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Volume 1:	sections 1–5 Schedule (sections 1.1–261.3)
Volume 2:	**Schedule (sections 268.1–490.7)** **Schedule (Dictionary)** **Endnotes**

Each volume has its own contents

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About this compilation

This compilation

This is a compilation of the *Criminal Code Act 1995* that shows the text of the law as amended and in force on 21 October 2016 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Schedule—The Criminal Code

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***.

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(4) Subdivision J creates offences each of which is called a ***crime against the administration of the justice of the International Criminal Court***.

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:

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(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
(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

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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 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
(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

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(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.

(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

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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

(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.

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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

(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

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(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;

(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.

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(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.

(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

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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;

(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

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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.

(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.

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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;

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(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.

268.20 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

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(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
(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

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(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.

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

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(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.

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.

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(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.

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

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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 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

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(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

(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:

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(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:

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(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
(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.

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(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

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(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.

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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.

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Penalty for a contravention of this subsection: Imprisonment for 25 years.

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.

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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

(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.

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

(3) In this section:

emblem means any emblem, identity card, sign, signal, insignia or uniform.

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

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(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.

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

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(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.

268.48 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.

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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:

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(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 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:

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(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.

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.

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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.

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

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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 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.

(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:

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(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;
(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).

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(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.

(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:

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(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;

(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

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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.

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.

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(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):

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);

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(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.

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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.

(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:

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(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

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(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:

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(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 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

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(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.

(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.

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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

(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 (whether or not the person or persons are alive); and

(b) the person or persons are not taking an active part in the hostilities; and

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(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) 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 person or persons who:

(a) are *hors de combat*; or

(b) are civilians, medical personnel or religious personnel who are not taking an active part in the hostilities; or

(c) are dead.

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.

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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

(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.

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(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).

(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.

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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.

(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

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(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 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 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;

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(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.

(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.

268.83 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

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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) 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

(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):

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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.

(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

(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

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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):

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:

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(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

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(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.

268.88 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

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(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.

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.

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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

(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

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(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.

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

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(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 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

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(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

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(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:

(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.

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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

(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:

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(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
(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.

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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

(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.

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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:

(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.

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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.

(2) For the purposes of this section, ***destroying*** evidence includes making the evidence illegible, indecipherable or otherwise incapable of being identified.

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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.

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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 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.

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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.

(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.

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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.

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

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(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.

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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);

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(d) section 270.7B (forced marriage offences).

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

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(ii) any commercial transaction involving a slave;

commits an offence.

Penalty: Imprisonment for 25 years.

(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;

commits 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 does not commit an offence against this section.

(5) The defendant bears a legal burden of proving the matter mentioned in subsection (4).

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270.3A Slavery offences—geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against section 270.3.

270.3B Prosecutions

(1) Proceedings for an offence against section 270.3, 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.

(2) Even though a consent in accordance with subsection (1) has not been given in relation to an offence against section 270.3:

(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.

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

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(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

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(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

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(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

(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) A marriage is a ***forced marriage*** if one party to the marriage (the ***victim***) entered into the marriage without freely and fully consenting:

(a) because of the use of coercion, threat or deception; or

(b) because the party was incapable of understanding the nature and effect of the marriage ceremony.

(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*;

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(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) Paragraph (1)(a) applies whether the coercion, threat or deception is used against the victim or another person.

(4) For the purposes of proving an offence against this Division or Division 271, a person under 16 years of age is presumed, unless the contrary is proved, to be incapable of understanding the nature and effect of a marriage ceremony.

Note: A defendant bears a legal burden in relation to proving the contrary (see section 13.4).

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:

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(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.

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 9 years; or
(b) in any other case—imprisonment for 7 years.

(3) Strict liability applies to paragraph (2)(c).

Note: For strict liability, see section 6.1.

(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.

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(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

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(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.

(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:

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(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.

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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 270.1A).

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.

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(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:

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(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

(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;

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(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.

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(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.

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.

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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

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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

(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:

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(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

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(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

(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:

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(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

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(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.

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:

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(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:

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(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.

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.

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(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.

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(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;

(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.

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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.

(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

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(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;

(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.

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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

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(d) the person is a religious official or spiritual leader (however described) providing pastoral care or religious instruction to the other person; or

(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).

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(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

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(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).

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.

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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.

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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.

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:

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(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.

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(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);

(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);

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(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:

(a) the trier of fact must be satisfied beyond reasonable doubt that the evidence establishes at least 3 separate occasions

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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).

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Note: For strict liability, see section 6.1.

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).

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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.

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

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;

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(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).

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.

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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.

(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.

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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.

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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.

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.

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(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

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(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
(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;

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(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;

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)

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Alternative verdicts		
Item	**Column 1**	**Column 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*).

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.

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(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.

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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.

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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.

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(2) Absolute liability applies to paragraph (1)(c).

Note: For absolute liability, see section 6.2.

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.

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(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).

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(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

(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 Children's e-Safety Commissioner 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);

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in the performance of the Commissioner'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.

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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.

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:

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(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.

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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.

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.

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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.

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conceal a thing includes conceal or disguise:

(a) the nature, source or location of the thing; or

(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

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(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;

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(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.

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;

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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 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.

Note: This section applies to a prosecution of an ancillary offence relating to this Part as well as to prosecution of a primary offence against this Part. This is because of:

(a) sections 11.2, 11.2A and 11.3 (which treat certain combinations of physical and fault elements relating to this Part as being offences against this Part); and

(b) section 11.6 (which has the effect that a reference to an offence against this Part includes a reference to an offence against section 11.1 (attempt), 11.4 (incitement) or 11.5 (conspiracy) that relates to this Part).

300.6 Recklessness as to nature of substance or plant sufficient for offence of attempt to commit an offence against this Part

Despite subsection 11.1(3), for the offence of attempting to commit an offence against this Part, recklessness is the fault element in relation to any of the following physical elements of the offence attempted:

(a) that a substance is a controlled drug (a physical element of an offence against Division 302 or 305 or section 308.1, 309.2, 309.3, 309.4, 309.7 or 309.8);

(b) that a plant is a controlled plant (a physical element of an offence against Division 303 or 304);

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(c) that a substance is a controlled precursor (a physical element of an offence against Division 306 or section 308.2, 309.10 or 309.11);

(d) that a substance is a border controlled drug or border controlled plant (a physical element of an offence against Subdivision A, B or C of Division 307 or section 309.12 or 309.13);

(e) that a substance is a border controlled precursor (a physical element of an offence against Subdivision D of Division 307 or section 309.14 or 309.15).

Note: Proof of intention, knowledge or recklessness will satisfy a fault element of recklessness: see subsection 5.4(4).

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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)).

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(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.

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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***):

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(i) a stereoisomer;
(ii) a structural isomer having the same constituent groups;
(iii) an alkaloid;

(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 or atoms specified in subsection (2) with one or more of the other groups or atoms specified in that subsection;
(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) The following groups and atoms are specified:
(a) alkoxy, cyclic diether, acyl, acyloxy, mono-amino or dialkylamino groups with up to 6 carbon atoms in any alkyl residue;
(b) 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;
(c) halogen, hydroxy, nitro or amino groups;
(d) hydrogen atoms.

(3) However:
(a) a drug analogue of a listed controlled drug does not include a substance that is itself a listed controlled drug; and
(b) a drug analogue of a listed border controlled drug does not include a substance that is itself a listed border controlled drug.

(4) In this section:

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addition has its ordinary meaning.

replacement has its ordinary meaning.

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 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.

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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 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 marketable quantity of the listed drug; or (b) for a drug analogue of 2 or more listed border controlled drugs—the smallest marketable 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

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(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 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:

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(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 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.

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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 *Legislation 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

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18 months after the time the determination is registered (within the meaning of the *Legislation 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 *Legislation 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)).

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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.

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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

(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.

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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).

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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.

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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:

(a) any process by which a substance is produced (other than the cultivation of a plant), and includes the following:

(i) the process of extracting or refining a substance;

(ii) the process of transforming a substance into a different substance; or

(b) any process by which a substance is converted from one form to another, including the process of extracting or refining a 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.

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(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).

305.4 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

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(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.

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

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(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(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:

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(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;

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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).

(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

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(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).

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.

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(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

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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 (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).

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(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.

(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).

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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:

(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

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(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.

(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.

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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
  (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
  (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).

307.13 Importing and exporting border controlled precursors

(1) A person commits an offence if:
  (a) the person imports or exports a substance; and

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(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.

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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.

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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).

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(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

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(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

(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.

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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

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(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.

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

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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;

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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 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).

(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;

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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 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

(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.

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(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.

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

(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)).

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(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

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(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

(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

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(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.

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).

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(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:

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(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:

(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).

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(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).

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.

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(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

(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).

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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

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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 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:

(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

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(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

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(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

(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

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(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

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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:

(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).

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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.

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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 regulations made for the purposes of item 1 of the table in section 301.10, 301.11 or 301.12, 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 regulations made for the purposes of item 1 of the table in section 301.10 or 301.11, 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.

