# Criminal Code Act 1995

**No. 12, 1995**

## Compilation No. 174

**Compilation date:** 30 June 2026

**Includes amendments:** Act No. 53, 2026

This compilation is in 3 volumes

Volume 1: sections 1-5
Schedule (sections 1.1-261.3)
**Volume 2: Schedule (sections 268.1-395.50)**
Volume 3: Schedule (sections 400.1-490.7)
Schedule (Dictionary)
Endnotes

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

Authorised Version C2026C00243 registered 30/06/2026

# 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 30 June 2026 (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. The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au).

### Application, saving and transitional provisions

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.

### Presentational changes

The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

### 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. Any modifications affecting the law are accessible on the Register.

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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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



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## 268.5 Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator inflicts certain conditions of life upon one or more persons; and

(b) the person or persons belong to a particular national, ethnical, racial or religious group; and

(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.



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### 268.7 Genocide by forcibly transferring children

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator forcibly transfers one or more persons; and

(b) the person or persons belong to a particular national, ethnical, racial or religious group; and

(c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such; and

(d) the transfer is from that group to another national, ethnical, racial or religious group; and

(e) the person or persons are under the age of 18 years; and

(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.



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Penalty: Imprisonment for life.

### 268.9 Crime against humanity—extermination

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes the death of one or more persons; and

(b) the perpetrator's conduct constitutes, or takes place as part of, a mass killing of members of a civilian population; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for life.

(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



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a person or imposes on a person a similar deprivation of liberty and also includes exercise a power arising from a debt incurred or contract made by a person.

### 268.11 Crime against humanity—deportation or forcible transfer of population

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator forcibly displaces one or more persons, by expulsion or other coercive acts, from an area in which the person or persons are lawfully present to another country or location; and

(b) the forcible displacement is contrary to paragraph 4 of article 12 or article 13 of the Covenant; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish the lawfulness of the presence of the person or persons in the area; and

(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.



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### 268.12 Crime against humanity—imprisonment or other severe deprivation of physical liberty

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator imprisons one or more persons or otherwise severely deprives one or more persons of physical liberty; and

(b) the perpetrator's conduct violates article 9, 14 or 15 of the Covenant; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 17 years.

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

### 268.13 Crime against humanity—torture

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator inflicts severe physical or mental pain or suffering upon one or more persons who are in the custody or under the control of the perpetrator; and

(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



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(b) the perpetrator knows of, or is reckless as to, the lack of consent; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes another person to sexually penetrate the perpetrator without the consent of the other person; and

(b) the perpetrator knows of, or is reckless as to, the lack of consent; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

(3) In this section:

***consent*** means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;

(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.



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(4) In this section:

***sexually penetrate*** means:

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

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

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

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

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

## 268.15 Crime against humanity—sexual slavery

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes another person to enter into or remain in sexual slavery; and

(b) the perpetrator intends to cause, or is reckless as to causing, that sexual slavery; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

(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



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(b) is not free to leave the place or area where the person provides sexual services.

(3) In this section:

***threat*** means:

(a) a threat of force; or

(b) a threat to cause a person's deportation; or

(c) a threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of sexual services by a person.

## 268.16 Crime against humanity—enforced prostitution

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes one or more persons to engage in one or more acts of a sexual nature without the consent of the person or persons, including by being reckless as to whether there is consent; and

(b) the perpetrator intends that he or she, or another person, will obtain pecuniary or other advantage in exchange for, or in connection with, the acts of a sexual nature; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

***consent*** means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;



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(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;
(d) the person is incapable of understanding the essential nature of the act;
(e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);
(f) the person submits to the act because of psychological oppression or abuse of power;
(g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

***threat of force or coercion*** includes:

(a) a threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power; or
(b) taking advantage of a coercive environment.

(3) In subsection (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person or persons are consenting to engaging in the act or acts of a sexual nature.

## 268.17 Crime against humanity—forced pregnancy

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator unlawfully confines one or more women forcibly made pregnant; and
(b) the perpetrator intends to affect the ethnic composition of any population or to destroy, wholly or partly, a national, ethnical, racial or religious group, as such; and
(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):



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***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.

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;



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without the consent of the person or persons, including by being reckless as to whether there is consent; and

(b) the perpetrator's conduct is of a gravity comparable to the offences referred to in sections 268.14 to 268.18; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

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

(3) In subsection (1):

***consent*** means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;

(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;

(d) the person is incapable of understanding the essential nature of the act;

(e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);

(f) the person submits to the act because of psychological oppression or abuse of power;

(g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

***threat of force or coercion*** includes:

(a) a threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power; or

(b) taking advantage of a coercive environment.



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(4) In subsection (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person is consenting to the act or acts of a sexual nature.

## 268.20 Crime against humanity—persecution

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator severely deprives one or more persons of any of the rights referred to in paragraph (b); and

(b) the rights are those guaranteed in articles 6, 7, 8 and 9, paragraph 2 of article 14, article 18, paragraph 2 of article 20, paragraph 2 of article 23 and article 27 of the Covenant; and

(c) the perpetrator targets the person or persons by reason of the identity of a group or collectivity or targets the group or collectivity as such; and

(d) the grounds on which the targeting is based are political, racial, national, ethnic, cultural, religious, gender or other grounds that are recognised in paragraph 1 of article 2 of the Covenant; and

(e) the perpetrator's conduct is committed in connection with another act that is:

(i) a proscribed inhumane act; or

(ii) genocide; or

(iii) a war crime; and

(f) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 17 years.

(2) Strict liability applies to:

(a) the physical element of the offence referred to in paragraph (1)(a) that the rights are those referred to in paragraph (1)(b); and



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(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

(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



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(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

(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.



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### 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.

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



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### 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

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.



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Penalty: Imprisonment for 25 years.

(2) Strict liability applies to paragraph (1)(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:



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(a) the perpetrator coerces one or more persons, by act or threat:
  (i) to take part in military operations against that person's or those persons' own country or forces; or
  (ii) otherwise to serve in the forces of an adverse power; and
(b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and
(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and
(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 10 years.

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

## 268.31 War crime—denying a fair trial

(1) A person (the ***perpetrator***) commits an offence if:
(a) the perpetrator deprives one or more persons of a fair and regular trial by denying to the person any of the judicial guarantees referred to in paragraph (b); and
(b) the judicial guarantees are those defined in articles 84, 99 and 105 of the Third Geneva Convention and articles 66 and 71 of the Fourth Geneva Convention; and
(c) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and
(d) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and
(e) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.



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Penalty: Imprisonment for 10 years.

(2) Strict liability applies to:
(a) the physical element of the offence referred to in paragraph (1)(a) that the judicial guarantees are those referred to in paragraph (1)(b); and
(b) paragraphs (1)(b) and (c).

### 268.32 War crime—unlawful deportation or transfer

(1) A person (the ***perpetrator***) commits an offence if:
(a) the perpetrator unlawfully deports or transfers one or more persons to another country or to another location; and
(b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and
(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and
(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

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

### 268.33 War crime—unlawful confinement

(1) A person (the ***perpetrator***) commits an offence if:
(a) the perpetrator unlawfully confines or continues to confine one or more persons to a certain location; and
(b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and



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(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and
(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

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

## 268.34 War crime—taking hostages

(1) A person (the ***perpetrator***) commits an offence if:
(a) the perpetrator seizes, detains or otherwise holds hostage one or more persons; and
(b) the perpetrator threatens to kill, injure or continue to detain the person or persons; and
(c) the perpetrator intends to compel the government of a country, an international organisation or a person or group of persons to act or refrain from acting as an explicit or implicit condition for either the safety or the release of the person or persons; and
(d) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and
(e) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and
(f) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

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



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## Subdivision E—Other serious war crimes that are committed in the course of an international armed conflict

### 268.35 War crime—attacking civilians

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator directs an attack; and

(b) the object of the attack is a civilian population as such or individual civilians not taking direct part in hostilities; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

### 268.36 War crime—attacking civilian objects

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator directs an attack; and

(b) the object of the attack is not a military objective; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

### 268.37 War crime—attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator directs an attack; and

(b) the object of the attack is personnel involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations; and

(c) the personnel are entitled to the protection given to civilians under the Geneva Conventions or Protocol I to the Geneva Conventions; and



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(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

(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
(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



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(b) the perpetrator knows that the attack will cause:
  (i) damage to civilian objects; or
  (ii) widespread, long-term and severe damage to the natural environment; and
(c) the perpetrator knows that the damage will be of such an extent as to be excessive in relation to the concrete and direct military advantage anticipated; and
(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 20 years.

### 268.39 War crime—attacking undefended places

A person (the ***perpetrator***) commits an offence if:
(a) the perpetrator attacks or bombards one or more towns, villages, dwellings or buildings; and
(b) the towns, villages, dwellings or buildings are open for unresisted occupation; and
(c) the towns, villages, dwellings or buildings do not constitute military objectives; and
(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

### 268.40 War crime—killing or injuring a person who is *hors de combat*

(1) A person (the ***perpetrator***) commits an offence if:
(a) the perpetrator kills one or more persons; and
(b) the person or persons are *hors de combat*; and



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(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are *hors de combat*; and
(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:
(a) the perpetrator injures one or more persons; and
(b) the person or persons are *hors de combat*; and
(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are *hors de combat*; and
(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

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

## 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.



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### 268.42 War crime—improper use of a flag, insignia or uniform of the adverse party

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator uses a flag, insignia or uniform of the adverse party; and

(b) the perpetrator uses the flag, insignia or uniform while engaged in an attack or in order to shield, favour, protect or impede military operations; and

(c) the perpetrator knows of, or is reckless as to, the illegal nature of such use of the flag, insignia or uniform; and

(d) the perpetrator's conduct results in death or serious personal injury; and

(e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

### 268.43 War crime—improper use of a flag, insignia or uniform of the United Nations

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator uses a flag, insignia or uniform of the United Nations; and

(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.



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## 268.44 War crime—improper use of the distinctive emblems of the Geneva Conventions

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator uses an emblem; and

(b) the emblem is one of the distinctive emblems of the Geneva Conventions; and

(c) the perpetrator uses the emblem for combatant purposes to invite the confidence of an adversary in order to lead him or her to believe that the perpetrator is entitled to protection, or that the adversary is obliged to accord protection to the perpetrator, with intent to betray that confidence; and

(d) the perpetrator knows of, or is reckless as to, the illegal nature of such use; and

(e) the perpetrator's conduct results in death or serious personal injury; and

(f) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

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

(3) In this section:

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

## 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



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(ii) authorises, organises or directs, or participates in the authorisation, organisation or direction of, or participates in, the deportation or transfer of all or parts of the population of territory occupied by the perpetrator's own country within or outside that territory; and

(b) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

## 268.46 War crime—attacking protected objects

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator directs an attack; and

(b) the object of the attack is any one or more of the following that are not military objectives:

(i) buildings dedicated to religion, education, art, science or charitable purposes;

(ii) historic monuments;

(iii) hospitals or places where the sick and wounded are collected; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 20 years.

(2) The definitions of ***charitable purpose*** in subsection 12(1) of the *Charities Act 2013* and section 2B of the *Acts Interpretation Act 1901* do not apply to this section.

## 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



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or removing organs or appendages of, the person or persons; and

(b) the perpetrator's conduct causes the death of the person or persons; and

(c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are in the power of an adverse party; and

(e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling or removing organs or appendages of, the person or persons; and

(b) the perpetrator's conduct seriously endangers the physical or mental health, or the integrity, of the person or persons; and

(c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are in the power of an adverse party; and

(e) the conduct takes place in the context of, and is associated with, an international armed conflict.

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



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## 268.48 War crime—medical or scientific experiments

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to a medical or scientific experiment; and

(b) the experiment causes the death of the person or persons; and

(c) the perpetrator's conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are in the power of an adverse party; and

(e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to a medical or scientific experiment; and

(b) the experiment seriously endangers the physical or mental health, or the integrity, of the person or persons; and

(c) the perpetrator's conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are in the power of an adverse party; and

(e) the conduct takes place in the context of, and is associated with, an international armed conflict.

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



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## 268.49 War crime—treacherously killing or injuring

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator invites the confidence or belief of one or more persons that the perpetrator is entitled to protection, or that the person or persons are obliged to accord protection to the perpetrator; and

(b) the perpetrator kills the person or persons; and

(c) the perpetrator makes use of that confidence or belief in killing the person or persons; and

(d) the person or persons belong to an adverse party; and

(e) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator invites the confidence or belief of one or more persons that the perpetrator is entitled to protection, or that the person or persons are obliged to accord protection to the perpetrator; and

(b) the perpetrator injures the person or persons; and

(c) the perpetrator makes use of that confidence or belief in injuring the person or persons; and

(d) the person or persons belong to an adverse party; and

(e) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

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

## 268.50 War crime—denying quarter

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator declares or orders that there are to be no survivors; and



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(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.



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Penalty: Imprisonment for 15 years.

### 268.55 War crime—employing poison or poisoned weapons

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator employs a substance or employs a weapon that releases a substance as a result of its employment; and

(b) the substance is such that it causes death or serious damage to health in the ordinary course of events through its toxic properties; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

### 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



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(c) the perpetrator knows that, or is reckless as to whether, the nature of the bullets is such that their employment will uselessly aggravate suffering or the wounding effect; and
(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

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

## 268.58 War crime—outrages upon personal dignity

(1) A person (the ***perpetrator***) commits an offence if:
(a) the perpetrator severely humiliates, degrades or otherwise violates the dignity of one or more persons; and
(b) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

(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



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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 25 years.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes another person to sexually penetrate the perpetrator without the consent of the other person; and

(b) the perpetrator knows about, or is reckless as to, the lack of consent; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(3) In this section:

***consent*** means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;

(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;

(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:



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

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

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

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

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

## 268.60 War crime—sexual slavery

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes another person to enter into or remain in sexual slavery; and

(b) the perpetrator intends to cause, or is reckless as to causing, that sexual slavery; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(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:



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***threat*** means:

(a) a threat of force; or

(b) a threat to cause a person's deportation; or

(c) a threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of sexual services by a person.

## 268.61 War crime—enforced prostitution

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes one or more persons to engage in one or more acts of a sexual nature without the consent of the person or persons, including by being reckless as to whether there is consent; and

(b) the perpetrator intends that he or she, or another person, will obtain pecuniary or other advantage in exchange for, or in connection with, the acts of a sexual nature; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

***consent*** means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;

(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;

(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.

(3) In subsection (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person is consenting to the act or acts of a sexual nature.

## 268.62 War crime—forced pregnancy

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator unlawfully confines one or more women forcibly made pregnant; and
(b) the perpetrator intends to affect the ethnic composition of any population or to destroy, wholly or partly, a national, ethnical, racial or religious group, as such; and
(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

***forcibly made pregnant*** includes made pregnant by a consent that was effected by deception or by natural, induced or age-related incapacity.

(3) To avoid doubt, this section does not affect any other law of the Commonwealth or any law of a State or Territory.



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## 268.63 War crime—enforced sterilisation

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator deprives one or more persons of biological reproductive capacity; and

(b) the deprivation is not effected by a birth-control measure that has a non-permanent effect in practice; and

(c) the perpetrator's conduct is neither justified by the medical or hospital treatment of the person or persons nor carried out with the consent of the person or persons; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

***consent*** does not include consent effected by deception or by natural, induced or age-related incapacity.

## 268.64 War crime—sexual violence

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator does either of the following:

(i) commits an act or acts of a sexual nature against one or more persons;

(ii) causes one or more persons to engage in an act or acts of a sexual nature;

without the consent of the person or persons, including by being reckless as to whether there is consent; and

(b) the perpetrator's conduct is of a gravity comparable to the offences referred to in sections 268.59 to 268.63; and

(c) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.



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

(3) In subsection (1):

***consent*** means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;

(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;

(d) the person is incapable of understanding the essential nature of the act;

(e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);

(f) the person submits to the act because of psychological oppression or abuse of power;

(g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

***threat of force or coercion*** includes:

(a) a threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power; or

(b) taking advantage of a coercive environment.

(4) In subsection (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person is consenting to the act or acts of a sexual nature.



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### 268.65 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, medical or religious personnel or persons who are *hors de combat*; and

(b) the perpetrator intends the perpetrator's conduct to render a military objective immune from attack or to shield, favour or impede military operations; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty:

(a) if the conduct results in the death of any of the persons referred to in paragraph (a)—imprisonment for life; or

(b) otherwise—imprisonment for 17 years.

(2) In this section:

***religious personnel*** includes non-confessional, non-combatant military personnel carrying out a similar function to religious personnel.

### 268.66 War crime—attacking persons or objects using the distinctive emblems of the Geneva Conventions

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator attacks one or more persons; and

(b) the person or persons are using, in conformity with the Geneva Conventions or the Protocols to the Geneva Conventions, any of the distinctive emblems of the Geneva Conventions; and

(c) the perpetrator intends the persons so using such an emblem to be the object of the attack; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.



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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:
    (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).



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Section 268.68

## 268.68 War crime—using, conscripting or enlisting children

*National armed forces*

(1) A person (the ***perpetrator***) commits an offence if:
  (a) the perpetrator uses one or more persons to participate actively in hostilities as members of the national armed forces; and
  (b) the person or persons are under the age of 15 years; and
  (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

(2) A person (the ***perpetrator***) commits an offence if:
  (a) the perpetrator conscripts one or more persons into the national armed forces; and
  (b) the person or persons are under the age of 15 years; and
  (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

(3) A person (the ***perpetrator***) commits an offence if:
  (a) the perpetrator enlists one or more persons into the national armed forces; and
  (b) the person or persons are under the age of 15 years; and
  (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 10 years.

*Other armed forces and groups*

(4) A person (the ***perpetrator***) commits an offence if:



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(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 neither taking an active part in the hostilities nor are members of an organised armed group; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are neither taking an active part in the hostilities nor are members of an organised armed group; 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.

(1A) Subsection (1) does not apply if:

(a) the death of the person or persons occurs in the course of, or as a result of, an attack on a military objective; and

(b) at the time the attack was launched:

(i) the perpetrator did not expect that the attack would result in the incidental death of, or injury to, civilians



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that would have been excessive in relation to the concrete and direct military advantage anticipated; and

(ii) it was reasonable in all the circumstances that the perpetrator did not have such an expectation.

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

(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.

(3) For the purposes of this section, the expression ***members of an organised armed group*** does not include members of an organised armed group who are *hors de combat*.

## 268.71 War crime—mutilation

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling 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 neither taking an active part in the hostilities nor are members of an organised armed group; and

(e) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are neither taking an active part in the hostilities nor are members of an organised armed group; 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 life.

(1A) Subsection (1) does not apply if:

(a) the death of the person or persons occurs in the course of, or as a result of, an attack on a military objective; and

(b) at the time the attack was launched:

(i) the perpetrator did not expect that the attack would result in the incidental death of, or injury to, civilians that would have been excessive in relation to the concrete and direct military advantage anticipated; and

(ii) it was reasonable in all the circumstances that the perpetrator did not have such an expectation.

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

(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 neither taking an active part in the hostilities nor are members of an organised armed group; and

(e) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are neither taking an active part in the hostilities nor are members of an organised armed group; 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.

(2A) Subsection (2) does not apply if:

(a) the serious endangerment of the physical or mental health, or integrity, of the person or persons occurs in the course of, or as a result of, an attack on a military objective; and

(b) at the time the attack was launched:

(i) the perpetrator did not expect that the attack would result in the incidental death of, or injury to, civilians that would have been excessive in relation to the concrete and direct military advantage anticipated; and

(ii) it was reasonable in all the circumstances that the perpetrator did not have such an expectation.

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

(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.

(4) For the purposes of this section, the expression ***members of an organised armed group*** does not include members of an organised armed group who are *hors de combat*.



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## 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 neither taking an active part in the hostilities nor are members of an organised armed group; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are neither taking an active part in the hostilities nor are members of an organised armed group; 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.

(1A) Subsection (1) does not apply if:

(a) the infliction of the severe physical or mental pain or suffering on the person or persons occurs in the course of, or as a result of, an attack on a military objective; and

(b) at the time the attack was launched:

(i) the perpetrator did not expect that the attack would result in the incidental death of, or injury to, civilians that would have been excessive in relation to the concrete and direct military advantage anticipated; and

(ii) it was reasonable in all the circumstances that the perpetrator did not have such an expectation.

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

(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



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

(3) For the purposes of this section, the expression ***members of an organised armed group*** does not include members of an organised armed group who are *hors de combat*.

## 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.



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## 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

(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



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condition for either the safety or the release of the person or persons; and

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

(e) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and

(f) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.

(2) To avoid doubt, a reference in subsection (1) to a person or persons who are not taking an active part in the hostilities includes a reference to:

(a) a person or persons who are *hors de combat*; or

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

## 268.76 War crime—sentencing or execution without due process

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator passes a sentence on one or more persons; and

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

(c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and

(d) either of the following applies:

(i) there was no previous judgment pronounced by a court;

(ii) the court that rendered judgment did not afford the essential guarantees of independence and impartiality or other judicial guarantees; and



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(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.

(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



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(ii) if subparagraph (d)(ii) applies—the failure to afford the relevant guarantees and the fact that they are indispensable to a fair trial; and

(g) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 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.

## 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.



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## 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

(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).



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### 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

(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:



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(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
(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



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(b) the perpetrator knows of, or is reckless as to, the lack of consent; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes another person to sexually penetrate the perpetrator without the consent of the other person; and

(b) the perpetrator knows of, or is reckless as to, the lack of consent; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

(3) In this section:

***consent*** means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;

(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;

(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.



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(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

(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



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(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):

***consent*** means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;



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(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;
(d) the person is incapable of understanding the essential nature of the act;
(e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);
(f) the person submits to the act because of psychological oppression or abuse of power;
(g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

***threat of force or coercion*** includes:

(a) a threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power; or
(b) taking advantage of a coercive environment.

(3) In subsection (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person 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
(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.



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(2) In subsection (1):

***forcibly made pregnant*** includes made pregnant by a consent that was affected by deception or by natural, induced or age-related incapacity.

(3) To avoid doubt, this section does not affect any other law of the Commonwealth or any law of a State or Territory.

## 268.86 War crime—enforced sterilisation

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator deprives one or more persons of biological reproductive capacity; and

(b) the deprivation is not effected by a birth-control measure that has a non-permanent effect in practice; and

(c) the perpetrator's conduct is neither justified by the medical or hospital treatment of the person or persons nor carried out with the consent of the person or persons; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

***consent*** does not include consent effected by deception or by natural, induced or age-related incapacity.

## 268.87 War crime—sexual violence

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator does either of the following:

(i) commits an act or acts of a sexual nature against one or more persons;



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(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.



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Penalty for a contravention of this subsection: Imprisonment for 10 years.

## 268.89 War crime—displacing civilians

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator orders a displacement of a civilian population; and

(b) the order is not justified by the security of the civilians involved or by imperative military necessity; and

(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



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the person or persons are obliged to accord protection to the perpetrator; and

(b) the perpetrator injures the person or persons; and

(c) the perpetrator makes use of that confidence or belief in injuring the person or persons; and

(d) the person or persons belong to an adverse party; and

(e) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

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

## 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



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or removing organs or appendages of, the person or persons; and

(b) the perpetrator's conduct causes the death of the person or persons; and

(c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are 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.



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Section 268.93

## 268.93 War crime—medical or scientific experiments

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to a medical or scientific experiment; and

(b) the experiment causes the death of the person or persons; and

(c) the perpetrator's conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are in the power of another party to the conflict; and

(e) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to a medical or scientific experiment; and

(b) the experiment seriously endangers the physical or mental health, or the integrity, of the person or persons; and

(c) the perpetrator's conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are in the power of another party to the conflict; and

(e) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

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



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### 268.94 War crime—destroying or seizing an adversary's property

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator destroys or seizes certain property; and

(b) the property is property of an adversary; and

(c) the property is protected from the destruction or seizure under article 14 of Protocol II to the Geneva Conventions; and

(d) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the property is so protected; and

(e) the destruction or seizure is not justified by military necessity; and

(f) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 15 years

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

## Subdivision H—War crimes that are grave breaches of Protocol I to the Geneva Conventions

### 268.95 War crime—medical procedure

A person (the ***perpetrator***) commits an offence if:

(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



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circumstances to persons who are of the same nationality as the perpetrator and are in no way deprived of liberty; and

(e) the person or persons are in the power of, or are interned, detained or otherwise deprived of liberty by, the country of the perpetrator as a result of an international armed conflict; and

(f) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

### 268.96 War crime—removal of blood, tissue or organs for transplantation

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator removes from one or more persons blood, tissue or organs for transplantation; and

(b) in the case of the removal of blood—the removal:

(i) is not for transfusion; or

(ii) is for transfusion without the consent of the person or persons; and

(c) in the case of the removal of skin—the removal:

(i) is not for grafting; or

(ii) is for grafting without the consent of the person or persons; and

(d) the intent of the removal is non-therapeutic; and

(e) the removal is not carried out under conditions consistent with generally accepted medical standards and controls designed for the benefit of the person or persons and of the recipient; and

(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.



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Penalty: Imprisonment for 25 years.

(2) In subsection (1):

***consent*** means consent given voluntarily and without any coercion or inducement.

### 268.97 War crime—attack against works or installations containing dangerous forces resulting in excessive loss of life or injury to civilians

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator launches an attack against works or installations containing dangerous forces; and

(b) the attack is such that it will cause loss of life, injury to civilians, or damage to civilian objects, to such an extent as to be excessive in relation to the concrete and direct military advantage anticipated; and

(c) the perpetrator knows that the attack will cause loss of life, injury to civilians, or damage to civilian objects, to such an extent; and

(d) the attack results in death or serious injury to body or health; and

(e) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

### 268.98 War crime—attacking undefended places or demilitarized zones

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator attacks one or more towns, villages, dwellings, buildings or demilitarized zones; and

(b) the towns, villages, dwellings or buildings are open for unresisted occupation; and



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(c) the attack results in death or serious injury to body or health; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

### 268.99 War crime—unjustifiable delay in the repatriation of prisoners of war or civilians

(1) A person (the ***perpetrator***) commits an offence if:

(a) one or more persons are in the power of, or are interned, detained or otherwise deprived of liberty by, an adverse party as a result of an international armed conflict; and

(b) the perpetrator unjustifiably delays the repatriation of the person or persons to the person's own country or the persons' own countries; and

(c) the delay is in violation of Part IV of the Third Geneva Convention or Chapter XII of Section IV of Part III of the Fourth Geneva Convention.

