not affect a prosecutor's duty to do all he or she can to adduce the best possible evidence for determining the question.

(7) If, on a trial for an offence against a provision of this Subdivision, evidence may be treated as admissible because of subsection (5), the court must warn the jury that it must be satisfied beyond reasonable doubt in determining the question.

Issues relating to aggravated offence involving sexual activity

(7A) For the purposes of an offence against subsection 474.25B(1):
  (a) there is no fault element for the physical element described in paragraph (a) of that subsection other than the fault elements (however described), if any, for the underlying offence; and
  (b) absolute liability applies to the physical element of circumstance of the offence that the child has a mental impairment; and
  (c) strict liability applies to the physical element of circumstance of the offence that the defendant is in a position of trust or authority in relation to the child, or the child is otherwise under the care, supervision or authority of the defendant.

Note 1: For absolute liability, see section 6.2.

Note 2: For strict liability, see section 6.1.

Note 3: For a defence based on belief that the child did not have a mental impairment, see section 474.29.

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Impossibility of sexual activity taking place

(8) A person may be found guilty of an offence against section 474.26 or 474.27 even if it is impossible for the sexual activity referred to in that section to take place.

Fictitious recipient

(9) For the purposes of sections 474.26, 474.27 and 474.27A, it does not matter that the recipient to whom the sender believes the sender is transmitting the communication is a fictitious person represented to the sender as a real person.

Attempt not offence

(10) It is not an offence to attempt to commit an offence against section 474.26 or 474.27.

474.29 Defences to offences against this Subdivision

Offences involving sexual activity—belief that child at least 16 years of age

(1) It is a defence to a prosecution for an offence against section 474.25A if the defendant proves that, at the time the sexual activity was engaged in, he or she believed that the child was at least 16 years of age.

Note: A defendant bears a legal burden in relation to the matter in this subsection, see section 13.4.

Offences involving sexual activity with other participant—belief that participant under 18 years of age

(2) It is a defence to a prosecution for an offence against subsection 474.25A(2) if the defendant proves that, at the time the sexual activity was engaged in, he or she believed that the participant was under 18 years of age.

Note: A defendant bears a legal burden in relation to the matter in this subsection, see section 13.4.

Aggravated offence involving sexual activity—belief that child did not have mental impairment

(3) It is a defence to a prosecution for an offence against subsection 474.25B(1) (as that subsection applies because of subparagraph 474.25B(1)(b)(i)) if the defendant proves that, at the time the defendant committed the offence, he or she believed that the child did not have a mental impairment.

Note: A defendant bears a legal burden in relation to the matter in this subsection, see section 13.4.

Offences involving procuring or "grooming" person for sexual activity with other participant—belief that participant under 18 years of age

(4) It is a defence to a prosecution for an offence against subsection 474.26(2) or (3) or 474.27(2) or (3) if the defendant proves that, at the time the communication was transmitted, he or she believed that the participant was under 18 years of age.

Note: A defendant bears a legal burden in relation to the matter in this subsection, see section 13.4.

Offences involving transmission of communication—belief that recipient at least 16 years of age

(5) It is a defence to a prosecution for an offence against section 474.26, 474.27 or 474.27A if the defendant proves that, at the time the communication was transmitted, he or she believed that the recipient was at least 16 years of age.

Note: A defendant bears a legal burden in relation to the matter in this subsection, see section 13.4.

Trier of fact may take into account whether belief reasonable

(6) In determining whether the defendant had the belief mentioned in one of the preceding subsections of this section, the trier of fact may take into account whether the alleged belief was reasonable in the circumstances.

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Subdivision G—Offences relating to use of carriage service for suicide related material

474.29A Using a carriage service for suicide related material

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

(a) the person:

(i) uses a carriage service to access material; or

(ii) uses a carriage service to cause material to be transmitted to the person; or

(iii) uses a carriage service to transmit material; or

(iv) uses a carriage service to make material available; or

(v) uses a carriage service to publish or otherwise distribute material; and

(b) the material directly or indirectly counsels or incites committing or attempting to commit suicide; and

(c) the person:

(i) intends to use the material to counsel or incite committing or attempting to commit suicide; or

(ii) intends that the material be used by another person to counsel or incite committing or attempting to commit suicide.

Penalty: 1,000 penalty units.

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

(a) the person:

(i) uses a carriage service to access material; or

(ii) uses a carriage service to cause material to be transmitted to the person; or

(iii) uses a carriage service to transmit material; or

(iv) uses a carriage service to make material available; or

(v) uses a carriage service to publish or otherwise distribute material; and

(b) the material directly or indirectly:

(i) promotes a particular method of committing suicide; or

(ii) provides instruction on a particular method of committing suicide; and

(c) the person:

(i) intends to use the material to promote that method of committing suicide or provide instruction on that method of committing suicide; or

(ii) intends that the material be used by another person to promote that method of committing suicide or provide instruction on that method of committing suicide; or

(iii) intends the material to be used by another person to commit suicide.

Penalty: 1,000 penalty units.

(3) To avoid doubt, a person is not guilty of an offence against subsection (1) merely because the person uses a carriage service to:

(a) engage in public discussion or debate about euthanasia or suicide; or

(b) advocate reform of the law relating to euthanasia or suicide;

if the person does not:

(c) intend to use the material concerned to counsel or incite committing or attempting to commit suicide; or

(d) intend that the material concerned be used by another person to counsel or incite committing or attempting to commit suicide.

(4) To avoid doubt, a person is not guilty of an offence against subsection (2) merely because the person uses a carriage service to:

(a) engage in public discussion or debate about euthanasia or suicide; or

(b) advocate reform of the law relating to euthanasia or suicide;

if the person does not:

(c) intend to use the material concerned to promote a method of committing suicide or provide instruction on a method of committing suicide; or

(d) intend that the material concerned be used by another person to promote a method of committing suicide or provide instruction on a method of committing suicide; or

(e) intend the material concerned to be used by another person to commit suicide.

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474.29B Possessing, controlling, producing, supplying or obtaining suicide related material for use through a carriage service

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

(a) the person:

(i) has possession or control of material; or

(ii) produces, supplies or obtains material; and

(b) the material directly or indirectly:

(i) counsels or incites committing or attempting to commit suicide; or

(ii) promotes a particular method of committing suicide; or

(iii) provides instruction on a particular method of committing suicide; and

(c) the person has that possession or control, or engages in that production, supply or obtaining, with the intention that the material be used:

(i) by that person; or

(ii) by another person;

in committing an offence against section 474.29A (using a carriage service for suicide related material).

Penalty: 1,000 penalty units.

(2) A person may be found guilty of an offence against subsection (1) even if committing the offence against section 474.29A (using a carriage service for suicide related material) is impossible.

(3) It is not an offence to attempt to commit an offence against subsection (1).

Division 475—Miscellaneous

475.1A Defences for NRS employees and emergency call persons

(1) A person is not criminally responsible for an offence against a provision of Subdivision C, D, E, F or G of Division 474 in relation to particular conduct if the person:

(a) is an employee of an NRS provider; and

(b) engages in the conduct in good faith in the course of the person's duties as such an employee.

(2) A person is not criminally responsible for an offence against a provision of Subdivision C, D, E, F or G of Division 474 in relation to particular conduct if the person:

(a) is an emergency call person; and

(b) engages in the conduct in good faith in the course of the person's duties as such an emergency call person.

475.1B Provisions relating to element of offence that particular conduct was engaged in using a carriage service

Presumption that conduct engaged in using carriage service

(1) If:

(a) a physical element of an offence against Subdivision C, D, E or F of Division 474 consists of a person using a carriage service to engage in particular conduct; and

(b) the prosecution proves beyond reasonable doubt that the person engaged in that particular conduct;

then it is presumed, unless the person proves to the contrary, that the person used a carriage service to engage in that conduct.

Note: A defendant bears a legal burden in relation to the matter in this subsection, see section 13.4.

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Absolute liability applies to physical element of offence that carriage service was used

(2) If:

(a) a physical element of an offence against Subdivision C, D, E or F of Division 474 consists of a person using a carriage service to engage in particular conduct; and

(b) the prosecution proves beyond reasonable doubt that the person intended to engage in that particular conduct;

then absolute liability applies to the physical element of the offence that a carriage service was used to engage in that particular conduct.

Note: For absolute liability, see section 6.2.

475.1 Saving of other laws

(1) This Part is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

(2) Without limiting subsection (1), a provision in this Part to the effect that a person is not criminally responsible for an offence against a provision of this Part in relation to particular conduct does not make the conduct lawful if it would otherwise be unlawful under the *Radiocommunications Act 1992*.

475.2 Geographical jurisdiction

Section 15.1 (extended geographical jurisdiction—category A) applies to each offence against this Part.

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Part 10.7—Computer offences

Division 476—Preliminary

476.1 Definitions

(1) In this Part:

access to data held in a computer means:

(a) the display of the data by the computer or any other output of the data from the computer; or

(b) the copying or moving of the data to any other place in the computer or to a data storage device; or

(c) in the case of a program—the execution of the program.

Defence Department means the Department of State that deals with defence and that is administered by the Minister administering section 1 of the *Defence Act 1903*.

electronic communication means a communication of information in any form by means of guided or unguided electromagnetic energy.

impairment of electronic communication to or from a computer includes:

(a) the prevention of any such communication; or

(b) the impairment of any such communication on an electronic link or network used by the computer;

but does not include a mere interception of any such communication.

modification, in respect of data held in a computer, means:

(a) the alteration or removal of the data; or

(b) an addition to the data.

unauthorised access, modification or impairment has the meaning given in section 476.2.

(2) In this Part, a reference to:

(a) access to data held in a computer; or

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(b) modification of data held in a computer; or

(c) the impairment of electronic communication to or from a computer;

is limited to such access, modification or impairment caused, whether directly or indirectly, by the execution of a function of a computer.

476.2 Meaning of *unauthorised access, modification or impairment*

(1) In this Part:

(a) access to data held in a computer; or

(b) modification of data held in a computer; or

(c) the impairment of electronic communication to or from a computer; or

(d) the impairment of the reliability, security or operation of any data held on a computer disk, credit card or other device used to store data by electronic means;

by a person is unauthorised if the person is not entitled to cause that access, modification or impairment.

(2) Any such access, modification or impairment caused by the person is not unauthorised merely because he or she has an ulterior purpose for causing it.

(3) For the purposes of an offence under this Part, a person causes any such unauthorised access, modification or impairment if the person's conduct substantially contributes to it.

(4) For the purposes of subsection (1), if:

(a) a person causes any access, modification or impairment of a kind mentioned in that subsection; and

(b) the person does so:

(i) under a warrant issued under the law of the Commonwealth, a State or a Territory; or

(ii) under an emergency authorisation given to the person under Part 3 of the *Surveillance Devices Act 2004* or under a law of a State or Territory that makes provision to similar effect; or

(iii) under a tracking device authorisation given to the person under section 39 of that Act;

the person is entitled to cause that access, modification or impairment.

476.3 Geographical jurisdiction

Section 15.1 (extended geographical jurisdiction—Category A) applies to offences under this Part.

476.4 Saving of other laws

(1) This Part is not intended to exclude or limit the operation of any other law of the Commonwealth, a State or a Territory.

(2) Subsection (1) has effect subject to section 476.5.

476.5 Liability for certain acts

(1) A staff member or agent of ASIS, DIGO or DSD (the ***agency***) is not subject to any civil or criminal liability for any computer-related act done outside Australia if the act is done in the proper performance of a function of the agency.

(2) A person is not subject to any civil or criminal liability for any act done inside Australia if:

(a) the act is preparatory to, in support of, or otherwise directly connected with, overseas activities of the agency concerned; and

(b) the act:

(i) taken together with a computer-related act, event, circumstance or result that took place, or was intended to take place, outside Australia, could amount to an offence; but

(ii) in the absence of that computer-related act, event, circumstance or result, would not amount to an offence; and

(c) the act is done in the proper performance of a function of the agency.

(2A) Subsection (2) is not intended to permit any act in relation to premises, persons, computers, things, or carriage services in Australia, being:

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(a) an act that ASIO could not do without a Minister authorising it by warrant issued under Division 2 of Part III of the *Australian Security Intelligence Organisation Act 1979* or under Part 2-2 of the *Telecommunications (Interception and Access) Act 1979*; or

(b) an act to obtain information that ASIO could not obtain other than in accordance with Division 3 of Part 4-1 of the *Telecommunications (Interception and Access) Act 1979*.

(2AA) Subsections (1) and (2) have effect despite anything in a law of the Commonwealth or of a State or Territory, whether passed or made before or after the commencement of this subsection, unless the law expressly provides otherwise.

(2AB) Subsection (2AA) does not affect the operation of subsection (2A).

(2B) The Inspector-General of Intelligence and Security may give a certificate in writing certifying any fact relevant to the question of whether an act was done in the proper performance of a function of an agency.

(2C) In any proceedings, a certificate given under subsection (2B) is prima facie evidence of the facts certified.

(3) In this section:

ASIS means the Australian Secret Intelligence Service.

civil or criminal liability means any civil or criminal liability (whether under this Part, under another law or otherwise).

computer-related act, event, circumstance or result means an act, event, circumstance or result involving:

(a) the reliability, security or operation of a computer; or

(b) access to, or modification of, data held in a computer or on a data storage device; or

(c) electronic communication to or from a computer; or

(d) the reliability, security or operation of any data held in or on a computer, computer disk, credit card, or other data storage device; or

(e) possession or control of data held in a computer or on a data storage device; or

(f) producing, supplying or obtaining data held in a computer or on a data storage device.

DIGO means that part of the Defence Department known as the Defence Imagery and Geospatial Organisation.

DSD means that part of the Defence Department known as the Defence Signals Directorate.

staff member means:

(a) in relation to ASIS—the Director-General of ASIS or a member of the staff of ASIS (whether an employee of ASIS, a consultant or contractor to ASIS, or a person who is made available by another Commonwealth or State authority or other person to perform services for ASIS); and

(b) in relation to DSD—the Director of DSD or a member of the staff of DSD (whether an employee of DSD, a consultant or contractor to DSD, or a person who is made available by another Commonwealth or State authority or other person to perform services for DSD); and

(c) in relation to DIGO—the Director of DIGO or a member of the staff of DIGO (whether an employee of DIGO, a consultant or contractor to DIGO, or a person who is made available by another Commonwealth or State authority or other person to perform services for DIGO).

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Division 477—Serious computer offences

477.1 Unauthorised access, modification or impairment with intent to commit a serious offence

Intention to commit a serious Commonwealth, State or Territory offence

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

(a) the person causes:

(i) any unauthorised access to data held in a computer; or

(ii) any unauthorised modification of data held in a computer; or

(iii) any unauthorised impairment of electronic communication to or from a computer; and

(c) the person knows the access, modification or impairment is unauthorised; and

(d) the person intends to commit, or facilitate the commission of, a serious offence against a law of the Commonwealth, a State or a Territory (whether by that person or another person) by the access, modification or impairment.

(3) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the offence was:

(a) an offence against a law of the Commonwealth, a State or a Territory; or

(b) a serious offence.