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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:

(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:

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(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 regulations made for the purposes of item 1 of the table in section 301.10, 301.11 or 301.12, for the controlled drug in a mixture—on the basis of the quantity of the mixture.

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(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 regulations made for the purposes of item 1 of the table in section 301.10 or 301.11, 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:

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(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.

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

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 9.2—Psychoactive substances

Division 320—Psychoactive substances

320.1 Definitions

(1) In this Part:

consume, in relation to a substance, includes:

(a) ingest the substance; and

(b) inject the substance; and

(c) inhale the substance; and

(d) smoke the substance, or inhale fumes caused by heating or burning the substance; and

(e) apply the substance externally to the body of a person; and

(f) by any other means introduce the substance into any part of the body of a person.

psychoactive effect, in relation to a person, means:

(a) stimulation or depression of the person's central nervous system, resulting in hallucinations or in a significant disturbance in, or significant change to, motor function, thinking, behaviour, perception, awareness or mood; or

(b) causing a state of dependence, including physical or psychological addiction.

psychoactive substance means any substance that, when a person consumes it, has the capacity to induce a psychoactive effect.

serious drug alternative means a substance that:

(a) has a psychoactive effect that is the same as, or is substantially similar to, the psychoactive effect of a serious drug; or

(b) is a lawful alternative to a serious drug.

(2) Expressions used in this Part that are defined for the purposes of Part 9.1 have the same meaning as in that Part.

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320.2 Importing psychoactive substances

(1) A person commits an offence if:

(a) the person imports a substance; and

(b) the substance is a psychoactive substance.

Penalty: Imprisonment for 5 years, or 300 penalty units, or both.

(2) Subject to subsection (3), this section does not apply to a substance if it is:

(a) food (within the meaning of the *Food Standards Australia New Zealand Act 1991*) for which:

(i) there is a standard (within the meaning of that Act); or

(ii) in the form in which the substance is presented, there is a tradition in Australia and New Zealand of using the substance as food for humans; or

(b) a tobacco product (within the meaning of section 8 of the *Tobacco Advertising Prohibition Act 1992*); or

(c) goods that are listed goods, or registered goods, within the meaning of the *Therapeutic Goods Act 1989*; or

(d) goods that are represented in any way to be:

(i) for therapeutic use (within the meaning of that Act); or

(ii) for use as an ingredient or component in the manufacture of therapeutic goods (within the meaning of that Act);

other than goods that are represented as a serious drug alternative; or

(e) therapeutic goods that are:

(i) exempt goods (within the meaning of that Act); or

(ii) exempt under section 18A of that Act; or

(iii) the subject of an approval or authority under section 19 of that Act; or

(iv) the subject of an approval under section 19A of that Act; or

(f) a substance or mixture of substances:

(i) that is an agricultural chemical product (within the meaning of the Agricultural and Veterinary Chemicals

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Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*); or

(ii) that would be such an agricultural chemical product, apart from regulations made for the purposes of paragraph 4(4)(b) of that Code; or

(g) a substance or mixture of substances:

(i) that is a veterinary chemical product (within the meaning of that Code); or

(ii) to which paragraph 5(4)(a) of that Code applies; or

(iii) that would be such a veterinary chemical product, apart from regulations made for the purposes of paragraph 5(4)(b) of that Code; or

(h) a substance or mixture of substances that is an active constituent (within the meaning of that Code) for a proposed or existing chemical product (within the meaning of that Code), and that:

(i) is an approved active constituent (within the meaning of that Code); or

(ii) is an exempt active constituent (within the meaning of subsection 69B(1) of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*); or

(iii) is imported into Australia with the written consent of the Australian Pesticides and Veterinary Medicines Authority under subsection 69B(1B) of that Act; or

(i) an industrial chemical within the meaning of the *Industrial Chemicals (Notification and Assessment) Act 1989*; or

(ia) a plant or fungus, or an extract from a plant or fungus; or

(j) a controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor; or

(k) a prohibited import within the meaning of the *Customs Act 1901*; or

(l) prescribed by, or included in a class of substances prescribed by, the regulations.

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

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(3) Subsection (2) does not apply to a substance that contains any psychoactive substance that is not of a kind specified in any of paragraphs (2)(a) to (l).

(4) In a prosecution for an offence under subsection (1), it is not necessary to prove that the defendant was reckless as to:
  (a) the particular identity of the substance; or
  (b) whether the substance had a particular psychoactive effect.

320.3 Importing substances represented to be serious drug alternatives

(1) A person commits an offence if:
  (a) the person imports a substance; and
  (b) at the time of the importation, the presentation of the substance includes an express or implied representation that the substance is a serious drug alternative.

Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

(2) For the purposes of paragraph (1)(b), the presentation of a substance includes, but is not limited to, matters relating to:
  (a) the name of the substance; and
  (b) the labelling and packaging of the substance and
  (c) any advertising or other informational material associated with the substance.

(3) This section does not apply to a substance if it is:
  (a) food (within the meaning of the *Food Standards Australia New Zealand Act 1991*) for which:
    (i) there is a standard (within the meaning of that Act); or
    (ii) in the form in which the substance is presented, there is a tradition in Australia and New Zealand of using the substance as food for humans; or
  (b) goods that are listed goods, or registered goods, within the meaning of the *Therapeutic Goods Act 1989*; or
  (c) therapeutic goods that are:
    (i) exempt goods (within the meaning of that Act); or

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(ii) exempt under section 18A of that Act; or

(iii) the subject of an approval or authority under section 19 of that Act; or

(iv) the subject of an approval under section 19A of that Act; or

(d) a substance or mixture of substances that is a chemical product (within the meaning of the Agricultural and Veterinary Chemicals Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*), and that:

(i) is a registered chemical product (within the meaning of that Code); or

(ii) is a reserved chemical product (within the meaning of that Code); or

(iii) is an exempt chemical product (within the meaning of subsection 69B(2) of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*); or

(iv) is imported into Australia with the written consent of the Australian Pesticides and Veterinary Medicines Authority under subsection 69B(1B) of that Act; or

(e) a substance or mixture of substances that is an active constituent (within the meaning of that Code) for a proposed or existing chemical product (within the meaning of that Code), and that:

(i) is an approved active constituent (within the meaning of that Code); or

(ii) is an exempt active constituent (within the meaning of subsection 69B(2) of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*); or

(iii) is imported into Australia with the written consent of the Australian Pesticides and Veterinary Medicines Authority under subsection 69B(1B) of that Act; or

(f) prescribed by, or included in a class of substances prescribed by, the regulations.

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

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(4) In a prosecution for an offence under subsection (1), it is not necessary to prove that:

(a) the representation of the substance to be a serious drug alternative related to a particular serious drug; or

(b) the defendant intended to cause any person to believe that the substance:

(i) was a particular serious drug; or

(ii) has a psychoactive effect that is the same as or similar to a particular serious drug; or

(iii) is a lawful alternative to a particular serious drug; or

(c) the defendant knew, or was reckless as to:

(i) the particular identity of the substance, or

(ii) whether the substance has a particular psychoactive effect.

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Part 9.4—Dangerous weapons

Division 360—Cross-border firearms trafficking

360.1 Disposal and acquisition of a firearm or firearm part

(1) For the purposes of this Division, and without limitation, a person ***disposes*** of a firearm or a firearm part if any of the following applies:

(a) the person sells the firearm or part (whether or not the person to whom the firearm or part is sold also acquires physical control of the firearm or part);

(b) the person hires, leases or rents the firearm or part to another person;

(c) the person passes physical control of the firearm or part to another person (whether or not the person to whom physical control is passed also acquires ownership of the firearm or part).

(2) For the purposes of this Division, and without limitation, a person ***acquires*** a firearm or a firearm part if any of the following applies:

(a) the person purchases the firearm or part (whether or not the person also acquires physical control of the firearm or part);

(b) the person hires, leases or rents the firearm or part from another person;

(c) the person obtains physical control of the firearm or part (whether or not the person also acquires ownership of the firearm or part).

360.2 Cross-border offence of disposal or acquisition of a firearm or firearm part

(1) A person commits 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

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(b) the primary element of the offence is:

(i) the disposal of a firearm or a firearm part by the person; or

(ii) the acquisition of a firearm or a firearm part by the person.

Penalty: Imprisonment for 10 years or a fine of 2,500 penalty units, or both.

(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.

firearm part means either of the following within the meaning of the firearm law concerned:

(a) a firearm part;

(b) a part of, or for, a firearm or weapon.

360.3 Taking or sending a firearm or firearm part across borders

(1) A person commits 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 or a firearm part from one State or Territory to another State or Territory; and

(b) the person does so intending that the firearm or firearm part 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 firearm part; or

(ii) any acquisition of the firearm or firearm part that results from the disposal;

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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.

firearm part means either of the following within the meaning of the firearm law mentioned in paragraph (1)(c):

(a) a firearm part;

(b) a part of, or for, a firearm or weapon.