Penalty: Imprisonment for 10 years.

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

### 268.100 War crime—apartheid

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator commits against one or more persons an act that is a proscribed inhumane act or is of a nature and gravity similar to any proscribed inhumane act; and

(b) the perpetrator knows of, or is reckless at to, the factual circumstances that establish the character of the act; and

(c) the perpetrator's conduct is committed in the context of an institutionalised regime of systematic oppression and



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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.

### 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:



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(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.

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.



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### 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.

### 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.



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(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

(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



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(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.

### 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.



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(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.

## 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



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(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.

### 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.



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(2) For the purposes of subsection (1), it is immaterial whether the benefit is in the nature of a reward.

### 268.114 Subdivision not to apply to certain conduct

(1) This Subdivision does not apply to a person in respect of:
  (a) conduct that results in a failure or refusal to issue a certificate under section 22 or 29 of the *International Criminal Court Act 2002*; or
  (b) a failure or refusal to issue such a certificate; or
  (c) conduct engaged in reliance on the absence of such a certificate.

(2) In this section:

***conduct*** includes any one or more acts or omissions.

## Subdivision K—Miscellaneous

### 268.115 Responsibility of commanders and other superiors

(1) The criminal responsibility imposed by this section is in addition to other grounds of criminal responsibility under the law in force in 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



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(b) the military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(3) With respect to superior and subordinate relationships not described in subsection (2), a superior is criminally responsible for offences against this Division committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over those subordinates, where:

(a) the superior either knew, or consciously disregarded information that clearly indicated, that the subordinates were committing or about to commit such offences; and

(b) the offences concerned activities that were within the effective responsibility and control of the superior; and

(c) the superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

## 268.116 Defence of superior orders

(1) The fact that genocide or a crime against humanity has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, does not relieve the person of criminal responsibility.

(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



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(c) the person did not know that the order was unlawful; and
(d) the order was not manifestly unlawful.

Note: A defendant bears an evidential burden in establishing the elements in subsection (3). See subsection 13.3(3).

### 268.117 Geographical jurisdiction

(1) Section 15.4 (extended geographical jurisdiction—Category D) applies to genocide, crimes against humanity and war crimes.

(2) Section 15.3 (extended geographical jurisdiction—Category C) applies to crimes against the administration of the justice of the International Criminal Court.

### 268.118 Double jeopardy

A person cannot be tried by a federal court or a court of a State or Territory for an offence under this Division if the person has already been convicted or acquitted by the International Criminal Court for an offence constituted by substantially the same conduct as constituted the offence under this Division.

### 268.119 Offences related to exercise of jurisdiction of International Criminal Court

(1) A person must not:
(a) intentionally contravene an order that the International Criminal Court makes while sitting in Australia; or
(b) otherwise intentionally hinder the International Criminal Court in performing its functions while sitting in Australia.

Penalty: Imprisonment for 2 years.

(2) In this section:

***Australia*** includes all the external Territories.



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### 268.120 Saving of other laws

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

### 268.121 Bringing proceedings under this Division

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

(2) An offence against this Division may only be prosecuted in the name of the Attorney-General.

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

### 268.122 Attorney-General's decisions in relation to consents to be final

(1) Subject to any jurisdiction of the High Court under the Constitution, a decision by the Attorney-General to give, or to refuse to give, a consent under section 268.121:
  (a) is final; and
  (b) must not be challenged, appealed against, reviewed, quashed or called in question; and
  (c) is not subject to prohibition, mandamus, injunction, declaration or certiorari.

(2) The reference in subsection (1) to a decision includes a reference to the following:
  (a) a decision to vary, suspend, cancel or revoke a consent that has been given;
  (b) a decision to impose a condition or restriction in connection with the giving of, or a refusal to give, a consent or to remove a condition or restriction so imposed;



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(c) a decision to do anything preparatory to the making of a decision to give, or to refuse to give, a consent or preparatory to the making of a decision referred to in paragraph (a) or (b), including a decision for the taking of evidence or the holding of an inquiry or investigation;

(d) a decision doing or refusing to do anything else in connection with a decision to give, or to refuse to give, a consent or a decision referred to in paragraph (a), (b) or (c);

(e) a failure or refusal to make a decision whether or not to give a consent or a decision referred to in a paragraph (a), (b), (c) or (d).

(3) Any jurisdiction of the High Court referred to in subsection (1) is exclusive of the jurisdiction of any other court.

### 268.123 Legal representation

The provisions of section 12 (other than subsection 12(2)) of the *Geneva Conventions Act 1957* apply in relation to the trial of a person for an offence against this Division in the same way as they apply in relation to the trial of a protected prisoner of war.

### 268.124 Proof of application of Geneva Conventions or Protocol I to the Geneva Conventions

If, in proceedings under this Division in respect of a grave breach of any of the Geneva Conventions or of Protocol I to the Geneva Conventions, a question arises under:

(a) Article 2 of the Geneva Convention concerned (which relates to the circumstances in which the Convention applies); or

(b) Article 1 of that Protocol (which relates to the circumstances in which the Protocol applies);

a certificate signed by the Minister responsible for legislation relating to foreign affairs certifying to any matter relevant to that question is prima facie evidence of the matter so certified.



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## 268.125 Meaning of *civilian*

In this Division, the expression ***civilian*** does not include a person who is a member of an organised armed group.



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# Division 270—Slavery and slavery-like offences

## 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.

***debt bondage*** is the condition of a person (the ***first person***) if:

(a) the condition arises from a pledge:
  (i) by the first person of the personal services of the first person; or
  (ii) by another person of the personal services of the first person, and the first person is under the other person's control; or
  (iii) by the first person of the personal services of another person who is under the first person's control; and
(b) the pledge is made 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 the person making the pledge; and
(c) any of the following apply:



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(i) the debt owed or claimed to be owed is manifestly excessive;
(ii) the reasonable value of those services is not applied toward the liquidation of the debt or purported debt;
(iii) the length and nature of those services are not respectively limited and defined.

***deceive*** has the same meaning as in Division 271 (see section 271.1).

Note: ***Deception*** has a corresponding meaning (see section 18A of the *Acts Interpretation Act 1901*).

***forced labour*** has the meaning given by section 270.6.

***forced marriage*** has the meaning given by section 270.7A.

***servitude*** has the meaning given by section 270.4.

***slavery*** has the meaning given by section 270.1.

***slavery-like offence*** means an offence against any of the following provisions:

(a) section 270.5 (servitude offences);
(b) section 270.6A (forced labour offences);
(c) section 270.7 (deceptive recruiting for labour or services);
(d) section 270.7B (forced marriage offences);
(e) section 270.7C (debt bondage).

***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).



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## Subdivision B—Slavery

### 270.1 Definition of *slavery*

For the purposes of this Division, ***slavery*** is the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person.

### 270.2 Slavery is unlawful

Slavery remains unlawful and its abolition is maintained, despite the repeal by the *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* of Imperial Acts relating to slavery.

### 270.3 Slavery offences

(1) A person who, whether within or outside Australia, intentionally:
- (aa) reduces a person to slavery; or
- (a) possesses a slave or exercises over a slave any of the other powers attaching to the right of ownership; or
- (b) engages in slave trading; or
- (c) enters into any commercial transaction involving a slave; or
- (d) exercises control or direction over, or provides finance for:
  - (i) any act of slave trading; or
  - (ii) any commercial transaction involving a slave;

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



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(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 offences

### 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<br>Servitude offences | Column 2<br>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:



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(a) escape from the condition is practically possible for the victim; or
(b) the victim has attempted to escape from the condition.

## 270.6A Forced labour offences

*Causing a person to enter into or remain in forced labour*

(1) A person commits an offence if:
(a) the person engages in conduct; and
(b) the conduct causes another person to enter into or remain in forced labour.

Penalty:
(a) in the case of an aggravated offence (see section 270.8)—imprisonment for 12 years; or
(b) in any other case—imprisonment for 9 years.

*Conducting a business involving forced labour*

(2) A person commits an offence if:
(a) the person conducts any business; and
(b) the business involves the forced labour of another person (or persons).

Penalty:
(a) in the case of an aggravated offence (see section 270.8)—imprisonment for 12 years; or
(b) in any other case—imprisonment for 9 years.

Note: On a trial for an offence against section 270.5 (servitude offences), the trier of fact may find a defendant not guilty of that offence but guilty of the corresponding offence under this section (see subsections 270.5(3) and (4)).

## 270.7 Deceptive recruiting for labour or services

A person (the ***recruiter***) commits an offence if:



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(a) the recruiter engages in conduct; and

(b) the recruiter engages in the conduct with the intention of inducing another person (the ***victim***) to enter into an engagement to provide labour or services; and

(c) the conduct causes the victim to be deceived about:

(i) the extent to which the victim will be free to leave the place or area where the victim provides the labour or services; or

(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:

(a) either party to the marriage (the ***victim***) entered into the marriage without freely and fully consenting:

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



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(ii) because the victim was incapable of understanding the nature and effect of the marriage ceremony; or

(b) when the marriage was entered into, either party to the marriage (the ***victim***) was under 16.

(2) For the purposes of subsection (1), ***marriage*** includes the following:

(a) a registered relationship within the meaning of section 2E of the *Acts Interpretation Act 1901*;

(b) a marriage recognised under a law of a foreign country;

(c) a relationship registered (however that process is described) under a law of a foreign country, if the relationship is of the same, or a similar, type as any registered relationship within the meaning of section 2E of the *Acts Interpretation Act 1901*;

(d) a marriage (including a relationship or marriage mentioned in paragraph (a), (b) or (c)) that is void, invalid, or not recognised by law, for any reason, including the following:

(i) a party to the marriage has not freely or fully consented to the marriage (for example, because of natural, induced or age-related incapacity);

(ii) a party to the marriage is married (within the meaning of this subsection) to more than one person.

Note: Section 2E of the *Acts Interpretation Act 1901* covers relationships registered under a law of a State or Territory that are prescribed by regulations under that Act.

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

## 270.7B Forced marriage offences

*Causing a person to enter into a forced marriage*

(1) A person (the ***first person***) commits an offence if:

(a) the first person engages in conduct; and



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(b) the conduct causes another person to enter into a forced marriage as the victim of the marriage.

Penalty:

(a) in the case of an aggravated offence (see section 270.8)—imprisonment for 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)).

*Consent to commence proceedings if defendant under 18*

(5) Proceedings for an offence against subsection (1) or (2) must not be commenced without the consent of the Attorney-General if the defendant was under 18 at the time the defendant allegedly engaged in the conduct constituting the offence.



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(6) 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.

## 270.7C 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:

(a) in the case of an aggravated offence (see section 270.8)—imprisonment for 7 years; or

(b) in any other case—imprisonment for 4 years.

## 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.

Note: In the case of a slavery-like offence against section 270.7B involving a marriage that is a forced marriage because the victim was under 16 when the marriage was entered into (see paragraph 270.7A(1)(b)), the offence is also an aggravated offence because of paragraph (a) of this subsection.

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



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(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, 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 this Subdivision—the alleged victim has been coerced, threatened or deceived; or

(b) in the case of an offence against section 270.5—the alleged victim was significantly deprived of personal freedom; or

(c) in the case of an offence against section 270.7B—the alleged victim was incapable of understanding the nature and effect of a marriage ceremony; or

(d) in the case of an offence against section 270.7C—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, the alleged offender or a family member of the alleged victim or alleged offender, and any other person;



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(b) the terms of any written or oral contract or agreement between the alleged victim, the alleged offender or a family member of the alleged victim or alleged offender, and any other person;

(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 or any other person.

(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.

(4) In this section:

***family member*** of a person means:

(a) the person's spouse or de facto partner; or

(b) a parent, step-parent or grandparent of the person; or

(c) a child, step-child or grandchild of the person; or

(d) a brother, sister, step-brother or step-sister of the person; or

(e) a guardian or carer of the person.

(5) For the purposes of this section, the family members of a person are taken to include the following (without limitation):

(a) a de facto partner of the person;

(b) someone who is the child of the person, or of whom the person is the child, because of the definition of ***child*** in the Dictionary;

(c) anyone else who would be a member of the person's family if someone mentioned in paragraph (a) or (b) is taken to be a family member of the person.



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## 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:

(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;



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(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

## 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;



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(e) debt bondage.

Note: Division 270 (slavery and slavery-like offences) deals with slavery, servitude, forced labour, forced marriage and 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



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person will be exploited, either by the first person or another, after that entry or receipt.

Penalty: Imprisonment for 12 years.

(1C) A person (the ***first person***) commits an offence of trafficking in persons if:

(a) the first person organises or facilitates the exit or proposed exit of another person from Australia; and

(b) in organising or facilitating that exit or proposed exit, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that exit.

Penalty: Imprisonment for 12 years.

(2) A person (the ***first person***) commits an offence of trafficking in persons if:

(a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and

(b) the first person deceives the other person about the fact that the other person's entry or proposed entry, the other person's receipt or any arrangements for the other person's stay in Australia, will involve the provision by the other person of sexual services or will involve the other person's exploitation or the confiscation of the other person's travel or identity documents.

Penalty: Imprisonment for 12 years.

(2A) A person (the ***first person***) commits an offence of trafficking in persons if:

(a) the first person organises or facilitates the exit or proposed exit of another person from Australia; and

(b) the first person deceives the other person about the fact that the other person's exit or proposed exit is for purposes that involve the provision by the other person of sexual services outside Australia or will involve the other person's



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exploitation or the confiscation of the other person's travel or identity documents.

Penalty: Imprisonment for 12 years.

(2B) A person (the ***first person***) commits an offence of trafficking in persons if:

(a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and

(b) there is an arrangement for the other person to provide sexual services in Australia; and

(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:



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(i) the nature of the sexual services to be provided;

(ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;

(iii) the extent to which the other person will be free to cease providing sexual services;

(iv) the extent to which the other person will be free to leave his or her place of residence;

(v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services—the quantum, or the existence, of the debt owed or claimed to be owed.

Penalty: Imprisonment for 12 years.

(3) Absolute liability applies to paragraphs (1)(c) and (1A)(c).

## 271.3 Trafficking in persons—aggravated offence

(1) A person (the ***first person***) commits an aggravated offence of trafficking in persons if the first person commits the offence of trafficking in persons in relation to another person (the ***victim***) and any of the following applies:

(a) the first person commits the offence intending that the victim will be exploited, either by the first person or another:

(i) if the offence of trafficking in persons is an offence against subsection 271.2(1), (1B), (2) or (2B)—after entry into Australia; or

(ii) if the offence of trafficking in persons is an offence against subsection 271.2(1A), (1C), (2A) or (2C)—after exit from Australia;

(b) the first person, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;

(c) the first person, in committing the offence:

(i) engages in conduct that gives rise to a danger of death or serious harm to the victim or another person; and



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(ii) is reckless as to that danger.

Penalty: Imprisonment for 20 years.

(2) If, on a trial for an offence against this section, the court, or if the trial is before a jury, the jury, is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 271.2, it may find the defendant not guilty of the aggravated offence but guilty of an offence against that section.

(3) Subsection (2) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the offence against section 271.2.

Note: Section 271.2 provides for offences of trafficking in persons.

## 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:



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(a) the first person organises or facilitates the exit or proposed exit from Australia of another person; and
(b) the other person is under the age of 18; and
(c) in organising or facilitating that exit or proposed exit, the first person:
(i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that exit; or
(ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that exit.

Penalty: Imprisonment for 25 years.

## 271.5 Offence of domestic trafficking in persons

(1) A person (the ***first person***) commits an offence of domestic trafficking in persons if:
(a) the first person organises or facilitates the transportation or proposed transportation of another person from one place in Australia to another place in Australia; and
(b) the first person uses coercion, threat or deception; and
(c) that use of coercion, threat or deception results in the first person obtaining the other person's compliance in respect of that transportation or proposed transportation.

Penalty: Imprisonment for 12 years.

(2) A person (the ***first person***) commits an offence of domestic trafficking in persons if:
(a) the first person organises or facilitates the transportation or proposed transportation of another person from one place in Australia to another place in Australia; and
(b) in organising or facilitating that transportation or proposed transportation, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that transportation.



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Penalty: Imprisonment for 12 years.

(2A) A person (the ***first person***) commits an offence of domestic trafficking in persons if:

(a) the first person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and

(b) the first person deceives the other person about the fact that the transportation, or any arrangements the first person has made for the other person following the transportation, will involve the provision by the other person of sexual services or will involve the other person's exploitation or the confiscation of the other person's travel or identity documents.

Penalty: Imprisonment for 12 years.

(2B) A person (the ***first person***) commits an offence of domestic trafficking in persons if:

(a) the first person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and

(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,



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or the existence, of the debt owed or claimed to be owed.

Penalty: Imprisonment for 12 years.

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

## 271.6 Domestic trafficking in persons—aggravated offence

(1) A person (the ***first person***) commits an aggravated offence of domestic trafficking in persons if the first person commits the offence of domestic trafficking in persons in relation to another person (the ***victim***) and any of the following applies:

(a) the first person commits the offence intending that the victim will be exploited, either by the first person or by another, after arrival at the place to which the person has been transported;

(b) the first person, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;

(c) the first person, in committing the offence:

(i) engages in conduct that gives rise to a danger of death or serious harm to the victim or another person; and

(ii) is reckless as to that danger.

Penalty: Imprisonment for 20 years.

(2) If, on a trial for an offence against this section, the court, or if the trial is before a jury, the jury, is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 271.5, it may find the defendant not guilty of the aggravated offence, but guilty of an offence against that section.

(3) Subsection (2) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the offence against section 271.5.

Note: Section 271.5 provides for offences of domestic trafficking in persons.



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### 271.7 Offence of domestic trafficking in children

A person commits an offence of domestic trafficking in children if:

(a) the first-mentioned person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and

(b) the other person is under the age of 18; and

(c) in organising or facilitating that transportation, the first-mentioned person:

(i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place; or

(ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place.

Penalty: Imprisonment for 25 years.

## Subdivision BA—Organ trafficking

### 271.7A Removal of organs contrary to this Subdivision

The removal of a person's organ is contrary to this Subdivision if:

(a) the removal, or entering into an agreement for the removal, would be contrary to the law of the State or Territory where it is, or is to be, carried out; or

(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.



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## 271.7B Offence of organ trafficking—entry into and exit from Australia

*Entry into Australia*

(1) A person (the ***offender***) commits an offence of organ trafficking if:

(a) the offender engages in conduct consisting of the organisation or facilitation of the entry or proposed entry, or the receipt, of another person (the ***victim***) into Australia; and

(b) the offender is reckless as to whether the conduct will result in the removal of an organ of the victim contrary to this Subdivision, by the offender or another person, after or in the course of that entry or receipt.

Penalty: Imprisonment for 12 years.

Note: For when the removal of an organ is contrary to this Subdivision, see section 271.7A.

*Exit from Australia*

(2) A person (the ***offender***) commits an offence of organ trafficking if:

(a) the offender engages in conduct consisting of the organisation or facilitation of the exit or proposed exit of another person (the ***victim***) from Australia; and

(b) the offender is reckless as to whether the conduct will result in the removal of an organ of the victim contrary to this Subdivision, by the offender or another person, after or in the course of that exit.

Penalty: Imprisonment for 12 years.

Note: For when the removal of an organ is contrary to this Subdivision, see section 271.7A.

## 271.7C Organ trafficking—aggravated offence

(1) A person (the ***offender***) commits an aggravated offence of organ trafficking if the offender commits an offence of organ trafficking



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in relation to another person (the ***victim***) and any of the following applies:

(a) the victim is under 18;

(b) the offender commits the offence intending that an organ of the victim will be removed contrary to this Subdivision, either by the offender or another person:

(i) if the offence of organ trafficking is an offence against subsection 271.7B(1)—after or in the course of entry into Australia; or

(ii) if the offence of organ trafficking is an offence against subsection 271.7B(2)—after or in the course of exit from Australia;

(c) the offender, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;

(d) the offender, in committing the offence:

(i) engages in conduct that gives rise to a danger of death or serious harm to the victim or another person; and

(ii) is reckless as to that danger.

Penalty:

(a) if this subsection applies because the victim is under 18—imprisonment for 25 years; or

(b) in any other case—imprisonment for 20 years.

Note: For when the removal of an organ is contrary to this Subdivision, see section 271.7A.

(2) If, on a trial for an offence against this section, the court, or if the trial is before a jury, the jury, is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 271.7B, it may find the defendant not guilty of the aggravated offence but guilty of an offence against that section.

(3) Subsection (2) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the offence against section 271.7B.



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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:

(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.



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Penalty:

(a) if this subsection applies because the victim is under 18—imprisonment for 25 years; or

(b) in any other case—imprisonment for 20 years.

Note: For when the removal of an organ is contrary to this Subdivision, see section 271.7A.

(2) If, on a trial for an offence against this section, the court, or if the trial is before a jury, the jury, is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 271.7D, it may find the defendant not guilty of the aggravated offence, but guilty of an offence against that section.

(3) Subsection (2) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the offence against section 271.7D.

Note: Section 271.7D provides for offences of domestic organ trafficking.

## Subdivision BB—Harbouring a victim

### 271.7F Harbouring a victim

(1) A person (the ***offender***) commits an offence of harbouring a victim if:

(a) the offender harbours, receives or conceals another person (the ***victim***); and

(b) the harbouring, receipt or concealing of the victim:

(i) assists a third person in connection with any offence committed by the third person (the ***third person offence***); or

(ii) furthers a third person's purpose in relation to any offence committed by the third person (the ***third person offence***); and

(c) the third person offence is an offence against this Division (apart from this section) or Division 270.



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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.

(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 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 or 271.7G.



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### 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.

### 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—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.

(2) The following matters are covered by this subsection:



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(a) the economic relationship between the alleged victim, the alleged offender or a family member of the alleged victim or alleged offender, and any other person;

(b) the terms of any written or oral contract or agreement between the alleged victim, the alleged offender or a family member of the alleged victim or alleged offender, and any other person;

(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 or any other person.

(3) If subsection (1) applies in relation to the consent of an alleged victim's guardian to the removal of an organ of the alleged victim, a reference in subsection (2) to the alleged victim is taken to include a reference to the alleged victim's guardian.

(4) Subsection (1) does not:

(a) prevent the leading of any other evidence in the relevant proceedings; or

(b) limit the manner in which evidence may be given or the admissibility of evidence.

(5) In this section:

***family member*** of a person means:

(a) the person's spouse or de facto partner; or

(b) a parent, step-parent or grandparent of the person; or

(c) a child, step-child or grandchild of the person; or

(d) a brother, sister, step-brother or step-sister of the person; or

(e) a guardian or carer of the person.



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(6) For the purposes of this section, the family members of a person are taken to include the following (without limitation):

(a) a de facto partner of the person;

(b) someone who is the child of the person, or of whom the person is the child, because of the definition of ***child*** in the Dictionary;

(c) anyone else who would be a member of the person's family if someone mentioned in paragraph (a) or (b) is taken to be a family member of the person.

### 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.



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(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.

## 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 271A—Overseas travel by certain registered offenders

## 271A.1 Restrictions on overseas travel by certain registered offenders

(1) A person commits an offence if:

(a) the person is an Australian citizen; and

(b) the person's name is entered on a child protection offender register (however described) of a State or Territory; and

(c) the person has reporting obligations (however described) in connection with that entry on the register; and

(d) the person leaves Australia.

Penalty: Imprisonment for 5 years.

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

Note: For absolute liability, see section 6.2.

(3) Subsection (1) does not apply if:

(a) a competent authority (within the meaning of section 12 of the *Australian Passports Act 2005* or section 13 of the *Foreign Passports (Law Enforcement and Security) Act 2005*) has given permission (however described) for the person to leave Australia; or

(b) the reporting obligations of the person are suspended at the time the person leaves Australia.

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



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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



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(c) the person is a teacher engaged in the education of the other person; or

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

(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



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(d) cunnilingus; or

(e) the continuation of any activity mentioned in paragraph (a), (b), (c) or (d).

(2) In this Code, ***sexual intercourse*** does not include an act of penetration that:

(a) is carried out for a proper medical or hygienic purpose; or

(b) is carried out for a proper law enforcement purpose.

(3) For the purposes of this section, ***vagina*** includes:

(a) any part of a female person's genitalia; and

(b) a surgically constructed vagina.

## 272.5 Meaning of *offence against this Division* and extension of criminal responsibility

(1) A reference in this Division (except section 272.19, which deals with encouraging an offence against this Division) to an offence against this Division, or against a particular provision of it, includes:

(a) a reference to:

(i) an offence against section 6 of the *Crimes Act 1914* (accessory after the fact); or

(ii) an offence against section 11.1 (attempt), 11.5 (conspiracy) or 272.19 of this Code;

that relates to an offence against this Division or against that provision of it; and

(b) a reference to an offence against this Division, or against that provision of it, because of section 11.2 (complicity and common purpose), 11.2A (joint commission) or 11.3 (commission by proxy).

(2) A reference in section 272.19 (encouraging offence against this Division) to an offence against this Division or against a particular provision of it does not include a reference to such an offence because of section 11.2 (complicity and common purpose) or 11.2A (joint commission).



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(3) Section 11.1 (attempt) does not apply to an offence against:
  (a) section 272.14 (procuring child to engage in sexual activity outside Australia); or
  (b) section 272.15 ("grooming" child to engage in sexual activity outside Australia); or
  (ba) section 272.15A ("grooming" person to make it easier to engage in sexual activity with a child 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 25 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 25 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.

Note: 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: see the definition of ***engage in sexual activity*** in the Dictionary.

Penalty: Imprisonment for 20 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 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: For absolute liability, see section 6.2.



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*Defence—child present but defendant does not intend to derive gratification*

(5) It is a defence to a prosecution for an offence against subsection (1) or (2) if:

(a) the conduct constituting the offence consists only of the child being in the presence of the defendant while sexual activity is engaged in; and

(b) the defendant proves that he or she did not intend to derive gratification from the presence of the child during that activity.