Penalty

(6) A person who is guilty of an offence against this section is punishable, on conviction, by a penalty not exceeding the penalty applicable to the serious offence.

Impossibility

(7) A person may be found guilty of an offence against this section even if committing the serious offence is impossible.

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No offence of attempt

(8) It is not an offence to attempt to commit an offence against this section.

*Meaning of **serious offence***

(9) In this section:

serious offence means an offence that is punishable by imprisonment for life or a period of 5 or more years.

477.2 Unauthorised modification of data to cause impairment

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

(a) the person causes any unauthorised modification of data held in a computer; and

(b) the person knows the modification is unauthorised; and

(c) the person is reckless as to whether the modification impairs or will impair:

(i) access to that or any other data held in any computer; or

(ii) the reliability, security or operation, of any such data.

Penalty: 10 years imprisonment.

(3) A person may be guilty of an offence against this section even if there is or will be no actual impairment to:

(a) access to data held in a computer; or

(b) the reliability, security or operation, of any such data.

(4) A conviction for an offence against this section is an alternative verdict to a charge for an offence against section 477.3 (unauthorised impairment of electronic communication).

477.3 Unauthorised impairment of electronic communication

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

(a) the person causes any unauthorised impairment of electronic communication to or from a computer; and

(b) the person knows that the impairment is unauthorised.

Penalty: 10 years imprisonment.

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Section 477.3

(3) A conviction for an offence against this section is an alternative verdict to a charge for an offence against section 477.2 (unauthorised modification of data to cause impairment).

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Division 478—Other computer offences

478.1 Unauthorised access to, or modification of, restricted data

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

(a) the person causes any unauthorised access to, or modification of, restricted data; and

(b) the person intends to cause the access or modification; and

(c) the person knows that the access or modification is unauthorised.

Penalty: 2 years imprisonment.

(3) In this section:

restricted data means data:

(a) held in a computer; and

(b) to which access is restricted by an access control system associated with a function of the computer.

478.2 Unauthorised impairment of data held on a computer disk etc.

A person is guilty of an offence if:

(a) the person causes any unauthorised impairment of the reliability, security or operation of data held on:

(i) a computer disk; or

(ii) a credit card; or

(iii) another device used to store data by electronic means; and

(b) the person intends to cause the impairment; and

(c) the person knows that the impairment is unauthorised.

Penalty: 2 years imprisonment.

478.3 Possession or control of data with intent to commit a computer offence

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

(a) the person has possession or control of data; and

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(b) the person has that possession or control with the intention that the data be used, by the person or another person, in:
(i) committing an offence against Division 477; or
(ii) facilitating the commission of such an offence.

Penalty: 3 years imprisonment.

(2) A person may be found guilty of an offence against this section even if committing the offence against Division 477 is impossible.

No offence of attempt

(3) It is not an offence to attempt to commit an offence against this section.

Meaning of possession or control of data

(4) In this section, a reference to a person having possession or control of data includes a reference to the person:
(a) having possession of a computer or data storage device that holds or contains the data; or
(b) having possession of a document in which the data is recorded; or
(c) having control of data held in a computer that is in the possession of another person (whether inside or outside Australia).

478.4 Producing, supplying or obtaining data with intent to commit a computer offence

(1) A person is guilty of an offence if:
(a) the person produces, supplies or obtains data; and
(b) the person does so with the intention that the data be used, by the person or another person, in:
(i) committing an offence against Division 477; or
(ii) facilitating the commission of such an offence.

Penalty: 3 years imprisonment.

(2) A person may be found guilty of an offence against this section even if committing the offence against Division 477 is impossible.

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No offence of attempt

(3) It is not an offence to attempt to commit an offence against this section.

Meaning of producing, supplying or obtaining data

(4) In this section, a reference to a person producing, supplying or obtaining data includes a reference to the person:

(a) producing, supplying or obtaining data held or contained in a computer or data storage device; or

(b) producing, supplying or obtaining a document in which the data is recorded.

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Part 10.8—Financial information offences

480.1 Definitions

(1) In this Part:

ADI (authorised deposit-taking institution) means a corporation that is an ADI for the purposes of the *Banking Act 1959*.

dealing in personal financial information includes supplying or using financial information.

deception means an intentional or reckless deception, whether by words or other conduct, and whether as to fact or as to law, and includes:

(a) a deception as to the intentions of the person using the deception or any other person; and

(b) conduct by a person that causes a computer, a machine or an electronic device to make a response that the person is not authorised to cause it to do.

dishonest has the meaning given by section 480.2.

obtaining personal financial information includes possessing or making personal financial information.

personal financial information means information relating to a person that may be used (whether alone or in conjunction with other information) to access funds, credit or other financial benefits.

(2) For the purposes of this Part, a person is taken to obtain or deal in personal information without the consent of the person to whom the information relates if the consent of that person is obtained by any deception.

(3) This Part extends to personal information relating to:

(a) an individual; or

(b) a corporation; or

(c) a living or dead person.

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480.2 Dishonesty

(1) For the purposes of this Part, ***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.

(2) In a prosecution for an offence against this Part, the determination of dishonesty is a matter for the trier of fact.

480.3 Constitutional application of this Part

This Part applies to personal financial information only if:
  (a) the funds concerned represent amounts that have been deposited with or lent to, or are otherwise to be provided or made available by, an ADI or a constitutional corporation; or
  (b) the credit or other financial benefits concerned are provided, or made available, by an ADI or a constitutional corporation.

480.4 Dishonestly obtaining or dealing in personal financial information

A person is guilty of an offence if the person:
  (a) dishonestly obtains, or deals in, personal financial information; and
  (b) obtains, or deals in, that information without the consent of the person to whom the information relates.

Penalty: Imprisonment for 5 years.

480.5 Possession or control of thing with intent to dishonestly obtain or deal in personal financial information

(1) A person is guilty of an offence if:
  (a) the person has possession or control of any thing; and
  (b) the person has that possession or control with the intention that the thing be used:
    (i) by the person; or
    (ii) by another person;

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to commit an offence against section 480.4 (dishonestly obtaining or dealing in personal financial information) or to facilitate the commission of that offence.

Penalty: Imprisonment for 3 years.

(2) A person may be found guilty of an offence against subsection (1) even if committing the offence against section 480.4 (dishonestly obtaining or dealing in personal financial information) is impossible.

(3) It is not an offence to attempt to commit an offence against subsection (1).

480.6 Importation of thing with intent to dishonestly obtain or deal in personal financial information

A person is guilty of an offence if the person:

(a) imports a thing into Australia; and

(b) does so with the intention that the thing be used:

(i) by the person; or

(ii) by another person;

in committing an offence against section 480.4 (dishonestly obtaining or dealing in personal financial information) or to facilitate the commission of that offence.

Penalty: Imprisonment for 3 years.

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Dictionary

ABN (short for Australian Business Number) has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

aggravated burglary means an offence against section 132.5.

aggravated robbery means an offence against section 132.3.

ancillary offence means:

(a) an offence against section 11.1, 11.4 or 11.5; or

(b) an offence against a law of the Commonwealth, to the extent to which the offence arises out of the operation of section 11.2, 11.2A or 11.3.

attack directed against a civilian population means a course of conduct involving the multiple commission of any one or more proscribed inhumane acts against any civilian population pursuant to, or in furtherance of, a state or organisational policy to engage in that course of conduct.

Australia, when used in a geographical sense, includes the external Territories.

Australian aircraft means:

(a) an aircraft registered, or required to be registered, under regulations made under the *Civil Aviation Act 1988*; or

(b) an aircraft (other than a defence aircraft) that is owned by, or in the possession or control of, a Commonwealth entity; or

(c) a defence aircraft.

Australian ship means:

(a) a ship registered, or required to be registered, under the *Shipping Registration Act 1981*; or

(b) an unregistered ship that has Australian nationality; or

(c) a defence ship.

benefit includes any advantage and is not limited to property.

burglary means an offence against section 132.4.

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carriage service has the same meaning as in the *Telecommunications Act 1997*.

cause a person to engage in sexual intercourse or other sexual activity has the meaning given by section 272.2.

child: without limiting who is a child of a person for the purposes of this Code, someone is the ***child*** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

Commonwealth authority means a body established by or under a law of the Commonwealth, but does not include:

(a) a body established by or under:

(ii) the *Australian Capital Territory (Self-Government) Act 1988*; or

(iii) the *Corporations Act 2001*; or

(iv) the *Norfolk Island Act 1979*; or

(v) the *Northern Territory (Self-Government) Act 1978*; or

(aa) a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or

(ab) an organisation registered, or an association recognised, under the *Fair Work (Registered Organisations) Act 2009*; or

(b) a body specified in the regulations.

Commonwealth contract means a contract, to which a Commonwealth entity is a party, under which services are to be, or were to be, provided to a Commonwealth entity.

Commonwealth entity means:

(a) the Commonwealth; or

(b) a Commonwealth authority.

Commonwealth judicial officer means:

(a) a Justice of the High Court; or

(b) a judge or justice of a court created by the Parliament; or

(d) a registrar or other officer of the High Court; or

(e) a judicial registrar, registrar or other officer of a court created by the Parliament; or

(f) a judge, justice, magistrate or other judicial officer of a court of a State or Territory who acts in the exercise of federal jurisdiction; or

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(g) a judicial registrar, registrar or other officer of a court of a State or Territory who exercises powers, or performs functions, incidental to the exercise of federal jurisdiction; or

(h) a judge, justice, magistrate or other judicial officer of a court of a State or Territory who acts in the exercise of jurisdiction under a law in force in a Territory (other than the Australian Capital Territory, the Northern Territory or the Territory of Norfolk Island); or

(i) a judicial registrar, registrar or other officer of a court of a State or Territory who exercises powers, or performs functions, incidental to the exercise of jurisdiction under a law in force in a Territory (other than the Australian Capital Territory, the Northern Territory or the Territory of Norfolk Island).

Commonwealth public official means:

(a) the Governor-General; or

(b) a person appointed to administer the Government of the Commonwealth under section 4 of the Constitution; or

(c) a Minister; or

(d) a Parliamentary Secretary; or

(e) a member of either House of the Parliament; or

(f) an individual who holds an appointment under section 67 of the Constitution; or

(g) the Administrator, an Acting Administrator, or a Deputy Administrator, of the Northern Territory; or

(h) the Administrator, an Acting Administrator, or a Deputy Administrator, of Norfolk Island; or

(i) a Commonwealth judicial officer; or

(j) an APS employee; or

(k) an individual employed by the Commonwealth otherwise than under the *Public Service Act 1999*; or

(l) a member of the Australian Defence Force; or

(m) a member or special member of the Australian Federal Police; or

(n) an individual (other than an official of a registered industrial organisation) who holds or performs the duties of an office established by or under a law of the Commonwealth, other than:

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(i) the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or

(ii) the *Australian Capital Territory (Self-Government) Act 1988*; or

(iii) the *Corporations Act 2001*; or

(iv) the *Norfolk Island Act 1979*; or

(v) the *Northern Territory (Self-Government) Act 1978*; or

(o) an officer or employee of a Commonwealth authority; or

(p) an individual who is a contracted service provider for a Commonwealth contract; or

(q) an individual who is an officer or employee of a contracted service provider for a Commonwealth contract and who provides services for the purposes (whether direct or indirect) of the Commonwealth contract; or

(r) an individual (other than an official of a registered industrial organisation) who exercises powers, or performs functions, conferred on the person by or under a law of the Commonwealth, other than:

(i) the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or

(ii) the *Australian Capital Territory (Self-Government) Act 1988*; or

(iii) the *Corporations Act 2001*; or

(iv) the *Norfolk Island Act 1979*; or

(v) the *Northern Territory (Self-Government) Act 1978*; or

(vii) a provision specified in the regulations; or

(s) an individual who exercises powers, or performs functions, conferred on the person under a law in force in the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands (whether the law is a law of the Commonwealth or a law of the Territory concerned); or

(t) the Registrar, or a Deputy Registrar, of Aboriginal and Torres Strait Islander Corporations.

communication includes any communication:

(a) whether between persons and persons, things and things or persons and things; and

(b) whether the communication is:

(i) in the form of text; or

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(ii) in the form of speech, music or other sounds; or
(iii) in the form of visual images (still or moving); or
(iv) in the form of signals; or
(v) in the form of data; or
(vi) in any other form; or
(vii) in any combination of forms.

conduct is defined in subsection 4.1(2).

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

contracted service provider, for a Commonwealth contract, means:
(a) a person who is a party to the Commonwealth contract and who is responsible for the provision of services to a Commonwealth entity under the Commonwealth contract; or
(b) a subcontractor for the Commonwealth contract.

Covenant means the International Covenant on Civil and Political Rights, a copy of the English text of which is set out in Schedule 2 to the *Australian Human Rights Commission Act 1986*.

crime against humanity means an offence under Subdivision C of Division 268.

crime against the administration of the justice of the International Criminal Court means an offence under Subdivision J of Division 268.

data includes:
(a) information in any form; or
(b) any program (or part of a program).

data held in a computer includes:
(a) data held in any removable data storage device for the time being held in a computer; or
(b) data held in a data storage device on a computer network of which the computer forms a part.

data storage device means a thing (for example, a disk or file server) containing, or designed to contain, data for use by a computer.

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deal, in identification information, has a meaning affected by section 370.1.

death means:

(a) the irreversible cessation of all function of a person's brain (including the brain stem); or

(b) the irreversible cessation of circulation of blood in a person's body.

debt bondage means the status or condition that arises from a pledge by a person:

(a) of his or her personal services; or

(b) of the personal services of another person under his or her control;

as security for a debt owed, or claimed to be owed, (including any debt incurred, or claimed to be incurred, after the pledge is given), by that person if:

(ba) the debt owed or claimed to be owed is manifestly excessive; or

(c) the reasonable value of those services is not applied toward the liquidation of the debt or purported debt; or

(d) the length and nature of those services are not respectively limited and defined.

de facto partner has the meaning given by the *Acts Interpretation Act 1901*.

defence aircraft means an aircraft of any part of the Australian Defence Force, and includes an aircraft that is being commanded or piloted by a member of that Force in the course of his or her duties as such a member.

defence ship means a ship of any part of the Australian Defence Force, and includes a ship that is being operated or commanded by a member of that Force in the course of his or her duties as such a member.

detaining a person includes causing the person to remain where he or she is.

detriment includes any disadvantage and is not limited to personal injury or to loss of or damage to property.

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distinctive emblems of the Geneva Conventions means the emblems, identity cards, signs, signals, insignia or uniforms to which subsection 15(1) of the *Geneva Conventions Act 1957* applies.

electronic communication means a communication by means of guided or unguided electromagnetic energy or both.

employee includes a servant.

engage in conduct is defined in subsection 4.1(2).

engage in sexual activity: without limiting when a person engages in sexual activity, a person is taken to ***engage in sexual activity*** if the person is in the presence of another person (including by a means of communication that allows the person to see or hear the other person) while the other person engages in sexual activity.

evidence includes anything that may be used as evidence.

evidential burden is defined in subsection 13.3(6).

exploitation has the same meaning as in Division 271 (see section 271.1A).

federal aspect is defined in section 390.2.