360.4 Concurrent operation intended

(1) This Division is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

(2) Without limiting subsection (1), this Division 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 this Division; 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 Division;

(b) provides for a fault element in relation to the offence that differs from the fault elements applicable to the offence against this Division;

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(c) provides for a defence in relation to the offence that differs from the defences applicable to the offence against this Division.

(4) A person punished for an offence against a law of a State or Territory referred to in subsection (2) in respect of particular conduct cannot be punished for an offence against this Division in respect of that conduct.

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Division 361—International firearms trafficking

361.1 Definitions

In this Division:

export a thing, means export the thing from Australia.

firearm has the same meaning as in the *Customs (Prohibited Imports) Regulations 1956*.

firearm part has the same meaning as in the *Customs (Prohibited Imports) Regulations 1956*.

import a thing, means import the thing into Australia, and includes deal with the thing in connection with its importation.

traffic in a thing that is a firearm or a firearm part means:

(a) transfer the thing; or
(b) offer the thing for sale; or
(c) invite the making of offers to buy the thing; or
(d) prepare the thing 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 thing 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 thing with the intention of transferring any of it or the intention of assisting another person to transfer any of it; or
(g) possess the thing with the intention of transferring any of it.

For the purposes of paragraph (d), preparing a thing for transfer includes packaging the thing or separating the thing into discrete units.

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361.2 Trafficking prohibited firearms or firearm parts into Australia

Customs Act prohibits imports absolutely

(1) A person commits an offence if:
  (a) the person imports a thing; and
  (b) the thing is a firearm or firearm part; and
  (c) the person imports the firearm or part with the intention of trafficking in the firearm or part; and
  (d) importing the firearm or part was prohibited under the *Customs Act 1901* absolutely.

Penalty: Imprisonment for 10 years or a fine of 2,500 penalty units, or both.

(2) Absolute liability applies to paragraph (1)(d).

Note: For absolute liability, see section 6.2.

Customs Act prohibits imports if requirements not met

(3) A person commits an offence if:
  (a) the person imports a thing; and
  (b) the thing is a firearm or firearm part; and
  (c) the person imports the firearm or part with the intention of trafficking in the firearm or part; and
  (d) importing the firearm or part was prohibited under the *Customs Act 1901* unless certain requirements were met; and
  (e) the person fails to meet any of those requirements.

Penalty: Imprisonment for 10 years or a fine of 2,500 penalty units, or both.

(4) Absolute liability applies to paragraph (3)(d).

Note: For absolute liability, see section 6.2.

(5) Strict liability applies to paragraph (3)(e).

Note: For strict liability, see section 6.1.

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361.3 Trafficking prohibited firearms or firearm parts out of Australia

Customs Act prohibits exports absolutely

(1) A person commits an offence if:

(a) the person exports a thing, or enters a thing for export from Australia; and

(b) the thing is a firearm or firearm part; and

(c) the person exports, or enters for export, the firearm or part with the intention of trafficking in the firearm or part; and

(d) exporting the firearm or part was prohibited under the *Customs Act 1901* absolutely.

Penalty: Imprisonment for 10 years or a fine of 2,500 penalty units, or both.

(2) Absolute liability applies to paragraph (1)(d).

Note: For absolute liability, see section 6.2.

Customs Act prohibits exports if requirements not met

(3) A person commits an offence if:

(a) the person exports a thing; and

(b) the thing is a firearm or firearm part; and

(c) the person exports the firearm or part with the intention of trafficking in the firearm or part; and

(d) exporting the firearm or part, or entering the firearm or part for export, was prohibited under the *Customs Act 1901* unless certain requirements were met; and

(e) the person fails to meet any of those requirements.

Penalty: Imprisonment for 10 years or a fine of 2,500 penalty units, or both.

(4) A person commits an offence if:

(a) the person enters a thing for export from Australia; and

(b) the thing is a firearm or firearm part; and

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(c) the person enters the firearm or part for export with the intention of trafficking in the firearm or part; and

(d) entering the firearm or part for export was prohibited under the *Customs Act 1901* unless certain requirements were met; and

(e) the person fails to meet any of those requirements.

Penalty: Imprisonment for 10 years or a fine of 2,500 penalty units, or both.

(5) Absolute liability applies to paragraphs (3)(d) and (4)(d).

Note: For absolute liability, see section 6.2.

(6) Strict liability applies to paragraphs (3)(e) and (4)(e).

Note: For strict liability, see section 6.1.

361.4 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 Division 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)).

361.6 Double jeopardy

A person punished for an offence against this Division in respect of particular conduct cannot be punished for an offence against section 233BAB of the *Customs Act 1901* in respect of that conduct.

Note: A similar provision for the opposite case is set out in subsection 233BAB(7) of the *Customs Act 1901*.

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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

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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

(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

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(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

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(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.

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.

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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.

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375.2 Content of certificate

(1) A certificate issued under section 375.1 must:
  (a) identify the victim; and
  (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:

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(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.

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

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(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.

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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
  (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 commits an offence if:

(a) the person contaminates goods; and

(b) the person does so with intent:

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(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.

Offences based on other constitutional powers

(2) A person commits 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;

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(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 commits 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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Offences based on other constitutional powers

(2) A person commits 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;

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(viii) the goods are in the course of, or intended for, constitutional trade and commerce;

(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 commits 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.

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Offence based on other constitutional powers

(2) A person commits 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 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;

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(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;

(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:

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(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;
  (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.

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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

(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:

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(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).

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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

(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).

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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

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(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).

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

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(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

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(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:

(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.

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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

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(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.

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

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(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.

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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.

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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).

(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.

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(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 commits 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

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(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.

(2) A person commits 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 commits 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.

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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.

400.4 Dealing in proceeds of crime etc.—money or property worth $100,000 or more

(1) A person commits 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 commits 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 commits 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); 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 commits 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 commits 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

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(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 $50,000 or more.

Penalty: Imprisonment for 7 years, or 420 penalty units, or both.

(3) A person commits 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 commits an offence if:

(a) the person deals with money or other property; and

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(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.

Penalty: Imprisonment for 10 years, or 600 penalty units, or both.

(2) A person commits 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 commits 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.

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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 commits 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 commits 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.

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(3) A person commits 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 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 commits 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 commits an offence if:

(a) the person deals with money or other property; and

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(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 commits 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).

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.

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(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

(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

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(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 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

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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 commit 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.

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.

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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.

(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

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(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

(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;

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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 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 does not commit 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.

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Defence—ancillary offence

(4) A person does not commit 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).

(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.

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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.

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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

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(ii) collected or received by Australia Post for carriage by post; or

(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.

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unwritten communication has the same meaning as in the *Australian Postal Corporation Act 1989*.

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:

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(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.

(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 commits 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 commits 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:

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(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***

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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.

471.3 Taking or concealing of mail-receptacles, articles or postal messages

A person commits 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 commits 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 commits 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.

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(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 commits 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:

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(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 commits an offence if the person dishonestly:
(a) opens a mail-receptacle; or
(b) tampers with a mail-receptacle.

Penalty: Imprisonment for 5 years.

(2) A person commits 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 commits 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 commits an offence if:
(a) the person causes an article to be carried by a postal or similar service; and

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(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.

471.11 Using a postal or similar service to make a threat

Threat to kill

(1) A person (the ***first person***) commits 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***) commits 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.

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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.

471.12 Using a postal or similar service to menace, harass or cause offence

A person commits 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***) commits 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.

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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.

(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 commits an offence if:

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(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).

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.

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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

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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:

(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:

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(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).

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:

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(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:

(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:

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(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.

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

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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.

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

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(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.

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(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.

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

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(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.

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.

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(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.

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.

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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.

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.

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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.

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carry includes transmit, switch and receive.

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;

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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*.

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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.

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 Australian 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 Australian 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;

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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

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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 Corruption Commission of Queensland within the meaning of the *Crime and Corruption Act 2001* (Qld);

(l) the Independent Commissioner Against Corruption of South Australia, the Deputy Commissioner, a member of the staff of the Commissioner, or an examiner or investigator, within the meaning of the *Independent Commissioner Against Corruption Act 2012* (SA).

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 (Consumer Protection and Service Standards) Act 1999*.

nominated carrier has the same meaning as in the *Telecommunications Act 1997*.

NRS provider means:

(a) a person who:

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(i) is a contractor (within the meaning of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*); 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 (Consumer Protection and Service Standards) Act 1999*); 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.

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.

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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

(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.

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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.

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).

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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 commits 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 commits 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 commits 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 commits an offence if:

(a) the person:

(i) manufactures; or

(ii) advertises, displays or offers for sale; or

(iii) sells; or

(iv) possesses;

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an apparatus or device (whether in an assembled or unassembled form); and

(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 commits 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).

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474.6 Interference with facilities

(1) A person commits 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 commits 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 commits 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

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(b) this conduct results in hindering the normal operation of a carriage service supplied by a carriage service provider.

Penalty: Imprisonment for 2 years.