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

Note 2: For a defence based on belief about age, see section 272.16.

## 272.10 Aggravated offence—sexual intercourse or other sexual activity with child outside Australia

(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) one or more of the following apply:

(i) the child has a mental impairment at the time the person commits the underlying offence;



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(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, at the time the person commits the underlying offence;

(iii) the child is subjected to cruel, inhuman or degrading treatment in connection with the sexual activity referred to in subsection 272.8(1) or (2) or 272.9(1) or (2);

(iv) the child dies as a result of physical harm suffered in connection with the sexual activity referred to in subsection 272.8(1) or (2) or 272.9(1) or (2).

Penalty: Imprisonment for life.

(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.



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## 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 2 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);

(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 30 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.



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*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 2 separate occasions during the period concerned on which the person engaged in conduct constituting an offence against subsection 272.8(1) or (2) or 272.9(1) or (2), of a nature described in the charge, in relation to the child; and
  (b) the trier of fact must be so satisfied about the material facts of the 2 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 2 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 2 occasions.

(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.



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(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.

## 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



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(d) the person is in a position of trust or authority in relation to the young person; and

(e) the sexual intercourse is engaged in outside Australia.

Penalty: Imprisonment for 10 years.

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

(4) Absolute liability applies to paragraphs (1)(b) and (d) and (2)(c) and (e).

Note 1: For absolute liability, see section 6.2.

Note 2: For a defence based on belief about age, see section 272.16.

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

Note: For strict liability, see section 6.1.

## 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.

Note: 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: see the definition of ***engage in sexual activity*** in the Dictionary.

Penalty: Imprisonment for 7 years.



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*Causing young person to engage in sexual activity in presence of defendant*

(2) A person commits an offence if:

(a) the person engages in conduct in relation to another person (the ***young person***); and

(b) that conduct causes the young person to engage in sexual activity (other than sexual intercourse) in the presence of the person; and

(c) the young person is at least 16 but under 18 when the sexual activity is engaged in; and

(d) the person is in a position of trust or authority in relation to the young person; and

(e) the sexual activity is engaged in outside Australia.

Penalty: Imprisonment for 7 years.

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

(4) Absolute liability applies to paragraphs (1)(b) and (d) and (2)(c) and (e).

Note 1: For absolute liability, see section 6.2.

Note 2: For a defence based on belief about age, see section 272.16.

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

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



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(b) the defendant proves that he or she did not intend to derive gratification from the presence of the young person during that activity.

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

Note 2: For a defence based on belief about age, see section 272.16.

## 272.14 Procuring child to engage in sexual activity outside Australia

(1) A person commits an offence if:

(a) the person engages in conduct in relation to another person (the ***child***); and

(b) the person does so with the intention of procuring the child to engage in sexual activity (whether or not with the person) outside Australia; and

(c) the child is someone:

(i) who is under 16; or

(ii) who the person believes to be under 16; and

(d) one or more of the following apply:

(i) the conduct referred to in paragraph (a) occurs wholly or partly outside Australia;

(ii) the child is outside Australia when the conduct referred to in paragraph (a) occurs;

(iii) the conduct referred to in paragraph (a) occurs wholly in Australia and the child is in Australia when that conduct occurs.

Penalty: Imprisonment for 15 years.

(2) Absolute liability applies to subparagraph (1)(c)(i) and paragraph (1)(d).

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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(3) A person may be found guilty of an offence against subsection (1) even if it is impossible for the sexual activity referred to in that subsection to take place.

(4) For the purposes of subsection (1), it does not matter that the child is a fictitious person represented to the person as a real person.

## 272.15 "Grooming" child to engage in sexual activity outside Australia

(1) A person commits an offence if:

(a) the person engages in conduct in relation to another person (the ***child***); and

(b) the person does so with the intention of making it easier to procure the child to engage in sexual activity (whether or not with the person) outside Australia; and

(c) the child is someone:

(i) who is under 16; or

(ii) who the person believes to be under 16; and

(d) one or more of the following apply:

(i) the conduct referred to in paragraph (a) occurs wholly or partly outside Australia;

(ii) the child is outside Australia when the conduct referred to in paragraph (a) occurs;

(iii) the conduct referred to in paragraph (a) occurs wholly in Australia and the child is in Australia when that conduct occurs.

Penalty: Imprisonment for 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.



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(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.

### 272.15A "Grooming" person to make it easier to engage in sexual activity with a child outside Australia

(1) A person (the ***defendant***) commits an offence if:

(a) the defendant engages in conduct in relation to another person (the ***third party***); and

(b) the defendant does so with the intention of making it easier to procure a person (the ***child***) to engage in sexual activity (whether or not with the defendant) outside Australia; and

(c) the child is someone:

(i) who is under 16; or

(ii) who the defendant 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 third party or the child (or both) 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 both the third party and the child are 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.



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(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 third party or 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.

*Procuring and "grooming" offences—belief that child at least 16*

(3) It is a defence to a prosecution for an offence against section 272.14, 272.15 or 272.15A 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.



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*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

It is a defence to a prosecution for an offence against subsection 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 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 sexual intercourse or sexual activity is alleged to have taken place; or

(iii) the place of the defendant's residence or domicile; and

(b) when the marriage was solemnised:

(i) the marriage was genuine; and

(ii) the young person had attained the age of 16 years.

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

Note 2: Subsection 272.12(1) deals with engaging in sexual intercourse with a young person outside Australia. Subsection 272.13(1) deals with engaging in sexual activity (other than sexual intercourse) with a young person outside Australia. Both offences apply to defendants in a position of trust or authority in relation to the young person concerned.

## 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:



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(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 25 years.

(2) Subsection (1) applies:
(a) whether the conduct is engaged in within or outside Australia; and
(b) whether or not the person intends to benefit financially from an offence against this Division; and
(c) whether or not an offence against this Division is in fact committed.

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

Note: For absolute liability, see section 6.2.

## 272.19 Encouraging offence against this Division

(1) A person commits an offence if:
(a) the person engages in conduct; and
(b) the person does so with the intention of encouraging an offence against this Division (other than this section or section 272.20); and
(c) the conduct is reasonably capable of encouraging such an offence.

Penalty: Imprisonment for 25 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.



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

Note: For absolute liability, see section 6.2.

(4) In this section, ***encourage*** means:

(a) encourage, incite to, or urge, by any means whatever, (including by a written, electronic or other form of communication); or

(b) aid, facilitate, or contribute to, in any way whatever.

## 272.20 Preparing for or planning offence against this Division

*Offences involving sexual intercourse or other sexual activity with child, and benefiting offence*

(1) A person commits an offence if:

(a) the person does an act; and

(b) the person does so with the intention of preparing for, or planning, an offence against section 272.8, 272.9, 272.10, 272.11 or 272.18.

Penalty: Imprisonment for 10 years.

*Offences involving sexual intercourse or other sexual activity with young person*

(2) A person commits an offence if:

(a) the person does an act; and

(b) the person does so with the intention of preparing for, or planning, an offence against section 272.12 or 272.13.

Penalty: Imprisonment for 5 years.

(3) Subsections (1) and (2) apply:

(a) whether the act is done within or outside Australia; and

(b) whether or not an offence against a provision referred to in paragraph (1)(b) or (2)(b) is in fact committed; and



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(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;

(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.



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## 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) |
| 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



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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 following matters:

(a) the age and maturity of the person in relation to whom the offence was committed;

(b) if that person was under 10 when the offence was committed—that fact as a reason for aggravating the seriousness of the criminal behaviour to which the offence relates;

(c) the number of people involved in the commission of the offence.

(1A) However, the court need only take into account a matter mentioned in subsection (1) so far as the matter is known to the court and, for a matter mentioned in paragraph (1)(a) or (c), relevant.

(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 section 16A 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.

(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 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: One of those expressions is ***child abuse 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 abuse material

### 273.6 Possessing, controlling, producing, distributing or obtaining child abuse material outside Australia

(1) A person commits an offence if:

(a) the person:

(i) has possession or control of material; or

(ii) produces, distributes or obtains material; or

(iii) facilitates the production or distribution of material; and

(b) the material is child abuse material; and

(c) the conduct referred to in paragraph (a) occurs outside Australia.

Penalty: Imprisonment for 15 years.

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

Note: For absolute liability, see section 6.2.

### 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 section 273.6 (possessing etc. child abuse material outside Australia) on 3 or more separate occasions; and

(b) the commission of each such offence involves 2 or more people.

Penalty: Imprisonment for 30 years.



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(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 273.6.

(3) To avoid doubt, a person does not commit an offence against section 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 273.6 in relation to the conduct that constituted the aggravated offence.

(6) Subsection (5) does not prevent an alternative verdict under section 273.8.

(7) A person who has been convicted or acquitted of an offence (the ***underlying offence***) against section 273.6 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 273.6;

it may find the defendant not guilty of the aggravated offence but guilty of the offence against section 273.6, so long as the defendant



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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 273.6 because of engaging in particular conduct if the conduct:

(a) is of public benefit; and

(b) does not extend beyond what is of public benefit.

In determining whether the person is, under this subsection, not criminally responsible for the offence, the question whether the conduct is of public benefit is a question of fact and the person's motives in engaging in the conduct are irrelevant.

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

(2) For the purposes of subsection (1), conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in:

(a) enforcing a law of the Commonwealth, a State or Territory, or a foreign country; or

(b) monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or Territory or a foreign country; or

(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 273.6 if:

(a) the person is, at the time of the offence:



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(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 273.6 if the person engages in the conduct in good faith for the sole purpose of:

(a) assisting the eSafety Commissioner to perform the functions, or exercise the powers, conferred on the eSafety Commissioner by Part 9 of the *Online Safety Act 2021*; or

(b) manufacturing or developing, or updating, content filtering technology (including software) in accordance with:

(i) an industry code registered under Division 7 of Part 9 of the *Online Safety Act 2021*; or

(ii) an industry standard registered under Division 7 of Part 9 of the *Online Safety Act 2021*.

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 273A—Possession of child-like sex dolls etc.

## 273A.1 Possession of child-like sex dolls etc.

A person commits an offence if:

(a) the person possesses a doll or other object; and

(b) the doll or other object resembles:

(i) a person who is, or appears to be, under 18 years of age; or

(ii) a part of the body of such a person; and

(c) a reasonable person would consider it likely that the doll or other object is intended to be used by a person to simulate sexual intercourse.

Penalty: Imprisonment for 15 years.

## 273A.2 Defences

(1) A person is not criminally responsible for an offence against this Division 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



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(c) the administration of justice; or

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

(3) A person is not criminally responsible for an offence against this Division 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 the officer's 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) An expression used in this section that is defined in Part 10.6 has the same meaning in this section as it has in that Part.

Note: These expressions include ***AFP Minister***, ***intelligence or security officer*** and ***law enforcement officer***.

## 273A.3 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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# Division 273B—Protection of children

## Subdivision A—Preliminary

### 273B.1 Definitions

In this Division:

***child sexual abuse offence*** means:

(a) a Commonwealth child sex offence within the meaning of the *Crimes Act 1914*; or

(b) a State or Territory registrable child sex offence.

***Commonwealth officer*** means any of the following:

(a) a Minister;

(b) a Parliamentary Secretary;

(c) an individual who holds an appointment under section 67 of the Constitution;

(d) an APS employee;

(e) an individual employed by the Commonwealth otherwise than under the *Public Service Act 1999*;

(f) a member of the Australian Defence Force;

(g) a member or special member of the Australian Federal Police;

(h) 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 *Northern Territory (Self-Government) Act 1978*;

(i) an officer or employee of a Commonwealth authority;



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(j) an individual who is:
  (i) a contractor or subcontractor of the Commonwealth or a Commonwealth authority; or
  (ii) an officer or employee of a contractor or subcontractor of the Commonwealth or a Commonwealth authority; or
  (iii) assigned to work for the Commonwealth or a Commonwealth authority under a labour hire arrangement;

(k) 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 *Northern Territory (Self-Government) Act 1978*; or
  (v) a provision specified in the regulations;

(l) an individual who exercises powers, or performs functions, conferred on the individual by or under a law in force in Norfolk Island, 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).

***State or Territory registrable child sex offence*** means an offence:

(a) that a person becomes, or may at any time have become, a person whose name is entered on a child protection offender register (however described) of a State or Territory for committing; and

(b) in respect of which:
  (i) a person under 18 was a victim or an intended victim; or
  (ii) the offending involved child abuse material.



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### 273B.2 Geographical jurisdiction

Section 15.2 (extended geographical jurisdiction—category B) applies to each offence against this Division.

### 273B.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.

## Subdivision B—Offences relating to the protection of children

### 273B.4 Failing to protect child at risk of child sexual abuse offence

*Failing to protect child at risk of child sexual abuse offence*

(1) A person (the ***defendant***) commits an offence if:

(a) the defendant is a Commonwealth officer; and

(b) there is another person aged under 18 (the ***child***) under the defendant's care, supervision or authority, in the defendant's capacity as a Commonwealth officer; and

(c) the defendant knows there is a substantial risk that a person (the ***potential offender***) will engage in conduct in relation to the child; and

(d) such conduct, if engaged in, would constitute a child sexual abuse offence; and

(e) the defendant, because of the defendant's position as a Commonwealth officer, has the actual or effective responsibility to reduce or remove the risk mentioned in paragraph (c); and

(f) the defendant negligently fails to reduce or remove that risk.

Penalty: Imprisonment for 5 years.



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*Absolute liability*

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

Note: For absolute liability, see section 6.2.

*Certain matters not required to be proved*

(3) Subsection (1) applies:
(a) whether or not the child can be identified as a specific person; and
(b) whether or not the potential offender can be identified as a specific person; and
(c) whether or not a child sexual abuse offence is or was actually committed in relation to the child.

## 273B.5 Failing to report child sexual abuse offence

*Offence based on reasonable belief*

(1) A person (the ***defendant***) commits an offence if:
(a) the defendant is a Commonwealth officer; and
(b) there is another person aged under 18 (the ***child***) under the care or supervision of the defendant, in the defendant's capacity as a Commonwealth officer; and
(c) the defendant knows of information that would lead a reasonable person to believe that a person (the ***potential offender***):
(i) has engaged in conduct in relation to the child; or
(ii) will engage in conduct in relation to the child; and
(d) such conduct, if engaged in, would constitute a child sexual abuse offence; and
(e) the defendant fails to disclose the information, as soon as practicable after coming to know it, to:
(i) the police force or police service of a State or Territory; or
(ii) the Australian Federal Police.



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Penalty: Imprisonment for 3 years.

*Offence based on reasonable suspicion*

(2) A person (the ***defendant***) commits an offence if:

(a) the defendant is a Commonwealth officer; and

(b) there is another person aged under 18 (the ***child***) under the care or supervision of the defendant, in the defendant's capacity as a Commonwealth officer; and

(c) the defendant knows of information that would lead a reasonable person to suspect that a person (the ***potential offender***):

(i) has engaged in conduct in relation to the child; or

(ii) will engage in conduct in relation to the child; and

(d) such conduct, if engaged in, would constitute a child sexual abuse offence; and

(e) the defendant fails to disclose the information, as soon as practicable after coming to know it, to:

(i) the police force or police service of a State or Territory; or

(ii) the Australian Federal Police.

Penalty: Imprisonment for 2 years.

*Absolute liability*

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

Note: For absolute liability, see section 6.2.

*Defences*

(4) Subsection (1) or (2) does not apply if:

(a) the defendant reasonably believes that the information is already known:

(i) to the police force or police service of a State or Territory; or

(ii) to the Australian Federal Police; or



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(iii) to a person or body to which disclosure of such information is required by a scheme established under, or for the purposes of, a law of a State or Territory, or of a foreign country (or part of a foreign country); or

(b) the defendant has disclosed the information to a person or body for the purposes of a scheme mentioned in subparagraph (a)(iii); or

(c) the defendant reasonably believes that the disclosure of the information would put at risk the safety of any person, other than the potential offender; or

(d) the information is in the public domain.

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

(5) An individual is not excused from failing to disclose information as mentioned in paragraph (1)(e) or (2)(e) on the ground that disclosing the information might tend to incriminate the individual or otherwise expose the individual to a penalty or other liability.

Note: For the admissibility in evidence of such information if disclosed in the course of protected conduct, and any information obtained as an indirect consequence, see subsections 273B.9(10) and (11).

*Certain matters not required to be proved*

(6) Subsection (1) or (2) applies:

(a) whether or not the child can be identified as a specific person; and

(b) whether or not any person actually believes or suspects the matter mentioned in paragraph (1)(c) or (2)(c); and

(c) whether or not the potential offender can be identified as a specific person; and

(d) whether or not a child sexual abuse offence is or was actually committed in relation to the child.



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*Alternative verdict*

(7) If, on a trial of a person for an offence against subsection (1), the trier of fact:

(a) is not satisfied that the person is guilty of the offence against that subsection; and

(b) is satisfied beyond reasonable doubt that the person is guilty of an offence against subsection (2);

it may find the person not guilty of the offence against subsection (1) but guilty of the offence against subsection (2).

(8) Subsection (7) only applies if the person has been accorded procedural fairness in relation to the finding of guilt for the offence against subsection (2).

## Subdivision C—Rules about conduct of trials

### 273B.6 Consent to commence proceedings

(1) Proceedings for an offence against this Division must not be commenced without the consent of the Attorney-General.

(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.

### 273B.7 Evidence relating to a person's age

(1) In determining for the purposes of this Division how old a person is or was at a particular time, the trier of fact may have regard to any of the following matters:

(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.



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(2) Subsection (1) does not make any other kind of evidence inadmissible, and does not affect a prosecutor's duty to do all the prosecutor can to adduce the best possible evidence for determining the question.

(3) If, on a trial by jury for an offence against this Division, regard may be had to a matter because of subsection (1), the court must warn the jury that it must be satisfied beyond reasonable doubt in determining the question.

## Subdivision D—Relationship with other laws

### 273B.8 Relationship with State and Territory laws

This Division applies to the exclusion of a law, or a provision of a law, of a State or Territory that has the effect of making a person liable to be prosecuted for an offence against any law for failing to:

(a) reduce or remove a risk of a child being subjected to conduct constituting a child sexual abuse offence; or

(b) disclose to a police force or a police service information relating to whether a person has engaged, or will engage, in conduct constituting a child sexual abuse offence;

to the extent that the law or provision would otherwise apply in relation to conduct in which the person engages in the person's capacity as a Commonwealth officer.

### 273B.9 Protection from other laws etc. for complying with this Division

*Scope*

(1) A person engages in ***protected conduct*** if the person:

(a) engages in conduct in avoidance, or purported avoidance, of liability for an offence against this Division; and

(b) the conduct is genuine and proportionate for that purpose.



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(2) This section does not apply to liability in any civil, criminal or administrative proceedings (including disciplinary proceedings) (***relevant proceedings***) for knowingly making a statement that is false or misleading.

(3) Without limiting subsection (2), this section does not apply to liability for an offence against any of the following provisions:

(a) section 137.1 (false or misleading information);

(b) section 137.2 (false or misleading documents);

(c) section 144.1 (forgery);

(d) section 145.1 (using forged document).

(4) This section does not prevent a person from being liable in any relevant proceedings for conduct of the person that is revealed by a disclosure of information.

*Protection against liability for engaging in protected conduct*

(5) If a person engages in protected conduct:

(a) the person is not subject to any liability in relevant proceedings for engaging in the protected conduct; and

(b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the protected conduct being engaged in; and

(c) the person is not to be considered to have breached any professional ethics in respect of the protected conduct.

(6) ***Professional ethics*** includes the following (without limitation):

(a) rules of professional conduct;

(b) rules of professional etiquette;

(c) a code of ethics;

(d) standards of professional conduct.

(7) Without limiting subsection (5):

(a) if the person engages in protected conduct by disclosing information, the person:



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(i) has qualified privilege in proceedings for defamation relating to the disclosure; and

(ii) is not liable to an action for defamation at the suit of another person relating to the disclosure; and

(b) a contract to which the person is a party may not be terminated on the basis that the protected conduct constitutes a breach of the contract.

(8) Paragraphs (5)(a) and (7)(a) do not affect any other right, privilege or immunity the person has as a defendant in proceedings, or an action, for defamation.

(9) Without limiting paragraphs (5)(b) and (7)(b), if a court is satisfied that:

(a) a person (the ***employee***) is employed in a particular position under a contract of employment with another person (the ***employer***); and

(b) the employee engages in protected conduct; and

(c) the employer purports to terminate the contract of employment on the basis of the person engaging in protected conduct being engaged in;

the court may:

(d) order that the employee be reinstated in that position or a position at a comparable level; or

(e) order the employer to pay the employee an amount instead of reinstating the employee, if the court considers it appropriate to make the order.

*Admissibility of evidence*

(10) If an individual engages in protected conduct by disclosing information, the information is not admissible in evidence against the individual in relation to liability in any relevant proceedings.

(11) To avoid doubt, this section does not affect the admissibility of evidence in any relevant proceedings of any information obtained as an indirect consequence of a disclosure of information that constitutes protected conduct.



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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:



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(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.

(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).



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## 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.

(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.



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### 274.5 Jurisdiction of State/Territory courts preserved

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

### 274.6 Concurrent operation intended

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

### 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 offences);
(b) Division 271 (trafficking in persons);
(c) Division 272 (child sex offences outside Australia);
(d) Division 273 (offences involving child abuse material outside Australia);
(e) Division 273B (protection of children).

## 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.



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## 279.3 Technical requirements for video link

(1) A witness can give evidence under a direction only if:

(a) the courtroom or other place in Australia where the court is sitting (the ***Australian location***); and

(b) the place where the evidence is given (the ***overseas location***);

are equipped with video facilities that:

(c) enable appropriate persons at the Australian location to see and hear the witness give the evidence; and

(d) enable appropriate persons at the overseas location to see and hear appropriate persons at the Australian location.

(2) In subsection (1):

***appropriate persons*** means such persons as the court considers appropriate.

## 279.4 Application of laws about witnesses

A person who gives evidence under a direction is taken to give it at the courtroom or other place in Australia where the court is sitting.

Note: This section has effect, for example, for the purposes of laws relating to evidence, procedure, contempt of court and perjury.

## 279.5 Administration of oaths and affirmations

An oath or affirmation to be sworn or made by a witness who is to give evidence under a direction may be administered either:

(a) by means of the video link, in as nearly as practicable the same way as if the witness were to give the evidence at the courtroom or other place in Australia where the court is sitting; or

(b) as follows:

(i) on behalf of the court and as directed by it;

(ii) by a person (whether an Australian official or not) authorised by the court;

(iii) at the place where the witness is to give the evidence.



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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:

***AFP Minister*** means the Minister administering the *Australian Federal Police Act 1979*.

***aggravated offence*** has the meaning given by section 310.4.

***border controlled drug***:

(a) means a substance that is a border controlled drug within the meaning of subsection 301.4(1); and

(b) to avoid doubt, includes a substance that is, under subsection 301.4(2), (3) or 301.13(1A), taken, for the purposes of this Part, to be a border controlled drug only in



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relation to particular offences against this Part or particular elements of those offences.

***border controlled plant***:

(a) means a growing plant that is a border controlled plant within the meaning of subsection 301.5(1); and

(b) to avoid doubt, includes a growing plant that is, under subsection 301.5(2) or 301.13(1A), taken, for the purposes of this Part, to be a border controlled plant only in relation to particular offences against this Part or particular elements of those offences.

***border controlled precursor***:

(a) means a substance that is a border controlled precursor within the meaning of subsection 301.6(1); and

(b) to avoid doubt, includes a substance that is, under subsection 301.6(1A), (1B) or 301.14(1A), taken, for the purposes of this Part, to be a border controlled precursor only in relation to particular offences against this Part or particular elements of those offences.

***child*** means an individual who is under 18 years of age.

***commercial quantity*** of a serious drug, controlled precursor or border controlled precursor has the meaning given by section 301.10.

***conceal*** a thing includes conceal or disguise:

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

(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.



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***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 AFP Minister under section 301.13; or

(b) for a precursor—determined by the AFP Minister under section 301.14.

***drug analogue*** has the meaning given by section 301.9.

***export*** includes take from Australia.

***import***, in relation to a substance, means import the substance into Australia and includes:

(a) bring the substance into Australia; and

(b) deal with the substance in connection with its importation.

***listed***, in relation to a serious drug, means:

(a) for a controlled drug—listed by a regulation made for the purposes of paragraph 301.1(a); or

(b) for a controlled plant—listed by a regulation made for the purposes of paragraph 301.2(a); or

(c) for a border controlled drug—listed by a regulation made for the purposes of paragraph 301.4(1)(a); or

(d) for a border controlled plant—listed by a regulation made for the purposes of paragraph 301.5(1)(a).

***manufacture*** has the meaning given by subsection 305.1(1).

***manufactures a substance*** has the meaning given by subsection 305.1(2).



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***manufactures a substance for a commercial purpose*** has the meaning given by section 305.2.

***marketable quantity*** of a serious drug, controlled precursor or border controlled precursor has the meaning given by section 301.11.

***possession*** of a thing includes the following:

(a) receiving or obtaining possession of the thing;

(b) having control over the disposition of the thing (whether or not the thing is in the custody of the person);

(c) having joint possession of the thing.

***pre-traffics*** has the meaning given by section 306.1.

***procures an individual to pre-traffic*** has the meaning given by section 309.9.

***procures an individual to traffic*** has the meaning given by section 309.6.

***product*** of a plant has the meaning given by section 303.2.

***requisite fraction*** has the meaning given by subsection 312.2(3).

***sell*** includes the following:

(a) barter or exchange;

(b) agree to sell.

***serious drug*** means one of the following:

(a) a controlled drug;

(b) a controlled plant;

(c) a border controlled drug;

(d) a border controlled plant.

***supply*** includes the following:

(a) supply, whether or not by way of sale;

(b) agree to supply.



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***taking***, in relation to a substance or plant, means taking the substance or plant, or a product of the plant, into the body.