First Geneva Convention means the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted at Geneva on 12 August 1949, a copy of the English text of which (not including the annexes) is set out in Schedule 1 to the *Geneva Conventions Act 1957*.

forced labour has the same meaning as in Division 270 (see section 270.6).

forced marriage has the same meaning as in Division 270 (see section 270.7A).

foreign country includes:

(a) a colony or overseas territory; and

(b) a territory outside Australia, where a foreign country is to any extent responsible for the international relations of the territory; and

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(c) a territory outside Australia that is to some extent self-governing, but that is not recognised as an independent sovereign state by Australia.

Fourth Geneva Convention means the Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted at Geneva on 12 August 1949, a copy of the English text of which (not including the annexes) is set out in Schedule 4 to the *Geneva Conventions Act 1957*.

Geneva Conventions means the First Geneva Convention, the Second Geneva Convention, the Third Geneva Convention and the Fourth Geneva Convention.

genocide means an offence under Subdivision B of Division 268.

Hague Declaration means the Hague Declarations Concerning the Prohibition of Using Bullets which Expand or Flatten Easily in the Human Body, adopted at the Hague on 29 July 1899.

harm means physical harm or harm to a person's mental health, whether temporary or permanent. However, it does not include being subjected to any force or impact that is within the limits of what is acceptable as incidental to social interaction or to life in the community.

harm to a person's mental health includes significant psychological harm, but does not include mere ordinary emotional reactions such as those of only distress, grief, fear or anger.

hors de combat: a person is *hors de combat* if:

(a) the person is in the power of an adverse party; and

(b) the person:

(i) clearly expresses an intention to surrender; or

(ii) has been rendered unconscious or is otherwise incapacitated by wounds or sickness and is therefore incapable of defending himself or herself; and

(c) the person abstains from any hostile act and does not attempt to escape.

ICC Statute means the Statute of the International Criminal Court done at Rome on 17 July 1998, a copy of the English text of which

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is set out in Schedule 1 to the *International Criminal Court Act 2002*.

identification documentation has the meaning given by section 370.1.

identification information has the meaning given by section 370.1.

identity document includes any kind of document that may be used to establish the identity of a person in a country under the law or procedures of that country.

intention has the meaning given in section 5.2.

international armed conflict includes a military occupation.

International Criminal Court means the International Criminal Court established under the ICC Statute.

interpreter includes a person who interprets signs or other things made or done by a person who cannot speak adequately for the purpose of giving evidence in a proceeding before the International Criminal Court.

knowledge has the meaning given in section 5.3.

law means a law of the Commonwealth, and includes this Code.

legal burden is defined in subsection 13.1(3).

make available, in relation to material, includes, but is not limited to, describing how to obtain access, or describing methods that are likely to facilitate access, to material (for example: by setting out the name of a website, an IP address, a URL, a password, or the name of a newsgroup).

mental impairment has the meaning given by subsection 7.3(8).

negligence has the meaning given in section 5.5.

offence means an offence against a law of the Commonwealth.

official of a registered industrial organisation means a person who holds an office (within the meaning of the *Fair Work Act 2009*) in an organisation registered, or an association recognised, under the *Fair Work (Registered Organisations) Act 2009*.

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parent: without limiting who is a parent of a person for the purposes of this Code, someone is the ***parent*** of a person if the person is his or her child because of the definition of ***child*** in this Dictionary.

person includes a Commonwealth authority that is not a body corporate, and ***another*** has a corresponding meaning.

Note: This definition supplements subsection 2C(1) of the *Acts Interpretation Act 1901*. That subsection provides that ***person*** includes a body politic or corporate as well as an individual.

personal service means any labour or service, including a sexual service, provided by a person.

physical harm includes unconsciousness, pain, disfigurement, infection with a disease and any physical contact with a person that the person might reasonably object to in the circumstances (whether or not the person was aware of it at the time).

position of trust or authority has the meaning given by subsection 272.3(1).

primary offence means an offence against a law of the Commonwealth, other than an ancillary offence.

procure a person to engage in sexual activity includes:

(a) encourage, entice or recruit the person to engage in that activity; or

(b) induce the person (whether by threats, promises or otherwise) to engage in that activity.

proscribed inhumane act means any of the following acts:

(a) an act that is described in paragraph 268.8(a);

(b) an act that is described in paragraph 268.9(1)(a) and is committed as mentioned in paragraph 268.9(1)(b);

(c) an act that is described in paragraph 268.10(1)(a);

(d) an act that is described in paragraph 268.11(1)(a) and to which paragraph 268.11(1)(b) applies;

(e) an act that is described in paragraph 268.12(1)(a) and to which paragraph 268.12(1)(b) applies;

(f) an act that is described in paragraph 268.13(a) and to which paragraph 268.13(b) applies;

(g) an act that is described in paragraph 268.14(1)(a) or (2)(a);

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(h) an act that is described in paragraph 268.15(1)(a);

(i) an act that is described in paragraph 268.16(1)(a) and to which paragraph 268.16(1)(b) applies;

(j) an act that is described in paragraph 268.17(1)(a) and to which paragraph 268.17(1)(b) applies;

(k) an act that is described in paragraphs 268.18(1)(a) and (b) and to which paragraph 268.18(1)(c) applies;

(l) an act that is described in paragraph 268.19(1)(a) and is of the gravity mentioned in paragraph 268.19(1)(b);

(m) an act that is described in paragraph 268.20(1)(a) and is committed as mentioned in paragraphs 268.20(1)(c), (d) and (e);

(n) an act that is described in paragraph 268.21(1)(a) and to which paragraphs 268.21(1)(b) and (c) apply;

(o) an act that is described in paragraph 268.21(2)(c) and is committed as mentioned in paragraph 268.21(2)(d);

(p) an act that is described in paragraph 268.22(a) and is committed as mentioned in paragraph 268.22(b);

(q) an act that is described in paragraph 268.23(a) and to which paragraph 268.23(b) applies.

Protocol I to the Geneva Conventions means the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), done at Geneva on 10 June 1977, a copy of the English text of which is set out in Schedule 5 to the *Geneva Conventions Act 1957*.

Protocol II to the Geneva Conventions means the Protocol Additional to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of Non-International Armed Conflicts done at Geneva on 10 June 1977.

Protocol III to the Geneva Conventions means the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), done at Geneva on 8 December 2005, a copy of the English text of which is set out in Schedule 6 to the *Geneva Conventions Act 1957*.

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Protocols to the Geneva Conventions means Protocol I to the Geneva Conventions, Protocol II to the Geneva Conventions and Protocol III to the Geneva Conventions.

public official includes:

(a) a Commonwealth public official; and

(b) an officer or employee of the Commonwealth or of a State or Territory; and

(c) an individual who performs work for the Commonwealth, or for a State or Territory, under a contract; and

(d) an individual who holds or performs the duties of an office established by a law of the Commonwealth or of a State or Territory; and

(e) an individual who is otherwise in the service of the Commonwealth or of a State or Territory (including service as a member of a military force or police force); and

(f) a member of the executive, judiciary or magistracy of the Commonwealth or of a State or Territory; and

(g) a member of the legislature of the Commonwealth or of a State or Territory; and

(h) an officer or employee of:

(i) an authority of the Commonwealth; or

(ii) an authority of a State or Territory.

receiving means an offence against section 132.1.

recklessness has the meaning given in section 5.4.

referendum has the same meaning as in the *Referendum (Machinery Provisions) Act 1984*.

resident of Australia means an individual who is a resident of Australia.

robbery means an offence against section 132.2.

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Second Geneva Convention means the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick and Shipwrecked Members of Armed Forces at Sea, adopted at Geneva on 12 August 1949, a copy of the English text of which (not including the annexes) is set out in Schedule 2 to the *Geneva Conventions Act 1957*.

serious harm means harm (including the cumulative effect of any harm):

(a) that endangers, or is likely to endanger, a person's life; or

(b) that is or is likely to be significant and longstanding.

services provided to a Commonwealth entity includes services that consist of the provision of services to other persons in connection with the performance of the Commonwealth entity's functions.

servitude has the same meaning as in Division 270 (see section 270.4).

sexual activity means:

(a) sexual intercourse; or

(b) any other activity of a sexual or indecent nature (including an indecent assault) that involves the human body, or bodily actions or functions (whether or not that activity involves physical contact between people).

Note: See also the definition of ***engage in sexual activity***.

sexual intercourse has the meaning given by section 272.4.

sexually penetrate is defined in section 71.8.

sexual service means the use or display of the body of the person providing the service for the sexual gratification of others.

slavery has the meaning given by section 270.1.

slavery-like offence has the same meaning as in Division 270 (see section 270.1A).

special liability provision means:

(a) a provision that provides that absolute liability applies to one or more (but not all) of the physical elements of an offence; or

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(b) a provision that provides that, in a prosecution for an offence, it is not necessary to prove that the defendant knew a particular thing; or

(c) a provision that provides that, in a prosecution for an offence, it is not necessary to prove that the defendant knew or believed a particular thing.

step-child: without limiting who is a step-child of a person for the purposes of this Code, someone who is a child of a de facto partner of the person is the ***step-child*** of the person, if he or she would be the person's step-child except that the person is not legally married to the partner.

step-parent: without limiting who is a step-parent of a person for the purposes of this Code, someone who is a de facto partner of a parent of the person is the ***step-parent*** of the person, if he or she would be the person's step-parent except that he or she is not legally married to the person's parent.

subcontractor, for a Commonwealth contract, means a person:

(a) who is a party to a contract (the ***subcontract***):

(i) with a contracted service provider for the Commonwealth contract (within the meaning of paragraph (a) of the definition of ***contracted service provider***); or

(ii) with a subcontractor for the Commonwealth contract (under a previous application of this definition); and

(b) who is responsible under the subcontract for the provision of services to a Commonwealth entity, or to a contracted service provider for the Commonwealth contract, for the purposes (whether direct or indirect) of the Commonwealth contract.

sworn statement means an oral statement made on oath or affirmation or a statement in a document verified on oath or affirmation.

taking a person includes causing the person to accompany another person and causing the person to be taken.

theft means an offence against section 131.1.

Third Geneva Convention means the Geneva Convention relative to the Protection of Prisoners of War, adopted at Geneva on

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12 August 1949, a copy of the English text of which (not including the annexes) is set out in Schedule 3 to the *Geneva Conventions Act 1957*.

threat includes a threat made by any conduct, whether express or implied and whether conditional or unconditional.

travel document includes any kind of document required, under the law of a country, to enter or leave that country.

war crime means an offence under Subdivision D, E, F, G or H of Division 268.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history
Endnote 5—Uncommenced amendments
Endnote 6—Modifications
Endnote 7—Misdescribed amendments
Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word "none" will appear in square brackets after the endnote heading.

Abbreviation key—Endnote 2
The abbreviation key in this endnote sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended the compiled law. The information includes commencement information for amending laws and details of application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

Uncommenced amendments—Endnote 5

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in endnote 5.

Modifications—Endnote 6

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

Misdescribed amendments—Endnote 7

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

Miscellaneous—Endnote 8

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

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Endnote 2—Abbreviation key

ad = added or inserted
am = amended
c = clause(s)
Ch = Chapter(s)
def = definition(s)
Dict = Dictionary
disallowed = disallowed by Parliament
Div = Division(s)
exp = expired or ceased to have effect
hdg = heading(s)
LI = Legislative Instrument
LIA = *Legislative Instruments Act 2003*
mod = modified/modification
No = Number(s)
o = order(s)
Ord = Ordinance
orig = original
par = paragraph(s)/subparagraph(s)
/sub-subparagraph(s)
pres = present
prev = previous
(prev) = previously
Pt = Part(s)
r = regulation(s)/rule(s)
Reg = Regulation/Regulations
reloc = relocated
renum = renumbered
rep = repealed
rs = repealed and substituted
s = section(s)
Sch = Schedule(s)
Sdiv = Subdivision(s)
SLI = Select Legislative Instrument
SR = Statutory Rules
Sub-Ch = Sub-Chapter(s)
SubPt = Subpart(s)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Criminal Code Act 1995	12, 1995	15 Mar 1995	1 Jan 1997 (*see Gazette* 1996, No. S534)	
Criminal Code Amendment Act 1998	12, 1998	13 Apr 1998	13 Apr 1998	—
Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999	43, 1999	17 June 1999	17 Dec 1999	—
Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999	104, 1999	24 Aug 1999	21 Sept 1999	—
Criminal Code Amendment (Application) Act 2000	4, 2000	29 Feb 2000	29 Feb 2000	—
Criminal Code Amendment (United Nations and Associated Personnel) Act 2000	124, 2000	26 Oct 2000	1 Jan 2001 (*see Gazette* 2000, No. GN45)	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	—
Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001	24, 2001	6 Apr 2001	s. 4(1) and (2): *(a)* Schedule 1 (item 3): 4 May 2001 *(a)*	s. 4(1) and (2)
Corporations (Repeals, Consequentials and Transitionals) Act 2001	55, 2001	28 June 2001	ss. 4–14 and Schedule 3 (items 148–150): 15 July 2001 (*see Gazette* 2001, No. S285) *(b)*	ss. 4–14