(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 commits 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:

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(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 commits 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)

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(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

(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 commits 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

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(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

(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.

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474.10 Copying subscription-specific secure data

Copying subscription-specific secure data from an existing account identifier

(1) A person commits 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.

Copying subscription-specific secure data onto a new account identifier

(2) A person commits 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:

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(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.

474.11 Possession or control of data or a device with intent to copy an account identifier

(1) A person commits 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.

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(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.

474.12 Producing, supplying or obtaining data or a device with intent to copy an account identifier

(1) A person commits an offence if:

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(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:

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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 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 commits 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

(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 commits 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.

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(3) A person who commits 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***) commits 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.

Threat to cause serious harm

(2) A person (the ***first person***) commits 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.

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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 commits 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 commits 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 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

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(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 commits 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 commits 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.

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 commits an offence if:
(a) the person:
(i) accesses material; or
(ii) causes material to be transmitted to himself or herself; or

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(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 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;

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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.

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(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 Children's e-Safety Commissioner 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 Commissioner'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).

474.22 Using a carriage service for child abuse material

(1) A person commits an offence if:

(a) the person:

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(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 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

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(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

(d) conducting scientific, medical or educational research that has been approved by the Minister in writing for the purposes of this section.

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(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 Children's e-Safety Commissioner 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 Commissioner'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:

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(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

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(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.

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Penalty: Imprisonment for 15 years.

(3) The fault element for paragraph (2)(b) is intention.

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.

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(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.

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

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(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.

(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.

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(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

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(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.

(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.

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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):

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(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.

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.

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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

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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.

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 commits 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

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(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 commits 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 does not commit 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

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(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 does not commit 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.

474.29B Possessing, controlling, producing, supplying or obtaining suicide related material for use through a carriage 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 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

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(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).

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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.

Absolute liability applies to physical element of offence that carriage service was used

(2) If:

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(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:

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(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;

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

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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, AGO or ASD (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

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(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:

(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:

AGO means that part of the Defence Department known as the Australian Geospatial-Intelligence Organisation.

ASD means that part of the Defence Department known as the Australian Signals Directorate.

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).

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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.

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 ASD—the Director of ASD or a member of the staff of ASD (whether an employee of ASD, a consultant or contractor to ASD, or a person who is made available by another Commonwealth or State authority or other person to perform services for ASD); and

(c) in relation to AGO—the Director of AGO or a member of the staff of AGO (whether an employee of AGO, a consultant or contractor to AGO, or a person who is made available by another Commonwealth or State authority or other person to perform services for AGO).

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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 commits 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 commits 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 commits 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 commits 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.

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Penalty: 10 years imprisonment.

(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 commits 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 commits 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 commits an offence if:

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(a) the person has possession or control of data; and

(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 commits 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.

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(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 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

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(c) a living or dead person.

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 commits 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 commits 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:

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(i) by the person; or

(ii) by another person;

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 commits 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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Part 10.9—Accounting records

Division 490—False dealing with accounting documents

490.1 Intentional false dealing with accounting documents

(1) A person commits an offence if:

(a) the person:

(i) makes, alters, destroys or conceals an accounting document; or

(ii) fails to make or alter an accounting document that the person is under a duty, under a law of the Commonwealth, a State or Territory or at common law, to make or alter; and

(b) the person intended the making, alteration, destruction or concealment of the document (or the failure to make or alter the document) to facilitate, conceal or disguise the occurrence of one or more of the following:

(i) the person receiving a benefit that is not legitimately due to the person;

(ii) the person giving a benefit that is not legitimately due to the recipient, or intended recipient, of the benefit;

(iii) another person receiving a benefit that is not legitimately due to the other person;

(iv) another person giving a benefit that is not legitimately due to the recipient, or intended recipient, of the benefit (who may be the first-mentioned person);

(v) loss to another person that is not legitimately incurred by the other person; and

(c) one or more of the circumstances referred to in subsection (2) applies.

(2) For the purposes of paragraph (1)(c) of this section or paragraph 490.2(1)(c), the circumstances are:

(a) the person is:

(i) a constitutional corporation, or a corporation that is incorporated in a Territory; or

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(ii) an officer or employee of a constitutional corporation acting in the performance of his or her duties or the carrying out of his or her functions; or

(iii) a person engaged to provide services to a constitutional corporation and acting in the course of providing those services; or

(iv) a Commonwealth public official acting in the performance of his or her duties or the carrying out of his or her functions; or

(b) the person's act or omission referred to in paragraph (1)(a):

(i) occurs in a Territory; or

(ii) occurs outside Australia; or

(iii) concerns matters or things outside Australia; or

(iv) facilitates or conceals the commission of an offence against a law of the Commonwealth; or

(c) the accounting document:

(i) is outside Australia; or

(ii) is in a Territory; or

(iii) is kept under or for the purposes of a law of the Commonwealth; or

(iv) is kept to record the receipt or use of Australian currency.

(3) Absolute liability applies to paragraph (1)(c).

Note: For absolute liability, see section 6.2.

Penalty for individual

(4) An offence against this section 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

(5) An offence against this section 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;

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(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.

490.2 Reckless false dealing with accounting documents

(1) A person commits an offence if:

(a) the person:

(i) makes, alters, destroys or conceals an accounting document; or

(ii) fails to make or alter an accounting document that the person is under a duty, under a law of the Commonwealth, a State or Territory or at common law, to make or alter; and

(b) the person is reckless as to whether the making, alteration, destruction or concealment of the document (or the failure to make or alter the document) facilitates, conceals or disguises the occurrence of one or more of the following:

(i) the person receiving a benefit that is not legitimately due to the person;

(ii) the person giving a benefit that is not legitimately due to the recipient, or intended recipient, of the benefit;

(iii) another person receiving a benefit that is not legitimately due to the other person;

(iv) another person giving a benefit that is not legitimately due to the recipient, or intended recipient, of the benefit (who may be the first-mentioned person);

(v) loss to another person that is not legitimately incurred by the other person; and

(c) one or more of the circumstances referred to in subsection 490.1(2) applies.

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(2) Absolute liability applies to paragraph (1)(c).

Note: For absolute liability, see section 6.2.

Penalty for individual

(3) An offence against this section committed by an individual is punishable on conviction by imprisonment for not more than 5 years, a fine not more than 5,000 penalty units, or both.

Penalty for body corporate

(4) An offence against this section committed by a body corporate is punishable on conviction by a fine not more than the greatest of the following:

(a) 50,000 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—1.5 times the value of that benefit;

(c) if the court cannot determine the value of that benefit—5% 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.

490.3 Meaning of *annual turnover*

(1) For the purposes of this Division, 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*);

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

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

490.4 Related bodies corporate

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

490.5 Proof of certain matters unnecessary

In a prosecution for an offence against this Division, it is not necessary to prove:

(a) the occurrence of any of the following:
  (i) the defendant receiving or giving a benefit;
  (ii) another person receiving or giving a benefit;
  (iii) loss to another person; or

(b) that the defendant intended that a particular person receive or give a benefit, or incur a loss.

490.6 Consent to commencement of proceedings

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

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

(b) at the time of the alleged offence, the person alleged to have committed the offence is none of the following:
  (i) an Australian citizen;
  (ii) a resident of Australia;
  (iii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

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

490.7 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.

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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.

accounting document means:

(a) any account; or

(b) any record or document made or required for any accounting purpose; or

(c) any register under the *Corporations Act 2001*, or any financial report or financial records within the meaning of that Act.

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.

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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.

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

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(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

(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

(i) a Commonwealth judicial officer; or

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(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:

(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

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(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

(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.

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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.

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

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(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.

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.

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).

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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 meaning given by 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

(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.

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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 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.

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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*.

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.

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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);

(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);

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(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*.

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

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(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.

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.

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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

(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

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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 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.

