



Criminal Code Act 1995

Act No. 12 of 1995 as amended

This compilation was prepared on 1 March 2005
taking into account amendments up to Act No. 7 of 2005

Section 3AA ceased to have effect and is taken to have been repealed on
the day specified in subsection 2.2(2) of the *Criminal Code*

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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

Contents

1	Short title [see Note 1]	1
2	Commencement [see Note 1].....	1
3	The Criminal Code.....	1
3A	External Territories	1
3B	Offshore installations	1
4	Definitions.....	1
5	Regulations.....	2
Schedule—The Criminal Code		3
Chapter 1—Codification		3
Division 1		3
1.1	Codification.....	3
Chapter 2—General principles of criminal responsibility		4
Part 2.1—Purpose and application		4
Division 2		4
2.1	Purpose.....	4
2.2	Application.....	4
2.3	Application of provisions relating to intoxication	4
Part 2.2—The elements of an offence		5
Division 3—General		5
3.1	Elements.....	5
3.2	Establishing guilt in respect of offences	5
Division 4—Physical elements		6
4.1	Physical elements.....	6
4.2	Voluntariness.....	6
4.3	Omissions.....	7
Division 5—Fault elements		8
5.1	Fault elements.....	8
5.2	Intention	8
5.3	Knowledge	8
5.4	Recklessness.....	8
5.5	Negligence.....	9
5.6	Offences that do not specify fault elements	9
Division 6—Cases where fault elements are not required		10
6.1	Strict liability.....	10
6.2	Absolute liability.....	10

Part 2.3—Circumstances in which there is no criminal responsibility	11
Division 7—Circumstances involving lack of capacity	11
7.1 Children under 10	11
7.2 Children over 10 but under 14	11
7.3 Mental impairment.....	11
Division 8—Intoxication	13
8.1 Definition—self-induced intoxication	13
8.2 Intoxication (offences involving basic intent).....	13
8.3 Intoxication (negligence as fault element)	14
8.4 Intoxication (relevance to defences).....	14
8.5 Involuntary intoxication	15
Division 9—Circumstances involving mistake or ignorance	16
9.1 Mistake or ignorance of fact (fault elements other than negligence).....	16
9.2 Mistake of fact (strict liability)	16
9.3 Mistake or ignorance of statute law.....	17
9.4 Mistake or ignorance of subordinate legislation.....	17
9.5 Claim of right	18
Division 10—Circumstances involving external factors	19
10.1 Intervening conduct or event	19
10.2 Duress	19
10.3 Sudden or extraordinary emergency.....	19
10.4 Self-defence.....	20
10.5 Lawful authority	21
Part 2.4—Extensions of criminal responsibility	22
Division 11	22
11.1 Attempt	22
11.2 Complicity and common purpose.....	23
11.3 Innocent agency.....	24
11.4 Incitement.....	24
11.5 Conspiracy.....	25
11.6 References in Acts to offences.....	27
Part 2.5—Corporate criminal responsibility	28
Division 12	28
12.1 General principles	28
12.2 Physical elements.....	28
12.3 Fault elements other than negligence	28
12.4 Negligence.....	30
12.5 Mistake of fact (strict liability)	30

12.6	Intervening conduct or event	31
Part 2.6—Proof of criminal responsibility		32
Division 13		32
13.1	Legal burden of proof—prosecution	32
13.2	Standard of proof—prosecution	32
13.3	Evidential burden of proof—defence	32
13.4	Legal burden of proof—defence	33
13.5	Standard of proof—defence	33
13.6	Use of averments	33
Part 2.7—Geographical jurisdiction		34
Division 14—Standard geographical jurisdiction		34
14.1	Standard geographical jurisdiction	34
Division 15—Extended geographical jurisdiction		37
15.1	Extended geographical jurisdiction—category A	37
15.2	Extended geographical jurisdiction—category B	39
15.3	Extended geographical jurisdiction—category C	42
15.4	Extended geographical jurisdiction—category D	44
Division 16—Miscellaneous		45
16.1	Attorney-General’s consent required for prosecution if alleged conduct occurs wholly in a foreign country in certain circumstances	45
16.2	When conduct taken to occur partly in Australia	45
16.3	Meaning of <i>Australia</i>	46
16.4	Result of conduct	46
Chapter 4—The integrity and security of the international community and foreign governments		47
Division 70—Bribery of foreign public officials		47
70.1	Definitions	47
70.2	Bribing a foreign public official	50
70.3	Defence—conduct lawful in foreign public official’s country	51
70.4	Defence—facilitation payments	54
70.5	Territorial and nationality requirements	56
70.6	Saving of other laws	57
Division 71—Offences against United Nations and associated personnel		58
71.1	Purpose	58
71.2	Murder of a UN or associated person	58
71.3	Manslaughter of a UN or associated person	58
71.4	Intentionally causing serious harm to a UN or associated person	59

71.5	Recklessly causing serious harm to a UN or associated person.....	59
71.6	Intentionally causing harm to a UN or associated person	60
71.7	Recklessly causing harm to a UN or associated person	60
71.8	Unlawful sexual penetration	61
71.9	Kidnapping a UN or associated person.....	62
71.10	Unlawful detention of UN or associated person.....	63
71.11	Intentionally causing damage to UN or associated person’s property etc.....	63
71.12	Threatening to commit other offences	64
71.13	Aggravated offences.....	64
71.14	Defence—activities involving serious harm	65
71.15	Defence—medical or hygienic procedures	66
71.16	Jurisdictional requirement	66
71.17	Exclusion of this Division if State/Territory laws provide for corresponding offences.....	67
71.18	Double jeopardy.....	68
71.19	Saving of other laws.....	68
71.20	Bringing proceedings under this Division.....	68
71.21	Ministerial certificates relating to proceedings.....	68
71.22	Jurisdiction of State courts preserved.....	69
71.23	Definitions.....	69

Division 72—International terrorist activities using explosive or lethal devices

		71
72.1	Purpose.....	71
72.2	ADF members not liable for prosecution.....	71
72.3	Offences	71
72.4	Jurisdictional requirement	72
72.5	Saving of other laws.....	73
72.6	Double jeopardy and foreign offences.....	73
72.7	Bringing proceedings under this Division.....	74
72.8	Ministerial certificates relating to proceedings.....	74
72.9	Jurisdiction of State courts preserved.....	75
72.10	Definitions.....	75

Division 73—People smuggling and related offences

Subdivision A—People smuggling offences

		76
73.1	Offence of people smuggling.....	76
73.2	Aggravated offence of people smuggling (exploitation etc.).....	76
73.3	Aggravated offence of people smuggling (at least 5 people).....	78
73.4	Jurisdictional requirement	79
73.5	Attorney-General’s consent required.....	79

Subdivision B—Document offences related to people smuggling and unlawful entry into foreign countries	79
73.6 Meaning of <i>travel or identity document</i>	79
73.7 Meaning of <i>false travel or identity document</i>	80
73.8 Making, providing or possessing a false travel or identity document.....	81
73.9 Providing or possessing a travel or identity document issued or altered dishonestly or as a result of threats	81
73.10 Providing or possessing a travel or identity document to be used by a person who is not the rightful user	82
73.11 Taking possession of or destroying another person’s travel or identity document	83
73.12 Jurisdictional requirement	83
Chapter 5—The security of the Commonwealth	84
Part 5.1—Treason	84
Division 80—Treason	84
80.1 Treason.....	84
Part 5.2—Offences relating to espionage and similar activities	87
Division 90—Preliminary	87
90.1 Definitions.....	87
Division 91—Offences relating to espionage and similar activities	89
91.1 Espionage and similar activities.....	89
91.2 Defence—information lawfully available.....	91
Division 93—Prosecutions and hearings	92
93.1 Institution of prosecution.....	92
93.2 Hearing in camera etc.....	92
Division 94—Forfeiture	94
94.1 Forfeiture of articles etc.....	94
Part 5.3—Terrorism	95
Division 100—Preliminary	95
100.1 Definitions.....	95
100.2 Referring States	97
100.3 Constitutional basis for the operation of this Part.....	98
100.4 Application of provisions	99
100.5 Application of <i>Acts Interpretation Act 1901</i>	101
100.6 Concurrent operation intended.....	102
100.7 Regulations may modify operation of this Part to deal with interaction between this Part and State and Territory laws	103
100.8 Approval for changes to or affecting this Part.....	103

Division 101—Terrorism	104
101.1 Terrorist acts.....	104
101.2 Providing or receiving training connected with terrorist acts.....	104
101.4 Possessing things connected with terrorist acts.....	105
101.5 Collecting or making documents likely to facilitate terrorist acts.....	106
101.6 Other acts done in preparation for, or planning, terrorist acts	107
Division 102—Terrorist organisations	108
Subdivision A—Definitions	108
102.1 Definitions.....	108
102.1A Reviews by Parliamentary Joint Committee on ASIO, ASIS and DSD.....	115
Subdivision B—Offences	117
102.2 Directing the activities of a terrorist organisation.....	117
102.3 Membership of a terrorist organisation.....	117
102.4 Recruiting for a terrorist organisation.....	118
102.5 Training a terrorist organisation or receiving training from a terrorist organisation	118
102.6 Getting funds to or from a terrorist organisation	119
102.7 Providing support to a terrorist organisation.....	120
102.8 Associating with terrorist organisations.....	120
Subdivision C—General provisions relating to offences	123
102.9 Extended geographical jurisdiction for offences	123
102.10 Alternative verdicts.....	123
Division 103—Financing terrorism	124
103.1 Financing terrorism.....	124
Division 106—Transitional provisions	125
106.1 Saving—regulations made for the purposes of the definition of <i>terrorist organisation</i>	125
Part 5.4—Harming Australians	126
Division 104—Harming Australians	126
104.1 Murder of an Australian citizen or a resident of Australia	126
104.2 Manslaughter of an Australian citizen or a resident of Australia.....	126
104.3 Intentionally causing serious harm to an Australian citizen or a resident of Australia	127
104.4 Recklessly causing serious harm to an Australian citizen or a resident of Australia	127
104.5 Saving of other laws.....	127
104.6 Bringing proceedings under this Division.....	128
104.7 Ministerial certificates relating to proceedings.....	128

104.8	Geographical jurisdiction	128
104.9	Meaning of <i>causes</i> death or harm.....	128
Chapter 7—The proper administration of Government		129
Part 7.1—Preliminary		129
Division 130—Preliminary		129
130.1	Definitions.....	129
130.2	When property belongs to a person	130
130.3	Dishonesty.....	131
130.4	Determination of dishonesty to be a matter for the trier of fact	131
Part 7.2—Theft and other property offences		132
Division 131—Theft		132
131.1	Theft.....	132
131.2	Special rules about the meaning of dishonesty.....	132
131.3	Appropriation of property.....	133
131.4	Theft of land or things forming part of land.....	133
131.5	Trust property	133
131.6	Obligation to deal with property in a particular way	134
131.7	Property obtained because of fundamental mistake.....	134
131.8	Property of a corporation sole.....	135
131.9	Property belonging to 2 or more persons	135
131.10	Intention of permanently depriving a person of property.....	135
131.11	General deficiency	136
Division 132—Other property offences		137
132.1	Receiving	137
132.2	Robbery.....	140
132.3	Aggravated robbery.....	141
132.4	Burglary	142
132.5	Aggravated burglary.....	144
132.6	Making off without payment	145
132.7	Going equipped for theft or a property offence.....	146
132.8	Dishonest taking or retention of property	147
132.9	Geographical jurisdiction	148
Part 7.3—Fraudulent conduct		149
Division 133—Preliminary		149
133.1	Definitions.....	149
Division 134—Obtaining property or a financial advantage by deception		150
134.1	Obtaining property by deception.....	150

134.2	Obtaining a financial advantage by deception.....	153
134.3	Geographical jurisdiction	153
Division 135—Other offences involving fraudulent conduct		154
135.1	General dishonesty.....	154
135.2	Obtaining financial advantage	155
135.4	Conspiracy to defraud	156
135.5	Geographical jurisdiction	158
Part 7.4—False or misleading statements		159
Division 136—False or misleading statements in applications		159
136.1	False or misleading statements in applications.....	159
Division 137—False or misleading information or documents		162
137.1	False or misleading information.....	162
137.2	False or misleading documents	163
137.3	Geographical jurisdiction	164
Part 7.5—Unwarranted demands		165
Division 138—Preliminary		165
138.1	Unwarranted demand with menaces.....	165
138.2	Menaces	165
Division 139—Unwarranted demands		167
139.1	Unwarranted demands of a Commonwealth public official	167
139.2	Unwarranted demands made by a Commonwealth public official.....	167
139.3	Geographical jurisdiction	168
Part 7.6—Bribery and related offences		169
Division 140—Preliminary		169
140.1	Definition	169
140.2	Obtaining.....	169
Division 141—Bribery		170
141.1	Bribery of a Commonwealth public official.....	170
Division 142—Offences relating to bribery		172
142.1	Corrupting benefits given to, or received by, a Commonwealth public official.....	172
142.2	Abuse of public office	173
142.3	Geographical jurisdiction	174
Part 7.7—Forgery and related offences		175
Division 143—Preliminary		175
143.1	Definitions.....	175
143.2	False documents.....	175