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Cybercrime Act 2001	161, 2001	1 Oct 2001	21 Dec 2001 (*see Gazette* 2001, No. S529)	s. 4
Criminal Code Amendment (Anti-hoax and Other Measures) Act 2002	9, 2002	4 Apr 2002	Schedule 1: 16 Oct 2001 *(c)* Remainder: Royal Assent	—
International Criminal Court (Consequential Amendments) Act 2002	42, 2002	27 June 2002	Schedules 1–7: 26 Sept 2002 (*see* s. 2(1) and *Gazette* 2002, No. GN38) Remainder: 28 June 2002	—
Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002	58, 2002	3 July 2002	Schedule 1: 8 Sept 2002 (*see Gazette* 2002, No. S331) Remainder: Royal Assent	—
Security Legislation Amendment (Terrorism) Act 2002	65, 2002	5 July 2002	s. 4: Royal Assent Schedule 1 (item 2): 6 July 2002 Schedule 1 (items 4, 5): *(d)*	Sch. 1 (item 5) s. 4 (am. by 40, 2003, Sch. 2 [item 1])
as amended by				
Criminal Code Amendment (Terrorism) Act 2003	40, 2003	27 May 2003	(*see* 40, 2003 below)	—
Suppression of the Financing of Terrorism Act 2002	66, 2002	5 July 2002	Schedule 1 (item 1): Royal Assent Schedule 1 (item 2): 6 July 2002 Schedule 1 (item 3): *(e)*	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002	86, 2002	11 Oct 2002	ss. 1–3: Royal Assent Remainder: 1 Jan 2003 (*see* s. 2(1) and *Gazette* 2002, No. GN44)	—
Criminal Code Amendment (Terrorist Organisations) Act 2002	89, 2002	23 Oct 2002	23 Oct 2002	Sch. 1 (item 3)
Criminal Code Amendment (Espionage and Related Matters) Act 2002	91, 2002	31 Oct 2002	s. 4: Royal Assent Schedule 1 (item 5): 28 Nov 2002	s. 4
Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002	105, 2002	14 Nov 2002	Schedule 3 (items 38–40): 12 May 2003	—
as amended by				
Workplace Relations Legislation Amendment Act 2002	127, 2002	11 Dec 2002	Schedule 3 (items 53–55): *(f)*	—
Criminal Code Amendment (Offences Against Australians) Act 2002	106, 2002	14 Nov 2002	ss. 1–3: Royal Assent Remainder: 1 Oct 2002	—
Australian Crime Commission Establishment Act 2002	125, 2002	10 Dec 2002	Schedule 2 (items 31, 32): 1 Jan 2003	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002	141, 2002	19 Dec 2002	Schedules 1, 2 and Schedule 3 (items 1–22, 24–26): 16 Jan 2003 Schedule 3 (item 23): 1 Jan 2003 (*see* s. 2(1) and *Gazette* 2002, No. GN44) Remainder: Royal Assent	—
Criminal Code Amendment (Terrorism) Act 2003	40, 2003	27 May 2003	Schedules 1 and 2: 29 May 2003 (*see Gazette* 2003, No. S175) Remainder: Royal Assent	—
Criminal Code Amendment (Hizballah) Act 2003	44, 2003	24 June 2003	ss. 1–3: Royal Assent Remainder: *(g)*	—
Criminal Code Amendment (Hamas and Lashkar-e-Tayyiba) Act 2003	109, 2003	7 Nov 2003	5 Nov 2003	—
Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003	140, 2003	17 Dec 2003	s. 4 and Schedule 1 (item 16): *(h)*	s. 4
Criminal Code Amendment (Terrorist Organisations) Act 2004	7, 2004	10 Mar 2004	10 Mar 2004	—
Anti-terrorism Act 2004	104, 2004	30 June 2004	1 July 2004	—
Anti-terrorism Act (No. 2) 2004	124, 2004	16 Aug 2004	Schedule 3: 17 Aug 2004 Remainder: Royal Assent	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No. 2) 2004	127, 2004	31 Aug 2004	Schedule 1 (items 1, 6–23, 30): 1 Mar 2005 Schedules 2–4: 28 Sept 2004	Sch. 1 (item 30) and Sch. 4 (items 2, 8)
Surveillance Devices Act 2004	152, 2004	15 Dec 2004	15 Dec 2004	—
Australian Passports (Transitionals and Consequentials) Act 2005	7, 2005	18 Feb 2005	ss. 4–11 and Schedule 1: 1 July 2005 (*see* s. 2(1)) Remainder: Royal Assent	—
Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005	45, 2005	1 Apr 2005	Schedule 3 (items 1, 2) and Schedule 4: 1 July 2005 (*see* s. 2(1))	Sch. 4
Criminal Code Amendment (Suicide Related Material Offences) Act 2005	92, 2005	6 July 2005	Schedule 1: 6 Jan 2006 Remainder: Royal Assent	—
Crimes Legislation Amendment (Telecommunications Interception and Other Measures) Act 2005	95, 2005	6 July 2005	Schedule 1: 1 Mar 2005	—
Criminal Code Amendment (Trafficking in Persons Offences) Act 2005	96, 2005	6 July 2005	Schedules 1 and 2: 3 Aug 2005 Remainder: Royal Assent	—
Statute Law Revision Act 2005	100, 2005	6 July 2005	Schedule 1 (item 12): *(i)*	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Anti-Terrorism Act 2005	127, 2005	3 Nov 2005	Schedule 1: 4 Nov 2005 Remainder: Royal Assent	s. 4
Intelligence Services Legislation Amendment Act 2005	128, 2005	4 Nov 2005	Schedules 1–8: 2 Dec 2005 Remainder: Royal Assent	—
Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Act 2005	129, 2005	8 Nov 2005	Schedule 1: 6 Dec 2005 Schedule 2: 26 Oct 2006 (*see* s. 2 and *Gazette* 2006, No. GN48, p. 3373) Schedule 9 (items 3, 4): 9 Nov 2005 Remainder: Royal Assent	Sch. 1 (items 75, 76)
Anti-Terrorism Act (No. 2) 2005	144, 2005	14 Dec 2005	s. 4 and Schedule 2: Royal Assent Schedule 1 (items 2–21), Schedule 3 (items 1–3) and Schedule 4 (items 1–24): 15 Dec 2005 Schedule 1 (item 22): 16 Feb 2006 (*see* F2006L00345) Schedule 7 (items 5–12): 11 Jan 2006	s. 4
Telecommunications (Interception) Amendment Act 2006	40, 2006	3 May 2006	Schedule 1 (items 17–19): 13 June 2006 (*see* F2006L01623)	—
ASIO Legislation Amendment Act 2006	54, 2006	19 June 2006	Schedule 1 (items 12–14): 20 June 2006	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Law Enforcement (AFP Professional Standards and Related Measures) Act 2006	84, 2006	30 June 2006	Schedule 3 (items 36–45): 30 Dec 2006 (*see* s. 2(1))	—
Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006	86, 2006	30 June 2006	Schedule 1 (item 32): 30 Dec 2006 (*see* s. 2(1))	—
Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006	125, 2006	4 Nov 2006	Schedules 1–3: 1 July 2007 (*see* s. 2(1)) Remainder: Royal Assent	—
Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Act 2006	170, 2006	12 Dec 2006	Schedule 1 (items 21–38): 13 Dec 2006 (*see* s. 2(1))	—
Law and Justice Legislation Amendment (Marking of Plastic Explosives) Act 2007	3, 2007	19 Feb 2007	Schedules 1–3: 25 Aug 2007 Remainder: Royal Assent	—
Australian Citizenship (Transitionals and Consequentials) Act 2007	21, 2007	15 Mar 2007	Schedules 1–3: 1 July 2007 (*see* s. 2(1) and F2007L01653) Remainder: Royal Assent	Sch. 3 (items 14, 19)
Communications Legislation Amendment (Content Services) Act 2007	124, 2007	20 July 2007	Schedule 1 (items 78–81): 20 Jan 2008	—
International Trade Integrity Act 2007	147, 2007	24 Sept 2007	Schedule 2 (items 1–4): 25 Sept 2007	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Telecommunications (Interception and Access) Amendment Act 2007	177, 2007	28 Sept 2007	Schedule 1 (items 14, 68): 1 Nov 2007 (*see* F2007L03941)	Sch. 1 (item 68)
Wheat Export Marketing (Repeal and Consequential Amendments) Act 2008	66, 2008	30 June 2008	Schedule 2 (items 1–5): 1 July 2008 (*see* s. 2(1))	—
Defence Legislation (Miscellaneous Amendments) Act 2009	18, 2009	26 Mar 2009	Schedule 1 (items 1, 2): 15 Feb 2010	—
Customs Legislation Amendment (Name Change) Act 2009	33, 2009	22 May 2009	Schedule 2 (item 20): 23 May 2009	—
Fair Work (State Referral and Consequential and Other Amendments) Act 2009	54, 2009	25 June 2009	Schedule 5 (items 21–27): *(j)*	—
Disability Discrimination and Other Human Rights Legislation Amendment Act 2009	70, 2009	8 July 2009	Schedule 3 (item 18): 5 Aug 2009	—
Crimes Legislation Amendment (Serious and Organised Crime) Act 2010	3, 2010	19 Feb 2010	Schedule 4 (items 1–13): 20 Feb 2010	—
Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010	4, 2010	19 Feb 2010	Schedule 4 (items 1–3), Schedule 8 and Schedule 9: 20 Feb 2010 Schedule 5 (items 1–24): 19 Mar 2010	Sch. 4 (item 3) and Sch. 5 (item 24)
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Schedule 1 (item 15) and Schedule 5 (items 28–31): Royal Assent Schedule 5 (item 137): *(k)*	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act 2010	37, 2010	13 Apr 2010	Schedule 1 (items 1–3): 14 Apr 2010	—
Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010	42, 2010	14 Apr 2010	Schedule 1 (items 2–60): 15 Apr 2010	—
Anti-People Smuggling and Other Measures Act 2010	50, 2010	31 May 2010	Schedule 1 (items 1–6): 1 June 2010	—
National Security Legislation Amendment Act 2010	127, 2010	24 Nov 2010	Schedule 1 (items 4–32) and Schedule 2 (items 2–24): 25 Nov 2010 Schedule 1 (items 33–37): 22 Dec 2010	Sch. 1 (items 16, 29, 31) and Sch. 2 (item 4)
Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2011	3, 2011	2 Mar 2011	Schedule 1 (items 1–5) and Schedule 7 (item 3): 3 Mar 2011 Schedule 1 (item 6): *(l)*	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Schedule 5 (items 75–78) and Schedule 6 (items 28–32): 19 Apr 2011	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 459–461) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
Intelligence Services Legislation Amendment Act 2011	80, 2011	25 July 2011	Schedule 1 (item 19): 26 July 2011	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Crimes Legislation Amendment (Powers and Offences) Act 2012	24, 2012	4 Apr 2012	Schedule 5 (items 1–12): Royal Assent	—
Telecommunications Legislation Amendment (Universal Service Reform) Act 2012	44, 2012	16 Apr 2012	Schedule 1 (items 108–110, 122, 123): 1 July 2012 (*see* s. 2(1))	Sch. 1 (items 122, 123)
Criminal Code Amendment (Cluster Munitions Prohibition) Act 2012	114, 2012	8 Sept 2012	Schedule 1: 1 April 2013 (*see Gazette* 2013, No. GN11) Remainder: Royal Assent	—
Cybercrime Legislation Amendment Act 2012	120, 2012	12 Sept 2012	Schedule 3: 1 Mar 2013 (*see Gazette* 2013, No. GN1)	Sch. 3 (item 18)
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Schedule 1 (items 39, 40) and Schedule 3 (item 4): Royal Assent	—
Crimes Legislation Amendment (Serious Drugs, Identity Crime and Other Measures) Act 2012	167, 2012	28 Nov 2012	Schedule 1 (items 1–19): 28 May 2013 Schedule 1 (items 23, 24) and Schedule 2 (items 1–7, 9, 10(2)): 29 Nov 2012	Sch. 1 (items 23, 24) and Sch. 2 (item 10(2))
Wheat Export Marketing Amendment Act 2012	170, 2012	3 Dec 2012	Schedule 1 (items 63–67): 10 Dec 2012	—
Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013	6, 2013	7 Mar 2013	Schedules 1 and 3: 8 Mar 2013	Sch. 3
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Schedule 1 (items 110A–112): 12 Apr 2013 (*see* s. 2(1))	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Amendment (Anti-Dumping Commission) Act 2013	32, 2013	30 Mar 2013	Schedule 1 (item 20): 1 July 2013	—
Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013	74, 2013	28 June 2013	Schedule 2 (items 79–85, 93): 29 June 2013	Sch. 2 (item 93)
Charities (Consequential Amendments and Transitional Provisions) Act 2013	96, 2013	28 June 2013	Sch 1 (items 10–13): 1 Jan 2014 (*see* s 2(1))	—

Number and year	FRLI registration	Commencement	Application, saving and transitional provisions
2006 No. 50	17 Mar 2006 (*see* F2006L00820)	Schedule 34: 27 Mar 2006	—

(a) The *Criminal Code Act 1995* was amended by Schedule 1 (item 3) only of the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*, subsections 2(1)(a) and (2) of which provide as follows:

(1) Subject to this section, this Act commences at the later of the following times:

(a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;

(2) Schedule 1 commences on the 28th day after the day on which this Act receives the Royal Assent.

Item 15 commenced on 24 May 2001.

(b) The *Criminal Code Act 1995* was amended by Schedule 3 (items 148–150) only of the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, subsection 2(3) of which provides as follows:

(3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.

(c) Subsection 2(1) (item 2) of the *Criminal Code Amendment (Anti-hoax and Other Measures) Act 2002* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
2. Schedule 1	2 pm (by legal time in the Australian Capital Territory) on 16 October 2001	16 October 2001

(d) Subsection 2(1) (item 5) of the *Security Legislation Amendment (Terrorism) Act 2002* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
5. Schedule 1, items 4 and 5	Immediately after the start of the day after this Act receives the Royal Assent	6 July 2002

(e) Subsection 2(1) (item 4) of the *Suppression of the Financing of Terrorism Act 2002* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
4. Schedule 1, item 3	Immediately after the start of the day after this Act receives the Royal Assent	6 July 2002

(f) Subsection 2(1) (item 32) of the *Workplace Relations Legislation Amendment Act 2002* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
32. Schedule 3, items 53 to 55	Immediately before the commencement of items 38, 39 and 40 of Schedule 3 to the *Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002*	12 May 2003

(g) Subsection 2(1) (item 2) of the *Criminal Code Amendment (Hizballah) Act 2003* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
2. Schedule 1	On 29 May 2003, immediately after the commencement of Schedule 1 to the *Criminal Code Amendment (Terrorism) Act 2003*	29 May 2003

(h) Subsection 2(1) (items 2 and 3) of the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
2. Sections 4 and 5	Immediately after the commencement of sections 3 to 62 of the *Legislative Instruments Act 2003*	1 January 2005
3. Schedule 1	Immediately after the commencement of sections 3 to 62 of the *Legislative Instruments Act 2003*	1 January 2005

(i) Subsection 2(1) (item 8) of the *Statute Law Revision Act 2005* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
8. Schedule 1, item 12	Immediately after the commencement of item 1 of Schedule 1 to the *Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002*.	1 January 2003

(j) Subsection 2(1) (item 11) of the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
11. Schedule 5, items 1 to 30	Immediately after the commencement of Part 2-4 of the *Fair Work Act 2009*.	1 July 2009

(k) Subsection 2(1) (items 31 and 38) of the *Statute Law Revision Act 2010* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
31. Schedule 5, items 1 to 51	The day this Act receives the Royal Assent.	1 March 2010
38. Schedule 5, Parts 2 and 3	Immediately after the provision(s) covered by table item 31.	1 March 2010

(l) Subsection 2(1) (item 3) of the *Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2011* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
3. Schedule 1, Part 2	The day after this Act receives the Royal Assent. However, if item 21 of Schedule 2 to the *National Security Legislation Amendment Act 2010* commences on or before that day, the provision(s) do not commence at all.	Does not commence

Endnote 4—Amendment history

Provision affected	How affected
s. 2	am. No. 12, 1998
s. 3AA	ad. No. 24, 2001
	rep. No. 12, 1995
s. 3A	ad. No. 43, 1999
s. 3B	ad. No. 43, 1999
	am. No. 137, 2000
s. 5	ad. No. 137, 2000
Schedule	
Chapter 2	
Part 2.1	
Division 2	
s. 2.2	am. No. 12, 1998; No. 4, 2000
s. 2.3	ad. No. 12, 1998
Part 2.2	
Division 3	
Note to s. 3.2 Renumbered Note 1	No. 137, 2000
Note 2 to s. 3.2	ad. No. 137, 2000
Division 4	
s. 4.1	am. No. 137, 2000; No. 161, 2001
s. 4.3	am. No. 6, 2013
Division 5	
s. 5.1	am. No. 137, 2000
s. 5.6	am. No. 137, 2000
Part 2.3	
Division 7	
s. 7.3	am. No. 42, 2010
Division 9	
s. 9.3	am. No. 127, 2004
s. 9.4	am. No. 140, 2003; No. 127, 2004