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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 information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key 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 (or will amend) the compiled law. The information includes commencement details for amending laws and details of any 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 (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

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)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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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 (gaz 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 (gaz 2000, No. GN45)	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 1 (items 1A, 2, 3, 5, 7A, 7B, 8, 8A–8F, 12–31, 33–41): 24 May 2001 (s 2(3)) Sch 1 (items 1, 4, 6, 7, 9–11, 32): 24 Nov 2000 (s 2(1)(b))	—
Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001	24, 2001	6 Apr 2001	s 4(1) and (2): 24 May 2001 (s 2(1)(a)) Sch 1 (item 3): 4 May 2001 (s 2(2))	s 4(1) and (2)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Corporations (Repeals, Consequentials and Transitionals) Act 2001	55, 2001	28 June 2001	s 4–14 and Sch 3 (items 148–150): 15 July 2001 (s 2(1), (3) and gaz 2001, No S285)	s 4–14
Cybercrime Act 2001	161, 2001	1 Oct 2001	21 Dec 2001 (gaz 2001, No. S529)	s. 4
Criminal Code Amendment (Anti-hoax and Other Measures) Act 2002	9, 2002	4 Apr 2002	Sch 1: 2 pm (A.C.T.) 16 Oct 2001 (s 2(1) item 2) Remainder: 4 Apr 2002 (s 2(1) items 1, 3)	—
International Criminal Court (Consequential Amendments) Act 2002	42, 2002	27 June 2002	Schedules 1–7: 26 Sept 2002 (*see* s. 2(1) and gaz 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 (gaz 2002, No. S331) Remainder: Royal Assent	—
Security Legislation Amendment (Terrorism) Act 2002	65, 2002	5 July 2002	s 4: 5 July 2002 (s 2(1) item 1) Sch 1 (items 2, 4, 5): 6 July 2002 (s 2(1) items 3, 5)	s. 4 and Sch. 1 (item 5)
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	Sch 1 (item 1): 5 July 2002 (s 2(1) item 2) Sch 1 (items 2, 3): 6 July 2002 (s 2(1) items 3, 4)	—

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Endnote 3—Legislation history

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 gaz 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	Sch 3 (items 53–55): 12 May 2003 (s 2(1) item 32)	—
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 gaz 2002, No. GN44) Remainder: Royal Assent	—
Criminal Code Amendment (Terrorism) Act 2003	40, 2003	27 May 2003	Schedules 1 and 2: 29 May 2003 (gaz 2003, No. S175) Remainder: Royal Assent	—
Criminal Code Amendment (Hizballah) Act 2003	44, 2003	24 June 2003	s 1–3: 24 June 2003 (s 2(1) item 1) Remainder: 29 May 2013 (s 2(1) item 2)	—
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 Sch 1 (item 16): 1 Jan 2005 (s 2(1) items 2, 3)	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	Sch 1 (item 12): 1 Jan 2003 (s 2(1) item 8)	—

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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 gaz 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	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
International Trade Integrity Act 2007	147, 2007	24 Sept 2007	Schedule 2 (items 1–4): 25 Sept 2007	—
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	Sch 5 (items 21–27): 1 July 2009 (s 2(1) item 11)	—
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	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
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	Sch 1 (item 15) and Sch 5 (items 28–31, 137): 1 Mar 2010 (s 2(1) items 2, 31, 38)	—
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	Sch 1 (items 1–5) and Sch 7 (item 3): 3 Mar 2011 (s 2(1) items 2, 4) Schedule 1 (item 6): never commenced (s 2(1) item 3)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
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	—
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 Apr 2013 (gaz 2013, No. GN11) Remainder: Royal Assent	—
Cybercrime Legislation Amendment Act 2012	120, 2012	12 Sept 2012	Schedule 3: 1 Mar 2013 (gaz 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))

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
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))	—
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 (s 2(1) item 2)	—
Customs Amendment (Anti-Dumping Commission Transfer) Act 2013	139, 2013	13 Dec 2013	Sch 1 (items 98, 101–103, 106): 27 Mar 2014 (s 2(1) item 2 and F2014L00281)	Sch 1 (items 101–103, 106)
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 1 (item 17) and Sch 9 (items 8–17): 24 June 2014 (s 2(1) items 2, 9)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
National Security Legislation Amendment Act (No. 1) 2014	108, 2014	2 Oct 2014	Sch 1 (items 38–41, 78–87): 30 Oct 2014 (s 2(1) item 2) Sch 7 (items 95–102, 144, 145): 3 Oct 2014 (s 2(1) items 3, 5)	Sch 1 (items 78–87) and Sch 7 (items 144, 145)
Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014	116, 2014	3 Nov 2014	Sch 1 (items 57–110): 1 Dec 2014 (s 2(1) item 2)	—
Counter-Terrorism Legislation Amendment Act (No. 1) 2014	134, 2014	12 Dec 2014	Sch 1: 9 Jan 2015 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 1 (item 11) and Sch 3 (item 61): 25 Mar 2015 (s 2(1) items 2, 10)	—
Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Act 2015	12, 2015	5 Mar 2015	Sch 1 (item 1): 5 Sept 2015 (s 2(1) item 2) Sch 2 (items 1–13, 15–18), Sch 4 and Sch 6 (items 1–5): 6 Mar 2015 (s 2(1) items 3, 5, 7)	Sch 2 (item 17) and Sch 4 (item 2)
Enhancing Online Safety for Children (Consequential Amendments) Act 2015	25, 2015	24 Mar 2015	Sch 2 (items 9–14) and Sch 3: 1 July 2015 (s 2(1) items 4, 6)	Sch 3
Telecommunications Legislation Amendment (Deregulation) Act 2015	38, 2015	13 Apr 2015	Sch 1 (items 11, 12, 138–163): 1 July 2015 (s 2(1) item 3)	Sch 1 (items 138–163)
Customs and Other Legislation Amendment (Australian Border Force) Act 2015	41, 2015	20 May 2015	Sch 5 (items 59, 60), Sch 6 (items 61, 62) and Sch 9: 1 July 2015 (s 2(1) items 2, 7)	Sch 5 (item 60), Sch 6 (item 62) and Sch 9

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 1 (item 95) and Sch 2 (items 356–396): 18 June 2015 (s 2(1) items 2, 6) Sch 1 (items 184–203): 27 May 2015 (s 2(1) item 3) Sch 2 (item 119): 1 July 2016 (s 2(1) item 5)	Sch 1 (items 184–203) and Sch 2 (items 356–396)
as amended by				
Territories Legislation Amendment Act 2016	33, 2016	23 March 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Tribunals Amalgamation Act 2015	60, 2015	26 May 2015	Sch 8 (item 18) and Sch 9: 1 July 2015 (s 2(1) items 19, 22)	Sch 9
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 150–158): 5 Mar 2016 (s 2(1) item 2)	—
Crimes Legislation Amendment (Powers, Offences and Other Measures) Act 2015	153, 2015	26 Nov 2015	Sch 1–4 and Sch 15 (item 7): 27 Nov 2015 (s 2(1) items 2, 3)	Sch 1 (item 8)
Crimes Legislation Amendment (Harming Australians) Act 2015	163, 2015	30 Nov 2015	Sch 1: 1 Dec 2015 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 87–106, 355–358): 10 Mar 2016 (s 2(1) item 6)	—
Crimes Legislation Amendment (Proceeds of Crime and Other Measures) Act 2016	15, 2016	29 Feb 2016	Sch 2 and Sch 3: 1 Mar 2016 (s 2(1) item 2)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 2 (items 13–16): 21 Oct 2016 (s 2(1) item 1)	—

Name	Registration	Commencement	Application, saving and transitional provisions
Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1) (SLI No. 50, 2006)	17 Mar 2006 (F2006L00820)	Sch 34: 27 Mar 2006 (r 2(b))	—

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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	
s. 3.2	am. 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; No 126, 2015

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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; No 4, 2016
s. 11.2	am. No. 137, 2000; No. 127, 2004; No. 3, 2010
s. 11.2A	ad. No. 3, 2010
s. 11.3	am. No. 3, 2010
s. 11.4	am. No. 137, 2000; No 4, 2016
s. 11.5	am. No. 137, 2000; No 4, 2016
s. 11.6	am. No. 137, 2000; No. 3, 2010
Part 2.7	
Part 2.7	ad. No. 137, 2000
Division 14	
s. 14.1	ad. No. 137, 2000
	am. No. 3, 2010; No 4, 2016
Division 15	
s. 15.1	ad. No. 137, 2000
	am. No. 3, 2010; No 4, 2016
s. 15.2	ad. No. 137, 2000
	am. No. 3, 2010; No 4, 2016
s. 15.3	ad. No. 137, 2000
	am. No. 3, 2010
s. 15.4	ad. No. 137, 2000
	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

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Provision affected	How affected
Chapter 4	
Chapter 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; No 153, 2015; No 4, 2016
s. 70.3	ad. No. 43, 1999
	am. No. 147, 2007; No 4, 2016
s. 70.4	ad. No. 43, 1999
	am No 4, 2016
s. 70.5	ad. No. 43, 1999
	am. No. 137, 2000; No. 3, 2010
s. 70.6	ad. No. 43, 1999
Division 71	
Division 71	ad. No. 124, 2000
s. 71.1	ad. No. 124, 2000
s. 71.2	ad. No. 124, 2000
	am No 4, 2016; No 61, 2016
s. 71.3	ad. No. 124, 2000
	am No 4, 2016; No 61, 2016
s. 71.4	ad. No. 124, 2000
	am No 4, 2016; No 61, 2016
s. 71.5	ad. No. 124, 2000
	am No 4, 2016; No 61, 2016
s. 71.6	ad. No. 124, 2000
	am No 4, 2016; No 61, 2016
s. 71.7	ad. No. 124, 2000
	am No 4, 2016; No 61, 2016
s. 71.8	ad. No. 124, 2000
	am No 4, 2016; No 61, 2016