143.3	False Commonwealth documents.....	177
143.4	Inducing acceptance of false documents.....	178
Division 144—Forgery		179
144.1	Forgery.....	179
Division 145—Offences relating to forgery		181
145.1	Using forged document	181
145.2	Possession of forged document.....	182
145.3	Possession, making or adaptation of devices etc. for making forgeries	184
145.4	Falsification of documents etc.	186
145.5	Giving information derived from false or misleading documents	187
145.6	Geographical jurisdiction	188
Part 7.8—Causing harm to, and impersonation and obstruction of, Commonwealth public officials		189
Division 146—Preliminary		189
146.1	Definitions.....	189
146.2	Causing harm.....	190
Division 147—Causing harm to Commonwealth public officials		191
147.1	Causing harm to a Commonwealth public official etc.	191
147.2	Threatening to cause harm to a Commonwealth public official etc.....	193
147.3	Geographical jurisdiction	195
Division 148—Impersonation of Commonwealth public officials		196
148.1	Impersonation of an official by a non-official.....	196
148.2	Impersonation of an official by another official	197
148.3	Geographical jurisdiction	198
Division 149—Obstruction of Commonwealth public officials		199
149.1	Obstruction of Commonwealth public officials	199
Part 7.20—Miscellaneous		201
Division 261—Miscellaneous		201
261.1	Saving of other laws.....	201
261.2	Contempt of court	201
261.3	Ancillary offences.....	201

Chapter 8—Offences against humanity and related offences	202
Division 268—Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court	202
Subdivision A—Introductory	202
268.1 Purpose of Division.....	202
268.2 Outline of offences.....	202
Subdivision B—Genocide	203
268.3 Genocide by killing.....	203
268.4 Genocide by causing serious bodily or mental harm	203
268.5 Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction	203
268.6 Genocide by imposing measures intended to prevent births	204
268.7 Genocide by forcibly transferring children	204
Subdivision C—Crimes against humanity	205
268.8 Crime against humanity—murder	205
268.9 Crime against humanity—extermination	205
268.10 Crime against humanity—enslavement	206
268.11 Crime against humanity—deportation or forcible transfer of population.....	206
268.12 Crime against humanity—imprisonment or other severe deprivation of physical liberty	207
268.13 Crime against humanity—torture.....	208
268.14 Crime against humanity—rape	208
268.15 Crime against humanity—sexual slavery.....	210
268.16 Crime against humanity—enforced prostitution.....	210
268.17 Crime against humanity—forced pregnancy.....	212
268.18 Crime against humanity—enforced sterilisation	212
268.19 Crime against humanity—sexual violence.....	213
268.20 Crime against humanity—persecution.....	214
268.21 Crime against humanity—enforced disappearance of persons	215
268.22 Crime against humanity—apartheid.....	216
268.23 Crime against humanity—other inhumane act	217
Subdivision D—War crimes that are grave breaches of the Geneva Conventions and of Protocol I to the Geneva Conventions	217
268.24 War crime—wilful killing	217
268.25 War crime—torture.....	218
268.26 War crime—inhumane treatment	218
268.27 War crime—biological experiments.....	219
268.28 War crime—wilfully causing great suffering.....	219

268.29	War crime—destruction and appropriation of property	220
268.30	War crime—compelling service in hostile forces.....	220
268.31	War crime—denying a fair trial	221
268.32	War crime—unlawful deportation or transfer	222
268.33	War crime—unlawful confinement.....	222
268.34	War crime—taking hostages.....	223
Subdivision E—Other serious war crimes that are committed in the course of an international armed conflict		223
268.35	War crime—attacking civilians.....	223
268.36	War crime—attacking civilian objects	224
268.37	War crime—attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission.....	224
268.38	War crime—excessive incidental death, injury or damage	225
268.39	War crime—attacking undefended places.....	225
268.40	War crime—killing or injuring a person who is <i>hors de combat</i>	226
268.41	War crime—improper use of a flag of truce	226
268.42	War crime—improper use of a flag, insignia or uniform of the adverse party	227
268.43	War crime—improper use of a flag, insignia or uniform of the United Nations	227
268.44	War crime—improper use of the distinctive emblems of the Geneva Conventions	228
268.45	War crime—transfer of population	229
268.46	War crime—attacking protected objects.....	229
268.47	War crime—mutilation.....	230
268.48	War crime—medical or scientific experiments	231
268.49	War crime—treacherously killing or injuring	231
268.50	War crime—denying quarter	232
268.51	War crime—destroying or seizing the enemy’s property.....	233
268.52	War crime—depriving nationals of the adverse power of rights or actions	233
268.53	War crime—compelling participation in military operations	234
268.54	War crime—pillaging.....	234
268.55	War crime—employing poison or poisoned weapons	234
268.56	War crime—employing prohibited gases, liquids, materials or devices	235
268.57	War crime—employing prohibited bullets.....	235
268.58	War crime—outrages upon personal dignity.....	235
268.59	War crime—rape.....	236
268.60	War crime—sexual slavery.....	237
268.61	War crime—enforced prostitution.....	238
268.62	War crime—forced pregnancy	239
268.63	War crime—enforced sterilisation	240

268.64	War crime—sexual violence.....	240
268.65	War crime—using protected persons as shields	242
268.66	War crime—attacking persons or objects using the distinctive emblems of the Geneva Conventions.....	242
268.67	War crime—starvation as a method of warfare.....	243
268.68	War crime—using, conscripting or enlisting children	244
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		
		244
268.69	Definition of religious personnel.....	244
268.70	War crime—murder	245
268.71	War crime—mutilation.....	245
268.72	War crime—cruel treatment	247
268.73	War crime—torture.....	247
268.74	War crime—outrages upon personal dignity.....	248
268.75	War crime—taking hostages.....	249
268.76	War crime—sentencing or execution without due process	250
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		
		252
268.77	War crime—attacking civilians.....	252
268.78	War crime—attacking persons or objects using the distinctive emblems of the Geneva Conventions.....	252
268.79	War crime—attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission.....	253
268.80	War crime—attacking protected objects.....	254
268.81	War crime—pillaging.....	254
268.82	War crime—rape.....	255
268.83	War crime—sexual slavery.....	256
268.84	War crime—enforced prostitution.....	257
268.85	War crime—forced pregnancy.....	258
268.86	War crime—enforced sterilisation	259
268.87	War crime—sexual violence.....	259
268.88	War crime—using, conscripting or enlisting children	261
268.89	War crime—displacing civilians.....	262
268.90	War crime—treacherously killing or injuring	262
268.91	War crime—denying quarter	263
268.92	War crime—mutilation.....	263
268.93	War crime—medical or scientific experiments	264
268.94	War crime—destroying or seizing an adversary’s property	265

Subdivision H—War crimes that are grave breaches of Protocol I to the Geneva Conventions	266
268.95 War crime—medical procedure	266
268.96 War crime—removal of blood, tissue or organs for transplantation	267
268.97 War crime—attack against works or installations containing dangerous forces resulting in excessive loss of life or injury to civilians	267
268.98 War crime—attacking undefended places or demilitarized zones	268
268.99 War crime—unjustifiable delay in the repatriation of prisoners of war or civilians.....	268
268.100 War crime—apartheid	269
268.101 War crime—attacking protected objects.....	269
Subdivision J—Crimes against the administration of the justice of the International Criminal Court	270
268.102 Perjury.....	270
268.103 Falsifying evidence	270
268.104 Destroying or concealing evidence	271
268.105 Deceiving witnesses	271
268.106 Corrupting witnesses or interpreters.....	272
268.107 Threatening witnesses or interpreters	272
268.108 Preventing witnesses or interpreters.....	273
268.109 Preventing production of things in evidence.....	273
268.110 Reprisals against witnesses.....	273
268.111 Reprisals against officials of the International Criminal Court	274
268.112 Perverting the course of justice	275
268.113 Receipt of a corrupting benefit by an official of the International Criminal Court.....	275
268.114 Subdivision not to apply to certain conduct	276
Subdivision K—Miscellaneous	276
268.115 Responsibility of commanders and other superiors	276
268.116 Defence of superior orders.....	277
268.117 Geographical jurisdiction	278
268.118 Double jeopardy.....	278
268.119 Offences related to exercise of jurisdiction of International Criminal Court.....	278
268.120 Saving of other laws.....	278
268.121 Bringing proceedings under this Division.....	279
268.122 Attorney-General’s decisions in relation to consents to be final.....	279
268.123 Legal representation	280

268.124	Proof of application of Geneva Conventions or Protocol I to the Geneva Conventions.....	280
Division 270—Slavery, sexual servitude and deceptive recruiting		281
270.1	Definition of <i>slavery</i>	281
270.2	Slavery is unlawful	281
270.3	Slavery offences.....	281
270.4	Definition of <i>sexual servitude</i>	282
270.5	Jurisdictional requirement	283
270.6	Sexual servitude offences	283
270.7	Deceptive recruiting for sexual services	284
270.8	Aggravated offences.....	285
270.9	Alternative verdict if aggravated offence not proven.....	285
270.10	No nationality requirement	285
270.11	Attorney-General’s consent required.....	285
270.12	Other laws not excluded.....	286
270.13	Double jeopardy.....	286
270.14	External Territories	286
Chapter 9—Dangers to the community		287
Part 9.4—Dangerous weapons		287
Division 360—Cross-border firearms trafficking		287
360.1	Disposal and acquisition of a firearm	287
360.2	Cross-border offence of disposal or acquisition of a firearm.....	287
360.3	Taking or sending a firearm across borders	288
360.4	Concurrent operation intended.....	289
Part 9.6—Contamination of goods		290
380.1	Definitions.....	290
380.2	Contaminating goods	290
380.3	Threatening to contaminate goods.....	292
380.4	Making false statements about contamination of goods.....	294
380.5	Extended geographical jurisdiction—category D	296
Chapter 10—National infrastructure		297
Part 10.2—Money laundering		297
Division 400—Money laundering		297
400.1	Definitions.....	297
400.2	Meaning of <i>dealing with money or other property</i>	298
400.3	Dealing in proceeds of crime etc.—money or property worth \$1,000,000 or more	300
400.4	Dealing in proceeds of crime etc.—money or property worth \$100,000 or more.....	301

400.5	Dealing in proceeds of crime etc.—money or property worth \$50,000 or more.....	302
400.6	Dealing in proceeds of crime etc.—money or property worth \$10,000 or more.....	303
400.7	Dealing in proceeds of crime etc.—money or property worth \$1,000 or more.....	305
400.8	Dealing in proceeds of crime etc.—money or property of any value.....	306
400.9	Possession etc. of property reasonably suspected of being proceeds of crime etc.....	307
400.10	Mistake of fact as to the value of money or property.....	308
400.11	Proof of certain matters relating to kinds of offences not required.....	309
400.12	Combining several contraventions in a single charge.....	310
400.13	Proof of other offences is not required.....	310
400.14	Alternative verdicts.....	310
400.15	Geographical jurisdiction.....	311
400.16	Saving of other laws.....	311

Part 10.5—Postal services 312

Division 470—Preliminary 312

470.1	Definitions.....	312
470.2	Dishonesty.....	314
470.3	Determination of dishonesty to be a matter for the trier of fact.....	314

Division 471—Postal offences 315

471.1	Theft of mail-receptacles, articles or postal messages.....	315
471.2	Receiving stolen mail-receptacles, articles or postal messages.....	316
471.3	Taking or concealing of mail-receptacles, articles or postal messages.....	318
471.4	Dishonest removal of postage stamps or postmarks.....	318
471.5	Dishonest use of previously used, defaced or obliterated stamps.....	318
471.6	Damaging or destroying mail-receptacles, articles or postal messages.....	319
471.7	Tampering with mail-receptacles.....	320
471.8	Dishonestly obtaining delivery of articles.....	320
471.9	Geographical jurisdiction.....	320
471.10	Hoaxes—explosives and dangerous substances.....	320
471.11	Using a postal or similar service to make a threat.....	321
471.12	Using a postal or similar service to menace, harass or cause offence.....	322
471.13	Causing a dangerous article to be carried by a postal or similar service.....	322