Endnote 4—Amendment history

Provision affected	How affected
Division 10	
s. 10.5	ad. No. 137, 2000
Part 2.4	
Division 11	
s. 11.1	am. No. 137, 2000; No. 3, 2010
s. 11.2	am. No. 137, 2000; No. 127, 2004; No. 3, 2010
s. 11.2A	ad. No. 3, 2010
Heading to s. 11.3	rs. No. 3, 2010
s. 11.4	am. No. 137, 2000
s. 11.5	am. No. 137, 2000
s. 11.6	am. No. 137, 2000
Note to s. 11.6(4)	am. No. 3, 2010
Part 2.7	
Part 2.7	ad. No. 137, 2000
Division 14	
s. 14.1	ad. No. 137, 2000
Note to s. 14.1(1)	am. No. 3, 2010
Division 15	
s. 15.1	ad. No. 137, 2000
Note to s. 15.1(1)	am. No. 3, 2010
s. 15.2	ad. No. 137, 2000
Note to s. 15.2(1)	am. No. 3, 2010
s. 15.3	ad. No. 137, 2000
Note to s. 15.3(1)	am. No. 3, 2010
s. 15.4	ad. No. 137, 2000
Note to s. 15.4	am. No. 3, 2010
Division 16	
s. 16.1	ad. No. 137, 2000
s. 16.2	ad. No. 137, 2000
s. 16.3	ad. No. 137, 2000
s. 16.4	ad. No. 137, 2000
Chapter 4	

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Provision affected	How affected
Chapt. 4	ad. No. 43, 1999
Division 70	
s. 70.1	ad. No. 43, 1999
	am. No. 137, 2000
s. 70.2	ad. No. 43, 1999
	am. No. 147, 2007; No. 4, 2010
Note to s. 70.2(1)	ad. No. 4, 2010
Notes 1, 2 to s. 70.2(1)	rep. No. 4, 2010
s. 70.3	ad. No. 43, 1999
	am. No. 147, 2007
s. 70.4	ad. No. 43, 1999
s. 70.5	ad. No. 43, 1999
	am. No. 137, 2000
Note to s. 70.5(1)	am. No. 3, 2010
s. 70.6	ad. No. 43, 1999
Division 71	
Div. 71	ad. No. 124, 2000
s. 71.1	ad. No. 124, 2000
s. 71.2	ad. No. 124, 2000
s. 71.3	ad. No. 124, 2000
s. 71.4	ad. No. 124, 2000
s. 71.5	ad. No. 124, 2000
s. 71.6	ad. No. 124, 2000
s. 71.7	ad. No. 124, 2000
s. 71.8	ad. No. 124, 2000
s. 71.9	ad. No. 124, 2000
s. 71.10	ad. No. 124, 2000
s. 71.11	ad. No. 124, 2000
s. 71.12	ad. No. 124, 2000
s. 71.13	ad. No. 124, 2000
	am. No. 37, 2010
s. 71.14	ad. No. 124, 2000

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Endnote 4—Amendment history

Provision affected	How affected
s. 71.15	ad. No. 124, 2000
s. 71.16	ad. No. 124, 2000
	am. No. 136, 2012
s. 71.17	ad. No. 124, 2000
s. 71.18	ad. No. 124, 2000
s. 71.19	ad. No. 124, 2000
s. 71.20	ad. No. 124, 2000
s. 71.21	ad. No. 124, 2000
	am. No. 5, 2011
s. 71.22	ad. No. 124, 2000
s. 71.23	ad. No. 124, 2000
	am. No. 8, 2010; No. 5, 2011
Division 72	
Heading to Div. 72	rs. No. 3, 2007
Div. 72	ad. No. 58, 2002
Subdivision A	
Heading to Subdiv. A of Div. 72	ad. No. 3, 2007
s. 72.1	ad. No. 58, 2002
	am. No. 3, 2007
Note to s. 72.1	am. No. 8, 2010
s. 72.2	ad. No. 58, 2002
	am. No. 3, 2007
s. 72.3	ad. No. 58, 2002
s. 72.4	ad. No. 58, 2002
	am. No. 3, 2007
s. 72.5	ad. No. 58, 2002
	am. No. 3, 2007
s. 72.6	ad. No. 58, 2002
	am. No. 3, 2007
Heading to s. 72.7	am. No. 3, 2007
s. 72.7	ad. No. 58, 2002
	am. No. 3, 2007

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Provision affected	How affected
s. 72.8	ad. No. 58, 2002
	am. No. 21, 2007
s. 72.9	ad. No. 58, 2002
	am. No. 3, 2007
s. 72.10	ad. No. 58, 2002
	am. No. 3, 2007
Subdivision B	
Subdiv. B of Div. 72	ad. No. 3, 2007
s. 72.11	ad. No. 3, 2007
s. 72.12	ad. No. 3, 2007
s. 72.13	ad. No. 3, 2007
s. 72.14	ad. No. 3, 2007
s. 72.15	ad. No. 3, 2007
s. 72.16	ad. No. 3, 2007
s. 72.17	ad. No. 3, 2007
s. 72.18	ad. No. 3, 2007
s. 72.19	ad. No. 3, 2007
s. 72.20	ad. No. 3, 2007
s. 72.21	ad. No. 3, 2007
s. 72.22	ad. No. 3, 2007
s. 72.23	ad. No. 3, 2007
s. 72.24	ad. No. 3, 2007
s. 72.25	ad. No. 3, 2007
s. 72.26	ad. No. 3, 2007
s. 72.27	ad. No. 3, 2007
s. 72.28	ad. No. 3, 2007
s. 72.29	ad. No. 3, 2007
s. 72.30	ad. No. 3, 2007
s. 72.31	ad. No. 3, 2007
s. 72.32	ad. No. 3, 2007
s. 72.33	ad. No. 3, 2007
s. 72.34	ad. No. 3, 2007

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Endnote 4—Amendment history

Provision affected	How affected
s. 72.35	ad. No. 3, 2007
s. 72.36	ad. No. 3, 2007
	am. No. 8, 2010
Subdivision C	
Subdiv. C of Div. 72	ad. No. 114, 2012
s. 72.37	ad. No. 114, 2012
s. 72.38	ad. No. 114, 2012
s. 72.39	ad. No. 114, 2012
s. 72.40	ad. No. 114, 2012
s. 72 41	ad. No. 114, 2012
s. 72.42	ad. No. 114, 2012
s. 72.43	ad. No. 114, 2012
s. 72.44	ad. No. 114, 2012
s. 72.45	ad. No. 114, 2012
Division 73	
Div. 73	ad. No. 141, 2002
Subdivision A	
s. 73.1	ad. No. 141, 2002
	am. No. 50, 2010
Heading to s. 73.2	rs. No. 50, 2010; No. 6, 2013
s. 73.2	ad. No. 141, 2002
	am. No. 96, 2005; No. 50, 2010; No. 6, 2013
s. 73.3	ad. No. 141, 2002
	am. No. 50, 2010
s. 73.3A	ad. No. 50, 2010
s. 73.4	ad. No. 141, 2002
s. 73.5	ad. No. 141, 2002
Subdivision B	
s. 73.6	ad. No. 141, 2002
	am. No. 96, 2005
s. 73.7	ad. No. 141, 2002
s. 73.8	ad. No. 141, 2002

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Provision affected	How affected
s. 73.9	ad. No. 141, 2002
s. 73.10	ad. No. 141, 2002
s. 73.11	ad. No. 141, 2002
s. 73.12	ad. No. 141, 2002
Chapter 5	
Heading to Chapt. 5	ad. No. 66, 2002
Part 5.1	
Heading to Part 5.1	rs. No. 144, 2005; No. 127, 2010
Part 5.1	ad. No. 65, 2002
Division 80	
Heading to Div. 80	rs. No. 144, 2005; No. 127, 2010
Subdivision A	
Heading to Subdiv. A of Div. 80	ad. No. 127, 2010
s. 80.1A	ad. No. 144, 2005
Subdivision B	
Heading to Subdiv. B of Div. 80	ad. No. 127, 2010
s. 80.1	ad. No. 65, 2002
	am. No. 144, 2005; No. 127, 2010
Note to s. 80.1(1A) Renumbered Note 1	No. 144, 2005
Note 1 to s. 80.1(1A)	rep. No. 127, 2010
Note 2 to s. 80.1(1A)	ad. No. 144, 2005
	rep. No. 127, 2010
s. 80.1AA	ad. No. 127, 2010
Subdivision C	
Heading to Subdiv. C of Div. 80	ad. No. 127, 2010
Heading to s. 80.2	rs. No. 127, 2010
s. 80.2	ad. No. 144, 2005
	am. No. 127, 2010
Note to s. 80.2(6)	ad. No. 127, 2010

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Endnote 4—Amendment history

Provision affected	How affected
s. 80.2A	ad. No. 127, 2010
s. 80.2B	ad. No. 127, 2010
Subdivision D	
Heading to Subdiv. D of Div. 80	ad. No. 127, 2010
s. 80.3	ad. No. 144, 2005
	am. No. 127, 2010
s. 80.4	ad. No. 144, 2005
	am. No. 127, 2010
s. 80.5	ad. No. 144, 2005
	rep. No. 127, 2010
s. 80.6	ad. No. 144, 2005
Part 5.2	
Part 5.2	ad. No. 91, 2002
Division 90	
s. 90.1	ad. No. 91, 2002
Division 91	
s. 91.1	ad. No. 91, 2002
s. 91.2	ad. No. 91, 2002
Division 93	
s. 93.1	ad. No. 91, 2002
s. 93.2	ad. No. 91, 2002
Division 94	
s. 94.1	ad. No. 91, 2002
Part 5.3	
Part 5.3	ad. No. 66, 2002
	rs. No. 40, 2003
Division 100	
Div. 100	ad. No. 66, 2002
	rs. No. 40, 2003
s. 100.1	ad. No. 66, 2002
	rs. No. 40, 2003
	am. No. 144, 2005; No. 13, 2013

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Provision affected	How affected
s. 100.2	ad. No. 66, 2002
	rs. No. 40, 2003
s. 100.3	ad. No. 40, 2003
s. 100.4	ad. No. 40, 2003
s. 100.5	ad. No. 40, 2003
	am. No. 127, 2010; No. 46, 2011
s. 100.6	ad. No. 40, 2003
s. 100.7	ad. No. 40, 2003
s. 100.8	ad. No. 40, 2003
Division 101	
Div. 101	ad. No. 65, 2002
	rs. No. 40, 2003
s. 101.1	ad. No. 65, 2002
	rs. No. 40, 2003
s. 101.2	ad. No. 65, 2002
	rs. No. 40, 2003
	am. No. 127, 2005
s. 101.4	ad. No. 65, 2002
	rs. No. 40, 2003
	am. No. 127, 2005
s. 101.5	ad. No. 65, 2002
	rs. No. 40, 2003
	am. No. 127, 2005
s. 101.6	ad. No. 65, 2002
	rs. No. 40, 2003
	am. No. 127, 2005
Division 102	
Div. 102	ad. No. 65, 2002
	rs. No. 40, 2003
Subdivision A	
s. 102.1	ad. No. 65, 2002
	am. No. 89, 2002

Endnote 4—Amendment history

Provision affected	How affected
	rs. No. 40, 2003
	am. Nos. 44 and 109, 2003; Nos. 7 and 124, 2004; No. 144, 2005; Nos. 42 and 127, 2010
Heading to s. 102.1A	am. No. 127, 2010
s. 102.1A	ad. No. 7, 2004
	am. No. 127, 2010
Subdivision B	
s. 102.2	ad. No. 65, 2002
	rs. No. 40, 2003
s. 102.3	ad. No. 65, 2002
	rs. No. 40, 2003
	am. Nos. 44 and 109, 2003; No. 104, 2004
s. 102.4	ad. No. 65, 2002
	rs. No. 40, 2003
s. 102.5	ad. No. 65, 2002
	rs. No. 40, 2003; No. 104, 2004
	am. No. 144, 2005
Heading to s. 102.6	am. No. 144, 2005
s. 102.6	ad. No. 65, 2002
	rs. No. 40, 2003
	am. No. 144, 2005
s. 102.7	ad. No. 65, 2002
	rs. No. 40, 2003
s. 102.8	ad. No. 124, 2004
	am. No. 144, 2005
Subdivision C	
s. 102.9	ad. No. 65, 2002
	rs. No. 40, 2003
s. 102.10	ad. No. 65, 2002
	rs. No. 40, 2003
Division 103	
Div. 103	ad. No. 66, 2002
	rs. No. 40, 2003

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Provision affected	How affected
s. 103.1	ad. No. 66, 2002
	rs. No. 40, 2003
	am. Nos. 127 and 144, 2005
s. 103.2	ad. No. 144, 2005
s. 103.3	ad. No. 144, 2005
Division 104	
Div. 104	ad. No. 144, 2005
Subdivision A	
s. 104.1	ad. No. 144, 2005
Subdivision B	
s. 104.2	ad. No. 144, 2005
s. 104.3	ad. No. 144, 2005
s. 104.4	ad. No. 144, 2005
s. 104.5	ad. No. 144, 2005
	am. No. 8, 2010
Subdivision C	
s. 104.6	ad. No. 144, 2005
s. 104.7	ad. No. 144, 2005
s. 104.8	ad. No. 144, 2005
s. 104.9	ad. No. 144, 2005
s. 104.10	ad. No. 144, 2005
s. 104.11	ad. No. 144, 2005
Subdivision D	
s. 104.12	ad. No. 144, 2005
s. 104.12A	ad. No. 144, 2005
s. 104.13	ad. No. 144, 2005
s. 104.14	ad. No. 144, 2005
s. 104.15	ad. No. 144, 2005
s. 104.16	ad. No. 144, 2005
s. 104.17	ad. No. 144, 2005
Subdivision E	
s. 104.18	ad. No. 144, 2005

Endnote 4—Amendment history

Provision affected	How affected
s. 104.19	ad. No. 144, 2005
s. 104.20	ad. No. 144, 2005
s. 104.21	ad. No. 144, 2005
s. 104.22	ad. No. 144, 2005
Subdivision F	
s. 104.23	ad. No. 144, 2005
s. 104.24	ad. No. 144, 2005
s. 104.25	ad. No. 144, 2005
s. 104.26	ad. No. 144, 2005
Subdivision G	
s. 104.27	ad. No. 144, 2005
Subdivision H	
s. 104.28	ad. No. 144, 2005
s. 104.28A	ad. No. 144, 2005
s. 104.29	ad. No. 144, 2005
	am. No. 84, 2006
s. 104.30	ad. No. 144, 2005
s. 104.31	ad. No. 144, 2005
s. 104.32	ad. No. 144, 2005
Division 105	
Div. 105	ad. No. 144, 2005
Subdivision A	
s. 105.1	ad. No. 144, 2005
s. 105.2	ad. No. 144, 2005
	am. No. 13. 2013
s. 105.3	ad. No. 144, 2005
Subdivision B	
s. 105.4	ad. No. 144, 2005
s. 105.5	ad. No. 144, 2005
s. 105.5A	ad. No. 144, 2005
s. 105.6	ad. No. 144, 2005
s. 105.7	ad. No. 144, 2005