***TINDAPS Convention*** has the meaning given by section 300.1.

***trafficable quantity*** of a controlled drug, or a controlled plant, has the meaning given by section 301.12.

***traffics*** has the meaning given by section 302.1.

***transport*** includes deliver.

## 300.3 Geographical jurisdiction

Section 15.2 (extended geographical jurisdiction—category B) applies to each offence against this Part.

## 300.4 Concurrent operation intended

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

(2) Without limiting subsection (1), this Part is not intended to exclude or limit the concurrent operation of a law of a State or Territory that makes:

(a) an act or omission that is an offence against a provision of this Part; or

(b) a similar act or omission;

an offence against the law of the State or Territory.

(3) Subsection (2) applies even if the law of the State or Territory does any one or more of the following:

(a) provides for a penalty for the offence that differs from the penalty provided for in this Part;

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

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



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## 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);

(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);



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(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 AFP 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 AFP 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



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(b) a determination can be made for paragraph (1)(b) (see subsection 301.13(2)).

(2) The purpose of subsection (1) is to permit growing plants that are covered by the TINDAPS Convention to be treated as ***controlled plants*** for the purposes of this Part (see also section 300.1).

## 301.3 Meaning of *controlled precursor*

(1) For the purposes of this Part, a ***controlled precursor*** is a substance (including a growing plant) that is:

(a) listed by a regulation as a controlled precursor; or

(b) a salt or ester of a controlled precursor that is so listed; or

(c) determined by the AFP 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*

(1) 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 AFP 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



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(b) a determination can be made for paragraph (c) (see subsection 301.13(2)).

Note 2: For the meaning of ***drug analogue***, see section 301.9.

(2) However:

(a) the regulations may provide that a listed border controlled drug is taken, for the purposes of this Part, to be a border controlled drug only in relation to particular offences against this Part, or particular elements of those offences; and

(b) if the regulations so provide, then the listed border controlled drug is taken, for the purposes of this Part, to be a border controlled drug only in relation to those offences or elements.

(3) To avoid doubt, if a listed border controlled drug is taken, for the purposes of this Part, to be a border controlled drug only in relation to particular offences against this Part, or particular elements of those offences, then a drug analogue of the listed border controlled drug is taken, for the purposes of this Part, to be a border controlled drug only in relation to those offences or elements.

## 301.5 Meaning of *border controlled plant*

(1) A ***border controlled plant*** is a growing plant:

(a) listed by a regulation as a border controlled plant; or

(b) determined by the AFP 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)).

(2) However:

(a) the regulations may provide that a listed border controlled plant is taken, for the purposes of this Part, to be a border controlled plant only in relation to particular offences against this Part, or particular elements of those offences; and



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(b) if the regulations so provide, then the listed border controlled plant is taken, for the purposes of this Part, to be a border controlled plant only in relation to those offences or elements.

## 301.6 Meaning of *border controlled precursor*

(1) 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 AFP 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)).

(1A) However:

(a) the regulations may provide that a listed border controlled precursor is taken, for the purposes of this Part, to be a border controlled precursor only in relation to particular offences against this Part, or particular elements of those offences; and

(b) if the regulations so provide, then the listed border controlled precursor is taken, for the purposes of this Part, to be a border controlled precursor only in relation to those offences or elements.

(1B) To avoid doubt, if a listed border controlled precursor is taken, for the purposes of this Part, to be a border controlled precursor only in relation to particular offences against this Part, or particular elements of those offences, then a salt, ester or immediate precursor of the listed border controlled precursor is taken, for the purposes of this Part, to be a border controlled precursor only in relation to those offences or elements.



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*Definition of immediate precursor*

(2) In this section:

***immediate precursor*** of a precursor listed for the purposes of paragraph (1)(a) means a chemical or compound (other than another precursor that is so listed) that is an immediate precursor in the manufacture by a chemical process of the listed precursor.

## 301.7 Serious drugs—conditions for listing by regulation

Before a regulation is made listing a substance or plant as a serious drug for the purposes of this Part, the AFP 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 AFP Minister must be satisfied that there is a risk that the substance will be used to



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unlawfully manufacture a controlled drug (other than a determined controlled drug).

## 301.9 Meaning of *drug analogue*

(1) A substance is a ***drug analogue*** of a listed controlled drug, or a listed border controlled drug, if the substance is any of the following in relation to the listed drug (or in relation to a primary analogue of the listed drug), however the substance is obtained:

(a) one of the following (a ***primary analogue***):

(i) a stereoisomer;

(ii) a structural isomer having the same constituent groups;

(iii) an alkaloid;

(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.

Note: Some substances are taken, for the purposes of this Part, to be drug analogues only in relation to particular offences against this Part, or particular elements of those offences: see subsection 301.4(3).

(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;



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(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:

***addition*** has its ordinary meaning.

***replacement*** has its ordinary meaning.



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## 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:<br>(a) the quantity listed as a commercial quantity of the drug or precursor in a regulation made for the purposes of this section; or<br>(b) the quantity determined as a commercial quantity of the drug or precursor by the AFP Minister under section 301.15 (which deals with emergency determinations of quantities). |
| 2 | A drug analogue of 1 or more listed controlled drugs | Either:<br>(a) for a drug analogue of a single listed controlled drug—the commercial quantity of the listed drug; or<br>(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:<br>(a) for a drug analogue of a single listed border controlled drug—the commercial quantity of the listed drug; or<br>(b) for a drug analogue of 2 or more listed border controlled drugs—the smallest commercial quantity of any of the listed drugs. |

Note: A drug analogue of a listed controlled drug, or a listed border controlled drug, is itself a controlled drug or border controlled drug



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(see paragraphs 301.1(b) and 301.4(1)(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:<br>(a) the quantity listed as a marketable quantity of the drug or precursor in a regulation made for the purposes of this section; or<br>(b) the quantity determined as a marketable quantity of the drug or precursor by the AFP Minister under section 301.15 (which deals with emergency determinations of quantities). |
| 2 | A drug analogue of 1 or more listed controlled drugs | Either:<br>(a) for a drug analogue of a single listed controlled drug—the marketable quantity of the listed drug; or<br>(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:<br>(a) for a drug analogue of a single listed border controlled drug—the marketable quantity of the listed drug; or<br>(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(1)(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:<br>(a) the quantity listed as a trafficable quantity of the drug or plant in a regulation made for the purposes of this section; or<br>(b) the quantity determined as a trafficable quantity of the drug or plant by the AFP Minister under section 301.15 (which deals with emergency determinations of quantities). |
| 2 | A drug analogue of 1 or more listed controlled drugs | Either:<br>(a) for a drug analogue of a single listed controlled drug—the trafficable quantity of the listed drug; or<br>(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 AFP 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.

(1A) However:

(a) a determination made under subsection (1) may provide that:

(i) a determined border controlled drug is taken, for the purposes of this Part, to be a border controlled drug; or

(ii) a determined border controlled plant is taken, for the purposes of this Part, to be a border controlled plant;

only in relation to particular offences against this Part, or particular elements of those offences; and

(b) if such a determination so provides, then:

(i) the determined border controlled drug is taken, for the purposes of this Part, to be a border controlled drug; or

(ii) the determined border controlled plant is taken, for the purposes of this Part, to be a border controlled plant;

only in relation to those offences or elements.

*Conditions on making a determination*

(2) The AFP Minister must not make a determination under subsection (1) unless he or she is satisfied:

(a) that there is an imminent and substantial risk that the substance or plant will be taken without appropriate medical supervision; and

(b) one or more of the following conditions is met:

(i) taking the substance or plant may create a risk of death or serious harm;

(ii) taking the substance or plant may have a physical or mental effect substantially similar to that caused by taking a listed serious drug;

(iii) there is limited or no known lawful use of the substance or plant in Australia, and the substance or plant has been



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found by a public official in the course of the performance of the official's duties;

(iv) the substance or plant may pose a substantial risk to the health or safety of the public.

(3) The AFP 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 AFP Minister may, by legislative instrument, determine that a substance (including a growing plant) is a controlled precursor or a border controlled precursor.

(1A) However:

(a) a determination made under subsection (1) may provide that a determined border controlled precursor is taken, for the purposes of this Part, to be a border controlled precursor only in relation to particular offences against this Part, or particular elements of those offences; and

(b) if such a determination so provides, then the determined border controlled precursor is taken, for the purposes of this Part, to be a border controlled precursor only in relation to those offences or elements.

*Conditions on making a determination*

(2) The AFP 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 AFP 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 AFP 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 AFP 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 AFP Minister may, by legislative instrument, extend the period during which the determination is in force by a further period or periods.



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(3) The AFP Minister must not extend the period under subsection (2) with the effect that the determination would stay in force for longer than 18 months after the time the determination is registered (within the meaning of the *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 AFP 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.



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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.

## 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



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(b) the plant is a controlled plant.

Penalty: Imprisonment for 10 years or 2,000 penalty units, or both.

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



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# Division 305—Commercial manufacture of controlled drugs

## 305.1 Meanings of *manufacture* and *manufactures a substance*

(1) For the purposes of this Part, ***manufacture*** means:

(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.



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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).

## 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:



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(a) in the case of an aggravated offence—imprisonment for 12 years or 2,400 penalty units, or both; or

(b) in any other case—imprisonment for 10 years or 2,000 penalty units, or both.

Note: The additional elements for an aggravated offence against this section are set out in subsection 310.4(2).

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

## 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:



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(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(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



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(b) the substance is a controlled precursor.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 9 years or 1,800 penalty units, or both; or

(b) in any other case—imprisonment for 7 years or 1,400 penalty units, or both.

Note: The additional elements for an aggravated offence against this section are set out in subsection 310.4(3).

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

## 306.5 Presumption for pre-trafficking controlled precursors—sale

(1) For the purposes of proving an offence against subsection 306.4(1), if:

(a) a person has sold a substance; and

(b) a law of the Commonwealth or of a State or Territory required the sale to be authorised (however described); and

(c) the sale was not so authorised;

the person is taken to have sold the substance believing that the person to whom it was sold, or another person, intended to use some or all of the substance to manufacture a controlled drug.

(2) Subsection (1) does not apply if the person proves that he or she did not have that belief.

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

## 306.6 Presumptions for pre-trafficking controlled precursors—manufacture for drug manufacture

(1) For the purposes of proving an offence against subsection 306.4(1), if:

(a) a person has manufactured a substance; and



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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 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).



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(3) For the purposes of proving an offence against subsection 306.4(1), if:

(a) a person has manufactured a substance with the intention of selling some or all of it to another person; and

(b) a law of the Commonwealth or of a State or Territory required the manufacture to be authorised (however described); and

(c) the manufacture was not so authorised;

the person is taken to have manufactured the substance believing that the other person intended to use some or all of the substance to manufacture a controlled drug.

(4) Subsection (3) does not apply if the person proves that he or she did not have that belief.

Note: A defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4).

## 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).



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(3) For the purposes of proving an offence against subsection 306.4(1), if a person possessed a marketable quantity of a substance with the intention of using some or all of it to manufacture a controlled drug, the person is taken to have done so with the intention of selling some or all of the drug so manufactured, or believing that another person intended to sell some or all of the drug so manufactured.

(4) Subsection (3) does not apply if the person proves that he or she had neither that intention nor belief.

Note: A defendant bears a legal burden in relation to the matters in subsection (4) (see section 13.4).



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# Division 307—Import-export offences

## Subdivision A—Importing and exporting border controlled drugs or border controlled plants

### 307.1 Importing and exporting commercial quantities of border controlled drugs or border controlled plants

(1) A person commits an offence if:
  (a) the person imports or exports a substance; and
  (b) the substance is a border controlled drug or border controlled plant; and
  (c) the quantity imported or exported is a commercial quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

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

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

### 307.2 Importing and exporting marketable quantities of border controlled drugs or border controlled plants

(1) A person commits an offence if:
  (a) the person imports or exports a substance; and
  (b) the substance is a border controlled drug or border controlled plant; and
  (c) the quantity imported or exported is a marketable quantity.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

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

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



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(4) Subsection (1) does not apply if the person proves that he or she neither intended, nor believed that another person intended, to sell any of the border controlled drug or any of the border controlled plant or its products.

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.



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

## 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.



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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 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



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(c) the substance is a border controlled drug or border controlled plant; and

(d) the quantity possessed is a marketable quantity.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

(2) Absolute liability applies to paragraphs (1)(b) and (d).

(3) The fault element for paragraph (1)(c) is recklessness.

(4) Subsection (1) does not apply if the person proves that he or she neither intended, nor believed that another person intended, to sell any of the border controlled drug or any of the border controlled plant or its products.

(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.



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(4) Subsection (1) does not apply if the person proves that the border controlled drug or border controlled plant was not unlawfully imported.

Note: A defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4).

## Subdivision D—Importing and exporting border controlled precursors

### 307.11 Importing and exporting commercial quantities of border controlled precursors

(1) A person commits an offence if:

(a) the person imports or exports a substance; and

(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).



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## 307.13 Importing and exporting 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.

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



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(c) any other law that provides for a law of a State or Territory to apply in relation to the exercise of federal jurisdiction.

## 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



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(b) the person intends to use the plant, product, equipment or document to cultivate a controlled plant; and

(c) the person intends to sell, or believes that another person intends to sell, any of the plant so cultivated or any of its products.

Penalty: Imprisonment for 7 years or 1,400 penalty units, or both.

### 308.4 Possessing substance, equipment or instructions for commercial manufacture of controlled drugs

(1) A person commits an offence if:

(a) the person possesses any substance (other than a controlled precursor), any equipment or any document containing instructions for manufacturing a controlled drug; and

(b) the person intends to use the substance, equipment or document to manufacture a controlled drug; and

(c) the person intends to sell, or believes that another person intends to sell, any of the drug so manufactured.

Penalty: Imprisonment for 7 years or 1,400 penalty units, or both.

(2) For the purposes of proving an offence against subsection (1), if:

(a) a person possessed a tablet press; and

(b) a law of the Commonwealth or of a State or Territory required the possession to be authorised (however described); and

(c) the possession was not so authorised;

the person is taken to have possessed the tablet press with the intention of using it to manufacture a controlled drug.

(3) Subsection (2) does not apply if the person proves that he or she did not have that intention.

Note: A defendant bears a legal burden in relation to the matter in subsection (3) (see section 13.4).



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# Division 309—Drug offences involving children

## 309.1 Children not criminally responsible for offences against this Division

A child is not criminally responsible for an offence against this Division.

Note: For the purposes of this Part, a ***child*** is an individual under 18 years of age (see section 300.2).

## 309.2 Supplying controlled drugs to children

(1) A person commits an offence if:

(a) the person supplies a substance to an individual; and

(b) the individual is a child; and

(c) the substance is a controlled drug.

Penalty: Imprisonment for 15 years or 3,000 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

## 309.3 Supplying marketable quantities of controlled drugs to children for trafficking

(1) A person commits an offence if:

(a) the person supplies a substance to an individual; and

(b) the individual is a child; and

(c) the substance is a controlled drug; and

(d) the quantity supplied is a marketable quantity; and

(e) the person supplies the controlled drug believing that the child intends to sell any of it.

Penalty: Imprisonment for life or 7,500 penalty units, or both.



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

(3) The fault element for paragraph (1)(c) is recklessness.

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

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(d).

## 309.4 Supplying controlled drugs to children for trafficking

(1) A person commits an offence if:

(a) the person supplies a substance to an individual; and

(b) the individual is a child; and

(c) the substance is a controlled drug; and

(d) the person supplies the controlled drug believing that the child intends to sell any of it.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

## 309.5 Presumption where trafficable quantities are involved

(1) For the purposes of proving an offence against section 309.3 or 309.4, if a person has supplied a trafficable quantity of a substance to a child, the person is taken to have done so believing that the child intended to sell some or all of it.

(2) Subsection (1) does not apply if the person proves that he or she did not have that belief.

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



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## 309.6 Meaning of *procures an individual to traffic*

(1) For the purposes of this Part, a person ***procures an individual to traffic*** in a substance if:

(a) the person procures the individual to sell the substance; or

(b) the person, with the intention of selling any of the substance or believing that another person intends to sell any of the substance, procures the individual to prepare the substance for supply or to transport the substance; or

(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).



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## 309.8 Procuring children for trafficking controlled drugs

(1) A person commits an offence if:
  (a) the person procures an individual to traffic in a substance; and
  (b) the individual is a child; and
  (c) the substance is a controlled drug.

  Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

## 309.9 Meaning of *procures an individual to pre-traffic*

For the purposes of this Part, a person ***procures an individual to pre-traffic*** in a substance if the person procures the individual to sell the substance believing that the person to whom the substance is sold intends to use any of the substance to manufacture a controlled drug.

## 309.10 Procuring children for pre-trafficking marketable quantities of controlled precursors

(1) A person commits an offence if:
  (a) the person procures an individual to pre-traffic in a quantity of a substance; and
  (b) the individual is a child; and
  (c) the substance is a controlled precursor; and
  (d) the quantity is a marketable quantity.

  Penalty: Imprisonment for life or 7,500 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.



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

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(d).

## 309.11 Procuring children for pre-trafficking controlled precursors

(1) A person commits an offence if:
(a) the person procures an individual to pre-traffic in a substance; and
(b) the individual is a child; and
(c) the substance is a controlled precursor.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

## 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).



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Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(d).

(5) Subsection (1) does not apply if the person proves that he or she neither intended, nor believed that another person intended, to sell any of the border controlled drug or any of the border controlled plant or its products.

Note 1: A defendant bears a legal burden in relation to the matters in subsection (5) (see section 13.4).

Note 2: A person who does not commit an offence against this section because he or she proves the matters in subsection (5) may, however, have committed an offence against section 309.2 (supplying controlled drugs to children).

## 309.13 Procuring children for importing or exporting border controlled drugs or border controlled plants

(1) A person commits an offence if:

(a) the person procures an individual to import or export a substance; and

(b) the individual is a child; and

(c) the substance is a border controlled drug or border controlled plant.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

(4) Subsection (1) does not apply if the person proves that he or she neither intended, nor believed that another person intended, to sell any of the border controlled drug or any of the border controlled plant or its products.

Note 1: A defendant bears a legal burden in relation to the matters in subsection (4) (see section 13.4).

Note 2: A person who does not commit an offence against this section because he or she proves the matters in subsection (4) may, however, have



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committed an offence against section 309.2 (supplying controlled drugs to children).

## 309.14 Procuring children for importing or exporting marketable quantities of border controlled precursors

(1) A person commits an offence if:

(a) the person procures an individual to import or export a substance; and

(b) either or both of the following apply:

(i) the person intends to use any of the substance to manufacture a controlled drug;

(ii) the person believes that another person intends to use any of the substance to manufacture a controlled drug; and

(c) the individual is a child; and

(d) the substance is a border controlled precursor; and

(e) the quantity imported or exported is a marketable quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

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

(3) The fault element for paragraph (1)(d) is recklessness.

(4) Absolute liability applies to paragraph (1)(e).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(e).

(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



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controlled drug, he or she did not intend to sell any of the substance to the other person.

Note: A defendant bears a legal burden in relation to the matters in subsection (5) (see section 13.4).

## 309.15 Procuring children for importing or exporting border controlled precursors

(1) A person commits an offence if:

(a) the person procures an individual to import or export a substance; and

(b) either or both of the following apply:

(i) the person intends to use any of the substance to manufacture a controlled drug;

(ii) the person believes that another person intends to use any of the substance to manufacture a controlled drug; and

(c) the individual is a child; and

(d) the substance is a border controlled precursor.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

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

(3) The fault element for paragraph (1)(d) is recklessness.

(4) Subsection (1) does not apply if:

(a) in relation to conduct covered by subparagraph (1)(b)(i)—the person proves that he or she neither intended, nor believed that another person intended, to sell any of the controlled drug so manufactured; or

(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.



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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



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precursors. The person need only cause harm to a child under 14 by exposing the child to such manufacture.

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

(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).



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(6) Subsections (2) and (3) do not apply if the commission of the offence does not give rise to a danger of harm to the individual.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3)).

(7) For the purposes of this section, if the commission of an offence exposes a person to the risk of catching a disease that may give rise to a danger of harm to the person, the commission of the offence is taken to give rise to a danger of harm to the person.

(8) For the purposes of this section, the commission of an offence gives rise to a danger of harm if the commission of the offence is ordinarily capable of creating a real, and not merely a theoretical, danger of harm.

(9) For the purposes of this section, the commission of an offence may give rise to a danger of harm whatever the statistical or arithmetical calculation of the degree of risk of harm involved.



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# Division 311—Combining quantities of drugs, plants or precursors

## Subdivision A—Combining different parcels on the same occasion

### 311.1 Combining different parcels on the same occasion

(1) If, on the same occasion, a person:

(a) traffics in different parcels of controlled drugs (Division 302); or

(b) cultivates different parcels of controlled plants (Division 303); or

(c) sells different parcels of controlled plants (Division 304); or

(d) manufactures different parcels of controlled drugs (Division 305); or

(e) pre-traffics in different parcels of controlled precursors (Division 306); or

(f) imports or exports different parcels of border controlled drugs or border controlled plants (Subdivision A of Division 307); or

(g) possesses different parcels of unlawfully imported border controlled drugs or border controlled plants (Subdivision B of Division 307); or

(h) possesses different parcels of border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported (Subdivision C of Division 307); or

(i) imports or exports different parcels of border controlled precursors (Subdivision D of Division 307); or

(j) supplies different parcels of controlled drugs to a child for trafficking (sections 309.3 and 309.4); or

(k) procures a child to traffic in different parcels of controlled drugs (sections 309.7 and 309.8); or



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(l) procures a child to pre-traffic in different parcels of controlled precursors (sections 309.10 and 309.11); or

(m) procures a child to import or export different parcels of border controlled drugs or border controlled plants (sections 309.12 and 309.13); or

(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);



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the prosecution may prove the element of the offence relating to the quantity of controlled drug by proving:

(c) that the defendant was engaged in an organised commercial activity that involved repeated trafficking in controlled drugs; and

(d) that the relevant quantity of a controlled drug, or of a combination of controlled drugs, was trafficked in the course of that activity.

Note 1: See section 312.2 for working out quantities where different kinds of controlled drugs are involved.

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



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(d) that the relevant quantity of a controlled precursor, or of a combination of controlled precursors, was pre-trafficked by sale in the course of that activity.

Note 1: See section 312.2 for working out quantities where different kinds of controlled precursors are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(d).

(2) For the purposes of subsection (1) it is not necessary for the prosecution to specify or prove:

(a) the exact date of each occasion of pre-trafficking; or

(b) the exact quantity pre-trafficked on each occasion.

## 311.4 Business of importing or exporting border controlled drugs or border controlled plants

(1) In proceedings for an offence against:

(a) section 307.1 (importing and exporting commercial quantities of border controlled drugs or border controlled plants); or

(b) section 307.2 (importing and exporting marketable quantities of border controlled drugs or border controlled plants);

the prosecution may prove the element of the offence relating to the quantity of border controlled drug or border controlled plant by proving:

(c) that the defendant was engaged in an organised commercial activity that involved repeated importing or exporting of border controlled drugs or border controlled plants, or both; and

(d) that the relevant quantity of a border controlled drug or border controlled plant or both, or of a combination of border controlled drugs or border controlled plants or both, was imported or exported in the course of that activity.

Note: See section 312.2 for working out quantities where different kinds of border controlled drugs or border controlled plants are involved.



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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 import or export; or
  (b) the exact quantity imported or exported on each occasion.

## 311.5 Business of importing or exporting border controlled precursors

(1) In proceedings for an offence against:
  (a) section 307.11 (importing and exporting commercial quantities of border controlled precursors); or
  (b) section 307.12 (importing and exporting marketable quantities of border controlled precursors);

the prosecution may prove the element of the offence relating to the quantity of border controlled precursor by proving:
  (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:



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(a) that the defendant was engaged in an organised commercial activity that involved repeated supplying of drugs to children for trafficking; and

(b) that the relevant quantity of a controlled drug, or of a combination of controlled drugs, was supplied to children in the course of that activity.

Note 1: See section 312.2 for working out quantities where different kinds of controlled drugs are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(b).

(2) For the purposes of subsection (1) it is not necessary for the prosecution to specify or prove:

(a) the exact date of each occasion of supply; or

(b) the exact quantity supplied on each occasion.

(3) Section 309.5 (presumption where trafficable quantities are involved) does not apply to an offence prosecuted in accordance with subsection (1).

### 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;



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that occasion must not be alleged in proceedings against the person for another offence against this Part.

(3) If:

(a) an occasion of trafficking, pre-trafficking, importing or exporting or supplying is alleged in proceedings against a person for an offence against this Part; and

(b) the person is convicted or acquitted of the offence;

that occasion must not be alleged in proceedings against the person for an offence prosecuted in accordance with section 311.2, 311.3, 311.4, 311.5 or 311.6.

(4) Subject to subsections (2) and (3), this Subdivision does not prevent a person being charged with separate offences in respect of conduct on different occasions.

## Subdivision C—Combining parcels from multiple offences

### 311.8 Multiple offences—trafficking controlled drugs

The prosecution may prove an offence against Division 302 (trafficking controlled drugs) by proving:

(a) that the defendant committed offences against that Division on different occasions; and

(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).



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## 311.9 Multiple offences—cultivating controlled plants

The prosecution may prove an offence against Division 303 (commercial cultivation of controlled plants) by proving:

(a) that the defendant committed offences against that Division on different occasions; and

(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

(c) that the relevant quantity (in sum) of a controlled plant, or of a combination of controlled plants, was cultivated during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled plants are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

## 311.10 Multiple offences—selling controlled plants

The prosecution may prove an offence against Division 304 (selling controlled plants) by proving:

(a) that the defendant committed offences against that Division on different occasions; and

(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

(c) that the relevant quantity (in sum) of a controlled plant, or of a combination of controlled plants, was sold during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled plants are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

## 311.11 Multiple offences—manufacturing controlled drugs

The prosecution may prove an offence against Division 305 (commercial manufacture of controlled drugs) by proving:



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(a) that the defendant committed offences against that Division on different occasions; and

(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

(c) that the relevant quantity (in sum) of a controlled drug, or of a combination of controlled drugs, was manufactured during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled drugs are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

### 311.12 Multiple offences—pre-trafficking controlled precursors

The prosecution may prove an offence against Division 306 (pre-trafficking controlled precursors) by proving:

(a) that the defendant committed offences against that Division on different occasions; and

(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

(c) that the relevant quantity (in sum) of a controlled precursor, or of a combination of controlled precursors, was pre-trafficked during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled precursors are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

### 311.13 Multiple offences—importing or exporting border controlled drugs or border controlled plants

The prosecution may prove an offence against Subdivision A of Division 307 (importing and exporting border controlled drugs or border controlled plants) by proving:

(a) that the defendant committed offences against that Subdivision on different occasions; and



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(b) that each of those offences was committed within a period of not more than 30 days from another of those offences; and

(c) that the relevant quantity (in sum) of a border controlled drug or border controlled plant or both, or of a combination of border controlled drugs or border controlled plants or both, was imported or exported during the commission of those offences.