471.14	Geographical jurisdiction	323
471.15	Causing an explosive, or a dangerous or harmful substance, to be carried by post	323
Division 472—Miscellaneous		325
472.1	Saving of other laws.....	325
472.2	Interpretation of other laws.....	325
Part 10.6—Telecommunications Services		326
Division 473—Preliminary		326
473.1	Definitions.....	326
473.2	Possession or control of data or material in the form of data	326
473.3	Producing, supplying or obtaining data or material in the form of data	333
473.4	Determining whether material is offensive	333
Division 474—Telecommunications offences		334
Subdivision A—Dishonesty with respect to carriage services		334
474.1	Dishonesty.....	334
474.2	General dishonesty with respect to a carriage service provider	334
Subdivision B—Interference with telecommunications		335
474.3	Person acting for a carrier or carriage service provider	335
474.4	Interception devices	335
474.5	Wrongful delivery of communications	336
474.6	Interference with facilities	337
474.7	Modification etc. of a telecommunications device identifier.....	338
474.8	Possession or control of data or a device with intent to modify a telecommunications device identifier.....	339
474.9	Producing, supplying or obtaining data or a device with intent to modify a telecommunications device identifier	340
474.10	Copying subscription-specific secure data.....	341
474.11	Possession or control of data or a device with intent to copy an account identifier.....	343
474.12	Producing, supplying or obtaining data or a device with intent to copy an account identifier	344
Subdivision C—Offences related to use of telecommunications		345
474.13	Use of a carriage service.....	345
474.14	Using a telecommunications network with intention to commit a serious offence.....	346
474.15	Using a carriage service to make a threat.....	347
474.16	Using a carriage service for a hoax threat	348
474.17	Using a carriage service to menace, harass or cause offence.....	348
474.18	Improper use of emergency call service	348

474.19	Using a carriage service for child pornography material	349
474.20	Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service.....	350
474.21	Defences in respect of child pornography material	350
474.22	Using a carriage service for child abuse material.....	352
474.23	Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service	353
474.24	Defences in respect of child abuse material	353
474.25	Obligations of Internet service providers and Internet content hosts.....	355
474.26	Using a carriage service to procure persons under 16 years of age	355
474.27	Using a carriage service to “groom” persons under 16 years of age	356
474.28	Provisions relating to offences against sections 474.26 and 474.27	358
474.29	Defences to offences against section 474.26 or 474.27.....	360
474.30	Defences for NRS employees and emergency call persons.....	361
Division 475—Miscellaneous		362
475.1	Saving of other laws.....	362
475.2	Geographical jurisdiction	362
Part 10.7—Computer offences		363
Division 476—Preliminary		363
476.1	Definitions.....	363
476.2	Meaning of <i>unauthorised access, modification or impairment</i>	364
476.3	Geographical jurisdiction	365
476.4	Saving of other laws.....	365
476.5	Liability for certain acts.....	365
Division 477—Serious computer offences		368
477.1	Unauthorised access, modification or impairment with intent to commit a serious offence	368
477.2	Unauthorised modification of data to cause impairment.....	370
477.3	Unauthorised impairment of electronic communication	371
Division 478—Other computer offences		372
478.1	Unauthorised access to, or modification of, restricted data.....	372
478.2	Unauthorised impairment of data held on a computer disk etc.	372
478.3	Possession or control of data with intent to commit a computer offence	373
478.4	Producing, supplying or obtaining data with intent to commit a computer offence.....	374

Part 10.8—Financial information offences	375
480.1 Definitions.....	375
480.2 Dishonesty.....	376
480.3 Constitutional application of this Part	376
480.4 Dishonestly obtaining or dealing in personal financial information.....	376
480.5 Possession or control of thing with intent to dishonestly obtain or deal in personal financial information.....	376
480.6 Importation of thing with intent to dishonestly obtain or deal in personal financial information	377
Dictionary	378
Notes	391

An Act relating to the criminal law

1 Short title [see Note 1]

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

2 Commencement [see Note 1]

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

3 The Criminal Code

- (1) The Schedule has effect as a law of the Commonwealth.
- (2) The Schedule may be cited as the *Criminal Code*.

3A External Territories

The *Criminal Code* extends to every external Territory.

3B Offshore installations

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

4 Definitions

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

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

5 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule—The Criminal Code

Section 3

Chapter 1—Codification

Division 1

1.1 Codification

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

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

Chapter 2—General principles of criminal responsibility

Part 2.1—Purpose and application

Division 2

2.1 Purpose

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

2.2 Application

- (1) This Chapter applies to all offences against this Code.
- (2) Subject to section 2.3, this Chapter applies on and after 15 December 2001 to all other offences.
- (3) Section 11.6 applies to all offences.

2.3 Application of provisions relating to intoxication

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

Part 2.2—The elements of an offence

Division 3—General

3.1 Elements

- (1) An offence consists of physical elements and fault elements.**
- (2) However, the law that creates the offence may provide that there is no fault element for one or more physical elements.
- (3) The law that creates the offence may provide different fault elements for different physical elements.

3.2 Establishing guilt in respect of offences

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

- (a) the existence of such physical elements as are, under the law creating the offence, relevant to establishing guilt;
- (b) in respect of each such physical element for which a fault element is required, one of the fault elements for the physical element.

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

Note 2: See Part 2.7 on geographical jurisdiction.

Division 4—Physical elements

4.1 Physical elements

- (1) **A physical element of an offence may be:**
- (a) **conduct; or**
 - (b) a result of conduct; or
 - (c) a circumstance in which conduct, or a result of conduct, occurs.
- (2) In this Code:

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

engage in conduct means:

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

4.2 Voluntariness

- (1) Conduct can only be a physical element if it is voluntary.
- (2) Conduct is only voluntary if it is a product of the will of the person whose conduct it is.
- (3) The following are examples of conduct that is not voluntary:
 - (a) a spasm, convulsion or other unwilled bodily movement;
 - (b) an act performed during sleep or unconsciousness;
 - (c) an act performed during impaired consciousness depriving the person of the will to act.
- (4) An omission to perform an act is only voluntary if the act omitted is one which the person is capable of performing.
- (5) If the conduct constituting an offence consists only of a state of affairs, the state of affairs is only voluntary if it is one over which the person is capable of exercising control.

- (6) Evidence of self-induced intoxication cannot be considered in determining whether conduct is voluntary.
- (7) Intoxication is self-induced unless it came about:
 - (a) involuntarily; or
 - (b) as a result of fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force.

4.3 Omissions

An omission to perform an act can only be a physical element if:

- (a) the law creating the offence makes it so; or
- (b) the law creating the offence impliedly provides that the offence is committed by an omission to perform an act that by law there is a duty to perform.

Division 5—Fault elements

5.1 Fault elements

- (1) **A fault element for a particular physical element may be intention, knowledge, recklessness or negligence.**
- (2) Subsection (1) does not prevent a law that creates a particular offence from specifying other fault elements for a physical element of that offence.

5.2 Intention

- (1) A person has intention with respect to conduct if he or she means to engage in that conduct.
- (2) A person has intention with respect to a circumstance if he or she believes that it exists or will exist.
- (3) A person has intention with respect to a result if he or she means to bring it about or is aware that it will occur in the ordinary course of events.

5.3 Knowledge

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

5.4 Recklessness

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

- (b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.
- (3) The question whether taking a risk is unjustifiable is one of fact.
- (4) If recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness will satisfy that fault element.

5.5 Negligence

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

- (a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and
- (b) such a high risk that the physical element exists or will exist; that the conduct merits criminal punishment for the offence.

5.6 Offences that do not specify fault elements

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

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

Section 6.1

Division 6—Cases where fault elements are not required

6.1 Strict liability

- (1) If a law that creates an offence provides that the offence is an offence of strict liability:**
 - (a) there are no fault elements for any of the physical elements of the offence; and**
 - (b) the defence of mistake of fact under section 9.2 is available.**
- (2) If a law that creates an offence provides that strict liability applies to a particular physical element of the offence:
 - (a) there are no fault elements for that physical element; and
 - (b) the defence of mistake of fact under section 9.2 is available in relation to that physical element.
- (3) The existence of strict liability does not make any other defence unavailable.

6.2 Absolute liability

- (1) If a law that creates an offence provides that the offence is an offence of absolute liability:**
 - (a) there are no fault elements for any of the physical elements of the offence; and**
 - (b) the defence of mistake of fact under section 9.2 is unavailable.**
- (2) If a law that creates an offence provides that absolute liability applies to a particular physical element of the offence:
 - (a) there are no fault elements for that physical element; and
 - (b) the defence of mistake of fact under section 9.2 is unavailable in relation to that physical element.
- (3) The existence of absolute liability does not make any other defence unavailable.

Part 2.3—Circumstances in which there is no criminal responsibility

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

Division 7—Circumstances involving lack of capacity

7.1 Children under 10

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

7.2 Children over 10 but under 14

- (1) A child aged 10 years or more but under 14 years old can only be criminally responsible for an offence if the child knows that his or her conduct is wrong.**
- (2) The question whether a child knows that his or her conduct is wrong is one of fact. The burden of proving this is on the prosecution.

7.3 Mental impairment

- (1) A person is not criminally responsible for an offence if, at the time of carrying out the conduct constituting the offence, the person was suffering from a mental impairment that had the effect that:**
 - (a) the person did not know the nature and quality of the conduct; or**
 - (b) the person did not know that the conduct was wrong (that is, the person could not reason with a moderate degree of sense and composure about whether the conduct, as perceived by reasonable people, was wrong); or**
 - (c) the person was unable to control the conduct.**
- (2) The question whether the person was suffering from a mental impairment is one of fact.

Schedule The Criminal Code

Chapter 2 General principles of criminal responsibility

Part 2.3 Circumstances in which there is no criminal responsibility

Division 7 Circumstances involving lack of capacity

Section 7.3

- (3) A person is presumed not to have been suffering from such a mental impairment. The presumption is only displaced if it is proved on the balance of probabilities (by the prosecution or the defence) that the person was suffering from such a mental impairment.
- (4) The prosecution can only rely on this section if the court gives leave.
- (5) The tribunal of fact must return a special verdict that a person is not guilty of an offence because of mental impairment if and only if it is satisfied that the person is not criminally responsible for the offence only because of a mental impairment.
- (6) A person cannot rely on a mental impairment to deny voluntariness or the existence of a fault element but may rely on this section to deny criminal responsibility.
- (7) If the tribunal of fact is satisfied that a person carried out conduct as a result of a delusion caused by a mental impairment, the delusion cannot otherwise be relied on as a defence.
- (8) In this section:
mental impairment includes senility, intellectual disability, mental illness, brain damage and severe personality disorder.
- (9) The reference in subsection (8) to **mental illness** is a reference to an underlying pathological infirmity of the mind, whether of long or short duration and whether permanent or temporary, but does not include a condition that results from the reaction of a healthy mind to extraordinary external stimuli. However, such a condition may be evidence of a mental illness if it involves some abnormality and is prone to recur.

Division 8—Intoxication

8.1 Definition—self-induced intoxication

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

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

8.2 Intoxication (offences involving basic intent)

- (1) Evidence of self-induced intoxication cannot be considered in determining whether a fault element of basic intent existed.**
- (2) A fault element of basic intent is a fault element of intention for a physical element that consists only of conduct.
Note: A fault element of intention with respect to a circumstance or with respect to a result is not a fault element of basic intent.
- (3) This section does not prevent evidence of self-induced intoxication being taken into consideration in determining whether conduct was accidental.
- (4) This section does not prevent evidence of self-induced intoxication being taken into consideration in determining whether a person had a mistaken belief about facts if the person had considered whether or not the facts existed.
- (5) A person may be regarded as having considered whether or not facts existed if:
 - (a) he or she had considered, on a previous occasion, whether those facts existed in circumstances surrounding that occasion; and
 - (b) he or she honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

Section 8.3

8.3 Intoxication (negligence as fault element)

- (1) **If negligence is a fault element for a particular physical element of an offence, in determining whether that fault element existed in relation to a person who is intoxicated, regard must be had to the standard of a reasonable person who is not intoxicated.**
- (2) However, if intoxication is not self-induced, regard must be had to the standard of a reasonable person intoxicated to the same extent as the person concerned.

8.4 Intoxication (relevance to defences)

- (1) **If any part of a defence is based on actual knowledge or belief, evidence of intoxication may be considered in determining whether that knowledge or belief existed.**
- (2) **If any part of a defence is based on reasonable belief, in determining whether that reasonable belief existed, regard must be had to the standard of a reasonable person who is not intoxicated.**
- (3) If a person's intoxication is not self-induced, in determining whether any part of a defence based on reasonable belief exists, regard must be had to the standard of a reasonable person intoxicated to the same extent as the person concerned.
- (4) If, in relation to an offence:
 - (a) each physical element has a fault element of basic intent; and
 - (b) any part of a defence is based on actual knowledge or belief;evidence of self-induced intoxication cannot be considered in determining whether that knowledge or belief existed.
- (5) A fault element of basic intent is a fault element of intention for a physical element that consists only of conduct.