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Provision affected	How affected
s. 105.8	ad. No. 144, 2005
s. 105.9	ad. No. 144, 2005
s. 105.10	ad. No. 144, 2005
s. 105.10A	ad. No. 144, 2005
s. 105.11	ad. No. 144, 2005
	am. No. 13. 2013
Heading to s. 105.12	rs. No. 13, 2013
s. 105.12	ad. No. 144, 2005
	am. No. 13. 2013
s. 105.13	ad. No. 144, 2005
s. 105.14	ad. No. 144, 2005
s. 105.14A	ad. No. 144, 2005
s. 105.15	ad. No. 144, 2005
s. 105.16	ad. No. 144, 2005
s. 105.17	ad. No. 144, 2005
s. 105.18	ad. No. 144, 2005
	am. No. 13, 2013
Subdivision C	
s. 105.19	ad. No. 144, 2005
s. 105.20	ad. No. 144, 2005
s. 105.21	ad. No. 144, 2005
s. 105.22	ad. No. 144, 2005
s. 105.23	ad. No. 144, 2005
s. 105.24	ad. No. 144, 2005
Heading to s. 105.25	am. No. 54, 2006
s. 105.25	ad. No. 144, 2005
	am. No. 54, 2006
s. 105.26	ad. No. 144, 2005
	am. No. 54, 2006
s. 105.27	ad. No. 144, 2005
Subdivision D	
s. 105.28	ad. No. 144, 2005

Endnote 4—Amendment history

Provision affected	How affected
	am. No. 84, 2006
s. 105.29	ad. No. 144, 2005
	am. No. 84, 2006
s. 105.30	ad. No. 144, 2005
s. 105.31	ad. No. 144, 2005
s. 105.32	ad. No. 144, 2005
Subdivision E	
s. 105.33	ad. No. 144, 2005
s. 105.33A	ad. No. 144, 2005
s. 105.34	ad. No. 144, 2005
s. 105.35	ad. No. 144, 2005
	am. No. 127, 2010
s. 105.36	ad. No. 144, 2005
	am. No. 84, 2006
s. 105.37	ad. No. 144, 2005
	am. No. 84, 2006
s. 105.38	ad. No. 144, 2005
	am. No. 84, 2006
s. 105.39	ad. No. 144, 2005
s. 105.40	ad. No. 144, 2005
s. 105.41	ad. No. 144, 2005
	am. No. 84, 2006
s. 105.42	ad. No. 144, 2005
s. 105.43	ad. No. 144, 2005
	am. No. 13, 2013
s. 105.44	ad. No. 144, 2005
s. 105.45	ad. No. 144, 2005
Subdivision F	
Heading to s. 105.46	rs. No. 13, 2013
s. 105.46	ad. No. 144, 2005
	am. No. 13, 2013
s. 105.47	ad. No. 144, 2005

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Provision affected	How affected
	am. No. 84, 2006
s. 105.48	ad. No. 144, 2005
	rs. No. 84, 2006
s. 105.49	ad. No. 144, 2005
s. 105.50	ad. No. 144, 2005
s. 105.51	ad. No. 144, 2005
s. 105.52	ad. No. 144, 2005
s. 105.53	ad. No. 144, 2005
Division 106	
Div. 106	ad. No. 40, 2003
Heading to s. 106.1	rs. No. 144, 2005
s. 106.1	ad. No. 40, 2003
s. 106.2	ad. No. 144, 2005
s. 106.3	ad. No. 144, 2005
s. 106.4	ad. No. 13, 2013
Part 5.4	
Part 5.4	ad. No. 106, 2002
Division 115	
Heading to Div. 104	rep. No. 144, 2005
Heading to Div. 115	ad. No. 144, 2005
s. 104.1	ad. No. 106, 2002
Renumbered s. 115.1	No. 144, 2005
s. 104.2	ad. No. 106, 2002
Renumbered s. 115.2	No. 144, 2005
s. 104.3	ad. No. 106, 2002
Renumbered s. 115.3	No. 144, 2005
s. 104.4	ad. No. 106, 2002
Renumbered s. 115.4	No. 144, 2005
s. 104.5	ad. No. 106, 2002
Renumbered s. 115.5	No. 144, 2005
s. 104.6	ad. No. 106, 2002
Renumbered s. 115.6	No. 144, 2005

Endnote 4—Amendment history

Provision affected	How affected
s. 104.7	ad. No. 106, 2002
	am. No. 7, 2005
Renumbered s. 115.7	No. 144, 2005
s. 115.7	am. No. 21, 2007
s. 104.8	ad. No. 106, 2002
Renumbered s. 115.8	No. 144, 2005
s. 104.9	ad. No. 106, 2002
Renumbered s. 115.9	No. 144, 2005
Chapter 7	
Chapt. 7	ad. No. 137, 2000
Part 7.1	
Division 130	
s. 130.1	ad. No. 137, 2000
Note to s. 130.1	am. No. 46, 2011
s. 130.2	ad. No. 137, 2000
s. 130.3	ad. No. 137, 2000
s. 130.4	ad. No. 137, 2000
Part 7.2	
Division 131	
s. 131.1	ad. No. 137, 2000
s. 131.2	ad. No. 137, 2000
s. 131.3	ad. No. 137, 2000
s. 131.4	ad. No. 137, 2000
s. 131.5	ad. No. 137, 2000
s. 131.6	ad. No. 137, 2000
s. 131.7	ad. No. 137, 2000
	am. No. 141, 2002
s. 131.8	ad. No. 137, 2000
s. 131.9	ad. No. 137, 2000
s. 131.10	ad. No. 137, 2000
s. 131.11	ad. No. 137, 2000
Division 132	

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Provision affected	How affected
s. 132.1	ad. No. 137, 2000
s. 132.2	ad. No. 137, 2000
s. 132.3	ad. No. 137, 2000
s. 132.4	ad. No. 137, 2000
s. 132.5	ad. No. 137, 2000
s. 132.6	ad. No. 137, 2000
s. 132.7	ad. No. 137, 2000
s. 132.8	ad. No. 137, 2000
s. 132.9	ad. No. 137, 2000
Part 7.3	
Division 133	
s. 133.1	ad. No. 137, 2000
Division 134	
s. 134.1	ad. No. 137, 2000
s. 134.2	ad. No. 137, 2000
s. 134.3	ad. No. 137, 2000
Division 135	
s. 135.1	ad. No. 137, 2000
s. 135.2	ad. No. 137, 2000
	am. No. 141, 2002; No. 127, 2004
s. 135.4	ad. No. 137, 2000
s. 135.5	ad. No. 137, 2000
Part 7.4	
Division 136	
Subhead. to s. 136.1(9)	rs. No. 66, 2008
s. 136.1	ad. No. 137, 2000
	am. No. 141, 2002; No. 66, 2008; No. 170, 2012
Division 137	
s. 137.1	ad. No. 137, 2000
	am. No. 141, 2002
s. 137.2	ad. No. 137, 2000
s. 137.3	ad. No. 137, 2000

Endnote 4—Amendment history

Provision affected	How affected
Part 7.5	
Division 138	
s. 138.1	ad. No. 137, 2000
s. 138.2	ad. No. 137, 2000
Division 139	
s. 139.1	ad. No. 137, 2000
s. 139.2	ad. No. 137, 2000
s. 139.3	ad. No. 137, 2000
Part 7.6	
Division 140	
s. 140.1	ad. No. 137, 2000
s. 140.2	ad. No. 137, 2000
Division 141	
s. 141.1	ad. No. 137, 2000
	am. No. 4, 2010
Division 142	
s. 142.1	ad. No. 137, 2000
s. 142.2	ad. No. 137, 2000
s. 142.3	ad. No. 137, 2000
Part 7.7	
Division 143	
s. 143.1	ad. No. 137, 2000
s. 143.2	ad. No. 137, 2000
s. 143.3	ad. No. 137, 2000
s. 143.4	ad. No. 137, 2000
Division 144	
s. 144.1	ad. No. 137, 2000
Division 145	
s. 145.1	ad. No. 137, 2000
s. 145.2	ad. No. 137, 2000
	am. No. 141, 2002
s. 145.3	ad. No. 137, 2000

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Provision affected	How affected
s. 145.4	ad. No. 137, 2000
s. 145.5	ad. No. 137, 2000
s. 145.6	ad. No. 137, 2000
Part 7.8	
Division 146	
s. 146.1	ad. No. 137, 2000
	am. No. 125, 2002; No. 86, 2006; No. 33, 2009; No. 32, 2013
s. 146.2	ad. No. 137, 2000
Division 147	
s. 147.1	ad. No. 137, 2000
	am. No. 141, 2002
s. 147.2	ad. No. 137, 2000
s. 147.3	ad. No. 137, 2000
Division 148	
s. 148.1	ad. No. 137, 2000
	am. No. 141, 2002
s. 148.2	ad. No. 137, 2000
	am. No. 141, 2002
s. 148.3	ad. No. 137, 2000
Division 149	
s. 149.1	ad. No. 137, 2000
Part 7.20	
Division 261	
s. 261.1	ad. No. 137, 2000
s. 261.2	ad. No. 137, 2000
s. 261.3	ad. No. 137, 2000
Chapter 8	
Heading to Chapt. 8	rs. No. 42, 2002
Chapt. 8	ad. No. 104, 1999
Division 268	
Div. 268	ad. No. 42, 2002
Subdivision A	

Endnote 4—Amendment history

Provision affected	How affected
s. 268.1	ad. No. 42, 2002
s. 268.2	ad. No. 42, 2002
Subdivision B	
s. 268.3	ad. No. 42, 2002
s. 268.4	ad. No. 42, 2002
s. 268.5	ad. No. 42, 2002
s. 268.6	ad. No. 42, 2002
s. 268.7	ad. No. 42, 2002
Subdivision C	
s. 268.8	ad. No. 42, 2002
s. 268.9	ad. No. 42, 2002
s. 268.10	ad. No. 42, 2002
s. 268.11	ad. No. 42, 2002
s. 268.12	ad. No. 42, 2002
s. 268.13	ad. No. 42, 2002
s. 268.14	ad. No. 42, 2002
s. 268.15	ad. No. 42, 2002
	am. No. 6, 2013
s. 268.16	ad. No. 42, 2002
s. 268.17	ad. No. 42, 2002
s. 268.18	ad. No. 42, 2002
s. 268.19	ad. No. 42, 2002
s. 268.20	ad. No. 42, 2002
s. 268.21	ad. No. 42, 2002
s. 268.22	ad. No. 42, 2002
s. 268.23	ad. No. 42, 2002
Subdivision D	
s. 268.24	ad. No. 42, 2002
s. 268.25	ad. No. 42, 2002
s. 268.26	ad. No. 42, 2002
s. 268.27	ad. No. 42, 2002
s. 268.28	ad. No. 42, 2002

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Provision affected	How affected
s. 268.29	ad. No. 42, 2002
s. 268.30	ad. No. 42, 2002
s. 268.31	ad. No. 42, 2002
s. 268.32	ad. No. 42, 2002
s. 268.33	ad. No. 42, 2002
s. 268.34	ad. No. 42, 2002
Subdivision E	
s. 268.35	ad. No. 42, 2002
s. 268.36	ad. No. 42, 2002
s. 268.37	ad. No. 42, 2002
s. 268.38	ad. No. 42, 2002
s. 268.39	ad. No. 42, 2002
s. 268.40	ad. No. 42, 2002
s. 268.41	ad. No. 42, 2002
s. 268.42	ad. No. 42, 2002
s. 268.43	ad. No. 42, 2002
s. 268.44	ad. No. 42, 2002
s. 268.45	ad. No. 42, 2002
s. 268.46	ad. No. 42, 2002
	am No 96, 2013
s. 268.47	ad. No. 42, 2002
s. 268.48	ad. No. 42, 2002
s. 268.49	ad. No. 42, 2002
s. 268.50	ad. No. 42, 2002
s. 268.51	ad. No. 42, 2002
s. 268.52	ad. No. 42, 2002
s. 268.53	ad. No. 42, 2002
s. 268.54	ad. No. 42, 2002
s. 268.55	ad. No. 42, 2002
s. 268.56	ad. No. 42, 2002
s. 268.57	ad. No. 42, 2002
s. 268.58	ad. No. 42, 2002

Endnote 4—Amendment history

Provision affected	How affected
s. 268.59	ad. No. 42, 2002
s. 268.60	ad. No. 42, 2002
	am. No. 6, 2013
s. 268.61	ad. No. 42, 2002
s. 268.62	ad. No. 42, 2002
s. 268.63	ad. No. 42, 2002
s. 268.64	ad. No. 42, 2002
s. 268.65	ad. No. 42, 2002
s. 268.66	ad. No. 42, 2002
s. 268.67	ad. No. 42, 2002
Subhead. to s. 268.68(1)	ad. No. 129, 2005
s. 268.68	ad. No. 42, 2002
	am. No. 129, 2005
Subdivision F	
s. 268.69	ad. No. 42, 2002
s. 268.70	ad. No. 42, 2002
s. 268.71	ad. No. 42, 2002
s. 268.72	ad. No. 42, 2002
s. 268.73	ad. No. 42, 2002
s. 268.74	ad. No. 42, 2002
s. 268.75	ad. No. 42, 2002
s. 268.76	ad. No. 42, 2002
Subdivision G	
s. 268.77	ad. No. 42, 2002
s. 268.78	ad. No. 42, 2002
s. 268.79	ad. No. 42, 2002
s. 268.80	ad. No. 42, 2002
	am No 96, 2013
s. 268.81	ad. No. 42, 2002
s. 268.82	ad. No. 42, 2002
s. 268.83	ad. No. 42, 2002
	am. No. 6, 2013

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Provision affected	How affected
s. 268.84	ad. No. 42, 2002
s. 268.85	ad. No. 42, 2002
s. 268.86	ad. No. 42, 2002
s. 268.87	ad. No. 42, 2002
Subhead. to s. 268.88(1)	ad. No. 129, 2005
s. 268.88	ad. No. 42, 2002
	am. No. 129, 2005
s. 268.89	ad. No. 42, 2002
s. 268.90	ad. No. 42, 2002
s. 268.91	ad. No. 42, 2002
s. 268.92	ad. No. 42, 2002
s. 268.93	ad. No. 42, 2002
s. 268.94	ad. No. 42, 2002
Subdivision H	
s. 268.95	ad. No. 42, 2002
s. 268.96	ad. No. 42, 2002
s. 268.97	ad. No. 42, 2002
s. 268.98	ad. No. 42, 2002
s. 268.99	ad. No. 42, 2002
s. 268.100	ad. No. 42, 2002
s. 268.101	ad. No. 42, 2002
Subdivision J	
s. 268.102	ad. No. 42, 2002
s. 268.103	ad. No. 42, 2002
s. 268.104	ad. No. 42, 2002
s. 268.105	ad. No. 42, 2002
s. 268.106	ad. No. 42, 2002
s. 268.107	ad. No. 42, 2002
s. 268.108	ad. No. 42, 2002
s. 268.109	ad. No. 42, 2002
s. 268.110	ad. No. 42, 2002
s. 268.111	ad. No. 42, 2002