Note: See section 312.2 for working out quantities where different kinds of border controlled drugs or border controlled plants are involved.

### 311.14 Multiple offences—possessing unlawfully imported border controlled drugs or border controlled plants

The prosecution may prove an offence against Subdivision B of Division 307 (possessing unlawfully imported border controlled drugs or border controlled plants) by proving:

(a) that the defendant committed offences against that Subdivision on different occasions; and

(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

(c) that the relevant quantity (in sum) of a border controlled drug or border controlled plant or both, or of a combination of border controlled drugs or border controlled plants or both, was possessed by the defendant during the commission of those offences.

Note: See section 312.2 for working out quantities where different kinds of border controlled drugs or border controlled plants are involved.

### 311.15 Multiple offences—possessing border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported

The prosecution may prove an offence against Subdivision C of Division 307 (possessing border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported) by proving:



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(a) that the defendant committed offences against that Subdivision on different occasions; and

(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

(c) that the relevant quantity (in sum) of a border controlled drug or border controlled plant or both, or of a combination of border controlled drugs or border controlled plants or both, was possessed by the defendant during the commission of those offences.

Note: See section 312.2 for working out quantities where different kinds of border controlled drugs or border controlled plants are involved.

### 311.16 Multiple offences—importing or exporting border controlled precursors

The prosecution may prove an offence against Subdivision D of Division 307 (importing and exporting border controlled precursors) by proving:

(a) that the defendant committed offences against that Subdivision on different occasions; and

(b) that each of those offences was committed within a period of not more than 30 days from another of those offences; and

(c) that the relevant quantity (in sum) of a border controlled precursor, or of a combination of border controlled precursors, was imported or exported during the commission of those offences.

Note: See section 312.2 for working out quantities where different kinds of border controlled precursors are involved.

### 311.17 Multiple offences—supplying controlled drugs to children for trafficking

The prosecution may prove an offence against section 309.3 (supplying marketable quantities of controlled drugs to children for trafficking) by proving:



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(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

(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).



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### 311.19 Multiple offences—procuring children for pre-trafficking controlled precursors

The prosecution may prove an offence against section 309.10 (procuring children for pre-trafficking marketable quantities of controlled precursors) by proving:

(a) that the defendant committed offences against section 309.11 (procuring children for pre-trafficking controlled precursors) on different occasions; and

(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

(c) that the relevant quantity (in sum) of a controlled precursor, or of a combination of controlled precursors, was pre-trafficked during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled precursors are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

### 311.20 Multiple offences—procuring children for importing or exporting border controlled drugs or border controlled plants

The prosecution may prove an offence against section 309.12 (procuring children for importing or exporting marketable quantities of border controlled drugs or border controlled plants) by proving:

(a) that the defendant committed offences against section 309.13 (procuring children for importing or exporting border controlled drugs or border controlled plants) on different occasions; and

(b) that each of those offences was committed within a period of not more than 30 days from another of those offences; and

(c) that the relevant quantity (in sum) of a border controlled drug or border controlled plant or both, or of a combination of border controlled drugs or border controlled plants or both,



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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).

### 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.



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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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Section 312.2

## 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



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301.12, for the controlled drug in a mixture—on the basis of the quantity of the mixture.

(5) If this section applies in relation to a border controlled drug in a mixture of substances, the requisite fraction of a marketable or commercial quantity of the border controlled drug may be calculated:

(a) on the basis of the quantity of the border controlled drug in pure form; or

(b) if such a quantity is specified, in 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)).



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## 313.3 Alternative verdict—offence not proved

If:

(a) in a prosecution for an offence against this Part, the trier of fact:

(i) is not satisfied that the defendant is guilty of the alleged offence; but

(ii) is satisfied, beyond reasonable doubt, that the defendant is guilty of another offence against this Part; and

(b) the maximum penalty for the other offence is not greater than the maximum penalty for the alleged offence;

the trier of fact may find the defendant not guilty of the alleged offence but guilty of the other offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

## 313.4 Alternative verdict—mistake as to quantity of drug, plant or precursor

(1) This section applies if:

(a) an offence against this Part (other than Division 307) is prosecuted; and

(b) the offence involves a commercial quantity or a marketable quantity of a controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor; and

(c) the trier of fact would, apart from this section, have found the defendant guilty of the offence.

(2) If:

(a) the defendant proves that, at the time of the alleged offence, he or she was under a mistaken belief about the quantity of the drug, plant or precursor; and

(b) if the mistaken belief had been correct, the defendant would have been guilty of another offence against this Part; and



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(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).

### 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.



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

## 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 the *Public Health (Tobacco and Other Products) Act 2023*); 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



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(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 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 Act 2019*; 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



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(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)).

(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:



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(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

(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



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(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)).

(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

*Basic offence*

(1) A person commits an offence if:



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(a) the person engages in conduct that constitutes an offence (the ***underlying offence***) against a firearm law; and

(b) the person does so in the course of trade or commerce:

(i) among the States; or

(ii) between a State and a Territory, or between 2 Territories; and

(c) the primary element of the underlying offence involves:

(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 20 years or a fine of 5,000 penalty units, or both.

*Aggravated offence—disposing or acquiring 50 or more firearms or firearm parts in 6 month period*

(2) A person commits an offence if:

(a) the person engages in conduct on one or more occasions that constitutes an offence (the ***underlying offence***) against a firearm law; and

(b) the person does so in the course of trade or commerce:

(i) among the States; or

(ii) between a State and a Territory, or between 2 Territories; and

(c) the primary element of the underlying offence involves:

(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; and

(d) the conduct on any occasion, or on 2 or more occasions taken together, results in the disposal, or acquisition, by the person of:

(i) 50 or more firearms; or

(ii) 50 or more firearm parts; or



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(iii) a combination of firearms and firearm parts such that the sum of the firearms and the firearm parts is 50 or more; and

(e) if the disposal or acquisition of the firearms or parts mentioned in paragraph (d) resulted from conduct on 2 or more occasions taken together—the occasions of conduct occurred during a 6 month period.

Penalty: Imprisonment for life or a fine of 7,500 penalty units, or both.

*Provisions relating to basic offence and aggravated offence*

(2A) There is no fault element for any of the physical elements described in paragraphs (1)(a) and (2)(a), other than the fault elements (however described), if any, for the underlying offence.

(2B) To avoid doubt:

(a) in determining whether the conduct referred to in paragraph (1)(a) or (2)(a) constitutes the underlying offence, any defences or special liability provisions (however described) that apply in relation to the underlying offence have effect; and

(b) a person may be convicted of an offence against subsection (1) or (2) even if the person has not been convicted of the underlying offence; and

(c) for the purposes of subsection (2)—it is immaterial whether:

(i) the underlying offence is the same on each occasion; or

(ii) the conduct constituting the underlying offence is the same on each occasion; or

(iii) the firearms or firearm parts to which the conduct relates are of the same kind.

(2C) Absolute liability applies to paragraphs (1)(b) and (c) and (2)(b), (c) and (e).

Note: For absolute liability, see section 6.2.

(2D) Strict liability applies to paragraph (2)(d).



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Note: For strict liability, see section 6.1.

*Definitions*

(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

*Basic offence*

(1) A person commits an offence if:

(a) the person takes or sends a thing from one State or Territory to another State or Territory; and

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

(ab) the person does so in the course of trade or commerce:

(i) among the States; or

(ii) between a State and a Territory, or between 2 Territories; 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 20 years or a fine of 5,000 penalty units, or both.

*Aggravated offence—taking or sending 50 or more firearms or firearm parts in 6 month period*

(1A) A person commits an offence if:

(a) the person takes or sends (on one or more occasions) one or more things from one State or Territory to another State or Territory; and

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

(c) the person does so in the course of trade or commerce:

(i) among the States; or

(ii) between a State and a Territory, or between 2 Territories; and

(d) the person does so intending that any of the firearms or parts will be disposed of in the other State or Territory (whether by the person or another); and

(e) the person knows that, or is reckless as to whether:

(i) the disposal of any of the firearms or parts; or

(ii) any acquisition of any of the firearms or parts that results from the disposal;

would happen in circumstances that would constitute an offence against the firearm law of that other State or Territory; and

(f) the conduct on any occasion, or on 2 or more occasions taken together, results in the taking, or sending, by the person of:

(i) 50 or more firearms; or

(ii) 50 or more firearm parts; or



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(iii) a combination of firearms and firearm parts such that the sum of the firearms and the firearm parts is 50 or more; and

(g) if the taking or sending of the firearms or parts mentioned in paragraph (f) resulted from conduct on 2 or more occasions taken together—the occasions of conduct occurred during a 6 month period.

Penalty: Imprisonment for life or a fine of 7,500 penalty units, or both.

*Provisions relating to basic offence and aggravated offence*

(1B) Absolute liability applies to paragraphs (1)(ab) and (1A)(c) and (g).

Note: For absolute liability, see section 6.2.

(1C) Strict liability applies to paragraph (1A)(f).

Note: For strict liability, see section 6.1.

(1D) To avoid doubt, it is immaterial for the purposes of paragraphs (1A)(b) and (f) whether the firearms or firearm parts are of the same kind.

*Definitions*

(2) In this section:

***firearm*** means a firearm within the meaning of the firearm law mentioned in paragraph (1)(c) or (1A)(e) (as the case requires).

***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) or (1A)(e) (as the case requires):

(a) a firearm part;

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



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## 360.3A Minimum penalties

(1) Subject to subsections (2) and (3), the court must impose a sentence of imprisonment of at least 5 years for a person convicted of an offence against this Division.

*People aged under 18*

(2) Subsection (1) does not apply to a person who was aged under 18 years when the offence was committed.

*Reduction of minimum penalty*

(3) A court may impose a sentence of imprisonment of less than the period specified in subsection (1) only if the court considers it appropriate to reduce the sentence because of either or both of the following:

(a) the court is taking into account, under paragraph 16A(2)(g) of the *Crimes Act 1914*, the person pleading guilty;

(b) the court is taking into account, under paragraph 16A(2)(h) of that Act, the person having cooperated with law enforcement agencies in the investigation of the offence.

(4) If a court may reduce a sentence, the court may reduce the sentence as follows:

(a) if the court is taking into account, under paragraph 16A(2)(g) of the *Crimes Act 1914*, the person pleading guilty—by an amount that is up to 25% of the period specified in subsection (1);

(b) if the court is taking into account, under paragraph 16A(2)(h) of that Act, the person having cooperated with law enforcement agencies in the investigation of the offence—by an amount that is up to 25% of the period specified in subsection (1);

(c) if the court is taking into account both of the matters in paragraphs (a) and (b)—by an amount that is up to 50% of the period specified in subsection (1).



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## 360.3B Double jeopardy and alternative verdicts

*Double jeopardy*

(1) A person who has been convicted or acquitted of an aggravated offence may not be convicted of a basic offence relating to the aggravated offence that is alleged to have been committed in the period during which the person was alleged to have committed the aggravated offence.

(2) However, subsection (1) does not prevent an alternative verdict under subsection (4).

(3) A person who has been convicted or acquitted of a basic offence relating to an aggravated offence may not be convicted of the aggravated offence if any of the occasions relied on as evidence of the commission of the aggravated offence includes the conduct that constituted the basic offence.

*Alternative verdict—aggravated offence not proven*

(4) If, on a trial for an aggravated offence, 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 the basic offence relating to the aggravated offence;

it may find the defendant not guilty of the aggravated offence but guilty of the basic offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

*Definitions*

(5) In this section:

***aggravated offence*** means an offence against subsection 360.2(2) or 360.3(1A).

***basic offence*** relating to an aggravated offence means:



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(a) if the aggravated offence is an offence against subsection 360.2(2)—an offence against subsection 360.2(1); or

(b) if the aggravated offence is an offence against subsection 360.3(1A)—an offence against subsection 360.3(1).

## 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;

(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

*Basic offence*

(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*:
    (i) absolutely; or
    (ii) unless certain requirements were met; and
  (e) if subparagraph (d)(ii) applies—the person fails to meet any of those requirements.

Penalty: Imprisonment for 20 years or a fine of 5,000 penalty units, or both.

*Aggravated offence—importing 50 or more prohibited firearms or firearm parts in 6 month period*

(2) A person commits an offence if:
  (a) the person imports (on one or more occasions) one or more things; and
  (b) the thing is, or the things include, a firearm or firearm part; and
  (c) the person imports each firearm or part with the intention of trafficking in the firearm or part; and
  (d) importing each firearm or part was prohibited under the *Customs Act 1901*:
    (i) absolutely; or
    (ii) unless certain requirements were met; and



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(e) if subparagraph (d)(ii) applies in relation to an occasion of importation—the person fails to meet any of those requirements; and

(f) any occasion of importation, or 2 or more occasions taken together, results in the importation by the person of:

(i) 50 or more firearms; or

(ii) 50 or more firearm parts; or

(iii) a combination of firearms and firearm parts such that the sum of the firearms and the firearm parts is 50 or more; and

(g) if the importation of the firearms or parts mentioned in paragraph (f) resulted from 2 or more occasions of importation taken together—the occasions of importation occurred during a 6 month period.

Penalty: Imprisonment for life or a fine of 7,500 penalty units, or both.

*Provisions relating to basic offence and aggravated offence*

(3) Absolute liability applies to paragraphs (1)(d) and (2)(d) and (g).

Note: For absolute liability, see section 6.2.

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

Note: For strict liability, see section 6.1.

(5) To avoid doubt, it is immaterial for the purposes of paragraphs (2)(b) and (f) whether the firearms or firearm parts are of the same kind.

## 361.3 Trafficking prohibited firearms or firearm parts out of Australia

*Basic offence*

(1) A person commits an offence if:



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(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, or entering for export, the firearm or part was prohibited under the *Customs Act 1901*:
(i) absolutely; or
(ii) unless certain requirements were met; and
(e) if subparagraph (d)(ii) applies—the person fails to meet any of those requirements.

Penalty: Imprisonment for 20 years or a fine of 5,000 penalty units, or both.

*Aggravated offence—exporting or entering for export 50 or more prohibited firearms or firearm parts in 6 month period*

(2) A person commits an offence if:
(a) the person (on one or more occasions) exports, or enters for export from Australia, one or more things; and
(b) the thing is, or the things include, a firearm or firearm part; and
(c) the person exports, or enters for export, each firearm or part with the intention of trafficking in the firearm or part; and
(d) exporting, or entering for export, each firearm or part was prohibited under the *Customs Act 1901*:
(i) absolutely; or
(ii) unless certain requirements were met; and
(e) if subparagraph (d)(ii) applies in relation to an occasion of exportation or entry for export—the person fails to meet any of those requirements; and
(f) any occasion of exportation or entry for export, or 2 or more occasions taken together, results in the exportation or entry for export by the person of:
(i) 50 or more firearms; or



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(ii) 50 or more firearm parts; or

(iii) a combination of firearms and firearm parts such that the sum of the firearms and the firearm parts is 50 or more; and

(g) if the exportation or entry for export of the firearms or parts mentioned in paragraph (f) resulted from 2 or more occasions of exportation or entry for export taken together—the occasions of exportation or entry occurred during a 6 month period.

Penalty: Imprisonment for life or a fine of 7,500 penalty units, or both.

*Provisions relating to basic offence and aggravated offence*

(3) Absolute liability applies to paragraphs (1)(d) and (2)(d) and (g).

Note: For absolute liability, see section 6.2.

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

Note: For strict liability, see section 6.1.

(5) To avoid doubt, it is immaterial for the purposes of paragraphs (2)(b) and (f) whether the firearms or firearm parts are of the same kind.

## 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.



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

## 361.5 Minimum penalties

(1) Subject to subsections (2) and (3), the court must impose a sentence of imprisonment of at least 5 years for a person convicted of an offence against this Division.

*People aged under 18*

(2) Subsection (1) does not apply to a person who was aged under 18 years when the offence was committed.

*Reduction of minimum penalty*

(3) A court may impose a sentence of imprisonment of less than the period specified in subsection (1) only if the court considers it appropriate to reduce the sentence because of either or both of the following:

(a) the court is taking into account, under paragraph 16A(2)(g) of the *Crimes Act 1914*, the person pleading guilty;

(b) the court is taking into account, under paragraph 16A(2)(h) of that Act, the person having cooperated with law enforcement agencies in the investigation of the offence.

(4) If a court may reduce a sentence, the court may reduce the sentence as follows:

(a) if the court is taking into account, under paragraph 16A(2)(g) of the *Crimes Act 1914*, the person pleading guilty—by an amount that is up to 25% of the period specified in subsection (1);

(b) if the court is taking into account, under paragraph 16A(2)(h) of that Act, the person having cooperated with law enforcement agencies in the investigation of the offence—by an amount that is up to 25% of the period specified in subsection (1);



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(c) if the court is taking into account both of the matters in paragraphs (a) and (b)—by an amount that is up to 50% of the period specified in subsection (1).

## 361.6 Double jeopardy and alternative verdicts

*Double jeopardy*

(1) 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*.

(2) A person who has been convicted or acquitted of an aggravated offence may not be convicted of a basic offence relating to the aggravated offence that is alleged to have been committed in the period during which the person was alleged to have committed the aggravated offence.

(3) However, subsection (2) does not prevent an alternative verdict under subsection (5).

(4) A person who has been convicted or acquitted of a basic offence relating to an aggravated offence may not be convicted of the aggravated offence if any of the occasions relied on as evidence of the commission of the aggravated offence includes the conduct that constituted the basic offence.

*Alternative verdict—aggravated offence not proven*

(5) If, on a trial for an aggravated offence, 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 the basic offence relating to the aggravated offence;



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it may find the defendant not guilty of the aggravated offence but guilty of the basic offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

*Definitions*

(6) In this section:

***aggravated offence*** means an offence against subsection 361.2(2) or 361.3(2).

***basic offence*** relating to an aggravated offence means:

(a) if the aggravated offence is an offence against subsection 361.2(2)—an offence against subsection 361.2(1); or

(b) if the aggravated offence is an offence against subsection 361.3(2)—an offence against subsection 361.3(1).



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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;



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(j) a series of numbers or letters (or both) intended for use as a means of personal identification;

(k) an ABN.

## 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.



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(4) This section does not apply to dealing in the first person's own identification information.

### 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



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(b) the first person does so using a carriage service; and
(c) the first person deals in the identification information; and
(d) the first person intends that any person (the ***user***) (whether or not the first person) will use the identification information to pretend to be, or to pass the user off as, another person (whether living, dead, real or fictitious) for the purpose of:
  (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:



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(i) committing the offence referred to in paragraph (1)(c) or (3)(d) is impossible; or

(ii) the offence referred to in paragraph (1)(c) or (3)(d) is to be committed at a later time; and

(b) whether or not the person to whom the identification information concerned relates consented to the dealing in the identification information.

(7) This section does not apply to dealing in the first person's own identification information.

## 372.2 Possession of identification information

(1) A person (the ***first person***) commits an offence if:

(a) the first person possesses identification information; and

(b) the first person intends that any person (whether or not the first person) will use the identification information to engage in conduct; and

(c) the conduct referred to in paragraph (b) constitutes an offence against section 372.1 or subsection 372.1A(1) or (3).

Penalty: Imprisonment for 3 years.

(2) Absolute liability applies to the paragraph (1)(c) element of the offence.

Note: For absolute liability, see section 6.2.

(3) This section applies whether or not the person to whom the identification information concerned relates consented to the possession of the identification information.

(4) This section does not apply to the possession of the first person's own identification information.

## 372.3 Possession of equipment used to make identification documentation

(1) A person (the ***first person***) commits an offence if:



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(a) the first person possesses equipment; and
(b) the first person intends that any person (whether or not the first person) will use the equipment to make identification documentation; and
(c) the first person intends that any person (whether or not referred to in paragraph (b)) will use the identification documentation to engage in conduct; and
(d) the conduct referred to in paragraph (c) constitutes an offence against section 372.1 or subsection 372.1A(1) or (3).

Penalty: Imprisonment for 3 years.

(2) Absolute liability applies to the paragraph (1)(d) element of the offence.

Note: For absolute liability, see section 6.2.

## 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.



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## 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



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(c) the information resulted in the identification of a person as a passenger on the flight; and

(d) the information is false in relation to the defendant; and

(e) a carriage service was used (whether by the defendant or another person) to obtain the ticket; and

(f) the flight starts or ends within Australia.

Penalty: Imprisonment for 12 months.

*General*

(3) In a prosecution for an offence against subsection (1) or (2), if the prosecution proves beyond reasonable doubt that an air passenger ticket was obtained, then it is presumed, unless the defendant proves to the contrary, that a carriage service was used to obtain the ticket.

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

(4) Absolute liability applies to paragraphs (1)(e) and (f) and (2)(e) and (f).

Note: For absolute liability, see section 6.2.

## 376.4 False identification information—air passenger tickets for constitutional flights

*Constitutional flight offence—using information to obtain an air passenger ticket*

(1) A person (the ***defendant***) commits an offence if:

(a) the defendant uses information; and

(b) the defendant does so:

(i) with the result that an air passenger ticket for a flight is obtained (whether by the defendant or another person); and



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(ii) reckless as to whether the information is used to identify the defendant, or another person, as a passenger on the flight; and

(c) the information is identification information; and

(d) the information is false in relation to the person who takes, or intends to take, the flight using the ticket; and

(e) the flight is a constitutional flight.

Penalty: Imprisonment for 12 months.

*Constitutional flight offence—taking a flight using an air passenger ticket*

(2) A person (the ***defendant***) commits an offence if:

(a) the defendant takes a flight using an air passenger ticket; and

(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



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(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

*Offences based on implied nationhood power*

(1) A person commits an offence if:



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(a) the person contaminates goods; 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 15 years.

(1A) A person commits an offence if:
(a) the person contaminates goods; and
(b) the person does so reckless as to:
(i) causing public alarm or anxiety in Australia; or
(ii) causing widespread, or nationally significant, economic loss in Australia through public awareness of the contamination, or possible contamination, of the goods; or
(iii) causing harm to, or creating 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:



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(i) the loss is a loss to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);

(ii) the loss is a loss to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(iii) the goods belong to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);

(iv) the goods belong to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(v) the person is a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);

(vi) the person is a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(vii) the loss takes the form of detriment to constitutional trade and commerce;

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

(ix) the contamination occurs outside Australia and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(x) the loss is a loss to the Commonwealth or a Commonwealth authority.

Penalty: Imprisonment for 15 years.

(2A) A person commits an offence if:



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(a) the person contaminates goods; and
(b) the person does so reckless as to causing:
  (i) public alarm or anxiety; or
  (ii) economic loss through public awareness of the contamination, or possible contamination, of the goods; and
(c) any of the following subparagraphs applies:
  (i) the loss is a loss to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);
  (ii) the loss is a loss to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
  (iii) the goods belong to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);
  (iv) the goods belong to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
  (v) the person is a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);
  (vi) the person is a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
  (vii) the loss takes the form of detriment to constitutional trade and commerce;
  (viii) the goods are in the course of, or intended for, constitutional trade and commerce;



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(ix) the 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 paragraphs (2)(c) and (2A)(c).

## 380.3 Threatening to contaminate goods

*Offences 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 15 years.

(1A) A person commits an offence if:

(a) the person makes a threat that goods will be contaminated; and

(b) the person does so reckless as to:

(i) causing public alarm or anxiety in Australia; or

(ii) causing widespread, or nationally significant, economic loss in Australia through public awareness of the contamination, or possible contamination, of the goods; or



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(iii) causing harm to, or creating 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 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);



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(vi) the person is a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(vii) the loss takes the form of detriment to constitutional trade and commerce;

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

(ix) the person makes the 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 15 years.

(2A) A person commits an offence if:

(a) the person makes a threat that goods will be contaminated; and

(b) the person does so reckless as to causing:

(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



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been produced, manufactured, assembled or otherwise processed in Australia;

(iii) the goods belong to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);

(iv) the goods belong to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(v) the person is a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);

(vi) the person is a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(vii) the loss takes the form of detriment to constitutional trade and commerce;

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

(ix) the person makes the 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 paragraphs (2)(c) and (2A)(c).



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Section 380.4

## 380.4 Making false statements about contamination of goods

*Offences 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 15 years.

(1A) 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 reckless as to:

(i) causing public alarm or anxiety in Australia; or

(ii) causing widespread, or nationally significant, economic loss in Australia through public awareness of the contamination, or possible contamination, of the goods; or

(iii) causing harm to, or creating 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 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



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been produced, manufactured, assembled or otherwise processed in Australia;

(vii) the loss takes the form of detriment to constitutional trade and commerce;

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

(ix) the person makes the statement in Australia using a postal or other like service or an electronic communication;

(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 15 years.

(2A) 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 reckless as to causing:

(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



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paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(iii) the goods belong to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);

(iv) the goods belong to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(v) the person is a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);

(vi) the person is a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(vii) the loss takes the form of detriment to constitutional trade and commerce;

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

(ix) the person makes the statement in Australia using a postal or other like service or an electronic communication;

(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 paragraphs (2)(d) and (2A)(d).



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(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 section 380.2, 380.3 or 380.4.



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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.



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## 390.2 State offences that have a federal aspect

*Object*

(1) The object of this section is to identify State offences that have a federal aspect because:

(a) they potentially fall within Commonwealth legislative power because of the elements of the State offence; or

(b) they potentially fall within Commonwealth legislative power because of the circumstances in which the State offence is committed (whether or not those circumstances are expressed to be acts or omissions involved in committing the offence).