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

8.5 Involuntary intoxication

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

Schedule The Criminal Code

Chapter 2 General principles of criminal responsibility

Part 2.3 Circumstances in which there is no criminal responsibility

Division 9 Circumstances involving mistake or ignorance

Section 9.1

Division 9—Circumstances involving mistake or ignorance

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

- (1) A person is not criminally responsible for an offence that has a physical element for which there is a fault element other than negligence if:**
 - (a) at the time of the conduct constituting the physical element, the person is under a mistaken belief about, or is ignorant of, facts; and**
 - (b) the existence of that mistaken belief or ignorance negates any fault element applying to that physical element.**
- (2) In determining whether a person was under a mistaken belief about, or was ignorant of, facts, the tribunal of fact may consider whether the mistaken belief or ignorance was reasonable in the circumstances.**

9.2 Mistake of fact (strict liability)

- (1) A person is not criminally responsible for an offence that has a physical element for which there is no fault element if:**
 - (a) at or before the time of the conduct constituting the physical element, the person considered whether or not facts existed, and is under a mistaken but reasonable belief about those facts; and**
 - (b) had those facts existed, the conduct would not have constituted an offence.**
- (2) A person may be regarded as having considered whether or not facts existed if:**
 - (a) he or she had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and**
 - (b) he or she honestly and reasonably believed that the circumstances surrounding the present occasion were the**

same, or substantially the same, as those surrounding the previous occasion.

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

9.3 Mistake or ignorance of statute law

- (1) A person can be criminally responsible for an offence even if, at the time of the conduct constituting the offence, he or she is mistaken about, or ignorant of, the existence or content of an Act that directly or indirectly creates the offence or directly or indirectly affects the scope or operation of the offence.**
- (2) Subsection (1) does not apply, and the person is not criminally responsible for the offence in those circumstances, if the Act is expressly to the contrary effect.

9.4 Mistake or ignorance of subordinate legislation

- (1) A person can be criminally responsible for an offence even if, at the time of the conduct constituting the offence, he or she is mistaken about, or ignorant of, the existence or content of the subordinate legislation that directly or indirectly creates the offence or directly or indirectly affects the scope or operation of the offence.**
- (2) Subsection (1) does not apply, and the person is not criminally responsible for the offence in those circumstances, if:
 - (a) the subordinate legislation is expressly to the contrary effect;
or
 - (c) at the time of the conduct, the subordinate legislation:
 - (i) has not been made available to the public (by means of the Register under the *Legislative Instruments Act 2003* or otherwise); and
 - (ii) has not otherwise been made available to persons likely to be affected by it in such a way that the person would have become aware of its contents by exercising due diligence.

Schedule The Criminal Code

Chapter 2 General principles of criminal responsibility

Part 2.3 Circumstances in which there is no criminal responsibility

Division 9 Circumstances involving mistake or ignorance

Section 9.5

(3) In this section:

available includes available by sale.

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

9.5 Claim of right

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

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

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

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

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

Division 10—Circumstances involving external factors

10.1 Intervening conduct or event

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

- (a) the physical element is brought about by another person over whom the person has no control or by a non-human act or event over which the person has no control; and**
- (b) the person could not reasonably be expected to guard against the bringing about of that physical element.**

10.2 Duress

- (1) A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence under duress.**
- (2) A person carries out conduct under duress if and only if he or she reasonably believes that:
 - (a) a threat has been made that will be carried out unless an offence is committed; and
 - (b) there is no reasonable way that the threat can be rendered ineffective; and
 - (c) the conduct is a reasonable response to the threat.
- (3) This section does not apply if the threat is made by or on behalf of a person with whom the person under duress is voluntarily associating for the purpose of carrying out conduct of the kind actually carried out.

10.3 Sudden or extraordinary emergency

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

Schedule The Criminal Code

Chapter 2 General principles of criminal responsibility

Part 2.3 Circumstances in which there is no criminal responsibility

Division 10 Circumstances involving external factors

Section 10.4

- (2) This section applies if and only if the person carrying out the conduct reasonably believes that:
- (a) circumstances of sudden or extraordinary emergency exist; and
 - (b) committing the offence is the only reasonable way to deal with the emergency; and
 - (c) the conduct is a reasonable response to the emergency.

10.4 Self-defence

- (1) **A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence in self-defence.**
- (2) A person carries out conduct in self-defence if and only if he or she believes the conduct is necessary:
- (a) to defend himself or herself or another person; or
 - (b) to prevent or terminate the unlawful imprisonment of himself or herself or another person; or
 - (c) to protect property from unlawful appropriation, destruction, damage or interference; or
 - (d) to prevent criminal trespass to any land or premises; or
 - (e) to remove from any land or premises a person who is committing criminal trespass;
- and the conduct is a reasonable response in the circumstances as he or she perceives them.
- (3) This section does not apply if the person uses force that involves the intentional infliction of death or really serious injury:
- (a) to protect property; or
 - (b) to prevent criminal trespass; or
 - (c) to remove a person who is committing criminal trespass.
- (4) This section does not apply if:
- (a) the person is responding to lawful conduct; and
 - (b) he or she knew that the conduct was lawful.
- However, conduct is not lawful merely because the person carrying it out is not criminally responsible for it.

10.5 Lawful authority

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

Part 2.4—Extensions of criminal responsibility

Division 11

11.1 Attempt

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

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

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

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

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

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

- (a) committing the offence attempted is impossible; or
- (b) the person actually committed the offence attempted.

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

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

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

(7) It is not an offence to attempt to commit an offence against section 11.2 (complicity and common purpose), section 11.5

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

11.2 Complicity and common purpose

- (1) A person who aids, abets, counsels or procures the commission of an offence by another person is taken to have committed that offence and is punishable accordingly.**
 - (2) For the person to be guilty:
 - (a) the person's conduct must have in fact aided, abetted, counselled or procured the commission of the offence by the other person; and
 - (b) the offence must have been committed by the other person.
 - (3) For the person to be guilty, the person must have intended that:
 - (a) his or her conduct would aid, abet, counsel or procure the commission of any offence (including its fault elements) of the type the other person committed; or
 - (b) his or her conduct would aid, abet, counsel or procure the commission of an offence and have been reckless about the commission of the offence (including its fault elements) that the other person in fact committed.
 - (3A) Subsection (3) has effect subject to subsection (6).
 - (4) A person cannot be found guilty of aiding, abetting, counselling or procuring the commission of an offence if, before the offence was committed, the person:
 - (a) terminated his or her involvement; and
 - (b) took all reasonable steps to prevent the commission of the offence.
 - (5) A person may be found guilty of aiding, abetting, counselling or procuring the commission of an offence even if the principal offender has not been prosecuted or has not been found guilty.
 - (6) Any special liability provisions that apply to an offence apply also to the offence of aiding, abetting, counselling or procuring the commission of that offence.
-

Section 11.3

- (7) If the trier of fact is satisfied beyond reasonable doubt that a person either:
- (a) is guilty of a particular offence otherwise than because of the operation of subsection (1); or
 - (b) is guilty of that offence because of the operation of subsection (1);
- but is not able to determine which, the trier of fact may nonetheless find the person guilty of that offence.

11.3 Innocent agency

A person who:

- (a) has, in relation to each physical element of an offence, a fault element applicable to that physical element; and**
- (b) procures conduct of another person that (whether or not together with conduct of the procurer) would have constituted an offence on the part of the procurer if the procurer had engaged in it;**

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

11.4 Incitement

- (1) A person who urges the commission of an offence is guilty of the offence of incitement.**
- (2) For the person to be guilty, the person must intend that the offence incited be committed.
- (2A) Subsection (2) has effect subject to subsection (4A).
- (3) A person may be found guilty even if committing the offence incited is impossible.
- (4) Any defences, procedures, limitations or qualifying provisions that apply to an offence apply also to the offence of incitement in respect of that offence.
- (4A) Any special liability provisions that apply to an offence apply also to the offence of incitement in respect of that offence.

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

Penalty:

- (a) if the offence incited is punishable by life imprisonment—imprisonment for 10 years; or
- (b) if the offence incited is punishable by imprisonment for 14 years or more, but is not punishable by life imprisonment—imprisonment for 7 years; or
- (c) if the offence incited is punishable by imprisonment for 10 years or more, but is not punishable by imprisonment for 14 years or more—imprisonment for 5 years; or
- (d) if the offence is otherwise punishable by imprisonment—imprisonment for 3 years or for the maximum term of imprisonment for the offence incited, whichever is the lesser; or
- (e) if the offence incited is not punishable by imprisonment—the number of penalty units equal to the maximum number of penalty units applicable to the offence incited.

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

11.5 Conspiracy

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

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

- (2) For the person to be guilty:
- (a) the person must have entered into an agreement with one or more other persons; and

Section 11.5

- (b) the person and at least one other party to the agreement must have intended that an offence would be committed pursuant to the agreement; and
 - (c) the person or at least one other party to the agreement must have committed an overt act pursuant to the agreement.
 - (2A) Subsection (2) has effect subject to subsection (7A).
 - (3) A person may be found guilty of conspiracy to commit an offence even if:
 - (a) committing the offence is impossible; or
 - (b) the only other party to the agreement is a body corporate; or
 - (c) each other party to the agreement is at least one of the following:
 - (i) a person who is not criminally responsible;
 - (ii) a person for whose benefit or protection the offence exists; or
 - (d) subject to paragraph (4)(a), all other parties to the agreement have been acquitted of the conspiracy.
 - (4) A person cannot be found guilty of conspiracy to commit an offence if:
 - (a) all other parties to the agreement have been acquitted of the conspiracy and a finding of guilt would be inconsistent with their acquittal; or
 - (b) he or she is a person for whose benefit or protection the offence exists.
 - (5) A person cannot be found guilty of conspiracy to commit an offence if, before the commission of an overt act pursuant to the agreement, the person:
 - (a) withdrew from the agreement; and
 - (b) took all reasonable steps to prevent the commission of the offence.
 - (6) A court may dismiss a charge of conspiracy if it thinks that the interests of justice require it to do so.
 - (7) Any defences, procedures, limitations or qualifying provisions that apply to an offence apply also to the offence of conspiracy to commit that offence.
-

- (7A) Any special liability provisions that apply to an offence apply also to the offence of conspiracy to commit that offence.
- (8) Proceedings for an offence of conspiracy must not be commenced without the consent of the Director of Public Prosecutions.
However, a person may be arrested for, charged with, or remanded in custody or on bail in connection with, an offence of conspiracy before the necessary consent has been given.

11.6 References in Acts to offences

- (1) A reference in a law of the Commonwealth to an offence against a law of the Commonwealth (including this Code) includes a reference to an offence against section 11.1 (attempt), 11.4 (incitement) or 11.5 (conspiracy) of this Code that relates to such an offence.
- (2) A reference in a law of the Commonwealth (including this Code) to a particular offence includes a reference to an offence against section 11.1 (attempt), 11.4 (incitement) or 11.5 (conspiracy) of this Code that relates to that particular offence.
- (3) Subsection (1) or (2) does not apply if a law of the Commonwealth is expressly or impliedly to the contrary effect.
- (4) In particular, an express reference in a law of the Commonwealth to:
- (a) an offence against, under or created by the *Crimes Act 1914*;
or
 - (b) an offence against, under or created by a particular provision of the *Crimes Act 1914*; or
 - (c) an offence arising out of the first-mentioned law or another law of the Commonwealth; or
 - (d) an offence arising out of a particular provision; or
 - (e) an offence against, under or created by the *Taxation Administration Act 1953*;

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

Note: Sections 11.2 (complicity and common purpose) and 11.3 (innocent agency) of this Code operate as extensions of principal offences and are therefore not referred to in this section.

Part 2.5—Corporate criminal responsibility

Division 12

12.1 General principles

- (1) This Code applies to bodies corporate in the same way as it applies to individuals. It so applies with such modifications as are set out in this Part, and with such other modifications as are made necessary by the fact that criminal liability is being imposed on bodies corporate rather than individuals.**
- (2) A body corporate may be found guilty of any offence, including one punishable by imprisonment.**

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

12.2 Physical elements

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

12.3 Fault elements other than negligence

- (1) If intention, knowledge or recklessness is a fault element in relation to a physical element of an offence, that fault element must be attributed to a body corporate that expressly, tacitly or impliedly authorised or permitted the commission of the offence.
- (2) The means by which such an authorisation or permission may be established include:
 - (a) proving that the body corporate's board of directors intentionally, knowingly or recklessly carried out the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence; or

- (b) proving that a high managerial agent of the body corporate intentionally, knowingly or recklessly engaged in the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence; or
 - (c) proving that a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to non-compliance with the relevant provision; or
 - (d) proving that the body corporate failed to create and maintain a corporate culture that required compliance with the relevant provision.
- (3) Paragraph (2)(b) does not apply if the body corporate proves that it exercised due diligence to prevent the conduct, or the authorisation or permission.
- (4) Factors relevant to the application of paragraph (2)(c) or (d) include:
- (a) whether authority to commit an offence of the same or a similar character had been given by a high managerial agent of the body corporate; and
 - (b) whether the employee, agent or officer of the body corporate who committed the offence believed on reasonable grounds, or entertained a reasonable expectation, that a high managerial agent of the body corporate would have authorised or permitted the commission of the offence.
- (5) If recklessness is not a fault element in relation to a physical element of an offence, subsection (2) does not enable the fault element to be proved by proving that the board of directors, or a high managerial agent, of the body corporate recklessly engaged in the conduct or recklessly authorised or permitted the commission of the offence.
- (6) In this section:

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

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

Section 12.4

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

12.4 Negligence

- (1) The test of negligence for a body corporate is that set out in section 5.5.
- (2) If:
 - (a) negligence is a fault element in relation to a physical element of an offence; and
 - (b) no individual employee, agent or officer of the body corporate has that fault element;that fault element may exist on the part of the body corporate if the body corporate's conduct is negligent when viewed as a whole (that is, by aggregating the conduct of any number of its employees, agents or officers).
- (3) Negligence may be evidenced by the fact that the prohibited conduct was substantially attributable to:
 - (a) inadequate corporate management, control or supervision of the conduct of one or more of its employees, agents or officers; or
 - (b) failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.