Endnote 4—Amendment history

Provision affected	How affected
s. 268.112	ad. No. 42, 2002
s. 268.113	ad. No. 42, 2002
s. 268.114	ad. No. 42, 2002
Subdivision K	
s. 268.115	ad. No. 42, 2002
s. 268.116	ad. No. 42, 2002
s. 268.117	ad. No. 42, 2002
s. 268.118	ad. No. 42, 2002
s. 268.119	ad. No. 42, 2002
s. 268.120	ad. No. 42, 2002
s. 268.121	ad. No. 42, 2002
s. 268.122	ad. No. 42, 2002
s. 268.123	ad. No. 42, 2002
s. 268.124	ad. No. 42, 2002
Division 270	
Heading to Div. 270	rs. No. 6, 2013
Subdivision A	
Subdiv. A of Div. 270	ad. No. 6, 2013
s. 270.1A	ad. No. 6, 2013
Subdivision B	
Heading to Subdiv. B of Div. 270	ad. No. 6, 2013
s. 270.1	ad. No. 104, 1999
s. 270.2	ad. No. 104, 1999
s. 270.3	ad. No. 104, 1999
	am. No. 6, 2013
Subdivision C	
Subdiv. C of Div. 270	ad. No. 6, 2013
s. 270.4	ad. No. 104, 1999
	am. No. 96, 2005
	rs. No. 6, 2013
s. 270.5	ad. No. 104, 1999
	rs. No. 96, 2005; No. 6, 2013

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Provision affected	How affected
s. 270.6	ad. No. 104, 1999
	am. No. 96, 2005
	rs. No. 6, 2013
s. 270.6A	ad. No. 6, 2013
s. 270.7	ad. No. 104, 1999
	am. No. 96, 2005
	rs. No. 6, 2013
s. 270.7A	ad. No. 6, 2013
s. 270.7B	ad. No. 6, 2013
s. 270.8	ad. No. 104, 1999
	rs. No. 6, 2013
s. 270.9	ad. No. 104, 1999
	rs. No. 6, 2013
s. 270.10	ad. No. 104, 1999
	rep. No. 96, 2005
	ad. No. 6, 2013
Subdivision D	
Heading to Subdiv. D of Div. 270	ad. No. 6, 2013
s. 270.11	ad. No. 104, 1999
	rep. No. 96, 2005
	ad. No. 6, 2013
Heading to s. 270.12	rs. No. 6, 2013
s. 270.12	ad. No. 104, 1999
	am. No. 6, 2013
Note to s. 270.12(1)	ad. No. 74, 2013
Heading to s. 270.13	rs. No. 6, 2013
s. 270.13	ad. No. 104, 1999
s. 270.14	ad. No. 104, 1999
	rep. No. 6, 2013
Division 271	
Div. 271	ad. No. 96, 2005
Subdivision A	

Endnote 4—Amendment history

Provision affected	How affected
s. 271.1	ad. No. 96, 2005
	am. No. 6, 2013
s. 271.1A	ad. No. 6, 2013
Subdivision B	
s. 271.2	ad. No. 96, 2005
	am. No. 6, 2013
Heading to s. 271.3	rs. No. 6, 2013
s. 271.3	ad. No. 96, 2005
	am. No. 6, 2013
s. 271.4	ad. No. 96, 2005
	am. No. 6, 2013
s. 271.5	ad. No. 96, 2005
	am. No. 6, 2013
Heading to s. 271.6	rs. No. 6, 2013
s. 271.6	ad. No. 96, 2005
	am. No. 6, 2013
s. 271.7	ad. No. 96, 2005
	am. No. 6, 2013
Subdivision BA	
Subdiv. BA of Div. 271	ad. No. 6, 2013
s. 271.7A	ad. No. 6, 2013
s. 271.7B	ad. No. 6, 2013
s. 271.7C	ad. No. 6, 2013
s. 271.7D	ad. No. 6, 2013
s. 271.7E	ad. No. 6, 2013
Subdivision BB	
Subdiv. BB of Div. 271	ad. No. 6, 2013
s. 271.7F	ad. No. 6, 2013
s. 271.7G	ad. No. 6, 2013
Subdivision C	
s. 271.8	ad. No. 96, 2005
	am. No. 6, 2013

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Provision affected	How affected
s. 271.9	ad. No. 96, 2005
	rs. No. 6, 2013
Subdivision D	
Heading to Subdiv. D of Div. 271	rs. No. 6, 2013
Heading to s. 271.10	rs. No. 6, 2013
s. 271.10	ad. No. 96, 2005
	am. No. 6, 2013
Heading to s. 271.11	rs. No. 6, 2013
s. 271.11	ad. No. 96, 2005
	am. No. 6, 2013
s. 271.11A	ad. No. 6, 2013
s. 271.11B	ad. No. 6, 2013
Heading to s. 271.12	rs. No. 6, 2013
s. 271.12	ad. No. 96, 2005
	am. No. 6, 2013
Note to s. 271.12(1)	ad. No. 74, 2013
s. 271.13	ad. No. 96, 2005
Division 272	
Div. 272	ad. No. 42, 2010
Subdivision A	
s. 272.1	ad. No. 42, 2010
s. 272.2	ad. No. 42, 2010
s. 272.3	ad. No. 42, 2010
	am. No. 127, 2010
s. 272.4	ad. No. 42, 2010
s. 272.5	ad. No. 42, 2010
s. 272.6	ad. No. 42, 2010
s. 272.7	ad. No. 42, 2010
Note to s. 272.7	ad. No. 74, 2013
Subdivision B	
s. 272.8	ad. No. 42, 2010
s. 272.9	ad. No. 42, 2010

Endnote 4—Amendment history

Provision affected	How affected
s. 272.10	ad. No. 42, 2010
s. 272.11	ad. No. 42, 2010
s. 272.12	ad. No. 42, 2010
s. 272.13	ad. No. 42, 2010
s. 272.14	ad. No. 42, 2010
s. 272.15	ad. No. 42, 2010
s. 272.16	ad. No. 42, 2010
s. 272.17	ad. No. 42, 2010
Subdivision C	
s. 272.18	ad. No. 42, 2010
s. 272.19	ad. No. 42, 2010
s. 272.20	ad. No. 42, 2010
Subdiv. D of Div. 272	rep. No. 74, 2013
s. 272.21	ad. No. 42, 2010
	rep. No. 74, 2013
s. 272.22	ad. No. 42, 2010
	rep. No. 74, 2013
s. 272.23	ad. No. 42, 2010
	rep. No. 74, 2013
s. 272.24	ad. No. 42, 2010
	rep. No. 74, 2013
s. 272.25	ad. No. 42, 2010
	rep. No. 74, 2013
s. 272.26	ad. No. 42, 2010
	rep. No. 74, 2013
Subdivision E	
s. 272.27	ad. No. 42, 2010
s. 272.28	ad. No. 42, 2010
s. 272.29	ad. No. 42, 2010
s. 272.30	ad. No. 42, 2010
s. 272.31	ad. No. 42, 2010
Division 273	

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Provision affected	How affected
Div. 273	ad. No. 42, 2010
Subdivision A	
s. 273.1	ad. No. 42, 2010
s. 273.2	ad. No. 42, 2010
s. 273.2A	ad. No. 42, 2010
s. 273.3	ad. No. 42, 2010
s. 273.4	ad. No. 42, 2010
Note to s. 273.4	ad. No. 74, 2013
Subdivision B	
s. 273.5	ad. No. 42, 2010
s. 273.6	ad. No. 42, 2010
s. 273.7	ad. No. 42, 2010
s. 273.8	ad. No. 42, 2010
Subdivision C	
s. 273.9	ad. No. 42, 2010
Subdiv. D of Div. 273	rep. No. 74, 2013
s. 273.10	ad. No. 42, 2010
	rep. No. 74, 2013
s. 273.11	ad. No. 42, 2010
	rep. No. 74, 2013
s. 273.12	ad. No. 42, 2010
	rep. No. 74, 2013
s. 273.13	ad. No. 42, 2010
	rep. No. 74, 2013
s. 273.14	ad. No. 42, 2010
	rep. No. 74, 2013
s. 273.15	ad. No. 42, 2010
	rep. No. 74, 2013
Division 274	
Div. 274	ad. No. 37, 2010
s. 274.1	ad. No. 37, 2010
s. 274.2	ad. No. 37, 2010

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Endnote 4—Amendment history

Provision affected	How affected
s. 274.3	ad. No. 37, 2010
s. 274.4	ad. No. 37, 2010
s. 274.5	ad. No. 37, 2010
s. 274.6	ad. No. 37, 2010
s. 274.7	ad. No. 37, 2010
Division 279	
Div. 279	ad. No. 74, 2013
s. 279.1	ad. No. 74, 2013
s. 279.2	ad. No. 74, 2013
s. 279.3	ad. No. 74, 2013
s. 279.4	ad. No. 74, 2013
s. 279.5	ad. No. 74, 2013
s. 279.6	ad. No. 74, 2013
s. 279.7	ad. No. 74, 2013
Chapter 9	
Chapt. 9	ad. No. 141, 2002
Part 9.1	
Part 9.1	ad. No. 129, 2005
Division 300	
s. 300.1	ad. No. 129, 2005
	am. No. 167, 2012
Note to s. 300.1(1)	am. No. 8, 2010
s. 300.2	ad. No. 129, 2005
	am. No. 4, 2010; No. 167, 2012
s. 300.3	ad. No. 129, 2005
s. 300.4	ad. No. 129, 2005
s. 300.5	ad. No. 129, 2005
Division 301	
Div. 301	rs. No. 167, 2012
Subdivision A	
s. 301.1	ad. No. 129, 2005
	rs. No. 167, 2012

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Provision affected	How affected
s. 301.2	ad. No. 129, 2005
	rs. No. 167, 2012
s. 301.3	ad. No. 129, 2005
	rs. No. 167, 2012
s. 301.4	ad. No. 129, 2005
	rs. No. 167, 2012
s. 301.5	ad. No. 129, 2005
	rs. No. 167, 2012
s. 301.6	ad. No. 129, 2005
	rs. No. 167, 2012
s. 301.7	ad. No. 129, 2005
	rs. No. 167, 2012
s. 301.8	ad. No. 129, 2005
	rs. No. 167, 2012
s. 301.9	ad. No. 129, 2005
Subdivision B	
s. 301.10	ad. No. 129, 2005
	rs. No. 167, 2012
s. 301.11	ad. No. 129, 2005
	am. No. 8, 2010
	rs. No. 167, 2012
s. 301.12	ad. No. 129, 2005
	rs. No. 167, 2012
Subdivision C	
s. 301.13	ad. No. 167, 2012
s. 301.14	ad. No. 167, 2012
s. 301.15	ad. No. 167, 2012
s. 301.16	ad. No. 167, 2012
s. 301.17	ad. No. 167, 2012
Division 302	
s. 302.1	ad. No. 129, 2005
s. 302.2	ad. No. 129, 2005

Endnote 4—Amendment history

Provision affected	How affected
s. 302.3	ad. No. 129, 2005
s. 302.4	ad. No. 129, 2005
s. 302.5	ad. No. 129, 2005
s. 302.6	ad. No. 129, 2005
	am. No. 3, 2010
Division 303	
s. 303.1	ad. No. 129, 2005
s. 303.2	ad. No. 129, 2005
s. 303.3	ad. No. 129, 2005
s. 303.4	ad. No. 129, 2005
s. 303.5	ad. No. 129, 2005
s. 303.6	ad. No. 129, 2005
s. 303.7	ad. No. 129, 2005
Division 304	
s. 304.1	ad. No. 129, 2005
s. 304.2	ad. No. 129, 2005
s. 304.3	ad. No. 129, 2005
Division 305	
s. 305.1	ad. No. 129, 2005
s. 305.2	ad. No. 129, 2005
s. 305.3	ad. No. 129, 2005
s. 305.4	ad. No. 129, 2005
s. 305.5	ad. No. 129, 2005
s. 305.6	ad. No. 129, 2005
Division 306	
s. 306.1	ad. No. 129, 2005
s. 306.2	ad. No. 129, 2005
s. 306.3	ad. No. 129, 2005
s. 306.4	ad. No. 129, 2005
s. 306.5	ad. No. 129, 2005
s. 306.6	ad. No. 129, 2005
s. 306.7	ad. No. 129, 2005

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Provision affected	How affected
s. 306.8	ad. No. 129, 2005
Division 307	
Subdivision A	
s. 307.1	ad. No. 129, 2005
s. 307.2	ad. No. 129, 2005
s. 307.3	ad. No. 129, 2005
s. 307.4	ad. No. 129, 2005
	am. No. 167, 2012
Subdivision B	
s. 307.5	ad. No. 129, 2005
s. 307.6	ad. No. 129, 2005
s. 307.7	ad. No. 129, 2005
	am. No. 167, 2012
Subdivision C	
s. 307.8	ad. No. 129, 2005
s. 307.9	ad. No. 129, 2005
s. 307.10	ad. No. 129, 2005
	am. No. 167, 2012
Subdivision D	
s. 307.11	ad. No. 129, 2005
s. 307.12	ad. No. 129, 2005
s. 307.13	ad. No. 129, 2005
s. 307.14	ad. No. 129, 2005
Division 308	
s. 308.1	ad. No. 129, 2005
	am. No. 167, 2012
s. 308.2	ad. No. 129, 2005
s. 308.3	ad. No. 129, 2005
s. 308.4	ad. No. 129, 2005
Division 309	
s. 309.1	ad. No. 129, 2005
s. 309.2	ad. No. 129, 2005

Endnote 4—Amendment history

Provision affected	How affected
s. 309.3	ad. No. 129, 2005
s. 309.4	ad. No. 129, 2005
s. 309.5	ad. No. 129, 2005
s. 309.6	ad. No. 129, 2005
s. 309.7	ad. No. 129, 2005
s. 309.8	ad. No. 129, 2005
s. 309.9	ad. No. 129, 2005
s. 309.10	ad. No. 129, 2005
s. 309.11	ad. No. 129, 2005
s. 309.12	ad. No. 129, 2005
s. 309.13	ad. No. 129, 2005
s. 309.14	ad. No. 129, 2005
s. 309.15	ad. No. 129, 2005
Division 310	
s. 310.1	ad. No. 129, 2005
s. 310.2	ad. No. 129, 2005
s. 310.3	ad. No. 129, 2005
s. 310.4	ad. No. 129, 2005
Division 311	
Subdivision A	
s. 311.1	ad. No. 129, 2005
Subdivision B	
s. 311.2	ad. No. 129, 2005
s. 311.3	ad. No. 129, 2005
s. 311.4	ad. No. 129, 2005
s. 311.5	ad. No. 129, 2005
s. 311.6	ad. No. 129, 2005
s. 311.7	ad. No. 129, 2005
Subdivision C	
s. 311.8	ad. No. 129, 2005
s. 311.9	ad. No. 129, 2005
s. 311.10	ad. No. 129, 2005