*State offences that have a federal aspect*

(2) For the purposes of this Act, a State offence has a ***federal aspect*** if, and only if:

(a) both:

(i) the State offence is not an ancillary offence; and

(ii) assuming that the provision creating the State offence had been enacted by the Parliament of the Commonwealth instead of by the Parliament of the State—the provision would have been a valid law of the Commonwealth; or

(b) both:

(i) the State offence is an ancillary offence that relates to a particular primary offence; and

(ii) assuming that the provision creating the primary offence had been enacted by the Parliament of the Commonwealth instead of by the Parliament of the State—the provision would have been a valid law of the Commonwealth; or



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(c) assuming that the Parliament of the Commonwealth had enacted a provision that created an offence penalising the specific acts or omissions involved in committing the State offence—that provision would have been a valid law of the Commonwealth.

*Specificity of acts or omissions*

(3) For the purposes of paragraph (2)(c), the specificity of the acts or omissions involved in committing a State offence is to be determined having regard to the circumstances in which the offence is committed (whether or not those circumstances are expressed to be elements of the offence).

*State offences covered by paragraph (2)(c)*

(4) A State offence is taken to be covered by paragraph (2)(c) if the conduct constituting the State offence:

(a) affects the interests of:

(i) the Commonwealth; or

(ii) an authority of the Commonwealth; or

(iii) a constitutional corporation; or

(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



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(h) relates to a matter outside Australia; or

(i) relates to a matter in respect of which an international agreement to which Australia is a party imposes obligations to which effect could be given by the creation of an offence against the domestic laws of the parties to the agreement; or

(j) relates to a matter that affects the relations between Australia and another country or countries or is otherwise a subject of international concern.

(5) Subsection (4) does not limit paragraph (2)(c).

## Subdivision B—Offences

### 390.3 Associating in support of serious organised criminal activity

(1) A person (the ***first person***) commits an offence if:

(a) the first person associates on 2 or more occasions with another person (the ***second person***); and

(b) the second person engages, or proposes to engage, in conduct (the ***second person's conduct***) that constitutes, or is part of conduct constituting, an offence against any law; and

(c) the associations facilitate the engagement or proposed engagement by the second person in the second person's conduct; and

(d) the offence against any law mentioned in paragraph (b) involves 2 or more persons; and

(e) the offence against any law mentioned in paragraph (b) is a constitutionally covered offence punishable by imprisonment for at least 3 years.

Penalty: Imprisonment for 3 years.

*Repeat offence*

(2) A person (the ***first person***) commits an offence if:

(a) the first person has previously been convicted of an offence against subsection (1); and



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(b) the first person associates with another person (the ***second person***); and

(c) the second person engages, or proposes to engage, in conduct (the ***second person's conduct***) that constitutes, or is part of conduct constituting, an offence against any law; and

(d) the association facilitates the engagement or proposed engagement by the second person in the second person's conduct; and

(e) the offence against any law mentioned in paragraph (c) involves 2 or more persons; and

(f) the offence against any law mentioned in paragraph (c) is a constitutionally covered offence punishable by imprisonment for at least 3 years.

Penalty: Imprisonment for 3 years.

*Knowledge fault element for paragraphs (1)(b) and (2)(c)*

(3) The fault element for paragraphs (1)(b) and (2)(c) is knowledge (by the first person).

*Intention fault element for paragraphs (1)(c) and (2)(d)*

(3A) The fault element for paragraphs (1)(c) and (2)(d) is intention (by the first person).

*Absolute liability*

(4) Absolute liability applies to paragraphs (1)(e) and (2)(f).

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).



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*Defence for certain kinds of associations*

(6) This section does not apply to an association if:

(a) the association is with a close family member and relates only to a matter that could reasonably be regarded (taking into account the person's cultural background) as a matter of family or domestic concern; or

(b) the association is in a place being used for public religious worship and takes place in the course of practising a religion; or

(c) the association is only for the purpose of providing aid of a humanitarian nature; or

(d) the association is only for the purpose of providing legal advice or legal representation in connection with judicial or administrative proceedings under a law of the Commonwealth, a State, a Territory or a foreign country; or

(e) the association is reasonable in the circumstances.

Note: A defendant bears an evidential burden in relation to the matters in subsection (6). See subsection 13.3(3).

(6A) Paragraphs (6)(a), (b), (c), (d) and (e) do not limit one another.

*Other limits on this section*

(7) A person who is convicted of an offence against subsection (1) or (2) in relation to the person's conduct on 2 or more occasions is not liable to be punished for an offence against subsection (1) or (2) for other conduct of the person that takes place:

(a) at the same time as that conduct; or

(b) within 7 days before or after any of those occasions.

(8) This section does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.

## 390.4 Supporting a criminal organisation

(1) A person commits an offence if:



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(a) the person provides material support or resources to an organisation or a member of an organisation; and

(b) either:

(i) the provision of the support or resources aids; or

(ii) there is a risk that the provision of the support or resources will aid;

the organisation to engage in conduct constituting an offence against any law; and

(c) the organisation consists of 2 or more persons; and

(d) the organisation's aims or activities include facilitating the engagement in conduct, or engaging in conduct, constituting an offence against any law that is, or would if committed be, for the benefit of the organisation; and

(e) the offence against any law mentioned in paragraph (d) is an offence against any law punishable by imprisonment for at least 3 years; and

(f) the offence against any law mentioned in paragraph (b) is a constitutionally covered offence punishable by imprisonment for at least 12 months.

Penalty: Imprisonment for 5 years.

(2) Absolute liability applies to paragraphs (1)(e) and (f).

Note: For absolute liability, see section 6.2.

(3) To avoid doubt, a person may be convicted of an offence against subsection (1) because of a risk that the provision of the support or resources will aid the organisation as described in paragraph (1)(b) even if the provision of the support or resources does not actually aid the organisation in that way.

## 390.5 Committing an offence for the benefit of, or at the direction of, a criminal organisation

*Offence committed for the benefit of an organisation*

(1) A person commits an offence if:



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(a) the person commits an offence against any law (the ***underlying offence***); and
(b) the underlying offence is for the benefit of an organisation; and
(c) the organisation consists of 2 or more persons; and
(d) the organisation's aims or activities include facilitating the engagement in conduct, or engaging in conduct, constituting an offence against any law that is, or would if committed be, for the benefit of the organisation; and
(e) the offence against any law mentioned in paragraph (d) is an offence against any law punishable by imprisonment for at least 3 years; and
(f) the underlying offence is a constitutionally covered offence punishable by imprisonment for at least 12 months.

Penalty: Imprisonment for 7 years.

*Offence committed at the direction of an organisation*

(2) A person commits an offence if:
(a) the person commits an offence against any law (the ***underlying offence***); and
(b) the person engaged in the conduct constituting the underlying offence at the direction of an organisation or of a member of an organisation; and
(c) the organisation consists of 2 or more persons; and
(d) the organisation's aims or activities include facilitating the engagement in conduct, or engaging in conduct, constituting an offence against any law that is, or would if committed be, for the benefit of the organisation; and
(e) the offence against any law mentioned in paragraph (d) is an offence against any law punishable by imprisonment for at least 3 years; and
(f) the underlying offence is a constitutionally covered offence punishable by imprisonment for at least 12 months.

Penalty: Imprisonment for 7 years.



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*Fault elements*

(3) There is no fault element for the physical elements described in paragraphs (1)(a) and (2)(a) other than the fault elements (however described), if any, for the underlying offence.

*Absolute liability*

(4) Absolute liability applies to paragraphs (1)(e) and (f) and (2)(e) and (f).

Note: For absolute liability, see section 6.2.

*Avoiding multiplicity of proceedings and punishments*

(5) To avoid doubt, the person may be convicted of an offence against subsection (1) or (2) even if the person has not:

(a) been convicted of the underlying offence; or

(b) been the subject of an order under section 19B (Discharge of offenders without proceeding to conviction) of the *Crimes Act 1914*, or a corresponding law of a State, Territory or foreign country, relating to the underlying offence.

(6) If a person has been convicted or acquitted of a foreign offence in respect of conduct, the person cannot be convicted of an offence against this section in respect of that conduct.

Note: If the underlying offence is an Australian offence, section 4C of the *Crimes Act 1914* prevents the person from being punished twice under Australian law (once under this section and once under the Commonwealth, State or Territory law creating the underlying offence) for the act or omission constituting the underlying offence.

*Likely benefits*

(7) To avoid doubt, the person may be convicted of an offence against subsection (1) because the underlying offence is likely to result in the organisation or at least one member receiving benefits as described in the definition of ***for the benefit of*** in subsection 390.1(1), even if the organisation or member does not actually receive such a benefit.



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## 390.6 Directing activities of a criminal organisation

(1) A person commits an offence if:

(a) the person directs one or more activities of an organisation; and

(b) either:

(i) the activity or activities directed aid; or

(ii) there is a risk that the activity or activities directed will aid;

the organisation to engage in conduct constituting an offence against any law; and

(c) the organisation consists of 2 or more persons; and

(d) the organisation's aims or activities include facilitating the engagement in conduct, or engaging in conduct, constituting an offence against any law that is, or would if committed be, for the benefit of the organisation; and

(e) the offence against any law mentioned in paragraph (d) is an offence against any law punishable by imprisonment for at least 3 years; and

(f) the offence against any law mentioned in paragraph (b) is a constitutionally covered offence punishable by imprisonment for at least 12 months.

Penalty: Imprisonment for 10 years.

(2) A person commits an offence if:

(a) the person directs one or more activities of an organisation; and

(b) the activity or activities directed constitute an offence against any law; and

(c) the organisation consists of 2 or more persons; and

(d) the organisation's aims or activities include facilitating the engagement in conduct, or engaging in conduct, constituting an offence against any law that is, or would if committed be, for the benefit of the organisation; and



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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 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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# Part 9.10—Community safety orders

## Division 395—Community safety orders

## Subdivision A—Preliminary

### 395.1 Object

The object of this Division is to protect the community from serious harm by providing that non-citizens who:

(a) pose an unacceptable risk of committing serious violent or sexual offences; and

(b) have no real prospect of their removal from Australia becoming practicable in the reasonably foreseeable future;

are subject to:

(c) a community safety detention order; or

(d) a community safety supervision order.

### 395.2 Definitions

(1) In this Division:

***AFP member*** means:

(a) a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or

(b) a special member of the Australian Federal Police (within the meaning of that Act).

***Commonwealth law enforcement officer*** has the meaning given by Part 7.8.

***community safety detention order*** means an order made under subsection 395.12(1).

***community safety order*** means a community safety detention order or a community safety supervision order.



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***community safety order decision*** means:

(a) a decision on an application for a community safety order; or

(b) a decision on an application to vary a community safety supervision order; or

(c) a decision in a review of a community safety order to affirm, revoke or vary the order; or

(d) a decision made under section 395.34 (when a serious offender is unable to engage a legal representative).

Note: See also subsection (4).

***community safety order proceeding*** means a proceeding under Subdivision C, D or E.

***community safety supervision order*** means an order made under subsection 395.13(1).

***detained in custody*** has the meaning given by subsection (2).

***detained in custody in a prison*** has the meaning given by subsection (3).

***exemption condition*** has the meaning given by subsection 395.15(2).

***immigration detention*** has the same meaning as in the *Migration Act 1958*.

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

***lawyer*** means a person enrolled as a legal practitioner of a federal court or the Supreme Court of a State or Territory.

***monitoring device*** means any electronic device capable of being used to determine or monitor the location of a person or an object or the status of an object.

Note: See also the definition of ***related monitoring equipment*** in this subsection.



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***non-citizen*** means a person who is not an Australian citizen.

***personal information*** has the same meaning as in the *Privacy Act 1988*.

***police officer*** means:

(a) an AFP member; or

(b) a member (however described) of a police force of a State or Territory.

***premises*** includes a place, an aircraft, a vehicle and a vessel.

***prison*** includes any gaol, lock-up or remand centre.

***related monitoring equipment***, in relation to a monitoring device, means any electronic equipment necessary for operating the monitoring device.

***relevant expert*** means any of the following persons who is competent to assess the risk of a serious offender committing a serious violent or sexual offence:

(a) a person who is:

(i) registered as a medical practitioner under a law of a State or Territory; and

(ii) a fellow of the Royal Australian and New Zealand College of Psychiatrists;

(b) any other person registered as a medical practitioner under a law of a State or Territory;

(c) a person registered as a psychologist under a law of a State or Territory;

(d) any other expert.

***reside*** includes reside temporarily.

***residence*** includes temporary residence.

***senior AFP member*** means:

(a) the Commissioner of the Australian Federal Police; or

(b) a Deputy Commissioner of the Australian Federal Police; or



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(c) an AFP member of, or above, the rank of Superintendent.

***serious foreign violent or sexual offence*** means an offence against a law of a foreign country, or of part of a foreign country, where:

(a) it is an offence punishable by imprisonment for life or for a period, or maximum period, of at least 7 years; and

(b) it is constituted by conduct that, if engaged in in Australia, would constitute an offence against a law of the Commonwealth, a State or a Territory; and

(c) the particular conduct constituting the offence involved, involves or would involve, as the case requires:

(i) loss of a person's life or serious risk of loss of a person's life; or

(ii) serious personal injury or serious risk of serious personal injury; or

(iii) sexual assault; or

(iv) sexual assault involving a person under 16; or

(v) the production, publication, possession, supply or sale of, or other dealing in, child abuse material (within the meaning of Part 10.6); or

(vi) consenting to or procuring the employment of a child, or employing a child, in connection with material referred to in subparagraph (v); or

(vii) acts done in preparation for, or to facilitate, the commission of a sexual offence against a person under 16.

***serious offender*** has the meaning given by subsections 395.5(1) and (2).

Note: This definition is affected by section 395.37.

***serious violent or sexual offence*** means an offence against a law of the Commonwealth, a State or a Territory where:

(a) it is an offence punishable by imprisonment for life or for a period, or maximum period, of at least 7 years; and



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(b) the particular conduct constituting the offence involved, involves or would involve, as the case requires:

(i) loss of a person's life or serious risk of loss of a person's life; or

(ii) serious personal injury or serious risk of serious personal injury; or

(iii) sexual assault; or

(iv) sexual assault involving a person under 16; or

(v) the production, publication, possession, supply or sale of, or other dealing in, child abuse material (within the meaning of Part 10.6); or

(vi) consenting to or procuring the employment of a child, or employing a child, in connection with material referred to in subparagraph (v); or

(vii) acts done in preparation for, or to facilitate, the commission of a sexual offence against a person under 16.

***specified authority***: a person, or person in a class of persons, is a ***specified authority*** for a requirement or condition in a community safety supervision order in relation to another person (the ***subject***) if:

(a) the person or class is any of the following:

(i) a police officer, or class of police officer;

(ii) if the requirement or condition relates to electronic monitoring—a person, or class of person, who is involved in electronically monitoring the subject;

(iii) for any requirement or condition in the order—any other person, or class of person; and

(b) the Court making the order is satisfied that the person or class is appropriate in relation to the requirement or condition; and

(c) the person or class is specified in the order.



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*Definition of **detained in custody** etc.*

(2) A person is ***detained in custody*** if the person is detained in custody under a law of the Commonwealth, a State or a Territory.

(3) A person is ***detained in custody in a prison*** if the person is detained in custody in a gaol, lock-up or remand centre, including under a community safety detention order. However, a person is not ***detained in custody in a prison*** if the person is in immigration detention in a gaol, lock-up or remand centre.

*When a decision is made*

(4) To avoid doubt, a decision on an application to a Supreme Court of a State or Territory for a community safety order is not made until the Court determines the application in accordance with section 395.10.

## 395.3 Concurrent operation intended

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

## 395.4 Regulations may modify operation of this Division to deal with interaction between this Division and State and Territory laws

(1) The regulations may modify the operation of this Division so that:
  (a) provisions of this Division do not apply to a matter that is dealt with by a law of a State or Territory specified in the regulations; or
  (b) no inconsistency arises between the operation of a provision of this Division and the operation of a State or Territory law specified in the regulations.

(2) Without limiting subsection (1), regulations made for the purposes of that subsection may provide that the provision of this Division does not apply to:



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(a) a person specified in the regulations; or
(b) a body specified in the regulations; or
(c) circumstances specified in the regulations; or
(d) a person or body specified in the regulations in the circumstances specified in the regulations.

(3) In this section:

***matter*** includes act, omission, body, person or thing.

## Subdivision B—Community safety orders

### 395.5 Who a community safety order may apply to and effect of community safety orders

(1) A community safety order may be made under section 395.12 or 395.13 in relation to a person (the ***serious offender***) if:
(a) the person has been convicted of a serious violent or sexual offence; and
(b) the person is a non-citizen; and
(c) there is no real prospect of removal of the person from Australia becoming practicable in the reasonably foreseeable future; and
(d) a subsection of section 395.6 provides that the order may be made in relation to the person; and
(e) the person is at least 18 years old.

Note: Before making the order, a Court must be satisfied of certain matters under section 395.12 or 395.13.

(2) A community safety order may be made under section 395.12 or 395.13 in relation to a person (the ***serious offender***) if:
(a) the person has been convicted of a serious foreign violent or sexual offence; and
(b) the person is a non-citizen; and
(c) there is no real prospect of removal of the person from Australia becoming practicable in the reasonably foreseeable future; and



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(d) a subsection of section 395.6 provides that the order may be made in relation to the person; and

(e) the person is at least 18 years old.

Note: Before making the order, a Court must be satisfied of certain matters under section 395.12 or 395.13.

*Effect of community safety detention order*

(3) The effect of a community safety detention order is to commit the person to detention in a prison for the period the order is in force.

Note 1: The period must not be more than 3 years (see subsection 395.12(5)).

Note 2: See also:

(a) section 395.41 (detention under the *Migration Act 1958*); and

(b) section 395.42 (effect of prison detention on community safety order); and

(c) subsection 395.47(2) (arrangements with States and Territories); and

(d) section 395.50 (effect of community safety detention orders on bail or parole laws).

*Effect of a community safety supervision order*

(4) The effect of a community safety supervision order is to impose on the person, for the period the order is in force, conditions contravention of which is an offence.

Note 1: The period must not be more than 3 years (see paragraph 395.13(5)(d)).

Note 2: See also sections 395.41 (detention under the *Migration Act 1958*) and 395.42 (effect of prison detention on community safety order).

## 395.6 Preconditions for community safety orders

*Person is detained in custody in a prison*

(1) A community safety order may be made in relation to a person if the person is detained in custody in a prison serving:

(a) a sentence of imprisonment for a serious violent or sexual offence; or



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(b) a sentence of imprisonment for any other offence.

*Person is in the community*

(2) A community safety order may be made in relation to a person if the person is in the community.

*Community safety detention order is in force*

(3) A community safety order may be made in relation to a person if a community safety detention order is in force in relation to the person.

## 395.7 Treatment of a serious offender in a prison under a community safety detention order

(1) A serious offender who is detained in custody in a prison under a community safety detention order must be treated in a way that is appropriate to the offender's status as a person who is not serving a sentence of imprisonment, subject to any reasonable requirements necessary to maintain:
   (a) the management, security or good order of the prison; and
   (b) the safe custody or welfare of the offender or any prisoners; and
   (c) the safety and protection of the community.

(2) The offender must not be accommodated or detained in the same area or unit of the prison as persons who are in prison for the purpose of serving sentences of imprisonment unless:
   (a) it is reasonably necessary for the purposes of rehabilitation, treatment, work, education, general socialisation or other group activities; or
   (b) it is necessary for the security or good order of the prison or the safe custody or welfare of the offender or prisoners; or
   (c) it is necessary for the safety and protection of the community; or
   (d) the offender elects to be so accommodated or detained.



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(3) This section does not apply if the offender is serving a sentence of imprisonment.

## Subdivision C—Making community safety orders

### 395.8 Applying for a community safety order

(1) The Immigration Minister, or a legal representative of the Immigration Minister, (the ***applicant***) may apply to a Supreme Court of a State or Territory for either of the following:

(a) a community safety detention order in relation to a serious offender;

(b) a community safety supervision order in relation to a serious offender.

Note: The court may make a community safety supervision order under section 395.13 even if a community safety detention order is applied for.

(2) The Immigration Minister must ensure that reasonable inquiries are made to ascertain any facts known to any Commonwealth law enforcement officer that would reasonably be regarded as supporting a finding that:

(a) if the application is for a community safety detention order—neither a community safety detention order nor a community safety supervision order should be made in relation to the offender; or

(b) if the application is for a community safety supervision order—the community safety supervision order should not be made in relation to the offender.

*Content of application*

(3) The application must:

(a) include any report or other document that the applicant intends, at the time of the application, to rely on in relation to the application; and

(b) include:



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(i) a copy of any material in the possession of the applicant; and

(ii) a statement of any facts that the applicant is aware of;

that would reasonably be regarded as supporting a finding that the order or orders mentioned in paragraph (2)(a) or (b) (as the case requires) should not be made, except any information, material or facts that are likely to be protected by public interest immunity (whether the claim for public interest immunity is to be made by the Immigration Minister or any other person); and

(c) include information about the offender's age; and

(d) if the offender is a holder under the *Migration Act 1958* of a visa that is subject to one or more conditions—specify the conditions; and

(e) request that the order be in force for a specified period; and

(f) if the application is for a community safety supervision order—include the following material:

(i) a copy of the proposed conditions;

(ii) an explanation as to why each of the proposed conditions should be imposed on the offender;

(iii) if the Immigration Minister is aware of any facts relating to why any of those conditions should not be imposed on the offender—a statement of those facts, except any facts that are likely to be protected by public interest immunity (whether the claim for public interest immunity is to be made by the Immigration Minister or any other person);

(iv) if the offender is subject to an order under a law of a State or Territory that is equivalent to a community safety order—a copy of that order; and

(g) if a report was obtained under section 395.43 in relation to the offender—include a copy of the report.

Note 1: For paragraph (3)(e), the period must not be more than 3 years (see subsection 395.12(5) and paragraph 395.13(5)(d)).

Note 2: Evidence may also be adduced later under section 395.28.



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Note 3: A copy of the application must be given to the serious offender under section 395.29.

## 395.9 Appointment of and assessment by relevant expert

(1) If an application for a community safety order is made under section 395.8 to a Supreme Court of a State or Territory in relation to a serious offender, the Court must hold a preliminary hearing to determine whether to appoint one or more relevant experts.

(2) The hearing must be held within 28 days after a copy of the application is given to the offender under subsection 395.29(2).

(3) The Court may, either at the preliminary hearing or at any later time in the proceeding, appoint one or more relevant experts if the Court considers that doing so is likely to materially assist the Court in deciding whether to make a community safety order in relation to the offender.

(4) The Immigration Minister or the offender, or a legal representative of the Immigration Minister or the offender, may nominate one or more relevant experts for the purposes of subsection (3).

(5) The relevant expert who is appointed must:
  (a) conduct an assessment of the risk of the offender committing a serious violent or sexual offence; and
  (b) provide a report of the expert's assessment to the Court, the Immigration Minister and the offender.

Note: For giving documents to a serious offender who is detained in custody, see section 395.33.

*Attendance and participation at assessment*

(6) The offender must attend the assessment.

Note: The assessment may be conducted over a number of sessions.

(7) The answer to a question or information given at the assessment, and answering a question or giving information at the assessment, are not admissible in evidence against the offender in:



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(a) any criminal proceedings, except any proceedings relating to sentencing for an offence against this Division (including any appeal in relation to those proceedings); or

(b) any civil proceedings against the offender, except proceedings under this Division (including any appeal in relation to those proceedings).

(8) The Court must ensure that the effect of subsections (6), (7) and (11) is explained to the offender.

*Contents of report*

(9) The expert's report may include any one or more of the following matters:

(a) the expert's assessment of the risk of the offender committing a serious violent or sexual offence;

(b) reasons for that assessment;

(c) the pattern or progression to date of behaviour on the part of the offender in relation to serious violent or sexual offences, and an indication of the nature of any likely future behaviour on the offender's part in relation to serious violent or sexual offences;

(d) efforts made to date by the offender to address the causes of the offender's behaviour in relation to serious violent or sexual offences, including whether the offender has actively participated in any rehabilitation or treatment programs;

(e) if the offender has participated in any rehabilitation or treatment programs—whether or not this participation has had a positive effect on the offender;

(f) any relevant background of the offender, including developmental and social factors;

(g) factors that might increase or decrease any risks that have been identified of the offender committing a serious violent or sexual offence;

(h) any other matters the expert considers relevant.



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*Other relevant experts*

(10) This section does not prevent the Immigration Minister or the offender, or a legal representative of the Immigration Minister or the offender, from calling their own relevant expert as a witness in the proceeding.

*Assessments conducted for certain purposes*

(11) Without limiting subsection (7), an assessment of an offender conducted under paragraph (5)(a), and the report of the assessment, may be taken into account in proceedings to make, vary or review any community safety order in relation to the offender.

## 395.10 Determining an application for a community safety order

*Determining applications for community safety detention orders*

(1) If an application is made under section 395.8 to the Supreme Court of a State or Territory for a community safety detention order in relation to a serious offender, the Court may determine the application by:
  (a) making a community safety detention order under section 395.12; or
  (b) making a community safety supervision order under section 395.13; or
  (c) dismissing the application.

*Determining applications for community safety supervision orders*

(2) If an application is made under section 395.8 to the Supreme Court of a State or Territory for a community safety supervision order in relation to a serious offender, the Court may determine the application by:
  (a) making a community safety supervision order under section 395.13; or
  (b) dismissing the application.