12.5 Mistake of fact (strict liability)

- (1) A body corporate can only rely on section 9.2 (mistake of fact (strict liability)) in respect of conduct that would, apart from this section, constitute an offence on its part if:
 - (a) the employee, agent or officer of the body corporate who carried out the conduct was under a mistaken but reasonable belief about facts that, had they existed, would have meant that the conduct would not have constituted an offence; and
 - (b) the body corporate proves that it exercised due diligence to prevent the conduct.

- (2) A failure to exercise due diligence may be evidenced by the fact that the prohibited conduct was substantially attributable to:
- (a) inadequate corporate management, control or supervision of the conduct of one or more of its employees, agents or officers; or
 - (b) failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.

12.6 Intervening conduct or event

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

Part 2.6—Proof of criminal responsibility

Division 13

13.1 Legal burden of proof—prosecution

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

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

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

- (3) In this Code:

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

13.2 Standard of proof—prosecution

- (1) A legal burden of proof on the prosecution must be discharged beyond reasonable doubt.**
- (2) Subsection (1) does not apply if the law creating the offence specifies a different standard of proof.

13.3 Evidential burden of proof—defence

- (1) Subject to section 13.4, a burden of proof that a law imposes on a defendant is an evidential burden only.**
- (2) A defendant who wishes to deny criminal responsibility by relying on a provision of Part 2.3 (other than section 7.3) bears an evidential burden in relation to that matter.

- (3) A defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence bears an evidential burden in relation to that matter. The exception, exemption, excuse, qualification or justification need not accompany the description of the offence.
- (4) The defendant no longer bears the evidential burden in relation to a matter if evidence sufficient to discharge the burden is adduced by the prosecution or by the court.
- (5) The question whether an evidential burden has been discharged is one of law.
- (6) In this Code:

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

13.4 Legal burden of proof—defence

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

- (a) specifies that the burden of proof in relation to the matter in question is a legal burden; or
- (b) requires the defendant to prove the matter; or
- (c) creates a presumption that the matter exists unless the contrary is proved.

13.5 Standard of proof—defence

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

13.6 Use of averments

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

- (a) to aver any fault element of an offence; or
- (b) to make an averment in prosecuting for an offence that is directly punishable by imprisonment.

Part 2.7—Geographical jurisdiction

Division 14—Standard geographical jurisdiction

14.1 Standard geographical jurisdiction

- (1) This section may apply to a particular offence in either of the following ways:
- (a) unless the contrary intention appears, this section applies to the following offences:
 - (i) a primary offence, where the provision creating the offence commences at or after the commencement of this section;
 - (ii) an ancillary offence, to the extent to which it relates to a primary offence covered by subparagraph (i);
 - (b) if a law of the Commonwealth provides that this section applies to a particular offence—this section applies to that offence.

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

- (2) If this section applies to a particular offence, a person does not commit the offence unless:
- (a) the conduct constituting the alleged offence occurs:
 - (i) wholly or partly in Australia; or
 - (ii) wholly or partly on board an Australian aircraft or an Australian ship; or
 - (b) the conduct constituting the alleged offence occurs wholly outside Australia and a result of the conduct occurs:
 - (i) wholly or partly in Australia; or
 - (ii) wholly or partly on board an Australian aircraft or an Australian ship; or
 - (c) all of the following conditions are satisfied:
 - (i) the alleged offence is an ancillary offence;
 - (ii) the conduct constituting the alleged offence occurs wholly outside Australia;

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

Defence—primary offence

- (3) If this section applies to a particular offence, a person is not guilty of the offence if:
 - (aa) the alleged offence is a primary offence; and
 - (a) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
 - (b) there is not in force in:
 - (i) the foreign country where the conduct constituting the alleged offence occurs; or
 - (ii) the part of the foreign country where the conduct constituting the alleged offence occurs;a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the first-mentioned offence.

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

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

Defence—ancillary offence

- (5) If this section applies to a particular offence, a person is not guilty of the offence if:
 - (a) the alleged offence is an ancillary offence; and
 - (b) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
 - (c) the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur, wholly in a foreign

Section 14.1

country, but not on board an Australian aircraft or an Australian ship; and

(d) there is not in force in:

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

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

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

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

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

Division 15—Extended geographical jurisdiction

15.1 Extended geographical jurisdiction—category A

- (1) If a law of the Commonwealth provides that this section applies to a particular offence, a person does not commit the offence unless:
- (a) the conduct constituting the alleged offence occurs:
 - (i) wholly or partly in Australia; or
 - (ii) wholly or partly on board an Australian aircraft or an Australian ship; or
 - (b) the conduct constituting the alleged offence occurs wholly outside Australia and a result of the conduct occurs:
 - (i) wholly or partly in Australia; or
 - (ii) wholly or partly on board an Australian aircraft or an Australian ship; or
 - (c) the conduct constituting the alleged offence occurs wholly outside Australia and:
 - (i) at the time of the alleged offence, the person is an Australian citizen; or
 - (ii) at the time of the alleged offence, the person is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; or
 - (d) all of the following conditions are satisfied:
 - (i) the alleged offence is an ancillary offence;
 - (ii) the conduct constituting the alleged offence occurs wholly outside Australia;
 - (iii) the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur, wholly or partly in Australia or wholly or partly on board an Australian aircraft or an Australian ship.

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

Section 15.1

Defence—primary offence

- (2) If a law of the Commonwealth provides that this section applies to a particular offence, a person is not guilty of the offence if:
- (aa) the alleged offence is a primary offence; and
 - (a) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
 - (b) the person is neither:
 - (i) an Australian citizen; nor
 - (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and
 - (c) there is not in force in:
 - (i) the foreign country where the conduct constituting the alleged offence occurs; or
 - (ii) the part of the foreign country where the conduct constituting the alleged offence occurs;a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the first-mentioned offence.

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

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

Defence—ancillary offence

- (4) If a law of the Commonwealth provides that this section applies to a particular offence, a person is not guilty of the offence if:
- (a) the alleged offence is an ancillary offence; and
 - (b) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
 - (c) the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur, wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

- (d) the person is neither:
 - (i) an Australian citizen; nor
 - (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and
- (e) there is not in force in:
 - (i) the foreign country where the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur; or
 - (ii) the part of the foreign country where the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur;a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the primary offence.

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

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

15.2 Extended geographical jurisdiction—category B

- (1) If a law of the Commonwealth provides that this section applies to a particular offence, a person does not commit the offence unless:
 - (a) the conduct constituting the alleged offence occurs:
 - (i) wholly or partly in Australia; or
 - (ii) wholly or partly on board an Australian aircraft or an Australian ship; or
 - (b) the conduct constituting the alleged offence occurs wholly outside Australia and a result of the conduct occurs:
 - (i) wholly or partly in Australia; or
 - (ii) wholly or partly on board an Australian aircraft or an Australian ship; or
 - (c) the conduct constituting the alleged offence occurs wholly outside Australia and:

Section 15.2

- (i) at the time of the alleged offence, the person is an Australian citizen; or
- (ii) at the time of the alleged offence, the person is a resident of Australia; or
- (iii) at the time of the alleged offence, the person is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; or
- (d) all of the following conditions are satisfied:
 - (i) the alleged offence is an ancillary offence;
 - (ii) the conduct constituting the alleged offence occurs wholly outside Australia;
 - (iii) the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur, wholly or partly in Australia or wholly or partly on board an Australian aircraft or an Australian ship.

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

Defence—primary offence

- (2) If a law of the Commonwealth provides that this section applies to a particular offence, a person is not guilty of the offence if:
 - (aa) the alleged offence is a primary offence; and
 - (a) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
 - (b) the person is neither:
 - (i) an Australian citizen; nor
 - (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and
 - (c) there is not in force in:
 - (i) the foreign country where the conduct constituting the alleged offence occurs; or
 - (ii) the part of the foreign country where the conduct constituting the alleged offence occurs;a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the first-mentioned offence.

Section 15.2

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

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

Defence—ancillary offence

- (4) If a law of the Commonwealth provides that this section applies to a particular offence, a person is not guilty of the offence if:
- (a) the alleged offence is an ancillary offence; and
 - (b) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
 - (c) the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur, wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
 - (d) the person is neither:
 - (i) an Australian citizen; nor
 - (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and
 - (e) there is not in force in:
 - (i) the foreign country where the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur; or
 - (ii) the part of the foreign country where the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur;a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the primary offence.

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

Section 15.3

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

15.3 Extended geographical jurisdiction—category C

- (1) If a law of the Commonwealth provides that this section applies to a particular offence, the offence applies:
- (a) whether or not the conduct constituting the alleged offence occurs in Australia; and
 - (b) whether or not a result of the conduct constituting the alleged offence occurs in Australia.

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

Defence—primary offence

- (2) If a law of the Commonwealth provides that this section applies to a particular offence, a person is not guilty of the offence if:
- (aa) the alleged offence is a primary offence; and
 - (a) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
 - (b) the person is neither:
 - (i) an Australian citizen; nor
 - (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and
 - (c) there is not in force in:
 - (i) the foreign country where the conduct constituting the alleged offence occurs; or
 - (ii) the part of the foreign country where the conduct constituting the alleged offence occurs;a law of that foreign country, or that part of that foreign country, that creates an offence that corresponds to the first-mentioned offence.

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

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

Defence—ancillary offence

- (4) If a law of the Commonwealth provides that this section applies to a particular offence, a person is not guilty of the offence if:
- (a) the alleged offence is an ancillary offence; and
 - (b) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
 - (c) the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur, wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
 - (d) the person is neither:
 - (i) an Australian citizen; nor
 - (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and
 - (e) there is not in force in:
 - (i) the foreign country where the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur; or
 - (ii) the part of the foreign country where the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur;a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the primary offence.

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

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

Schedule The Criminal Code

Chapter 2 General principles of criminal responsibility

Part 2.7 Geographical jurisdiction

Division 15 Extended geographical jurisdiction

Section 15.4

15.4 Extended geographical jurisdiction—category D

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

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

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

Division 16—Miscellaneous

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

- (1) Proceedings for an offence must not be commenced without the Attorney-General's written consent if:
 - (a) section 14.1, 15.1, 15.2, 15.3 or 15.4 applies to the offence; and
 - (b) the conduct constituting the alleged offence occurs wholly in a foreign country; and
 - (c) at the time of the alleged offence, the person alleged to have committed the offence is neither:
 - (i) an Australian citizen; nor
 - (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.
- (2) However, a person may be arrested for, charged with, or remanded in custody or released on bail in connection with an offence before the necessary consent has been given.

16.2 When conduct taken to occur partly in Australia

Sending things

- (1) For the purposes of this Part, if a person sends a thing, or causes a thing to be sent:
 - (a) from a point outside Australia to a point in Australia; or
 - (b) from a point in Australia to a point outside Australia;that conduct is taken to have occurred partly in Australia.

Sending electronic communications

- (2) For the purposes of this Part, if a person sends, or causes to be sent, an electronic communication:
 - (a) from a point outside Australia to a point in Australia; or

Section 16.3

(b) from a point in Australia to a point outside Australia;
that conduct is taken to have occurred partly in Australia.

Point

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

16.3 Meaning of *Australia*

- (1) For the purposes of the application of this Part to a particular primary offence, ***Australia*** has the same meaning it would have if it were used in a geographical sense in the provision creating the primary offence.
- (2) For the purposes of the application of this Part to a particular ancillary offence, ***Australia*** has the same meaning it would have if it were used in a geographical sense in the provision creating the primary offence to which the ancillary offence relates.
- (3) For the purposes of this Part, if a provision creating an offence extends to an external Territory, it is to be assumed that if the expression ***Australia*** were used in a geographical sense in that provision, that expression would include that external Territory.
- (4) This section does not affect the meaning of the expressions ***Australian aircraft***, ***Australian citizen*** or ***Australian ship***.

16.4 Result of conduct

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

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

Division 70—Bribery of foreign public officials

70.1 Definitions

In this Division:

benefit includes any advantage and is not limited to property.

business advantage means an advantage in the conduct of business.

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

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

- (a) is conferred on the official; or
- (b) that the official holds himself or herself out as having.

foreign government body means:

- (a) the government of a foreign country or of part of a foreign country; or
- (b) an authority of the government of a foreign country; or
- (c) an authority of the government of part of a foreign country; or
- (d) a foreign local government body or foreign regional government body; or
- (e) a foreign public enterprise.