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Endnote 4—Amendment history

Provision affected	How affected
s. 71.9	ad. No. 124, 2000
	am No 4, 2016; No 61, 2016
s. 71.10	ad. No. 124, 2000
	am No 4, 2016; No 61, 2016
s. 71.11	ad. No. 124, 2000
	am No 4, 2016; No 61, 2016
s. 71.12	ad. No. 124, 2000
	am No 4, 2016; No 61, 2016
s. 71.13	ad. No. 124, 2000
	am. No. 37, 2010
s. 71.14	ad. No. 124, 2000
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	
Division 72 heading	rs. No. 3, 2007
Division 72	ad. No. 58, 2002
Subdivision A	
Subdivision A heading	ad. No. 3, 2007
s. 72.1	ad. No. 58, 2002
	am. No. 3, 2007; No. 8, 2010
s. 72.2	ad. No. 58, 2002

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Provision affected	How affected
	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
s. 72.7	ad. No. 58, 2002
	am. No. 3, 2007
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	
Subdivision B	ad. No. 3, 2007
s. 72.11	ad. No. 3, 2007
s. 72.12	ad. No. 3, 2007
	am No 31, 2014
s. 72.13	ad. No. 3, 2007
	am No 31, 2014
s. 72.14	ad. No. 3, 2007
	am No 31, 2014
s. 72.15	ad. No. 3, 2007
	am No 31, 2014
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

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Provision affected	How affected
	am No 31, 2014
	exp 25 Aug 2022 (s 72.19(5))
s. 72.20	ad. No. 3, 2007
	rep No 31, 2014
s. 72.21	ad. No. 3, 2007
	exp 25 Feb 2008 (s 72.21(5))
	rep No 31, 2014
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
	am No 31, 2014
s. 72.29	ad. No. 3, 2007
	am No 31, 2014
s. 72.30	ad. No. 3, 2007
	am No 31, 2014
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
s. 72.35	ad. No. 3, 2007
s. 72.36	ad. No. 3, 2007
	am. No. 8, 2010
Subdivision C	
Subdivision C	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

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Provision affected	How affected
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	
Division 73	ad. No. 141, 2002
Subdivision A	
s. 73.1	ad. No. 141, 2002
	am. No. 50, 2010
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
	am No 4, 2016
s. 73.9	ad. No. 141, 2002
	am No 4, 2016
s. 73.10	ad. No. 141, 2002
	am No 4, 2016
s. 73.11	ad. No. 141, 2002
	am No 4, 2016
s. 73.12	ad. No. 141, 2002

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Endnote 4—Amendment history

Provision affected	How affected
Chapter 5	
Chapter 5 heading	ad. No. 66, 2002
Part 5.1	
Part 5.1 heading	rs No 144, 2005; No 127, 2010; No 116, 2014
Part 5.1	ad. No. 65, 2002
Division 80	
Division 80 heading	rs No 144, 2005; No 127, 2010; No 116, 2014
Subdivision A	
Subdivision A heading	ad. No. 127, 2010
s. 80.1A	ad. No. 144, 2005
Subdivision B	
Subdivision B heading	ad. No. 127, 2010
s. 80.1	ad. No. 65, 2002
	am. No. 144, 2005; No. 127, 2010
s. 80.1AA	ad. No. 127, 2010
	am No 116, 2014; No 126, 2015
Subdivision C	
Subdivision C heading	ad No 127, 2010
	rs No 116, 2014
s. 80.2	ad. No. 144, 2005
	am. No. 127, 2010
s. 80.2A	ad. No. 127, 2010
s. 80.2B	ad. No. 127, 2010
s 80.2C	ad No 116, 2014
Subdivision D	
Subdivision D heading	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; No 116, 2014
s. 80.5	ad. No. 144, 2005

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Provision affected	How affected
	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	
Division 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; No 108 and 116, 2014
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

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Endnote 4—Amendment history

Provision affected	How affected
s. 100.8	ad. No. 40, 2003
Division 101	
Division 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	
Division 102	ad. No. 65, 2002
	rs. No. 40, 2003
Subdivision A	
s. 102.1	ad. No. 65, 2002
	am. No. 89, 2002
	rs. No. 40, 2003
	am. Nos. 44 and 109, 2003; Nos. 7 and 124, 2004; No. 144, 2005; Nos. 42 and 127, 2010; No 116, 2014; No 126, 2015
s 102.1AA	ad No 116, 2014
s. 102.1A	ad. No. 7, 2004
	am. No. 127, 2010; No 134, 2014; No 126, 2015
Subdivision B	

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Provision affected	How affected
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; No 116, 2014
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	
Division 103	ad. No. 66, 2002
	rs. No. 40, 2003
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	

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Endnote 4—Amendment history

Provision affected	How affected
Division 104	ad. No. 144, 2005
Subdivision A	
Subdivision A	rs No 134, 2014
s. 104.1	ad. No. 144, 2005
	rs No 134, 2014
Subdivision B	
s. 104.2	ad. No. 144, 2005
	am No 116, 2014; No 134, 2014
s. 104.3	ad. No. 144, 2005
	rs No 134, 2014
s. 104.4	ad. No. 144, 2005
	am No 116, 2014; No 134, 2014
s. 104.5	ad. No. 144, 2005
	am. No. 8, 2010; No 116, 2014; No 134, 2014
Subdivision C	
s. 104.6	ad. No. 144, 2005
	am No 116, 2014; No 134, 2014
s. 104.7	ad. No. 144, 2005
s. 104.8	ad. No. 144, 2005
	am No 116, 2014; No 134, 2014
s. 104.9	ad. No. 144, 2005
s. 104.10	ad. No. 144, 2005
	am No 134, 2014
s. 104.11	ad. No. 144, 2005
Subdivision D	
s. 104.12	ad. No. 144, 2005
	am No 116, 2014
s. 104.12A	ad. No. 144, 2005
	am No 134, 2014
s. 104.13	ad. No. 144, 2005
s. 104.14	ad. No. 144, 2005

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Provision affected	How affected
s. 104.15	ad. No. 144, 2005
s. 104.16	ad. No. 144, 2005
s. 104.17	ad. No. 144, 2005
	am No 116, 2014
Subdivision E	
s. 104.18	ad. No. 144, 2005
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
	am No 116, 2014; No 134, 2014
s. 104.24	ad. No. 144, 2005
	am No 116, 2014; No 134, 2014
s. 104.25	ad. No. 144, 2005
s. 104.26	ad. No. 144, 2005
	am No 116, 2014
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
	am No 116, 2014
Division 105	
Division 105	ad. No. 144, 2005

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Endnote 4—Amendment history

Provision affected	How affected
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
	am No 116, 2014
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
	am No 116, 2014
s. 105.8	ad. No. 144, 2005
	am No 116, 2014
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
s. 105.12	ad. No. 144, 2005
	am. No. 13, 2013; No 116, 2014
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
	am No 116, 2014
s. 105.16	ad. No. 144, 2005
	am No 116, 2014
s. 105.17	ad. No. 144, 2005
s. 105.18	ad. No. 144, 2005

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Provision affected	How affected
	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
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
	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

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Endnote 4—Amendment history

Provision affected	How affected
s. 105.38	ad. No. 144, 2005
	am. No. 84, 2006
s. 105.39	ad. No. 144, 2005
	am No 108, 2014
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
	am No 108, 2014
s. 105.43	ad. No. 144, 2005
	am. No. 13, 2013; No 108, 2014
s. 105.44	ad. No. 144, 2005
s. 105.45	ad. No. 144, 2005
Subdivision F	
s. 105.46	ad. No. 144, 2005
	am. No. 13, 2013
s. 105.47	ad. No. 144, 2005
	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
	am No 60, 2015
s. 105.52	ad. No. 144, 2005
s. 105.53	ad. No. 144, 2005
	am No 116, 2014
Division 106	
Division 106	ad. No. 40, 2003
s. 106.1	ad. No. 40, 2003
	am. No. 144, 2005

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Provision affected	How affected
s. 106.2	ad. No. 144, 2005
s. 106.3	ad. No. 144, 2005
s. 106.4	ad. No. 13, 2013
s 106.5	ad No 116, 2014
s 106.6	ad No 134, 2014
Part 5.4	
Part 5.4	ad. No. 106, 2002
Division 115	
Division 115 heading (prev Division 104 heading)	renum No 144, 2005
s 104.1	ad No 106, 2002
	renum No 144, 2005
s 115.1 (prev s 104.1)	am No 163, 2015; No 4, 2016
s 104.2	ad No 106, 2002
	renum No 144, 2005
s 115.2 (prev s 104.2)	am No 163, 2015; No 4, 2016
s 104.3	ad No 106, 2002
	renum No 144, 2005
s 115.3 (prev s 104.3)	am No 4, 2016
s 104.4	ad No 106, 2002
	renum No 144, 2005
s 115.4 (prev s 104.4)	am No 4, 2016
s 104.5	ad No 106, 2002
	renum No 144, 2005
s 115.5 (prev s 104.5)	
s 104.6	ad No 106, 2002
	renum No 144, 2005
s 115.6 (prev s 104.6)	
s 104.7	ad No 106, 2002
	am No 7, 2005
	renum No 144, 2005