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## 395.11 Matters a Court must have regard to in making a community safety order

(1) In deciding whether the Court is satisfied as referred to in paragraph 395.12(1)(b) or 395.13(1)(b) in relation to a serious offender, a Supreme Court of a State or Territory must have regard to the following matters:

(a) the object of this Division;

(b) any report of an assessment received from a relevant expert, and the level of the offender's participation in the assessment, under:

(i) section 395.9; or

(ii) section 395.43;

(c) the results of any other assessment conducted by a relevant expert of the risk of the offender committing a serious violent or sexual offence, and the level of the offender's participation in any such assessment;

(d) any report, relating to the extent to which the offender can reasonably and practicably be managed in the community, that has been prepared by:

(i) the relevant State or Territory corrective services; or

(ii) any other person or body who is competent to assess that extent;

(e) any treatment or rehabilitation programs in which the offender has had an opportunity to participate, and the level of the offender's participation in any such programs;

(f) the level of the offender's compliance with any obligations to which the offender is or has been subject while:

(i) on release on parole for any serious violent or sexual offence; or

(ii) subject to a community safety order;

(g) the level of the offender's compliance with any conditions to which a visa that the offender is, or has been, a holder of under the *Migration Act 1958* is or has been subject;



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(h) the offender's history of any prior convictions for, and findings of guilt made in relation to, any serious violent or sexual offence;

(i) if information is available about the offender's history of any prior convictions for, and findings of guilt made in relation to, any serious foreign violent or sexual offence—that information;

(j) the views of the sentencing court at the time any sentence for any serious violent or sexual offence was imposed on the offender;

(k) if information is available about the views of the sentencing court at the time any sentence for any serious foreign violent or sexual offence was imposed on the offender—that information;

(l) whether the offender is subject to any order under a law of a State or Territory that is equivalent to a community safety order, and if so, the conditions of the order;

(m) any other information as to the risk of the offender committing a serious violent or sexual offence.

(2) Subsection (1) does not prevent the Court from having regard to any other matter the Court considers relevant.

(3) To avoid doubt, section 395.27 (civil evidence and procedure rules in relation to community safety order proceedings) applies to the Court's consideration of the matters referred to in subsections (1) and (2) of this section.

## 395.12 Making a community safety detention order

(1) A Supreme Court of a State or Territory may make a written order under this subsection if:

(a) an application is made in accordance with section 395.8 for a community safety detention order in relation to a serious offender; and

(b) after having regard to matters in accordance with section 395.11, the Court is satisfied to a high degree of



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probability, on the basis of admissible evidence, that the offender poses an unacceptable risk of seriously harming the community by committing a serious violent or sexual offence; and

(c) the Court is satisfied that there is no less restrictive measure available under this Division that would be effective in protecting the community from serious harm by addressing the unacceptable risk; and

(d) in a case where the offender is a holder under the *Migration Act 1958* of a visa that is subject to conditions—the Court is satisfied that the conditions would not be effective in protecting the community from serious harm by addressing the unacceptable risk.

Note 1: The rules of evidence and procedure for civil matters apply when the Court has regard to matters in accordance with section 395.11, as referred to in paragraph (1)(b) of this section (see subsection 395.11(3) and section 395.27).

Note 2: For paragraph (1)(c), an example of a less restrictive measure that is available under this Division is a community safety supervision order. A Court can make a community safety supervision order under section 395.13 even if a community safety detention order was applied for (see subsection 395.10(1)).

(2) If the Court is not satisfied as mentioned in paragraph (1)(b) or (c) (or both), but is satisfied as mentioned in paragraph (1)(d), then the Court must:

(a) seek the following material from the Immigration Minister:

(i) a copy of the proposed conditions that would be sought for a community safety supervision order in relation to the offender;

(ii) an explanation as to why each of the proposed conditions should be imposed on the offender;

(iii) if the Immigration Minister is aware of any facts relating to why any of those conditions should not be imposed on the offender—a statement of those facts, except any facts that are likely to be protected by public interest immunity (whether the claim for public interest



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immunity is to be made by the Immigration Minister or any other person); and

(b) consider whether to make a community safety supervision order under section 395.13 in relation to the offender.

Note: A copy of the material must be given to the serious offender under section 395.29.

*Onus of satisfying Court*

(3) The Immigration Minister bears the onus of satisfying the Court of the matters referred to in paragraphs (1)(b), (c) and (d).

*Period of order*

(4) The order must specify the period during which it is in force.

Note: The order may be suspended during the period that it is in force if the offender is detained under the *Migration Act 1958* (see section 395.41) or detained in custody in a prison other than as a result of the order (see section 395.42).

(5) The period must be a period of no more than 3 years that the Court is satisfied is reasonably necessary to protect the community from serious harm by addressing the unacceptable risk.

*Court may make successive community safety detention orders*

(6) To avoid doubt, subsection (5) does not prevent a Supreme Court of a State or Territory making a community safety detention order in relation to a serious offender that begins to be in force immediately after a previous community safety detention order in relation to the offender ceases to be in force.

## 395.13 Making a community safety supervision order

(1) A Supreme Court of a State or Territory may make a written order under this subsection, in accordance with sections 395.14 and 395.15, if:

(a) any of the following applies:



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(i) an application is made in accordance with section 395.8 for a community safety supervision order in relation to a serious offender;

(ii) an application is made in accordance with section 395.8 for a community safety detention order in relation to a serious offender, and the Court is not satisfied as mentioned in paragraph 395.12(1)(b) or (c) (or both), but is satisfied as mentioned in paragraph 395.12(1)(d);

(iii) the Court has reviewed under section 395.25 a community safety detention order in relation to a serious offender and the Court is not satisfied as mentioned in paragraph 395.25(6)(a); and

(b) after having regard to matters in accordance with section 395.11, the Court is satisfied on the balance of probabilities, on the basis of admissible evidence, that the offender poses an unacceptable risk of seriously harming the community by committing a serious violent or sexual offence; and

(c) in a case where the offender is a holder under the *Migration Act 1958* of a visa that is subject to conditions—the Court is satisfied that the conditions would not be effective in protecting the community from serious harm by addressing the unacceptable risk; and

(d) the Court is satisfied on the balance of probabilities that:

(i) each of the conditions; and

(ii) the combined effect of all of the conditions;

to be imposed on the offender by the order is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing the unacceptable risk.

*Determining whether conditions are reasonably necessary, appropriate and adapted*

(2) For the purposes of paragraph (1)(d), in determining whether each of the conditions to be imposed on the offender by the order is reasonably necessary, and reasonably appropriate and adapted, the



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Court must take into account, as a paramount consideration in all cases, the object of this Division (see section 395.1).

(3) If the coming into effect of the order would result in the offender being taken to be granted a visa under section 76AA of the *Migration Act 1958*, then, for the purposes of paragraph (1)(d) of this section, in determining whether each of the conditions to be imposed on the offender by the order is reasonably necessary, and reasonably appropriate and adapted, the Court must take into account the conditions to which the visa would be subject.

*Onus of satisfying Court*

(4) The Immigration Minister bears the onus of satisfying the Court of:
  (a) the matters referred to in paragraphs (1)(b) and (d); and
  (b) if paragraph (1)(c) applies—the matters referred to in paragraph (1)(c).

*Content of order*

(5) The order must:
  (a) state that the Court is satisfied of:
    (i) the matters mentioned in paragraphs (1)(b) and (d); and
    (ii) if paragraph (1)(c) applies—the matters mentioned in paragraph (1)(c); and
  (b) specify the name of the offender to whom the order relates; and
  (c) specify all of the conditions, and any exemption conditions, that are to be imposed in accordance with section 395.14 or 395.15 on the offender by the order; and
  (d) specify the period during which the order is to be in force, which must be a period of no more than 3 years that the Court is satisfied is reasonably necessary to protect the community from serious harm by addressing the unacceptable risk; and
  (e) state that the offender's lawyer may request a copy of the order.



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Note: The order may be suspended during the period that it is in force if the offender is detained under the *Migration Act 1958* (see section 395.41) or detained in custody in a prison (see section 395.42).

*Court may make successive community safety supervision orders*

(6) To avoid doubt, paragraph (5)(d) does not prevent a Supreme Court of a State or Territory making a community safety supervision order in relation to a serious offender that begins to be in force immediately after a previous community safety supervision order, or community safety detention order, in relation to the offender ceases to be in force.

*Automatic revocation of community safety detention orders etc.*

(7) A community safety detention order that is in force in relation to a serious offender is revoked by force of this subsection if:
  (a) a Court makes a community safety supervision order in relation to the offender; and
  (b) the community safety detention order is in force immediately before the community safety supervision order begins to be in force.

## 395.14 Conditions of community safety supervision orders

(1) The conditions that a Court may impose on a serious offender by a community safety supervision order are:
  (a) any conditions that the Court is satisfied; and
  (b) those conditions whose combined effect the Court is satisfied;

on the balance of probabilities, are reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence.

Note: The Court may, under section 395.15, specify conditions from which exemptions may be granted.



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(2) If the offender is subject to an order under a law of a State or Territory that is equivalent to a community safety order, the Court must consider the conditions under that State or Territory order in imposing conditions in accordance with subsection (1).

*General rules about conditions*

(3) To avoid doubt, without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, a condition imposed under this section may:

(a) prohibit or restrict specified conduct of the offender, or impose obligations on the offender; or

(b) impose restrictions and obligations on the offender in relation to classes of conduct, and prohibit other classes of that conduct; or

(c) impose different restrictions, obligations and prohibitions in relation to different classes of conduct; or

(d) for conduct that is prohibited by a condition described in a paragraph of subsection (5) of this section—impose restrictions and obligations on the offender in relation to that conduct instead of prohibiting that conduct; or

(e) for conduct described in a paragraph of subsection (5) or (7) of this section—impose different restrictions, obligations and prohibitions in relation to that conduct.

(4) A condition imposed under this section must not require the offender to remain at specified premises for more than 12 hours within any 24 hours.

*General conditions*

(5) Without limiting this section, the conditions that the Court may impose in accordance with subsection (1) include conditions relating to the following:

(a) that the offender not be present at one or more of the following:

(i) specified areas or places;



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(ii) specified classes of areas or places;

(iii) any area or place determined by a specified authority;

(b) that the offender reside at specified premises, and not begin to reside at any other premises without the prior permission of a specified authority;

(c) that the offender remain at specified premises between specified times each day, or on specified days, subject to subsection (4);

(d) that the offender not leave the State or Territory in which the offender's residence is located;

(e) that the offender not change the offender's name, or use any name that is not specified in the order;

(f) that the offender not apply for any licence to operate equipment, machinery, a heavy vehicle or a weapon, or any licence to possess a weapon;

(g) that the offender not communicate or associate by any means (including through third parties) with one or more of the following:

(i) specified individuals;

(ii) specified classes of individuals;

(iii) any individuals determined by a specified authority;

(h) that the offender not access or use specified forms of telecommunication or other technology (including the internet);

(i) that the offender not possess or use specified articles or substances;

(j) that the offender not carry out specified activities;

(k) that the offender not engage in one or more of the following:

(i) specified work;

(ii) specified classes of work;

(iii) specified activities relating to specified work or classes of work;

(l) that the offender not in engage in any training or education without the prior permission of a specified authority;

(m) that the offender do any or all of the following:



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(i) attend and participate in treatment, rehabilitation or intervention programs or activities;

(ii) undertake psychological or psychiatric assessment or counselling;

as specified in the order or as directed by a specified authority;

(n) that the offender attend and participate in interviews and assessments (including for the purposes of paragraph (m)) as specified in the order or as directed by a specified authority;

(o) that the offender allow the results of the interviews and assessments referred to in paragraph (n), and any other specified information, to be disclosed to a specified authority;

(p) that the offender provide specified information to a specified authority within a specified period or before a specified event;

(q) that the offender comply with any reasonable direction given to the offender by a specified authority in relation to any specified condition (whether or not the condition is imposed in accordance with this subsection).

Note: See also subsection (10) and section 395.2 in relation to references to premises, reside or residence, and work.

(6) If a condition of the order authorises a specified authority to give a direction, the specified authority may give a direction only if the specified authority is satisfied that the direction is reasonable in all the circumstances to give effect to:

(a) the condition; or

(b) the object of this Division (see section 395.1).

*Conditions relating to monitoring and enforcement*

(7) Without limiting this section, the conditions that the Court may impose in accordance with subsection (1) include conditions relating to the following:



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(a) that the offender submit to testing by a specified authority in relation to the possession or use of specified articles or substances;

(b) that the offender allow the offender to be photographed by a specified authority;

(c) that the offender allow impressions of the offender's fingerprints to be taken by a specified authority;

(d) that the offender be subject to electronic monitoring (for example, by wearing a monitoring device at all times), and comply with directions given by a specified authority in relation to electronic monitoring;

(e) a condition that:

(i) the person carry at all times a specified mobile phone; and

(ii) the person be available to answer any call from a specified authority or, as soon as reasonably practicable, return a call that the person was unable to answer; and

(iii) the person comply with specified directions, or any directions given by a specified authority, in relation to the condition in subparagraph (i) or (ii);

(f) that the offender attend at places, and report to persons, at times, specified:

(i) in the order; or

(ii) by a specified authority;

(g) that the offender allow visits at specified premises from, and entry to specified premises by, a specified authority at any time for the purpose of ensuring the offender's compliance with a condition imposed in accordance with paragraph (5)(c);

(h) that the offender provide a specified authority with a schedule setting out the offender's proposed movements for a specified period and comply with that schedule during the period;

(i) that the offender allow any police officer to enter specified premises and:



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(i) search the offender; and

(ii) search the offender's residence or any premises which the offender intends to be the offender's residence; and

(iii) search any other premises under the offender's control; and

(iv) seize any item found during those searches, including to allow the item to be examined forensically;

(j) that the offender facilitate access (including by providing passwords or in any other way) to one or more of the following:

(i) electronic equipment or technology;

(ii) any data held within, or accessible from, any electronic equipment or technology;

owned or controlled by the offender, for the purposes of a police officer searching and seizing any such equipment or accessing such data (or both).

Note 1: For paragraphs (b) and (c), restrictions apply to the use of photographs or impressions of fingerprints (see section 395.16).

Note 2: For paragraph (d), see also section 395.17 (obligations relating to monitoring devices).

(8) A power exercised under a condition imposed in accordance with subsection (7) (other than a power to give a direction) may be exercised only if the person exercising the power is satisfied that it is reasonably necessary to do so in order to:

(a) give effect to the order; or

(b) facilitate or monitor compliance with the order.

*Access to lawyers*

(9) This section does not affect the offender's right to contact, communicate or associate with the offender's lawyer unless the offender's lawyer is a specified individual, or an individual in a specified class of individuals, as mentioned in paragraph (5)(g). If the offender's lawyer is so specified, the offender may contact, communicate or associate with any other lawyer who is not so specified.



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*References to work*

(10) In subsection (5), a reference to work includes a reference to voluntary work.

## 395.15 Conditions where exemptions may be granted

(1) A Supreme Court of a State or Territory that makes a community safety supervision order in relation to a serious offender may specify conditions included in the order that are to be exemption conditions.

(2) An ***exemption condition*** is a condition specified in the order from which the offender may apply for a temporary exemption.

(3) The Court may make provision in relation to applications for temporary exemptions.

(4) The offender may apply, in writing, to a specified authority for an exemption from an exemption condition. The application must:
  (a) include a reason for the exemption; and
  (b) comply with any other requirements provided for under subsection (3).

(5) If the offender so applies, the specified authority may:
  (a) require further information to be provided by the offender before making a decision in relation to the application; and
  (b) either:
    (i) grant or refuse the exemption; or
    (ii) grant the exemption subject to any reasonable directions specified in writing by the specified authority.

## 395.16 Treatment of photographs and impressions of fingerprints

(1) A photograph, or an impression of fingerprints, taken of or from a serious offender as mentioned in paragraph 395.14(7)(b) or (c) must be used only for the purpose of ensuring compliance with a community safety supervision order relating to the offender.



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(2) The photograph or the impression must be destroyed if:
  (a) no community safety supervision order has been in force in relation to the offender for 12 months; and
  (b) either:
    (i) no proceedings relating to a community safety supervision order relating to the offender were on foot in that 12-month period; or
    (ii) proceedings relating to a community safety supervision order relating to the offender were discontinued or completed within that 12-month period.

(3) A person commits an offence if:
  (a) the person engages in conduct; and
  (b) the conduct contravenes subsection (1).

Penalty: Imprisonment for 2 years.

## 395.17 Obligations relating to monitoring devices

*Additional obligations on serious offender*

(1) If the Court imposes a condition under paragraph 395.14(7)(d) in a community safety supervision order that a serious offender wear a monitoring device, then:
  (a) the condition must require the offender to wear the monitoring device at all times; and
  (b) the order must include the condition referred to in paragraph 395.14(7)(e); and
  (c) the order must include a condition that the offender do all of the following:
    (i) allow a specified authority to enter the offender's residence at any reasonable time for any purpose relating to the electronic monitoring of the offender;
    (ii) allow a specified authority to install, repair or fit the monitoring device or any related monitoring equipment;



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(iii) take the steps specified in the order (if any) and any other reasonable steps to ensure that the monitoring device and any related monitoring equipment are or remain in good working order;

(iv) if the offender becomes aware that the monitoring device and any related monitoring equipment are not in good working order—notify a specified authority as soon as reasonably practicable;

(v) allow a specified authority, police officer or corrective services officer to remove the monitoring device;

(vi) allow a police officer to remove any related monitoring equipment.

*Powers of specified authorities and others*

(2) After including the condition under paragraph 395.14(7)(d) in the order, the Court must also include in the order an authorisation for:

(a) one or more specified authorities to enter the offender's residence as specified in the order at any reasonable time for any purpose relating to the electronic monitoring of the offender; and

(b) one or more specified authorities to install, repair or fit the monitoring device and any related monitoring equipment; and

(c) one or more specified authorities or police officers to take the steps specified in the order to ensure that the device and any related monitoring equipment are or remain in good working order; and

(d) one or more specified authorities, police officers or corrective services officers to remove the monitoring device; and

(e) one or more police officers to remove any related monitoring equipment.

(3) If:

(a) a monitoring device is installed on the offender; and

(b) any of the following events occurs:



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(i) the condition under paragraph 395.14(7)(d) is removed from the order;

(ii) the order ceases to be in force;

(iii) the offender is detained in custody;

the device and any related monitoring equipment may be removed in accordance with paragraph (2)(d) or (e) even though:

(c) for subparagraph (b)(i) or (ii)—no authorisation under subsection (2) is in force; or

(d) for subparagraph (b)(iii)—the offender is not required to comply with a condition of the order because of section 395.41 or 395.42.

Note: For the definition of ***detained in custody***, see section 395.2.

*Powers relating to monitoring devices and related electronic equipment*

(4) Before exercising a power referred to in paragraph (2)(a), (b), (d) or (e), or subsection (3), a specified authority, police officer or corrective services officer must inform the offender:

(a) that the device and equipment are to be installed, repaired, fitted or removed (as the case requires); and

(b) of the proposed timing of the taking of the action; and

(c) that the offender may consent to the taking of the action; and

(d) that if consent is not given, reasonable force may be used to take the action, or to enter the offender's residence in order to take the action.

(5) If the offender does not give consent, reasonable force may be used by a police officer to take the action, or to enter the offender's residence in order to take the action.

## 395.18 Copy of a community safety supervision order must be given to serious offender's lawyer

(1) A copy of a community safety supervision order that is made under section 395.13 in relation to a serious offender must be given to the



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offender's lawyer as soon as practicable after being requested by the lawyer.

(2) This section does not entitle the lawyer to request, or be given a copy of, a document other than the order.

## Subdivision D—Varying a community safety supervision order

### 395.19 Application for variations of community safety supervision orders

*Requirement to apply for variation*

(1) If the Immigration Minister is satisfied that a condition in a community safety supervision order in relation to a serious offender is no longer reasonably necessary, or reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence, the Immigration Minister or a legal representative of the Immigration Minister must apply to a Supreme Court of a State or Territory to vary, under section 395.20, the order by:

(a) removing the condition; or

(b) varying the condition.

Note 1: The Immigration Minister or legal representative may also apply under subsection (2) for other variations of the order, including adding conditions.

Note 2: A copy of the application must be given to the offender under section 395.29.

*Who may otherwise apply*

(2) Any of the following persons (the ***applicant***) may (subject to subsection (1)) apply to a Supreme Court of a State or Territory to vary, under section 395.20, a community safety supervision order in relation to a serious offender, by adding, varying or removing one or more conditions mentioned in section 395.14:



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(a) the Immigration Minister or a legal representative of the Immigration Minister;

(b) the offender or a legal representative of the offender.

Note: If the application is made by or on behalf of the Immigration Minister, a copy of the application must be given to the offender under section 395.29.

(3) An application under subsection (1) or (2) must be made to the Supreme Court of the State or Territory where the offender resides.

Note: See subsection 395.2(1) for the definition of ***reside***.

*Contents of application*

(4) An application under subsection (1) or (2) must include:

(a) a copy of the conditions as sought to be varied; and

(b) if the applicant is the Immigration Minister or a legal representative of the Immigration Minister—the following material:

(i) an explanation as to why each condition that is sought to be added or varied should be added or varied;

(ii) if the Immigration Minister is aware of any facts relating to why any of those conditions should not be added or varied—a statement of those facts, except any facts that are likely to be protected by public interest immunity (whether the claim for public interest immunity is to be made by the Immigration Minister or any other person);

(iii) the outcomes and particulars of all previous applications made under this section (whether by or on behalf of the Immigration Minister or the offender) for variations of the order; and

(c) if the applicant is the offender or a legal representative of the offender—the outcomes and particulars of all previous applications made under this section by or on behalf of the offender for variations of the order; and



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(d) if a report was obtained under section 395.43 in relation to the offender for the purposes of determining whether to apply for the variation—a copy of the report.

(5) If the applicant is the offender or a legal representative of the offender, the applicant:

(a) may also include in the application an explanation as to why each condition that is sought to be varied or removed should be varied or removed; and

(b) must cause a copy of the application to be served on the Immigration Minister within 2 business days after the application is made.

*Adducing additional evidence*

(6) The following persons may adduce additional evidence (including by calling witnesses or producing material), or make additional submissions, to the Court in relation to the application to vary the order:

(a) the Immigration Minister;

(b) one or more AFP members;

(c) the offender;

(d) one or more representatives of the offender.

(7) Subsection (6) does not otherwise limit the power of the Court to control proceedings in relation to an application to vary a community safety supervision order.

## 395.20 Varying a community safety supervision order (other than by consent)

(1) If an application is made in accordance with subsection 395.19(1) or (2), and subsection (2) of this section, to a Supreme Court of a State or Territory to vary a community safety supervision order in relation to a serious offender, the Court may vary the order, but only if:



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(a) for an application for the order to be varied by adding or varying conditions—the Court is satisfied on the balance of probabilities that each of the conditions being added or varied is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence; and

(b) for an application for the order to be varied by removing conditions—the Court is not satisfied on the balance of probabilities that each of the conditions being removed is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence.

Note: See section 395.22 for the terms of a varied community safety supervision order.

(2) For the purposes of subsection (1), in determining whether each of the conditions to be added, varied or removed by the order is reasonably necessary, and reasonably appropriate and adapted, the Court must take into account, as a paramount consideration in all cases, the object of this Division (see section 395.1).

(3) The Immigration Minister bears the onus of satisfying the Court of the matters referred to in subsection (1).

*Relevant experts*

(4) The Court may appoint one or more relevant experts for the purposes of the proceedings relating to the application. If the Court does so, subsections 395.9(5) to (9) apply in relation to the proceedings.

(5) The Immigration Minister, the offender, or a legal representative of the Immigration Minister or offender, may nominate one or more relevant experts for the purposes of subsection (4).

(6) Subsection (4) does not prevent the Immigration Minister, the offender, or a legal representative of the Immigration Minister or



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offender, from calling another relevant expert as a witness in the proceedings.

## 395.21 Varying community safety supervision order by consent

(1) Any of the following persons (the ***applicant***) may apply to a Supreme Court of a State or Territory to vary a community safety supervision order in relation to a serious offender by varying or removing one or more conditions mentioned in section 395.14:

(a) the Immigration Minister or a legal representative of the Immigration Minister;

(b) the offender or a legal representative of the offender.

(2) The application must be made to the Court of the State or Territory where the offender resides.

Note: See subsection 395.2(1) for the definition of ***reside***.

(3) The Court may vary the order if the Court is satisfied that:

(a) written consent to the variation has been given by:

(i) if the applicant is the Immigration Minister or a legal representative of the Immigration Minister—the serious offender; or

(ii) if the applicant is the offender or a legal representative of the offender—the Immigration Minister; and

(b) the variation does not involve adding any conditions to the order; and

(c) the variation is appropriate in the circumstances.

## 395.22 Terms of a varied community safety supervision order

A community safety supervision order in relation to a person that is varied under section 395.20, 395.21 or 395.26 must:

(a) state that the Court is satisfied:

(i) for a variation under subsection 395.20(1) or 395.21(3)—of the matters mentioned in that subsection; or



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(ii) for a variation under section 395.26—of the matters mentioned in subsection 395.26(1), (3) or (4) (as the case requires); and

(b) specify the variations to the conditions that are to be made; and

(c) state the period during which the order, as varied, is in force; and

(d) state that the offender's lawyer may request a copy of the order.

## Subdivision E—Review of community safety order

### 395.23 Periodic review of community safety order

*When application for review must be made*

(1) The Immigration Minister, or a legal representative of the Immigration Minister, must, before the end of the period referred to in subsection (2), apply to a Supreme Court of a State or Territory for a review of a community safety order that is in force in relation to a serious offender.

Note: A copy of the application must be given to the offender under section 395.29.

(2) The application must be made:

(a) before the end of 12 months after the order began to be in force (unless paragraph (b) or (c) applies); or

(b) if the order has been reviewed under this Subdivision by a Supreme Court of a State or Territory—before the end of 12 months after the most recent review ended (unless paragraph (c) applies); or

(c) if paragraph (a) or (b) would otherwise apply and, at the time described in that paragraph, the community safety order is suspended under section 395.42 because the offender is detained in custody in a prison—on or before the day the offender's detention in a prison ends.



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(3) Despite subsection (1), an application for a review is not required if an application for a new community safety order in relation to the offender has been made and not withdrawn.

*Review must be conducted before end of period*

(4) On receiving the application, the Court must begin the review of the order before the end of that period.

Note: For the process for reviewing a community safety order, see section 395.25.

*Where application must be made*

(5) The application must be made to the Court of the State or Territory where:

(a) for a community safety detention order—the prison in which the offender is detained is located; or

(b) for a community safety supervision order—the offender resides.

Note: See subsection 395.2(1) for the definition of ***reside***.