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

- (a) in the case of a company—one of the following applies:
 - (i) the government of a foreign country or of part of a foreign country holds more than 50% of the issued share capital of the company;
 - (ii) the government of a foreign country or of part of a foreign country holds more than 50% of the voting power in the company;
 - (iii) the government of a foreign country or of part of a foreign country is in a position to appoint more than 50% of the company's board of directors;
 - (iv) the directors (however described) of the company are accustomed or under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of the government of a foreign country or of part of a foreign country;
 - (v) the government of a foreign country or of part of a foreign country is in a position to exercise control over the company; and
- (b) in the case of any other body or association—either of the following applies:
 - (i) the members of the executive committee (however described) of the body or association are accustomed or under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of the government of a foreign country or of part of a foreign country;
 - (ii) the government of a foreign country or of part of a foreign country is in a position to exercise control over the body or association; and
- (c) the company, body or association:
 - (i) enjoys special legal rights or a special legal status under a law of a foreign country or of part of a foreign country; or

(ii) enjoys special benefits or privileges under a law of a foreign country or of part of a foreign country; because of the relationship of the company, body or association with the government of the foreign country or of the part of the foreign country, as the case may be.

foreign public official means:

- (a) an employee or official of a foreign government body; or
- (b) an individual who performs work for a foreign government body under a contract; or
- (c) an individual who holds or performs the duties of an appointment, office or position under a law of a foreign country or of part of a foreign country; or
- (d) an individual who holds or performs the duties of an appointment, office or position created by custom or convention of a foreign country or of part of a foreign country; or
- (e) an individual who is otherwise in the service of a foreign government body (including service as a member of a military force or police force); or
- (f) a member of the executive, judiciary or magistracy of a foreign country or of part of a foreign country; or
- (g) an employee of a public international organisation; or
- (h) an individual who performs work for a public international organisation under a contract; or
- (i) an individual who holds or performs the duties of an office or position in a public international organisation; or
- (j) an individual who is otherwise in the service of a public international organisation; or
- (k) a member or officer of the legislature of a foreign country or of part of a foreign country; or
- (l) an individual who:
 - (i) is an authorised intermediary of a foreign public official covered by any of the above paragraphs; or
 - (ii) holds himself or herself out to be the authorised intermediary of a foreign public official covered by any of the above paragraphs.

public international organisation means:

- (a) an organisation:
 - (i) of which 2 or more countries, or the governments of 2 or more countries, are members; or
 - (ii) that is constituted by persons representing 2 or more countries, or representing the governments of 2 or more countries; or
- (b) an organisation established by, or a group of organisations constituted by:
 - (i) organisations of which 2 or more countries, or the governments of 2 or more countries, are members; or
 - (ii) organisations that are constituted by the representatives of 2 or more countries, or the governments of 2 or more countries; or
- (c) an organisation that is:
 - (i) an organ of, or office within, an organisation described in paragraph (a) or (b); or
 - (ii) a commission, council or other body established by an organisation so described or such an organ; or
 - (iii) a committee, or subcommittee of a committee, of an organisation described in paragraph (a) or (b), or of such an organ, council or body.

share includes stock.

70.2 Bribing a foreign public official

- (1) A person is guilty of an offence if:
 - (a) the person:
 - (i) provides a benefit to another person; or
 - (ii) causes a benefit to be provided to another person; or
 - (iii) offers to provide, or promises to provide, a benefit to another person; or
 - (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and
 - (b) the benefit is not legitimately due to the other person; and

- (c) the first-mentioned person does so with the intention of influencing a foreign public official (who may be the other person) in the exercise of the official's duties as a foreign public official in order to:
- (i) obtain or retain business; or
 - (ii) obtain or retain a business advantage that is not legitimately due to the recipient, or intended recipient, of the business advantage (who may be the first-mentioned person).

Penalty: Imprisonment for 10 years.

Note 1: For defences, see sections 70.3 and 70.4.

Note 2: Section 4B of the *Crimes Act 1914* allows a court to impose a fine instead of imprisonment or in addition to imprisonment.

Benefit that is not legitimately due

- (2) For the purposes of this section, in working out if a benefit is **not legitimately due** to a person in a particular situation, disregard the following:
- (a) the fact that the benefit may be customary, or perceived to be customary, in the situation;
 - (b) the value of the benefit;
 - (c) any official tolerance of the benefit.

Business advantage that is not legitimately due

- (3) For the purposes of this section, in working out if a business advantage is **not legitimately due** to a person in a particular situation, disregard the following:
- (a) the fact that the business advantage may be customary, or perceived to be customary, in the situation;
 - (b) the value of the business advantage;
 - (c) any official tolerance of the business advantage.

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

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

Schedule The Criminal Code

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

Division 70 Bribery of foreign public officials

Section 70.3

Defence of lawful conduct			
Item	In a case where the person's conduct occurred in relation to this kind of foreign public official...	and if it were assumed that the person's conduct had occurred wholly...	the person would not have been guilty of an offence against...
1	an employee or official of a foreign government body	in the place where the central administration of the body is located	a law in force in that place
2	an individual who performs work for a foreign government body under a contract	in the place where the central administration of the body is located	a law in force in that place
3	an individual who holds or performs the duties of an appointment, office or position under a law of a foreign country or of part of a foreign country	in the foreign country or in the part of the foreign country, as the case may be	a law in force in the foreign country or in the part of the foreign country, as the case may be
4	an individual who holds or performs the duties of an appointment, office or position created by custom or convention of a foreign country or of part of a foreign country	in the foreign country or in the part of the foreign country, as the case may be	a law in force in the foreign country or in the part of the foreign country, as the case may be
5	an individual who is otherwise in the service of a foreign government body (including service as a member of a military force or police force)	in the place where the central administration of the body is located	a law in force in that place
6	a member of the executive, judiciary or magistracy of a foreign country or of part of a foreign country	in the foreign country or in the part of the foreign country, as the case may be	a law in force in the foreign country or in the part of the foreign country, as the case may be

Defence of lawful conduct			
Item	In a case where the person's conduct occurred in relation to this kind of foreign public official...	and if it were assumed that the person's conduct had occurred wholly...	the person would not have been guilty of an offence against...
7	an employee of a public international organisation	in the place where the headquarters of the organisation is located	a law in force in that place
8	an individual who performs work for a public international organisation under a contract	in the place where the headquarters of the organisation is located	a law in force in that place
9	an individual who holds or performs the duties of a public office or position in a public international organisation	in the place where the headquarters of the organisation is located	a law in force in that place
10	an individual who is otherwise in the service of a public international organisation	in the place where the headquarters of the organisation is located	a law in force in that place
11	a member or officer of the legislature of a foreign country or of part of a foreign country	in the foreign country or in the part of the foreign country, as the case may be	a law in force in the foreign country or in the part of the foreign country, as the case may be

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

- (2) A person is not guilty of an offence against section 70.2 if:
- (a) the person's conduct occurred in relation to a foreign public official covered by paragraph (1) of the definition of **foreign public official** in section 70.1 (which deals with intermediaries of foreign public officials covered by other paragraphs of that definition); and
 - (b) assuming that the first-mentioned person's conduct had occurred instead in relation to:

Schedule The Criminal Code

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

Division 70 Bribery of foreign public officials

Section 70.4

- (i) the other foreign public official of whom the first-mentioned foreign public official was an authorised intermediary; or
 - (ii) the other foreign public official in relation to whom the first-mentioned foreign public official held himself or herself out to be an authorised intermediary;
- subsection (1) would have applied in relation to the first-mentioned person.

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

- (3) To avoid doubt, if:
- (a) a person's conduct occurred in relation to a foreign public official covered by 2 or more paragraphs of the definition of *foreign public official* in section 70.1; and
 - (b) at least one of the corresponding items in subsection (1) is applicable to the conduct of the first-mentioned person;
- subsection (1) applies to the conduct of the first-mentioned person.

70.4 Defence—facilitation payments

- (1) A person is not guilty of an offence against section 70.2 if:
- (a) the value of the benefit was of a minor nature; and
 - (b) the person's conduct was engaged in for the sole or dominant purpose of expediting or securing the performance of a routine government action of a minor nature; and
 - (c) as soon as practicable after the conduct occurred, the person made a record of the conduct that complies with subsection (3); and
 - (d) any of the following subparagraphs applies:
 - (i) the person has retained that record at all relevant times;
 - (ii) that record has been lost or destroyed because of the actions of another person over whom the first-mentioned person had no control, or because of a non-human act or event over which the first-mentioned person had no control, and the first-mentioned person could not reasonably be expected to have guarded

against the bringing about of that loss or that destruction;

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

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

Routine government action

- (2) For the purposes of this section, a ***routine government action*** is an action of a foreign public official that:
 - (a) is ordinarily and commonly performed by the official; and
 - (b) is covered by any of the following subparagraphs:
 - (i) granting a permit, licence or other official document that qualifies a person to do business in a foreign country or in a part of a foreign country;
 - (ii) processing government papers such as a visa or work permit;
 - (iii) providing police protection or mail collection or delivery;
 - (iv) scheduling inspections associated with contract performance or related to the transit of goods;
 - (v) providing telecommunications services, power or water;
 - (vi) loading and unloading cargo;
 - (vii) protecting perishable products, or commodities, from deterioration;
 - (viii) any other action of a similar nature; and
 - (c) does not involve a decision about:
 - (i) whether to award new business; or
 - (ii) whether to continue existing business with a particular person; or
 - (iii) the terms of new business or existing business; and
 - (d) does not involve encouraging a decision about:
 - (i) whether to award new business; or
 - (ii) whether to continue existing business with a particular person; or
 - (iii) the terms of new business or existing business.

Schedule The Criminal Code

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

Division 70 Bribery of foreign public officials

Section 70.5

Content of records

- (3) A record of particular conduct engaged in by a person complies with this subsection if the record sets out:
- (a) the value of the benefit concerned; and
 - (b) the date on which the conduct occurred; and
 - (c) the identity of the foreign public official in relation to whom the conduct occurred; and
 - (d) if that foreign public official is not the other person mentioned in paragraph 70.2(1)(a)—the identity of that other person; and
 - (e) particulars of the routine government action that was sought to be expedited or secured by the conduct; and
 - (f) the person's signature or some other means of verifying the person's identity.

70.5 Territorial and nationality requirements

- (1) A person does not commit an offence against section 70.2 unless:
- (a) the conduct constituting the alleged offence occurs:
 - (i) wholly or partly in Australia; or
 - (ii) wholly or partly on board an Australian aircraft or an Australian ship; or
 - (b) the conduct constituting the alleged offence occurs wholly outside Australia and:
 - (i) at the time of the alleged offence, the person is an Australian citizen; or
 - (ii) at the time of the alleged offence, the person is a resident of Australia; or
 - (iii) at the time of the alleged offence, the person is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

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

- (2) Proceedings for an offence against section 70.2 must not be commenced without the Attorney-General's written consent if:
 - (a) the conduct constituting the alleged offence occurs wholly outside Australia; and
 - (b) at the time of the alleged offence, the person alleged to have committed the offence is:
 - (i) a resident of Australia; and
 - (ii) not an Australian citizen.
- (3) However, a person may be arrested for, charged with, or remanded in custody or released on bail in connection with an offence against section 70.2 before the necessary consent has been given.

70.6 Saving of other laws

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

Schedule The Criminal Code

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

Division 71 Offences against United Nations and associated personnel

Section 71.1

Division 71—Offences against United Nations and associated personnel

71.1 Purpose

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

71.2 Murder of a UN or associated person

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

Maximum penalty: Imprisonment for life.

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

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

71.3 Manslaughter of a UN or associated person

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

Maximum penalty: Imprisonment for 25 years.

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

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

71.4 Intentionally causing serious harm to a UN or associated person

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

Maximum penalty: Imprisonment for 20 years.

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

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

Note 2: Section 71.13 defines *aggravated offence*.

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

71.5 Recklessly causing serious harm to a UN or associated person

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

Schedule The Criminal Code

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

Division 71 Offences against United Nations and associated personnel

Section 71.6

Maximum penalty: Imprisonment for 15 years.

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

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

Note 2: Section 71.13 defines *aggravated offence*.

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

71.6 Intentionally causing harm to a UN or associated person

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

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

Maximum penalty: Imprisonment for 10 years.

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

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

Note 2: Section 71.13 defines *aggravated offence*.

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

71.7 Recklessly causing harm to a UN or associated person

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

- (a) the person's conduct causes harm to another person without the consent of that person; and
- (b) that other person is a UN or associated person; and
- (c) the UN or associated person is engaged in a UN operation that is not a UN enforcement action; and

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

Maximum penalty: Imprisonment for 7 years.

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

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

Note 2: Section 71.13 defines *aggravated offence*.

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

71.8 Unlawful sexual penetration

- (1) A person is guilty of an offence if:
- (a) the person sexually penetrates another person without the consent of that person; and
 - (b) that other person is a UN or associated person; and
 - (c) the UN or associated person is engaged in a UN operation that is not a UN enforcement action; and
 - (d) the first-mentioned person knows about, or is reckless as to, the lack of consent.