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Endnote 4—Amendment history

Provision affected	How affected
s 115.7 (prev s 104.7).....	am No 21, 2007
s 104.8	ad No 106, 2002
	renum No 144, 2005
s 115.8 (prev s 104.8)	
s 104.9	ad No 106, 2002
	renum No 144, 2005
s 115.9 (prev s 104.9)	
Part 5.5	
Part 5.5.....	ad No 116, 2014
Division 117	
s 117.1	ad No 116, 2014
s 117.2	ad No 116, 2014
Division 119	
s 119.1	ad No 116, 2014
s 119.2	ad No 116, 2014
	exp 7 Sept 2018 (s 119.2(6))
s 119.3	ad No 116, 2014
	am No 126, 2015
s 119.4	ad No 116, 2014
s 119.5	ad No 116, 2014
s 119.6	ad No 116, 2014
s 119.7	ad No 116, 2014
s 119.8	ad No 116, 2014
s 119.9	ad No 116, 2014
s 119.10.....	ad No 116, 2014
s 119.11.....	ad No 116, 2014
s 119.12.....	ad No 116, 2014
Chapter 7	
Chapter 7	ad. No. 137, 2000
Part 7.1	
Division 130	

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Provision affected	How affected
s. 130.1	ad. No. 137, 2000
	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
	am No 4, 2016
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	
s. 132.1	ad. No. 137, 2000
	am No 4, 2016
s. 132.2	ad. No. 137, 2000
	am No 4, 2016
s. 132.3	ad. No. 137, 2000
	am No 4, 2016
s. 132.4	ad. No. 137, 2000
	am No 4, 2016
s. 132.5	ad. No. 137, 2000
	am No 4, 2016

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Endnote 4—Amendment history

Provision affected	How affected
s. 132.6	ad. No. 137, 2000
	am No 4, 2016
s. 132.7	ad. No. 137, 2000
	am No 4, 2016
s. 132.8	ad. No. 137, 2000
	am No 4, 2016
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
	am No 4, 2016
s. 134.2	ad. No. 137, 2000
	am No 4, 2016
s. 134.3	ad. No. 137, 2000
Division 135	
s. 135.1	ad. No. 137, 2000
	am No 4, 2016
s. 135.2	ad. No. 137, 2000
	am. No. 141, 2002; No. 127, 2004; No 4, 2016
s. 135.4	ad. No. 137, 2000
	am No 4, 2016
s. 135.5	ad. No. 137, 2000
Part 7.4	
Division 136	
s. 136.1	ad. No. 137, 2000
	am. No. 141, 2002; No. 66, 2008; No. 170, 2012; No 4, 2016
Division 137	
s. 137.1	ad. No. 137, 2000
	am. No. 141, 2002; No 4, 2016

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Provision affected	How affected
s. 137.2	ad. No. 137, 2000
	am No 4, 2016
s. 137.3	ad. No. 137, 2000
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
	am No 4, 2016
s. 139.2	ad. No. 137, 2000
	am No 4, 2016
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; No 4, 2016
Division 142	
s. 142.1	ad. No. 137, 2000
	am No 4, 2016
s. 142.2	ad. No. 137, 2000
	am No 4, 2016
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

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Endnote 4—Amendment history

Provision affected	How affected
s. 143.4	ad. No. 137, 2000
Division 144	
s. 144.1	ad. No. 137, 2000
	am No 4, 2016
Division 145	
s. 145.1	ad. No. 137, 2000
	am No 4, 2016
s. 145.2	ad. No. 137, 2000
	am. No. 141, 2002; No 4, 2016
s. 145.3	ad. No. 137, 2000
	am No 4, 2016
s. 145.4	ad. No. 137, 2000
	am No 4, 2016
s. 145.5	ad. No. 137, 2000
	am No 4, 2016
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; No 139, 2013; No 41, 2015
s. 146.2	ad. No. 137, 2000
Division 147	
s. 147.1	ad. No. 137, 2000
	am. No. 141, 2002; No 4, 2016
s. 147.2	ad. No. 137, 2000
	am No 4, 2016
s. 147.3	ad. No. 137, 2000
Division 148	
s. 148.1	ad. No. 137, 2000
	am. No. 141, 2002; No 4, 2016

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Provision affected	How affected
s. 148.2	ad. No. 137, 2000
	am. No. 141, 2002; No 4, 2016
s. 148.3	ad. No. 137, 2000
Division 149	
s. 149.1	ad. No. 137, 2000
	am No 4, 2016
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	
Chapter 8 heading	rs. No. 42, 2002
Chapter 8	ad. No. 104, 1999
Division 268	
Division 268	ad. No. 42, 2002
Subdivision A	
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

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Endnote 4—Amendment history

Provision affected	How affected
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
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

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Provision affected	How affected
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
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
s. 268.68	ad. No. 42, 2002
	am. No. 129, 2005

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Endnote 4—Amendment history

Provision affected	How affected
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
	am No 153, 2015
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
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
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

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Provision affected	How affected
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
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

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Provision affected	How affected
s. 268.122	ad. No. 42, 2002
s. 268.123	ad. No. 42, 2002
s. 268.124	ad. No. 42, 2002
Division 270	
Division 270 heading	rs. No. 6, 2013
Subdivision A	
Subdivision A	ad. No. 6, 2013
s. 270.1A	ad. No. 6, 2013
Subdivision B	
Subdivision B heading	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; No 4, 2016
s 270.3A	ad No 12, 2015
s 270.3B	ad No 12, 2015
Subdivision C	
Subdivision C	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
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

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Provision affected	How affected
	am No 153, 2015
s. 270.7B	ad. No. 6, 2013
	am No 153, 2015
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	
Subdivision D heading	ad No 6, 2013
s. 270.11	ad. No. 104, 1999
	rep. No. 96, 2005
	ad. No. 6, 2013
s. 270.12	ad. No. 104, 1999
	am. No. 6, 2013; No. 74, 2013
s. 270.13	ad. No. 104, 1999
	am. No. 6, 2013
s. 270.14	ad. No. 104, 1999
	rep. No. 6, 2013
Division 271	
Division 271	ad. No. 96, 2005
Subdivision A	
s. 271.1	ad. No. 96, 2005
	am. No. 6, 2013; No 31, 2014
s. 271.1A	ad. No. 6, 2013
Subdivision B	
s. 271.2	ad. No. 96, 2005
	am. No. 6, 2013
s. 271.3	ad. No. 96, 2005

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Provision affected	How affected
	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
s. 271.6	ad. No. 96, 2005
	am. No. 6, 2013
s. 271.7	ad. No. 96, 2005
	am. No. 6, 2013
Subdivision BA	
Subdivision BA	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	
Subdivision BB	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
s. 271.9	ad. No. 96, 2005
	rs. No. 6, 2013
Subdivision D	
Subdivision D heading	rs. No. 6, 2013
s. 271.10	ad. No. 96, 2005
	am. No. 6, 2013
s. 271.11	ad. No. 96, 2005
	am. No. 6, 2013

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Provision affected	How affected
s. 271.11A	ad. No. 6, 2013
s. 271.11B	ad. No. 6, 2013
s. 271.12	ad. No. 96, 2005
	am. No. 6, 2013; No. 74, 2013
s. 271.13	ad. No. 96, 2005
Division 272	
Division 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
	am. No. 74, 2013
Subdivision B	
s. 272.8	ad. No. 42, 2010
s. 272.9	ad. No. 42, 2010
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

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Endnote 4—Amendment history

Provision affected	How affected
s. 272.20	ad. No. 42, 2010
Subdivision D	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	
Division 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
	am. No. 74, 2013
Subdivision B	
s. 273.5	ad. No. 42, 2010

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Provision affected	How affected
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
	am No 25, 2015
Subdivision D	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	
Division 274	ad. No. 37, 2010
s. 274.1	ad. No. 37, 2010
s. 274.2	ad. No. 37, 2010
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	
Division 279	ad. No. 74, 2013
s. 279.1	ad. No. 74, 2013

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Endnote 4—Amendment history

Provision affected	How affected
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	
Chapter 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. 8, 2010; No. 167, 2012
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
	am No 153, 2015
s 300.6	ad No 153, 2015
Division 301	
Division 301	rs. No. 167, 2012
Subdivision A	
s. 301.1	ad. No. 129, 2005
	rs. No. 167, 2012
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

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Provision affected	How affected
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
	am No 15, 2016
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
	am No 12, 2015
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
	am No 126, 2015
s. 301.17	ad. No. 167, 2012
	am No 126, 2015
Division 302	
s. 302.1	ad. No. 129, 2005
s. 302.2	ad. No. 129, 2005
s. 302.3	ad. No. 129, 2005

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Endnote 4—Amendment history

Provision affected	How affected
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
	am No 15, 2016
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

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Provision affected	How affected
s. 306.7	ad. No. 129, 2005
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
	am No 153, 2015
s. 307.12	ad. No. 129, 2005
	am No 153, 2015
s. 307.13	ad. No. 129, 2005
	am No 153, 2015
s. 307.14	ad. No. 129, 2005
	rep No 153, 2015
Division 308	
s. 308.1	ad. No. 129, 2005
	am. No. 167, 2012