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Provision affected	How affected
s. 311.11	ad. No. 129, 2005
s. 311.12	ad. No. 129, 2005
s. 311.13	ad. No. 129, 2005
s. 311.14	ad. No. 129, 2005
s. 311.15	ad. No. 129, 2005
s. 311.16	ad. No. 129, 2005
s. 311.17	ad. No. 129, 2005
s. 311.18	ad. No. 129, 2005
s. 311.19	ad. No. 129, 2005
s. 311.20	ad. No. 129, 2005
s. 311.21	ad. No. 129, 2005
s. 311.22	ad. No. 129, 2005
Division 312	
s. 312.1	ad. No. 129, 2005
s. 312.2	ad. No. 129, 2005
Division 313	
s. 313.1	ad. No. 129, 2005
s. 313.2	ad. No. 129, 2005
s. 313.3	ad. No. 129, 2005
s. 313.4	ad. No. 129, 2005
s. 313.5	ad. No. 129, 2005
Div. 314	rep. No. 167, 2012
s. 314.1	ad. No. 129, 2005
	am. No. 24, 2012
	rep. No. 167, 2012
s. 314.2	ad. No. 129, 2005
	rep. No. 167, 2012
s. 314.3	ad. No. 129, 2005
	am. No. 24, 2012
	rep. No. 167, 2012
s. 314.4	ad. No. 129, 2005
	am. No. 24, 2012

Endnote 4—Amendment history

Provision affected	How affected
	rep. No. 167, 2012
s. 314.5	ad. No. 129, 2005
	rep. No. 167, 2012
s. 314.6	ad. No. 129, 2005
	am. No. 24, 2012
	rep. No. 167, 2012
Part 9.4	
Division 360	
s. 360.1	ad. No. 141, 2002
s. 360.2	ad. No. 141, 2002
s. 360.3	ad. No. 141, 2002
s. 360.4	ad. No. 141, 2002
Part 9.5	
Part 9.5	ad. No. 3, 2011
Division 370	
s. 370.1	ad. No. 3, 2011
s. 370.2	ad. No. 167, 2012
s. 370.3	ad. No. 167, 2012
Division 372	
s. 372.1	ad. No. 3, 2011
	am. No. 167, 2012
s. 372.1A	ad. No. 167, 2012
s. 372.2	ad. No. 3, 2011
	am. No. 167, 2012
s. 372.3	ad. No. 3, 2011
	am. No. 167, 2012
s. 372.4	ad. No. 3, 2011
s. 372.5	ad. No. 3, 2011
	am. No. 167, 2012
s. 372.6	ad. No. 3, 2011
Division 375	
s. 375.1	ad. No. 3, 2011

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Provision affected	How affected
s. 375.2	ad. No. 3, 2011
s. 375.3	ad. No. 3, 2011
s. 375.4	ad. No. 3, 2011
Division 376	
Div. 376	ad. No. 167, 2012
s. 376.1	ad. No. 167, 2012
s. 376.2	ad. No. 167, 2012
s. 376.3	ad. No. 167, 2012
s. 376.4	ad. No. 167, 2012
s. 376.5	ad. No. 167, 2012
Part 9.6	
Part 9.6	ad. No. 127, 2004
s. 380.1	ad. No. 127, 2004
s. 380.2	ad. No. 127, 2004
s. 380.3	ad. No. 127, 2004
s. 380.4	ad. No. 127, 2004
s. 380.5	ad. No. 127, 2004
Part 9.9	
Part 9.9	ad. No. 4, 2010
Division 390	
Subdivision A	
s. 390.1	ad. No. 4, 2010
	am. No. 127, 2010
s. 390.2	ad. No. 4, 2010
Subdivision B	
s. 390.3	ad. No. 4, 2010
s. 390.4	ad. No. 4, 2010
s. 390.5	ad. No. 4, 2010
s. 390.6	ad. No. 4, 2010
s. 390.7	ad. No. 4, 2010
Chapter 10	
Chapt. 10	ad. No. 137, 2000

Endnote 4—Amendment history

Provision affected	How affected
Part 10.2	
Part 10.2	ad. No. 86, 2002
Division 400	
s. 400.1	ad. No. 86, 2002
	am. No. 170, 2006; No. 4, 2010
s. 400.2	ad. No. 86, 2002
	am. No. 100, 2005; No. 170, 2006
	rs. No. 4, 2010
s. 400.2A	ad. No. 4, 2010
s. 400.3	ad. No. 86, 2002
Note to s. 400.3(4) Renumbered Note 1	No. 4, 2010
Note 2 to s. 400.3(4)	ad. No. 4, 2010
s. 400.4	ad. No. 86, 2002
Note to s. 400.4(4) Renumbered Note 1	No. 4, 2010
Note 2 to s. 400.4(4)	ad. No. 4, 2010
s. 400.5	ad. No. 86, 2002
Note to s. 400.5(4) Renumbered Note 1	No. 4, 2010
Note 2 to s. 400.5(4)	ad. No. 4, 2010
s. 400.6	ad. No. 86, 2002
Note to s. 400.6(4) Renumbered Note 1	No. 4, 2010
Note 2 to s. 400.6(4)	ad. No. 4, 2010
s. 400.7	ad. No. 86, 2002
Note to s. 400.7(4) Renumbered Note 1	No. 4, 2010
Note 2 to s. 400.7(4)	ad. No. 4, 2010
s. 400.8	ad. No. 86, 2002
Note to s. 400.8	ad. No. 4, 2010
Heading to s. 400.9	am. No. 4, 2010
s. 400.9	ad. No. 86, 2002

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Provision affected	How affected
	am. No. 170, 2006; No. 4, 2010
s. 400.10	ad. No. 86, 2002
	am. No. 4, 2010
s. 400.11	ad. No. 86, 2002
	am. No. 170, 2006
s. 400.12	ad. No. 86, 2002
s. 400.13	ad. No. 86, 2002
s. 400.14	ad. No. 86, 2002
s. 400.15	ad. No. 86, 2002
	rs. No. 4, 2010
s. 400.16	ad. No. 86, 2002
Part 10.5	
Division 470	
s. 470.1	ad. No. 137, 2000
	am. No. 9, 2002
s. 470.2	ad. No. 137, 2000
s. 470.3	ad. No. 137, 2000
s. 470.4	ad. No. 42, 2010
Division 471	
Subdivision A	
Heading to Subdiv. A of Div. 471	ad. No. 42, 2010
s. 471.1	ad. No. 137, 2000
s. 471.2	ad. No. 137, 2000
s. 471.3	ad. No. 137, 2000
s. 471.4	ad. No. 137, 2000
s. 471.5	ad. No. 137, 2000
s. 471.6	ad. No. 137, 2000
s. 471.7	ad. No. 137, 2000
s. 471.8	ad. No. 137, 2000
s. 471.9	ad. No. 137, 2000
	am. No. 9, 2002
s. 471.10	ad. No. 9, 2002

Endnote 4—Amendment history

Provision affected	How affected
s. 471.11	ad. No. 9, 2002
	am. No. 127, 2004
s. 471.12	ad. No. 9, 2002
	am. No. 127, 2004
s. 471.13	ad. No. 9, 2002
s. 471.14	ad. No. 9, 2002
	am. No. 9, 2002
s. 471.15	ad. No. 9, 2002
Subdivision B	
Subdiv. B of Div. 471	ad. No. 42, 2010
s. 471.16	ad. No. 42, 2010
s. 471.17	ad. No. 42, 2010
s. 471.18	ad. No. 42, 2010
s. 471.19	ad. No. 42, 2010
s. 471.20	ad. No. 42, 2010
s. 471.21	ad. No. 42, 2010
s. 471.22	ad. No. 42, 2010
s. 471.23	ad. No. 42, 2010
Subdivision C	
Subdiv. C of Div. 471	ad. No. 42, 2010
s. 471.24	ad. No. 42, 2010
s. 471.25	ad. No. 42, 2010
s. 471.26	ad. No. 42, 2010
s. 471.27	ad. No. 42, 2010
s. 471.28	ad. No. 42, 2010
s. 471.29	ad. No. 42, 2010
Subdivision D	
Subdiv. D of Div. 471	ad. No. 42, 2010
s. 471.30	ad. No. 42, 2010
s. 471.31	ad. No. 42, 2010
Division 472	
s. 472.1	ad. No. 137, 2000

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Provision affected	How affected
s. 472.2	ad. No. 137, 2000
Part 10.6	
Part 10.6	rs. No. 127, 2004
Division 473	
s. 473.1	ad. No. 137, 2000
	rs. No. 127, 2004
	am. No. 95, 2005; No. 40, 2006; Nos. 8 and 42, 2010; No. 5, 2011; No. 44, 2012
s. 473.2	ad. No. 137, 2000
	rs. No. 127, 2004
s. 473.3	ad. No. 137, 2000
	rs. No. 127, 2004
s. 473.4	ad. No. 127, 2004
s. 473.5	ad. No. 42, 2010
Division 474	
Subdivision A	
s. 474.1	ad. No. 137, 2000
	rs. No. 127, 2004
s. 474.2	ad. No. 127, 2004
Subdivision B	
s. 474.3	ad. No. 127, 2004
s. 474.4	ad. No. 127, 2004
	am. No. 40, 2006
s. 474.5	ad. No. 127, 2004
s. 474.6	ad. No. 127, 2004
s. 474.7	ad. No. 127, 2004
s. 474.8	ad. No. 127, 2004
s. 474.9	ad. No. 127, 2004
s. 474.10	ad. No. 127, 2004
s. 474.11	ad. No. 127, 2004
s. 474.12	ad. No. 127, 2004
Subdivision C	

Endnote 4—Amendment history

Provision affected	How affected
Heading to Subdiv. C of Div. 474	rs. No. 42, 2010
s. 474.13	ad. No. 127, 2004
	am. No. 8, 2010
	rep. No. 42, 2010
s. 474.14	ad. No. 127, 2004
s. 474.15	ad. No. 127, 2004
s. 474.16	ad. No. 127, 2004
s. 474.17	ad. No. 127, 2004
	am. No. 44, 2012
s. 474.18	ad. No. 127, 2004
Subdivision D	
Heading to Subdiv. D of Div. 474	ad. No. 42, 2010
s. 474.19	ad. No. 127, 2004
	am. No. 42, 2010
s. 474.20	ad. No. 127, 2004
	am. No. 42, 2010
s. 474.21	ad. No. 127, 2004
	am. No. 45, 2005; No. 124, 2007
s. 474.22	ad. No. 127, 2004
	am. No. 42, 2010
s. 474.23	ad. No. 127, 2004
	am. No. 42, 2010
s. 474.24	ad. No. 127, 2004
	am. No. 45, 2005; No. 124, 2007
s. 474.24A	ad. No. 42, 2010
s. 474.24B	ad. No. 42, 2010
s. 474.24C	ad. No. 42, 2010
Subdivision E	
Heading to Subdiv. E of Div. 474	ad. No. 42, 2010
Heading to s. 474.25	am. No. 8, 2010

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Provision affected	How affected
s. 474.25	ad. No. 127, 2004
	am. No. 8, 2010
Subdivision F	
Heading to Subdiv. F of Div. 474	ad. No. 42, 2010
s. 474.25A	ad. No. 42, 2010
s. 474.25B	ad. No. 42, 2010
s. 474.26	ad. No. 127, 2004
	am. No. 42, 2010
s. 474.27	ad. No. 127, 2004
	am. No. 42, 2010
s. 474.27A	ad. No. 42, 2010
Heading to s. 474.28	am. No. 42, 2010
Subhead. to s. 474.28(3)	ad. No. 42, 2010
Subhead. to s. 474.28(5)	ad. No. 42, 2010
s. 474.28	ad. No. 127, 2004
	am. No. 42, 2010
s. 474.29	ad. No. 127, 2004
	rs. No. 42, 2010
Subdivision G	
Heading to Subdiv. G of Div. 474	ad. No. 42, 2010
s. 474.29A	ad. No. 92, 2005
s. 474.29B	ad. No. 92, 2005
s. 474.30	ad. No. 127, 2004
	rep. No. 42, 2010
Division 475	
s. 475.1A	ad. No. 42, 2010
s. 475.1B	ad. No. 42, 2010
s. 475.1	ad. No. 137, 2000
	rs. No. 127, 2004
s. 475.2	ad. No. 127, 2004
Part 10.7	

Endnote 4—Amendment history

Provision affected	How affected
Part 10.7	ad. No. 161, 2001
Division 476	
s. 476.1	ad. No. 161, 2001
	am. No. 127, 2004; No. 5, 2011; No. 120, 2012
s. 476.2	ad. No. 161, 2001
	am. No. 152, 2004
s. 476.3	ad. No. 161, 2001
s. 476.4	ad. No. 161, 2001
s. 476.5	ad. No. 161, 2001
	am. No. 127, 2004; No. 128, 2005; No. 40, 2006; No. 177, 2007; Nos. 5 and 80, 2011
Division 477	
s. 477.1	ad. No. 161, 2001
	am. No. 127, 2004; No. 3, 2011; No. 120, 2012
s. 477.2	ad. No. 161, 2001
	am. No. 127, 2004; No. 120, 2012
s. 477.3	ad. No. 161, 2001
	am. No. 127, 2004; No. 120, 2012
Division 478	
s. 478.1	ad. No. 161, 2001
	am. No. 127, 2004; No. 120, 2012
s. 478.2	ad. No. 161, 2001
	am. No. 120, 2012
s. 478.3	ad. No. 161, 2001
s. 478.4	ad. No. 161, 2001
Part 10.8	
Part 10.8	ad. No. 127, 2004
s. 480.1	ad. No. 127, 2004
s. 480.2	ad. No. 127, 2004
s. 480.3	ad. No. 127, 2004
s. 480.4	ad. No. 127, 2004
s. 480.5	ad. No. 127, 2004
s. 480.6	ad. No. 127, 2004

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Provision affected	How affected
	am. No. 8, 2010
Dictionary.....	am. Nos. 43 and 104, 1999; Nos. 124 and 137, 2000; No. 55, 2001; No. 42, 2002; No. 105, 2002 (as am. by No. 127, 2002); No. 127, 2004; No. 96, 2005; SLI 2006 No. 50; No. 125, 2006; Nos. 18, 54 and 70, 2009; Nos. 3, 4, 42 and 127, 2010; Nos. 3 and 46, 2011; No. 136, 2012; Nos. 6 and 13, 2013

Endnote 5—Uncommenced amendments [none]

Endnote 6—Modifications [none]

Endnote 7—Misdescribed amendments [none]

Endnote 8—Miscellaneous [none]