Maximum penalty: Imprisonment for 15 years.

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

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

Note 2: Section 71.13 defines *aggravated offence*.

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

- (3) In this section:

sexually penetrate means:

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

Schedule The Criminal Code

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

Division 71 Offences against United Nations and associated personnel

Section 71.9

- (b) penetrate (to any extent) the mouth of a person by the penis of another person; or
 - (c) continue to sexually penetrate as defined in paragraph (a) or (b).
- (4) In this section, being *reckless* as to a lack of consent to sexual penetration includes not giving any thought to whether or not the person is consenting to sexual penetration.
- (5) In this section, the genitalia or others parts of the body of a person include surgically constructed genitalia or other parts of the body of the person.

71.9 Kidnapping a UN or associated person

- (1) A person is guilty of an offence if:
- (a) the person takes or detains another person without his or her consent; and
 - (b) that other person is a UN or associated person; and
 - (c) the UN or associated person is engaged in a UN operation that is not a UN enforcement action; and
 - (d) the first-mentioned person takes or detains the UN or associated person with the intention of:
 - (i) holding him or her to ransom or as a hostage; or
 - (ii) taking or sending him or her out of the country; or
 - (iii) committing a serious offence against him or her or another person.

Maximum penalty: Imprisonment for 15 years.

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

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

Note 2: Section 71.13 defines *aggravated offence*.

- (2) Strict liability applies to paragraphs (1)(b) and (c).
- (3) In this section, *serious offence* means an offence under a law of the Commonwealth, a State or Territory or a foreign law the
-

maximum penalty for which is death, or imprisonment for not less than 12 months.

71.10 Unlawful detention of UN or associated person

- (1) A person is guilty of an offence if:
- (a) the person takes or detains another person without that other person's consent; and
 - (b) that other person is a UN or associated person; and
 - (c) the UN or associated person is engaged in a UN operation that is not a UN enforcement action.

Maximum penalty: Imprisonment for 5 years.

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

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

Note 2: Section 71.13 defines *aggravated offence*.

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

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

- (1) A person is guilty of an offence if:
- (a) the person's conduct causes damage to official premises, private accommodation or a means of transportation (the *property*); and
 - (b) the property is occupied or used by a UN or associated person; and
 - (c) the conduct gives rise to a danger of serious harm to a person; and
 - (d) that person is the UN or associated person referred to in paragraph (b); and
 - (e) the UN or associated person is engaged in a UN operation that is not a UN enforcement action; and
 - (f) the first-mentioned person intends to cause the damage to the property; and

Schedule The Criminal Code

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

Division 71 Offences against United Nations and associated personnel

Section 71.12

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

Maximum penalty: Imprisonment for 10 years.

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

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

71.12 Threatening to commit other offences

A person is guilty of an offence if the person:

- (a) threatens to commit an offence (the *threatened offence*) under any of sections 71.2 to 71.11; and
(b) intends to compel any other person to do or omit to do an act by making the threat.

Maximum penalty:

- (a) if the threatened offence is the offence under section 71.2 (murder of a UN or associated person)—imprisonment for 10 years; or
(b) if the threatened offence is the offence under section 71.3, 71.4, 71.5, 71.8 or 71.9 (manslaughter of, causing serious harm to, kidnapping, or sexually penetrating, a UN or associated person)—imprisonment for 7 years; or
(c) if the threatened offence is the offence under section 71.6 or 71.11 (causing harm to, or damaging the property etc. of, a UN or associated person)—imprisonment for 5 years; or
(d) if the threatened offence is the offence under section 71.7 or 71.10 (recklessly causing harm to, or unlawful detention of, a UN or associated person)—imprisonment for 3 years.

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

71.13 Aggravated offences

- (1) For the purposes of this Division, an offence against section 71.4, 71.5, 71.6, 71.7, 71.8, 71.9 or 71.10 is an *aggravated offence* if:
(a) the offence was committed during torture; or
-

- (b) the offence was committed by the use or threatened use of an offensive weapon; or
 - (c) the offence was committed against a person in an abuse of authority.
- (2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.
 - (3) In order to prove an aggravated offence, the prosecution must prove that the defendant intended to commit, or was reckless as to committing, the matters referred to in paragraph (1)(a), (b) or (c).
 - (4) In this section:
 - offensive weapon* includes:
 - (a) an article made or adapted for use for causing injury to, or incapacitating, a person; or
 - (b) an article where the person who has the article intends, or threatens to use, the article to cause injury to, or to incapacitate, another person.

torture means the deliberate and systematic infliction of severe pain over a period of time.

71.14 Defence—activities involving serious harm

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

- (a) for the purpose of benefiting the other person or in pursuance of a socially acceptable function or activity; and
- (b) having regard to the purpose, function or activity, the conduct was reasonable.

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

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

Schedule The Criminal Code

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

Division 71 Offences against United Nations and associated personnel

Section 71.15

71.15 Defence—medical or hygienic procedures

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

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

71.16 Jurisdictional requirement

- (1) A person commits an offence under this Division only if:
 - (a) the conduct constituting the alleged offence occurs:
 - (i) wholly or partly in Australia; or
 - (ii) wholly or partly on board an Australian aircraft or an Australian ship; or
 - (b) the conduct constituting the alleged offence occurs wholly outside Australia and:
 - (i) at the time of the alleged offence, the person is an Australian citizen; or
 - (ii) at the time of the alleged offence, the person is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; or
 - (iii) at the time of the alleged offence, the person is a stateless person whose habitual residence is in Australia; or
 - (iv) the conduct is subject to the jurisdiction of another State Party to the Convention established in accordance with paragraph 1 or 2 of article 10 and the person enters Australia; or
 - (c) the alleged offence is committed against an Australian citizen; or
 - (d) by engaging in the conduct constituting the alleged offence, the person intends to compel a legislative, executive or judicial institution of the Commonwealth, a State or a Territory to do or omit to do an act.

(2) In this section:

Australian aircraft means:

- (a) an aircraft registered, or required to be registered, under the Civil Aviation Regulations as an Australian aircraft; or
- (b) an aircraft (other than a defence aircraft) that is owned by, or in the possession or control of, a Commonwealth entity; or
- (c) a defence aircraft.

Australian ship means:

- (a) a ship registered, or required to be registered, under the *Shipping Registration Act 1981*; or
- (b) an unregistered ship that has Australian nationality; or
- (c) a defence ship.

defence aircraft means an aircraft of any part of the Australian Defence Force, and includes an aircraft that is being commanded or piloted by a member of that Force in the course of his or her duties as such a member.

defence ship means a ship of any part of the Australian Defence Force, and includes a ship that is being operated or commanded by a member of that Force in the course of his or her duties as such a member.

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

- (1) A State or Territory court does not have jurisdiction to determine a charge of an offence under this Division if the conduct constituting the offence also constitutes an offence (the ***State offence***) against the law of that State or Territory.
- (2) If:
 - (a) a prosecution is brought against a person under this Division; and
 - (b) a court finds that there is a corresponding State offence;then this section does not prevent the person from being prosecuted for the State offence.

71.18 Double jeopardy

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

71.19 Saving of other laws

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

71.20 Bringing proceedings under this Division

- (1) Proceedings for an offence under this Division must not be commenced without the Attorney-General's written consent.
- (2) However, a person may be arrested, charged, remanded in custody, or released on bail, in connection with an offence under this Division before the necessary consent has been given.

71.21 Ministerial certificates relating to proceedings

- (1) The Minister for Foreign Affairs may issue a certificate stating any of the following matters:
 - (a) the Convention entered into force for Australia on a specified day;
 - (b) the Convention remains in force for Australia or any other State Party on a specified day;
 - (c) a matter relevant to the establishment of jurisdiction by a State Party under paragraph 1 or 2 of article 10 of the Convention;
 - (d) a matter relevant to whether a person is or was a UN or associated person;
 - (e) a matter relevant to whether an operation is or was a UN operation.

- (2) The Minister for Immigration and Multicultural Affairs may issue a certificate stating that:
- (a) a person is or was an Australian citizen at a particular time; or
 - (b) a person is or was a stateless person whose habitual residence is or was in Australia.
- (3) In any proceedings, a certificate under this section is prima facie evidence of the matters in the certificate.

71.22 Jurisdiction of State courts preserved

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

71.23 Definitions

- (1) In this Division:

associated personnel means:

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

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

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

Note: The text of the Convention is set out in Australian Treaty Series 1995 No. 1. In 2000 this was available in the Australian Treaties Library of

Schedule The Criminal Code

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

Division 71 Offences against United Nations and associated personnel

Section 71.23

the Department of Foreign Affairs and Trade, accessible on the Internet through that Department's world-wide web site.

UN enforcement action means a UN operation:

- (a) that is authorised by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations; and
- (b) in which any of the UN or associated personnel are engaged as combatants against organised armed forces; and
- (c) to which the law of international armed conflict applies.

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

- (a) the operation is for the purpose of maintaining or restoring international peace and security; or
- (b) the Security Council or the General Assembly has declared, for the purposes of the Convention, that there exists an exceptional risk to the safety of the personnel engaged in the operation.

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

UN personnel means:

- (a) persons engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a UN operation; or
 - (b) any other officials or experts on mission of the United Nations, its specialised agencies or the International Atomic Energy Agency who are present in an official capacity in the area where a UN operation is being conducted.
- (2) In this Division, a person's conduct *causes* death or harm if it substantially contributes to the death or harm.

Division 72—International terrorist activities using explosive or lethal devices

72.1 Purpose

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

Note: The text of the Convention is available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible on the Internet through that Department's world-wide web site.

72.2 ADF members not liable for prosecution

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

72.3 Offences

- (1) A person commits an offence if:
 - (a) the person intentionally delivers, places, discharges or detonates a device; and
 - (b) the device is an explosive or other lethal device and the person is reckless as to that fact; and
 - (c) the device is delivered, placed, discharged, or detonated, to, in, into or against:
 - (i) a place of public use; or
 - (ii) a government facility; or
 - (iii) a public transportation system; or
 - (iv) an infrastructure facility; and
 - (d) the person intends to cause death or serious harm.

Penalty: Imprisonment for life.

Schedule The Criminal Code

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

Division 72 International terrorist activities using explosive or lethal devices

Section 72.4

- (2) A person commits an offence if:
- (a) the person intentionally delivers, places, discharges or detonates a device; and
 - (b) the device is an explosive or other lethal device and the person is reckless as to that fact; and
 - (c) the device is delivered, placed, discharged, or detonated, to, in, into or against:
 - (i) a place of public use; or
 - (ii) a government facility; or
 - (iii) a public transportation system; or
 - (iv) an infrastructure facility; and
 - (d) the person intends to cause extensive destruction to the place, facility or system; and
 - (e) the person is reckless as to whether that intended destruction results or is likely to result in major economic loss.

Penalty: Imprisonment for life.

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

72.4 Jurisdictional requirement

- (1) A person commits an offence under this Division only if one or more of the following paragraphs applies and the circumstances relating to the alleged offence are not exclusively internal (see subsection (2)):
- (a) the conduct constituting the alleged offence occurs:
 - (i) wholly or partly in Australia; or
 - (ii) wholly or partly on board an Australian ship or an Australian aircraft;
 - (b) at the time of the alleged offence, the person is an Australian citizen;
 - (c) at the time of the alleged offence, the person is a stateless person whose habitual residence is in Australia;
 - (d) the conduct is subject to the jurisdiction of another State Party to the Convention established in accordance with paragraph 1 or 2 of Article 6 of the Convention and the person is in Australia;

- (e) the alleged offence is committed against a government facility of the Commonwealth, or of a State or Territory, that is located outside Australia;
 - (f) the alleged offence is committed against:
 - (i) an Australian citizen; or
 - (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory;
 - (g) by engaging in the conduct constituting the alleged offence, the person intends to compel a legislative, executive or judicial institution of the Commonwealth, a State or a Territory to do or omit to do an act.
- (2) The circumstances relating to the alleged offence are exclusively internal if:
- (a) the conduct constituting the alleged offence occurs wholly within Australia; and
 - (b) the alleged offender is an Australian citizen; and
 - (c) all of the persons against whom the offence is committed are Australian citizens or bodies corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and
 - (d) the alleged offender is in Australia; and
 - (e) no other State Party to the Convention has a basis under paragraph 1 or 2 of Article 6 of the Convention for exercising jurisdiction in relation to the conduct.

72.5 Saving of other laws

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

72.6 Double jeopardy and foreign offences

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

Schedule The Criminal Code

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

Division 72 International terrorist activities using explosive or lethal devices

Section 72.7

72.7 Bringing proceedings under this Division

- (1) Proceedings for an offence under this Division must not be commenced without the Attorney-General's written consent.
- (2) However, a person may be arrested, charged, remanded in custody, or released on bail, in connection with an offence under this Division before the necessary consent has been given.
- (3) In determining whether to bring proceedings for an offence under this Division, the Attorney-General must have regard to the terms of the Convention, including paragraph 2 of Article 19.
- (4) In determining whether to bring proceedings for an offence under this Division, the Attorney-General must also have regard to:
 - (a) whether the conduct constituting the offence also gives rise to an offence under a law of a State or Territory; and
 - (b) whether a prosecution relating to the conduct under the State or Territory law has been or will be commenced.