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Provision affected	How affected
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
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

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Provision affected	How affected
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
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
	am No 12, 2015
s 312.2	ad No 129, 2005
	am No 12, 2015
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
Division 314	rep. No. 167, 2012

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Endnote 4—Amendment history

Provision affected	How affected
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
	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 9.2	
Part 9.2	ad No 12, 2015
Division 320	
s 320.1	ad No 12, 2015
s 320.2	ad No 12, 2015
s 320.3	ad No 12, 2015
Part 9.4	
Division 360	
s 360.1	ad No 141, 2002
	am No 12, 2015
s 360.2	ad No 141, 2002
	am No 12, 2015; No 4, 2016
s 360.3	ad No 141, 2002
	am No 12, 2015; No 4, 2016
s 360.4	ad No 141, 2002

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Provision affected	How affected
	am No 12, 2015
Division 361	
Division 361	ad No 12, 2015
s 361.1	ad No 12, 2015
s 361.2	ad No 12, 2015
s 361.3	ad No 12, 2015
s 361.4	ad No 12, 2015
s 361.6	ad No 12, 2015
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
s. 375.2	ad. No. 3, 2011
s. 375.3	ad. No. 3, 2011
s. 375.4	ad. No. 3, 2011

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Endnote 4—Amendment history

Provision affected	How affected
Division 376	
Division 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
	am No 4, 2016
s. 380.3	ad. No. 127, 2004
	am No 4, 2016
s. 380.4	ad. No. 127, 2004
	am No 4, 2016
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	

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Provision affected	How affected
Chapter 10	ad. No. 137, 2000
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
	am. No. 4, 2010; No 4, 2016
s. 400.4	ad. No. 86, 2002
	am. No. 4, 2010; No 4, 2016
s. 400.5	ad. No. 86, 2002
	am. No. 4, 2010; No 4, 2016
s. 400.6	ad. No. 86, 2002
	am. No. 4, 2010; No 4, 2016
s. 400.7	ad. No. 86, 2002
	am. No. 4, 2010; No 4, 2016
s. 400.8	ad. No. 86, 2002
	am. No. 4, 2010; No 4, 2016
s. 400.9	ad. No. 86, 2002
	am. No. 170, 2006; No. 4, 2010
s. 400.10	ad. No. 86, 2002
	am. No. 4, 2010; No 4, 2016
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

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Endnote 4—Amendment history

Provision affected	How affected
s. 400.15	ad. No. 86, 2002
	rs. No. 4, 2010
	am No 4, 2016
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	
Subdivision A heading	ad. No. 42, 2010
s. 471.1	ad. No. 137, 2000
	am No 4, 2016
s. 471.2	ad. No. 137, 2000
	am No 4, 2016
s. 471.3	ad. No. 137, 2000
	am No 4, 2016
s. 471.4	ad. No. 137, 2000
	am No 4, 2016
s. 471.5	ad. No. 137, 2000
	am No 4, 2016
s. 471.6	ad. No. 137, 2000
	am No 4, 2016
s. 471.7	ad. No. 137, 2000
	am No 4, 2016
s. 471.8	ad. No. 137, 2000
	am No 4, 2016
s. 471.9	ad. No. 137, 2000

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Provision affected	How affected
	am. No. 9, 2002
s. 471.10	ad. No. 9, 2002
	am No 4, 2016
s. 471.11	ad. No. 9, 2002
	am. No. 127, 2004; No 4, 2016
s. 471.12	ad. No. 9, 2002
	am. No. 127, 2004; No 4, 2016
s. 471.13	ad. No. 9, 2002
	am No 4, 2016
s. 471.14	ad. No. 9, 2002
	am. No. 9, 2002
s. 471.15	ad. No. 9, 2002
	am No 4, 2016
Subdivision B	
Subdivision B	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	
Subdivision C	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

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Provision affected	How affected
Subdivision D	
Subdivision D	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
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; No 108, 2014; No 38, 2015; No 153, 2015
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
	am No 4, 2016
Subdivision B	
s. 474.3	ad. No. 127, 2004
s. 474.4	ad. No. 127, 2004
	am. No. 40, 2006; No 4, 2016
s. 474.5	ad. No. 127, 2004

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Provision affected	How affected
	am No 4, 2016
s. 474.6	ad. No. 127, 2004
	am No 4, 2016
s. 474.7	ad. No. 127, 2004
	am No 4, 2016
s. 474.8	ad. No. 127, 2004
	am No 4, 2016
s. 474.9	ad. No. 127, 2004
	am No 4, 2016
s. 474.10	ad. No. 127, 2004
	am No 4, 2016
s. 474.11	ad. No. 127, 2004
	am No 4, 2016
s. 474.12	ad. No. 127, 2004
	am No 4, 2016
Subdivision C	
Subdivision C heading	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
	am No 4, 2016
s. 474.15	ad. No. 127, 2004
	am No 4, 2016
s. 474.16	ad. No. 127, 2004
	am No 4, 2016
s. 474.17	ad. No. 127, 2004
	am. No. 44, 2012; No 4, 2016
s. 474.18	ad. No. 127, 2004
	am No 4, 2016

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Endnote 4—Amendment history

Provision affected	How affected
Subdivision D	
Subdivision D heading	ad. No. 42, 2010
s. 474.19	ad. No. 127, 2004
	am. No. 42, 2010; No 4, 2016
s. 474.20	ad. No. 127, 2004
	am. No. 42, 2010; No 4, 2016
s. 474.21	ad. No. 127, 2004
	am. No. 45, 2005; No. 124, 2007; No 25, 2015
s. 474.22	ad. No. 127, 2004
	am. No. 42, 2010; No 4, 2016
s. 474.23	ad. No. 127, 2004
	am. No. 42, 2010; No 4, 2016
s. 474.24	ad. No. 127, 2004
	am. No. 45, 2005; No. 124, 2007; No 25, 2015
s. 474.24A	ad. No. 42, 2010
s. 474.24B	ad. No. 42, 2010
s. 474.24C	ad. No. 42, 2010
Subdivision E	
Subdivision E heading	ad. No. 42, 2010
Heading to s. 474.25	am. No. 8, 2010
s. 474.25	ad. No. 127, 2004
	am. No. 8, 2010
Subdivision F	
Subdivision F heading	ad No 42, 2010
s 474.25A	ad No 42, 2010
s 474.25B	ad No 42, 2010
	am No 5, 2015
s. 474.26	ad. No. 127, 2004
	am. No. 42, 2010
s. 474.27	ad. No. 127, 2004
	am. No. 42, 2010

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Provision affected	How affected
s. 474.27A	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	
Subdivision G heading	ad. No. 42, 2010
s. 474.29A	ad. No. 92, 2005
	am No 4, 2016
s. 474.29B	ad. No. 92, 2005
	am No 4, 2016
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	
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; No 108, 2014

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Endnote 4—Amendment history

Provision affected	How affected
Division 477	
s. 477.1	ad. No. 161, 2001
	am. No. 127, 2004; No. 3, 2011; No. 120, 2012; No 4, 2016
s. 477.2	ad. No. 161, 2001
	am. No. 127, 2004; No. 120, 2012; No 4, 2016
s. 477.3	ad. No. 161, 2001
	am. No. 127, 2004; No. 120, 2012; No 4, 2016
Division 478	
s. 478.1	ad. No. 161, 2001
	am. No. 127, 2004; No. 120, 2012; No 4, 2016
s. 478.2	ad. No. 161, 2001
	am. No. 120, 2012; No 4, 2016
s. 478.3	ad. No. 161, 2001
	am No 4, 2016
s. 478.4	ad. No. 161, 2001
	am No 4, 2016
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
	am No 4, 2016
s. 480.5	ad. No. 127, 2004
	am No 4, 2016
s. 480.6	ad. No. 127, 2004
	am. No. 8, 2010; No 4, 2016
Part 10.9	
Part 10.9	ad No 15, 2016
Division 490	
s 490.1	ad No 15, 2016

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Provision affected	How affected
s 490.2	ad No 15, 2016
s 490.3	ad No 15, 2016
s 490.4	ad No 15, 2016
s 490.5	ad No 15, 2016
s 490.6	ad No 15, 2016
s 490.7	ad No 15, 2016
Dictionary	
Dictionary	am No 43, 1999; No 104, 1999; No 124, 2000; No 137, 2000; No 55, 2001; No 42, 2002; No 105, 2002 (as am by No 127, 2002); No 127, 2004; No 96, 2005; SLI No 50, 2006; No 125, 2006; No 18, 2009; No 54, 2009; No 70, 2009; No 3, 2010; No 4, 2010; No 42, 2010; No 127, 2010; No 3, 2011; No 46, 2011; No 136, 2012; No 6, 2013; No 13, 2013; No 5, 2015; No 59, 2015; No 153, 2015; No 15, 2016

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