*Order ceases to be in force if application not made*

(6) If an application is not made in accordance with this section, the order ceases to be in force at the end of the period referred to in subsection (2).

## 395.24 Review of community safety order on application

(1) The following persons may apply to a Supreme Court of a State or Territory for review of a community safety order:

(a) the Immigration Minister or a legal representative of the Immigration Minister;

(b) a serious offender, or a legal representative of a serious offender, in relation to whom the community safety order is in force.

Note 1: For the process for reviewing a community safety order, see section 395.25.



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Note 2: A copy of the application must be given to the serious offender under section 395.29.

(2) The application must include a copy of any report obtained under section 395.43 for the purposes of determining whether an application for a review of the community safety supervision order should be made.

(3) The Court may review the order if the Court is satisfied that:
  (a) there are new facts or circumstances which would justify reviewing the order; or
  (b) it would be in the interests of justice, having regard to the purposes of the order and the manner and effect of its implementation, to review the order.

(4) Otherwise, the Court must dismiss the application.

(5) The application must be made to the Court of the State or Territory where:
  (a) for a community safety detention order—the prison in which the offender is detained is located; or
  (b) for a community safety supervision order—the offender resides.

Note: See subsection 395.2(1) for the definition of ***reside***.

## 395.25 Process for reviewing a community safety order

(1) This section applies if, under section 395.23 or 395.24, a Supreme Court of a State or Territory reviews a community safety order that is in force in relation to a serious offender.

*Parties to the review*

(2) The parties to the review are:
  (a) the Immigration Minister; and
  (b) the offender.



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*Relevant experts*

(3) The Court may appoint one or more relevant experts for the purposes of the review. If the Court does so, subsections 395.9(5) to (9) apply in relation to the review.

(4) The Immigration Minister or the offender, or a legal representative of the Immigration Minister or the offender, may nominate one or more relevant experts for the purposes of subsection (3).

(5) Subsection (3) does not prevent the Immigration Minister or the offender, or a legal representative of the Immigration Minister or the offender, from calling their own relevant expert as a witness in the review.

*Affirming or revoking the order*

(6) The Court may affirm the order (including affirm the order with variations made under section 395.26) if, after having regard to the matters in section 395.11, the Court is satisfied that the Court:

(a) for a community safety detention order—could have made the order under section 395.12; or

(b) for a community safety supervision order—could have made the order under section 395.13, or could have made the order disregarding paragraph 395.13(1)(d).

Note: The rules of evidence and procedure for civil matters apply when the Court has regard to matters in accordance with section 395.11, as referred to in this subsection (see subsection 395.11(3) and section 395.27).

(7) If the review is of a community safety detention order, and the Court does not affirm the order under subsection (6), the Court must:

(a) consider making a community safety supervision order in relation to the offender under section 395.13; and

(b) seek the following material from the Immigration Minister:

(i) a copy of the proposed conditions that would be sought for a community safety supervision order;



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(ii) an explanation as to why each of the proposed conditions should be imposed on the offender;

(iii) if the Immigration Minister is aware of any facts relating to why any of those conditions should not be imposed on the offender—a statement of those facts, except any facts that are likely to be protected by public interest immunity (whether the claim for public interest immunity is to be made by the Immigration Minister or any other person); and

(c) if the Court does not make a community safety supervision order in relation to the offender—revoke the community safety detention order.

Note: If the Court makes a community safety supervision order in relation to the offender, the community safety detention order is revoked under subsection 395.13(7).

(8) If the Court does not affirm a community safety supervision order under subsection (6), the Court must revoke the order.

*Onus of satisfying Court*

(9) The Immigration Minister must ensure that reasonable inquiries are made to ascertain any facts known to any Commonwealth law enforcement officer that would reasonably be regarded as supporting a finding that the order should not be affirmed.

(10) The Immigration Minister bears the onus of satisfying the Court of the matters referred to in section 395.12 or 395.13.

(11) The Immigration Minister, or the legal representative of the Immigration Minister, must present to the Court:

(a) a copy of any material in the possession of the Immigration Minister or legal representative; and

(b) a statement of any facts that the Immigration Minister or legal representative is aware of;

that would reasonably be regarded as supporting a finding that:

(c) the order should not be affirmed, or should not be affirmed in the terms in which the order is made; or



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(d) if the court is considering making a community safety supervision order under subsection (7)—a community safety supervision order should not be made.

## 395.26 Varying community safety orders after review

*Varying the period specified by a community safety order*

(1) A Supreme Court of a State or Territory must vary a community safety order in relation to a serious offender to specify a shorter period for which the order will be in force if:

(a) the Court affirms the order under subsection 395.25(6); and

(b) the Court is not satisfied that the period currently specified is reasonably necessary to protect the community from serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence.

The shorter period must be a period that the Court is satisfied is reasonably necessary to address the unacceptable risk.

Note: See section 395.22 for the terms of a varied community safety supervision order.

*Varying or removing conditions*

(2) A Supreme Court of a State or Territory must vary, or remove, a condition imposed by a community safety supervision order if:

(a) the Court affirms the order under subsection 395.25(6); and

(b) the Court is not satisfied that the condition is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence.

(3) The Court must be satisfied that a condition that is varied under subsection (2) is (after the variation) reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence.



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*Varying to add conditions*

(4) The Court may vary a community safety supervision order to add one or more conditions if the Court is satisfied that the conditions are reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence.

*Object of this Division*

(5) For the purposes of subsections (3) and (4), in determining whether a condition to be varied or imposed on the offender by the order is reasonably necessary, and reasonably appropriate and adapted, the Court must take into account, as a paramount consideration in all cases, the object of this Division (see section 395.1).

*Onus of satisfying Court*

(6) The Immigration Minister bears the onus of satisfying the Court of the matters referred to in subsection (1), (3) or (4).

## Subdivision F—Provisions relating to community safety order proceedings

### 395.27 Civil evidence and procedure rules in relation to community safety order proceedings

(1) A Supreme Court of a State or Territory must, subject to subsection (2), apply the rules of evidence and procedure for civil matters during a community safety order proceeding.

(2) Despite anything in the rules of evidence and procedure, the Court may receive in evidence in the proceeding evidence of:

(a) the level of the serious offender's compliance with any conditions (however described) to which the offender is or has been subject while:

(i) on release on parole for any offence; or



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(ii) subject to a community safety supervision order; and

(b) the offender's history of any prior convictions for, and findings of guilt made in relation to, any offence; and

(c) the level of the offender's compliance with any conditions to which a visa that the offender is, or has been, a holder of under the *Migration Act 1958* is or has been subject.

## 395.28 Adducing evidence and making submissions

A party to a community safety order proceeding in a Supreme Court of a State or Territory may adduce evidence (including by calling witnesses or producing material), or make submissions, to the Court in relation to the proceeding.

## 395.29 Giving copies of applications etc. to serious offenders

(1) This section applies if the Immigration Minister, or a legal representative of the Immigration Minister, (the ***applicant***) applies to a Supreme Court of a State or Territory for:

(a) a community safety order; or

(b) a variation of a community safety supervision order under section 395.19; or

(c) a review of a community safety order;

in relation to a serious offender.

(2) Within 2 business days after the application is made, the applicant must (subject to sections 395.30 to 395.32) give a copy of the application to the offender personally, and to the offender's legal representative.

Note: For giving documents to a serious offender who is detained in custody, see section 395.33.

(3) If the Court seeks material from the Immigration Minister under paragraph 395.12(2)(a) or 395.25(7)(b), within 2 business days after the material is provided to the Court, the applicant must (subject to sections 395.30 to 395.32) give a copy of the material to the offender personally, and to the offender's legal representative.



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(4) If:

(a) the community safety order is made or varied; and

(b) neither the offender nor a legal representative of the offender is present during the proceedings in which the order is made or varied;

the applicant must (subject to sections 395.30 to 395.32), within 2 business days after the order is made or varied, give to the offender personally, and to the offender's legal representative, a copy of the order that is made, or of the order as varied.

## 395.30 Information excluded from application or material—national security information

(1) This section applies if the Immigration Minister, or a legal representative of the Immigration Minister, (the ***applicant***) gives a copy of an application or material to a serious offender, or a serious offender's legal representative, (the ***recipient***) under subsection 395.29(2) or (3).

(2) The applicant is not required to include any information in the application or material if a Minister (the ***decision-maker***) is likely to:

(a) take any actions in relation to the information under the *National Security Information (Criminal and Civil Proceedings) Act 2004*; or

(b) seek an order of a court preventing or limiting disclosure of the information.

(3) However, the applicant must (subject to subsection (4)) give the recipient personally a complete copy of the application or material if any of the following events occurs:

(a) the decision-maker decides not to take any of the actions referred to in paragraph (2)(a) or (b);

(b) a Minister gives a certificate under Subdivision C of Division 2 of Part 3A of the *National Security Information (Criminal and Civil Proceedings) Act 2004*;



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(c) a court makes an order in relation to any action taken by the decision-maker under paragraph (2)(a) or (b).

(4) Subsection (3) is subject to:
(a) the certificate referred to in paragraph (3)(b); or
(b) any order made by a court.

(5) The copy of the application or material must be given under subsection (3):
(a) within 2 business days of the event referred to in subsection (3); and
(b) within a reasonable period before:
(i) if the application is for a community safety order—the preliminary hearing referred to in section 395.9; or
(ii) if the application is for a variation or review of a community safety order—the hearing on the application.

## 395.31 Information excluded from application or material—public interest immunity

(1) This section applies if:
(a) the Immigration Minister, or a legal representative of the Immigration Minister, (the ***applicant***) gives a copy of an application or material to a serious offender, or a serious offender's legal representative, under subsection 395.29(2) or (3); and
(b) information (however described) is excluded from the application or material on the basis of public interest immunity.

(2) The applicant must give written notice to the offender, and the offender's legal representative, personally stating that the information has been excluded on the basis of public interest immunity. The notice must be given at the time that a copy of the application or material is given to the offender or legal representative.



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(3) To avoid doubt, nothing in this section imposes an obligation on the offender to satisfy the Court that a claim of public interest immunity should not be upheld.

Note: The offender may seek to access any information, material or facts that are likely to be protected by public interest immunity (for example, through a subpoena). Under the law of public interest immunity, the person claiming the immunity must make and substantiate the claim, and satisfy the Court that the claim should be upheld.

## 395.32 Information excluded from application and material

(1) This section applies if:

(a) the Immigration Minister, or a legal representative of the Immigration Minister, (the ***applicant***) is required to give a copy of an application or material to a serious offender, or a serious offender's legal representative, under subsection 395.29(2) or (3); and

(b) the application or material contains any of the following material (***relevant material***):

(i) terrorism material within the meaning of paragraph 105A.14D(1)(b);

(ii) child abuse material within the meaning of Part 10.6;

(iii) abhorrent violent material within the meaning of Subdivision H of Division 474.

(2) The applicant may apply to the Supreme Court of a State or Territory referred to in subsection 395.29(1) for an order in relation to the manner in which the relevant material is to be dealt with.

(3) The Court may make an order in relation to the manner in which the relevant material is to be dealt with, including that the relevant material:

(a) be provided to the offender's legal representative; or

(b) be available for inspection by the offender at specified premises.



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### 395.33 Giving documents to serious offenders who are detained in custody

(1) A document that is required to be given under this Division to a serious offender who is detained in custody is taken to have been given to the offender at the time referred to in paragraph (3)(b) if the document is given to the following person (the ***recipient***):

(a) the legal representative of the offender;

(b) if the offender does not have a legal representative—the chief executive officer (however described) of the prison or other facility in which the offender is detained, or a delegate of the chief executive officer.

(2) The recipient must, as soon as reasonably practicable, give the document to the offender personally.

(3) Once the recipient has done so, the recipient must notify the Court and the person who gave the recipient the document, in writing:

(a) that the document has been given to the offender; and

(b) of the day that document was so given.

### 395.34 When a serious offender is unable to engage a legal representative

(1) This section applies if:

(a) a community safety order proceeding relating to a serious offender is before a Supreme Court of a State or Territory; and

(b) the offender, due to circumstances beyond the offender's control, is unable to engage a legal representative in relation to the proceeding.

(2) The Court may make either or both of the following orders:

(a) an order staying the proceeding for such period and subject to such conditions as the Court thinks fit;

(b) an order requiring the Commonwealth to bear, in accordance with the regulations (if any), all or part of the reasonable



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costs and expenses of the offender's legal representation for the proceeding.

(3) The regulations may prescribe matters that the Court may, must or must not take into account in determining either or both of the following:
  (a) whether circumstances are beyond the offender's control;
  (b) reasonable costs and expenses of the offender's legal representation for the proceeding.

(4) This section does not limit any other power of the Court.

## 395.35 Reasons for decisions

A Supreme Court of a State or Territory that makes a community safety order decision in a community safety order proceeding must:
  (a) state the reasons for its decision; and
  (b) cause those reasons to be entered in the records of the Court; and
  (c) cause a copy of any order it made to be provided to each party to the proceeding.

Note: See also subsection 395.2(4) for when a Court makes a community safety order decision.

## 395.36 Right of appeal

(1) An appeal lies to the court of appeal (however described) of a State or Territory if:
  (a) the Supreme Court of the State or Territory makes a community safety order decision; and
  (b) the court of appeal has jurisdiction to hear appeals from the Supreme Court in relation to civil matters.

(2) The appeal is to be by way of rehearing. In particular, in relation to the appeal, the court of appeal:



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(a) subject to this subsection, has all the powers, functions and duties that the Supreme Court has in relation to the relevant community safety order proceedings; and

(b) may receive further evidence as to questions of fact (orally in court, by affidavit or in any other way) if the court of appeal is satisfied that there are special grounds for doing so.

(3) The appeal against the decision of the Supreme Court may be made:

(a) as of right, within 28 days after the day on which the decision was made; or

(b) by leave, within such further time as the court of appeal allows.

(4) The making of the appeal does not stay the operation of the order.

(5) This section does not limit any other right of appeal that exists apart from this section.

## 395.37 Consequences of sentences ending or orders ceasing to be in force

(1) This section applies in relation to a community safety order proceeding if:

(a) the proceeding is any of the following:

(i) a proceeding on an application for a community safety order in relation to a serious offender;

(ii) an appeal against a decision to dismiss such an application;

(iii) an appeal against a decision to revoke a community safety order in relation to a serious offender;

(iv) an appeal against a decision (including in a review of such an order) to specify a particular period for which such an order will be in force;

(v) an appeal against a decision under section 395.34 to stay a community safety order proceeding in relation to a serious offender (including a decision under that section



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to stay a proceeding for a specified period or to impose a specified condition); and

(b) before the application or appeal is determined (whether before or after the appeal is made) one of the following events occurs:

(i) a sentence of imprisonment referred to in subsection 395.6(1) ends;

(ii) a community safety order in relation to the offender ceases to be in force;

(iii) a community safety order in force in relation to the offender was revoked as referred to in subparagraph (a)(iii) of this subsection.

(2) For the purposes of the community safety order proceeding, the offender is taken to remain a serious offender:

(a) who is serving a sentence of imprisonment; or

(b) in relation to whom a community safety order is in force;

despite the event in subsection (1) occurring.

*Power of police officer to detain serious offender*

(3) If a community safety detention order is in force in relation to the offender at any time after the offender is released as mentioned in paragraph (1)(b):

(a) any police officer may take the offender into custody; and

(b) any police officer may detain the offender;

for the purpose of giving effect to the order.

(4) A police officer, in:

(a) taking the offender into custody; or

(b) detaining the offender;

under subsection (3) has the same powers and obligations as the police officer would have if the police officer were arresting the offender, or detaining the offender, for an offence.

(5) In subsection (4):



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***offence*** means:

(a) if the police officer is an AFP member—an offence against a law of the Commonwealth; or

(b) if the police officer is not an AFP member—an offence against a law of the State or Territory of whose police force the police officer is a member.

## Subdivision G—Offences relating to community safety supervision orders

### 395.38 Offence for contravening a community safety supervision order

(1) A person commits an offence if:

(a) a community safety supervision order is in force in relation to the person, and not suspended under section 395.41 or 395.42; and

(b) the person engages in conduct; and

(c) the conduct contravenes a condition the order imposes; and

(d) if the condition is an exemption condition—there is no exemption in force at the time the conduct is engaged in that exempts the person from the application of the condition.

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

(2) A person commits an offence if:



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(a) a community safety supervision order is in force in relation to the person, and not suspended under section 395.41 or 395.42; and
(b) the order includes an exemption condition; and
(c) an exemption is in force in relation to the condition; and
(d) a direction is specified in relation to the exemption condition under subparagraph 395.15(5)(b)(ii); and
(e) the person engages in conduct; and
(f) the conduct contravenes the direction.

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

(3) Subsections (1) and (2) do not apply if the person has a reasonable excuse.

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

## 395.39 Offence relating to monitoring devices

(1) A person commits an offence if:
(a) a community safety supervision order is in force in relation to the person, and not suspended under section 395.41 or 395.42; and
(b) the order requires the person to wear a monitoring device; and
(c) the person engages in conduct; and
(d) the conduct results in interference with, or disruption or loss of, a function of the monitoring device or any related monitoring equipment.

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

(2) A person (the ***perpetrator***) commits an offence if:
(a) the perpetrator knows that, or is reckless as to whether, a community safety supervision order is in force in relation to another person; and



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(b) the order is not suspended under section 395.41 or 395.42; and

(c) the perpetrator knows that, or is reckless as to whether, the order requires the other person to wear a monitoring device; and

(d) the perpetrator engages in conduct; and

(e) the conduct results in interference with, or disruption or loss of, a function of the monitoring device or any related monitoring equipment.

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

(3) Strict liability applies in relation to paragraph (2)(b).

(4) Subsections (1) and (2) do not apply if the person has a reasonable excuse.

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

### 395.40 Mandatory 1 year imprisonment for offences

If a person is convicted of an offence against section 395.38 or 395.39, the Court must impose a sentence of imprisonment of at least 1 year.

## Subdivision H—Miscellaneous

### 395.41 Detention under the *Migration Act 1958*

(1) The fact that:

(a) a community safety order is in force in relation to a serious offender; or

(b) a serious offender is detained in accordance with a community safety detention order;

does not prevent the offender being detained under the *Migration Act 1958*.



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Note: For example, the offender may be detained under the *Migration Act 1958* if there is a real prospect of the removal of the offender from Australia becoming practicable in the reasonably foreseeable future.

*Effect of detention on community safety orders*

(2) A community safety detention order in relation to a serious offender is suspended during the period that the offender is detained under the *Migration Act 1958*.

(3) A community safety supervision order in relation to a serious offender is suspended during the period that the offender is detained under the *Migration Act 1958*.

*Effect of suspension*

(4) A community safety order continues to be in force during the period in which the order is suspended under this section.

(5) However, the offender is not required to comply with any condition in a community safety supervision order during the period that the order is suspended.

## 395.42 Effect of prison detention on community safety order

*Effect of prison detention on community safety orders*

(1) A community safety detention order in relation to a serious offender is suspended during the period that the offender is detained in custody in a prison other than as a result of the order.

Note: For the definition of ***detained in custody in a prison***, see section 395.2.

(2) A community safety supervision order in relation to a serious offender is suspended during the period that the offender is detained in custody in a prison.



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*Effect of suspension*

(3) A community safety order continues to be in force during the period in which the order is suspended under this section.

(4) However, the offender is not required to comply with any condition in a community safety supervision order during the period that the order is suspended.

## 395.43 Immigration Minister may direct serious offenders to be assessed

(1) The Immigration Minister may direct any of the following serious offenders to be subject to an assessment of the risk of the person committing a serious violent or sexual offence:

(a) a serious offender in relation to whom an application for a community safety order could be made;

(b) a serious offender in relation to whom a community safety order is in force.

(2) The Immigration Minister may appoint a relevant expert to conduct the assessment, and provide a report, for the purposes of determining whether:

(a) an application for a community safety order in relation to the offender should be made; or

(b) an application for a variation or review of a community safety order in relation to the offender should be made.

(3) The relevant expert who is appointed must:

(a) conduct an assessment of the risk of the offender committing a serious violent or sexual offence; and

(b) provide a report of the expert's assessment to the Immigration Minister.

Note: For giving documents to a serious offender who is detained in custody, see section 395.33.



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*Attendance and participation at assessment*

(4) The offender must attend the assessment.

Note: The assessment may be conducted over a number of sessions.

(5) The answer to a question or information given at the assessment, and answering a question or giving information at the assessment, are not admissible in evidence against the offender in:

(a) any criminal proceedings, except any proceedings relating to sentencing for an offence against this Division (including any appeal in relation to those proceedings); or

(b) any civil proceedings against the offender, except proceedings under this Division (including any appeal in relation to those proceedings).

(6) The Immigration Minister must ensure that the effect of subsections (4), (5) and (8) is explained to the offender.

*Contents of report*

(7) The expert's report may include any one or more of the following matters:

(a) the expert's assessment of the risk of the offender committing a serious violent or sexual offence;

(b) reasons for that assessment;

(c) the pattern or progression to date of behaviour on the part of the offender in relation to serious violent or sexual offences, and an indication of the nature of any likely future behaviour on the offender's part in relation to serious violent or sexual offences;

(d) efforts made to date by the offender to address the causes of the offender's behaviour in relation to serious violent or sexual offences, including whether the offender has actively participated in any rehabilitation or treatment programs;

(e) if the offender has participated in any rehabilitation or treatment programs—whether or not this participation has had a positive effect on the offender;



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(f) any relevant background of the offender, including developmental and social factors;

(g) factors that might increase or decrease any risks that have been identified of the offender committing a serious violent or sexual offence;

(h) any other matters the expert considers relevant.

*Assessments conducted for certain purposes*

(8) Without limiting subsection (5), an assessment of an offender conducted under paragraph (3)(a), and the report of the assessment, may be taken into account:

(a) by the Immigration Minister in determining whether to make any application for a community safety order, or any application for a variation or review of a community safety order, in relation to the offender; and

(b) by the Court in proceedings to make, vary or review any community safety order in relation to the offender.

## 395.44 Sharing information

*Requesting information*

(1) The Immigration Minister may request a person prescribed by the regulations for the purposes of this subsection to give the Immigration Minister information (including personal information) that the Immigration Minister reasonably believes to be relevant to the administration or execution of this Division.

(2) The request need not be in writing.

(3) Despite any law of the Commonwealth, a State or a Territory (whether written or unwritten), the person may provide the information to the Immigration Minister.



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*Disclosing information*

(4) The Immigration Minister may disclose information to a person prescribed by the regulations for the purposes of this subsection if:

(a) the information was acquired by any of the following in the exercise of a power under, or the performance of a function or duty in connection with, this Division:

(i) the Immigration Minister;

(ii) a legal representative of the Immigration Minister;

(iii) the Secretary of the Department administered by the Immigration Minister;

(iv) an APS employee in the Department administered by the Immigration Minister; and

(b) the Immigration Minister reasonably believes that the disclosure is necessary to enable the person to exercise the person's powers, or to perform the person's functions or duties; and

(c) if the regulations provide that information may be disclosed to the person only if specified circumstances are met—those circumstances are met.

(5) Subsection (4) applies despite any other law of the Commonwealth, a State or a Territory (whether written or unwritten).

## 395.45 Sharing information relating to community safety supervision orders

(1) An AFP member may disclose information (including personal information), to a person employed or engaged by a body covered by an arrangement under subsection 395.48(1), for the purpose of facilitating the performance of any functions or the exercise of any powers in relation to community safety supervision orders.

(2) A person (the ***first person***) employed or engaged by a body covered by an arrangement under subsection 395.48(1) may disclose information (including personal information) to another



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person if the first person reasonably believes that the disclosure is authorised by the arrangement.

(3) This section applies despite any other law of the Commonwealth, a State or a Territory (whether written or unwritten).

### 395.46 Delegation by the Immigration Minister

The Immigration Minister may, in writing, delegate any of the Immigration Minister's powers or functions under section 395.44 to any of the following persons:

(a) the Secretary of the Department administered by the Immigration Minister;

(b) any APS employee in that Department who performs duties in connection with the administration or execution of this Division.

### 395.47 Arrangement with States and Territories

(1) The Immigration Minister may arrange for a serious offender in relation to whom a community safety detention order is in force to be detained in a prison of a State or Territory.

(2) If an arrangement is made under subsection (1), the community safety detention order is taken to authorise the chief executive officer (however described) of the prison to detain the offender in the prison while the order is in force.

### 395.48 Arrangements by Australian Federal Police Commissioner for functions and powers relating to community safety supervision orders

(1) The Commissioner of the Australian Federal Police may make an arrangement with a State or Territory, or any other body, for the performance of any functions or the exercise of any powers in relation to community safety supervision orders.



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(2) Without limiting subsection (1), for the purposes of section 395.45, the arrangement may authorise a person employed or engaged by a body covered by the arrangement to disclose information (including personal information).

(3) The Commissioner of the Australian Federal Police may, in writing, delegate to a senior AFP member the Commissioner's powers under subsection (1).

## 395.49 Annual report

(1) The Immigration Minister must, as soon as practicable after each 30 June, cause a report to be prepared about the operation of this Division during the year ended on that 30 June.

(2) Without limiting subsection (1), a report relating to a year must include the number of each of the following:
  (a) applications for each kind of community safety order made during the year;
  (b) each kind of community safety order made during the year;
  (c) applications for review of each kind of community safety order made by serious offenders during the year;
  (d) applications for review of each kind of community safety order made by the Immigration Minister, or a legal representative of the Immigration Minister, during the year;
  (e) each kind of community safety order affirmed during the year;
  (f) each kind of community safety order varied during the year;
  (g) community safety orders revoked (including by operation of this Act) during the year.

(3) The Immigration Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the report is completed.



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## 395.50 Effect of community safety detention orders on bail or parole laws

(1) A person in relation to whom a community safety detention order is in force is not eligible to be released on bail or parole until the order ceases to be in force.

(2) Subsection (1) does not prevent the person from applying, before the order ceases to be in force, to be released on bail if the person is charged with an offence while the order is in force.

Note: Although the person can apply to be released on bail, as a result of subsection (1), the person cannot be released on bail until the community safety detention order ceases to be in force.

(3) This section applies despite any law of the Commonwealth, a State or a Territory.



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