72.8 Ministerial certificates relating to proceedings

- (1) The Minister administering the *Charter of the United Nations Act 1945* may issue a certificate stating any of the following matters:
 - (a) that the Convention entered into force for Australia on a specified day;
 - (b) that the Convention remains in force for Australia or any other State Party on a specified day;
 - (c) a matter relevant to the establishment of jurisdiction by a State Party under paragraph 1 or 2 of Article 6 of the Convention.
- (2) The Minister administering the *Australian Citizenship Act 1948* may issue a certificate stating that:
 - (a) a person is or was an Australian citizen at a particular time;
or
 - (b) a person is or was a stateless person whose habitual residence is or was in Australia at a particular time.

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

72.9 Jurisdiction of State 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.

72.10 Definitions

In this Division:

Convention means the Convention referred to in section 72.1.

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

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

infrastructure facility has the same meaning as in the Convention.

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

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

Division 73—People smuggling and related offences

Subdivision A—People smuggling offences

73.1 Offence of people smuggling

- (1) A person (the *first person*) is guilty of an offence if:
- (a) the first person organises or facilitates the entry of another person (the *other person*) into a foreign country (whether or not via Australia); and
 - (b) the entry of the other person into the foreign country does not comply with the requirements under that country's law for entry into the country; and
 - (c) the other person is not a citizen or permanent resident of the foreign country; and
 - (d) the first person organises or facilitates the entry:
 - (i) having obtained (whether directly or indirectly) a benefit to do so; or
 - (ii) with the intention of obtaining (whether directly or indirectly) a benefit.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

- (2) Absolute liability applies to the paragraph (1)(c) element of the offence.
- (3) For the purposes of this Code, an offence against subsection (1) is to be known as the offence of people smuggling.

73.2 Aggravated offence of people smuggling (exploitation etc.)

- (1) A person (the *first person*) is guilty of an offence if the first person commits the offence of people smuggling 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 after entry into the foreign country (whether by the first person or another);
- (b) in committing the offence, the first person subjects the victim to cruel, inhuman or degrading treatment;
- (c) in committing the offence, the first person's conduct:
 - (i) gives rise to a danger of death or serious harm to the victim; and
 - (ii) the first person is reckless as to the danger of death or serious harm to the victim that arises from the conduct.

Penalty: Imprisonment for 20 years or 2,000 penalty units, or both.

- (2) For the purposes of subsection (1), and without limitation, the victim will be *exploited* by a person (the *exploiter*) if either of the following applies:
 - (a) the exploiter's conduct causes the victim to enter into slavery, forced labour or sexual servitude;
 - (b) the exploiter's conduct causes an organ of the victim to be removed and:
 - (i) neither the victim nor the victim's legal guardian consented to the removal of the organ; and
 - (ii) the organ was not removed to meet a medical or therapeutic need of the victim.

- (3) In this section:

forced labour means the condition of a person who provides labour or services (other than sexual services) and who, because of the use of force or threats:

- (a) is not free to cease providing labour or services; or
- (b) is not free to leave the place or area where the person provides labour or services.

sexual servitude has the same meaning as in Division 270.

slavery has the same meaning as in Division 270.

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 labour or services by a person.

73.3 Aggravated offence of people smuggling (at least 5 people)

- (1) A person (the *first person*) is guilty of an offence if:
 - (a) the first person organises or facilitates the entry of a group of at least 5 persons (the *other persons*) into a foreign country (whether or not via Australia); and
 - (b) the entry of at least 5 of the other persons into the foreign country does not comply with the requirements under that country's law for entry into that country; and
 - (c) at least 5 of the other persons whose entry into the foreign country is covered by paragraph (b) are not citizens or permanent residents of the foreign country; and
 - (d) the first person organises or facilitates the entry:
 - (i) having obtained (whether directly or indirectly) a benefit to do so; or
 - (ii) with the intention of obtaining (whether directly or indirectly) a benefit.

Penalty: Imprisonment for 20 years or 2,000 penalty units, or both.

- (2) Absolute liability applies to the paragraph (1)(c) element of the offence.
- (3) If, on a trial for an offence against subsection (1), the trier of fact is not satisfied that the defendant is guilty of that offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against subsection 73.1(1), the trier of fact may find the defendant not guilty of an offence against subsection (1) but guilty of an offence against subsection 73.1(1), so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

73.4 Jurisdictional requirement

A person commits an offence against this Subdivision only if:

- (a) both:
 - (i) the person is an Australian citizen or a resident of Australia; and
 - (ii) the conduct constituting the alleged offence occurs wholly outside Australia; or
- (b) both:
 - (i) the conduct constituting the alleged offence occurs wholly or partly in Australia; and
 - (ii) a result of the conduct occurs, or is intended by the person to occur, outside Australia.

73.5 Attorney-General's consent required

- (1) Proceedings for an offence against this Subdivision must not be commenced without the Attorney-General's written consent.
- (2) However, a person may be arrested, charged, remanded in custody or released on bail in connection with an offence against this Subdivision before the necessary consent has been given.

Subdivision B—Document offences related to people smuggling and unlawful entry into foreign countries

73.6 Meaning of *travel or identity document*

- (1) For the purposes of this Subdivision, a document is a *travel or identity document* if it is:
 - (a) a travel document; or
 - (b) an identity document.
- (2) In subsection (1):

identity document includes any kind of document that may be used to establish the identity of a person in a country under the law or procedures of that country.

travel document includes any kind of document required, under the law of a country, to enter or leave that country.

73.7 Meaning of false travel or identity document

- (1) For the purposes of this Subdivision, a travel or identity document is a *false travel or identity document* if, and only if:
 - (a) the document, or any part of the document:
 - (i) purports to have been made in the form in which it is made by a person who did not make it in that form; or
 - (ii) purports to have been made in the form in which it is made on the authority of a person who did not authorise its making in that form; or
 - (b) the document, or any part of the document:
 - (i) purports to have been made in the terms in which it is made by a person who did not make it in those terms; or
 - (ii) purports to have been made in the terms in which it is made on the authority of a person who did not authorise its making in those terms; or
 - (c) the document, or any part of the document:
 - (i) purports to have been altered in any respect by a person who did not alter it in that respect; or
 - (ii) purports to have been altered in any respect on the authority of a person who did not authorise its alteration in that respect; or
 - (d) the document, or any part of the document:
 - (i) purports to have been made or altered by a person who did not exist; or
 - (ii) purports to have been made or altered on the authority of a person who did not exist; or
 - (e) the document, or any part of the document, purports to have been made or altered on a date on which, at a time at which, at a place at which, or otherwise in circumstances in which, it was not made or altered.
- (2) For the purposes of this Subdivision, a person is taken to *make* a false travel or identity document if the person alters a document so as to make it a false travel or identity document (whether or not it

was already a false travel or identity document before the alteration).

- (3) This section has effect as if a document that purports to be a true copy of another document were the original document.

73.8 Making, providing or possessing a false travel or identity document

A person (the *first person*) is guilty of an offence if:

- (a) the first person makes, provides or possesses a false travel or identity document; and
- (b) the first person intends that the document will be used to facilitate the entry of another person (the *other person*) into a foreign country, where the entry of the other person into the foreign country would not comply with the requirements under that country's law for entry into the country; and
- (c) the first person made, provided or possessed the document:
 - (i) having obtained (whether directly or indirectly) a benefit to do so; or
 - (ii) with the intention of obtaining (whether directly or indirectly) a benefit.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

73.9 Providing or possessing a travel or identity document issued or altered dishonestly or as a result of threats

- (1) A person (the *first person*) is guilty of an offence if:
- (a) the first person provides or possesses a travel or identity document; and
 - (b) the first person knows that:
 - (i) the issue of the travel or identity document; or
 - (ii) an alteration of the travel or identity document; has been obtained dishonestly or by threats; and
 - (c) the first person intends that the document will be used to facilitate the entry of another person (the *other person*) into a

Section 73.10

foreign country, where the entry of the other person into the foreign country would not comply with the requirements under that country's law for entry into the country; and

- (d) the first person provided or possessed the document:
- (i) having obtained (whether directly or indirectly) a benefit to do so; or
 - (ii) with the intention of obtaining (whether directly or indirectly) a benefit.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

- (2) For the purposes of subsection (1), a *threat* may be:
- (a) express or implied; or
 - (b) conditional or unconditional.
- (3) For the purposes of subsection (1), *dishonest* means:
- (a) dishonest according to the standards of ordinary people; and
 - (b) known by the defendant to be dishonest according to the standards of ordinary people.
- (4) In a prosecution for an offence against this section, the determination of dishonesty is a matter for the trier of fact.

73.10 Providing or possessing a travel or identity document to be used by a person who is not the rightful user

A person (the *first person*) is guilty of an offence if:

- (a) the first person provides or possesses a travel or identity document; and
- (b) the first person intends that the document will be used to facilitate the entry of another person (the *other person*) into a foreign country, where the entry of the other person into the foreign country would not comply with the requirements under that country's law for entry into the country; and
- (c) the first person knows that the other person is not the person to whom the document applies; and
- (d) the first person provided or possessed the document:

- (i) having obtained (whether directly or indirectly) a benefit to do so; or
- (ii) with the intention of obtaining (whether directly or indirectly) a benefit.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

73.11 Taking possession of or destroying another person's travel or identity document

A person (the *first person*) is guilty of an offence if:

- (a) the first person takes possession of, or destroys, a travel or identity document that applies to another person (the *other person*); and
- (b) the first person does so intending to conceal the other person's identity or nationality; and
- (c) at the time of doing so, the first person intends to organise or facilitate the entry of the other person into a foreign country:
 - (i) having obtained, or with the intention of obtaining, whether directly or indirectly, a benefit to organise or facilitate that entry; and
 - (ii) where the entry of the other person into the foreign country would not comply with the requirements under that country's law for entry into the country.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

73.12 Jurisdictional requirement

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

Chapter 5—The security of the Commonwealth

Part 5.1—Treason

Division 80—Treason

80.1 Treason

- (1) A person commits an offence, called treason, if the person:
 - (a) causes the death of the Sovereign, the heir apparent of the Sovereign, the consort of the Sovereign, the Governor-General or the Prime Minister; or
 - (b) causes harm to the Sovereign, the Governor-General or the Prime Minister resulting in the death of the Sovereign, the Governor-General or the Prime Minister; or
 - (c) causes harm to the Sovereign, the Governor-General or the Prime Minister, or imprisons or restrains the Sovereign, the Governor-General or the Prime Minister; or
 - (d) levies war, or does any act preparatory to levying war, against the Commonwealth; or
 - (e) engages in conduct that assists by any means whatever, with intent to assist, an enemy:
 - (i) at war with the Commonwealth, whether or not the existence of a state of war has been declared; and
 - (ii) specified by Proclamation made for the purpose of this paragraph to be an enemy at war with the Commonwealth; or
 - (f) engages in conduct that assists by any means whatever, with intent to assist:
 - (i) another country; or
 - (ii) an organisation; that is engaged in armed hostilities against the Australian Defence Force; or

Section 80.1

- (g) instigates a person who is not an Australian citizen to make an armed invasion of the Commonwealth or a Territory of the Commonwealth; or
- (h) forms an intention to do any act referred to in a preceding paragraph and manifests that intention by an overt act.

Penalty: Imprisonment for life.

- (1A) Paragraphs (1)(e) and (f) do not apply to engagement in conduct by way of, or for the purposes of, the provision of aid of a humanitarian nature.

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

- (1B) Paragraph (1)(h) does not apply to formation of an intention to engage in conduct that:

- (a) is referred to in paragraph (1)(e) or (f); and
- (b) is by way of, or for the purposes of, the provision of aid of a humanitarian nature.

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

- (2) A person commits an offence if the person:

- (a) receives or assists another person who, to his or her knowledge, has committed treason with the intention of allowing him or her to escape punishment or apprehension; or
- (b) knowing that another person intends to commit treason, does not inform a constable of it within a reasonable time or use other reasonable endeavours to prevent the commission of the offence.

Penalty: Imprisonment for life.

- (3) Proceedings for an offence against this section must not be commenced without the Attorney-General's written consent.

- (4) Despite subsection (3):

- (a) a person may be arrested for an offence against this section; or
- (b) a warrant for the arrest of a person for such an offence may be issued and executed;

Section 80.1

and the person may be charged, and may be remanded in custody or on bail, but:

- (c) no further proceedings may be taken until that consent has been obtained; and
 - (d) the person must be discharged if proceedings are not continued within a reasonable time.
- (5) On the trial of a person charged with treason on the ground that he or she formed an intention to do an act referred to in paragraph (1)(a), (b), (c), (d), (e), (f) or (g) and manifested that intention by an overt act, evidence of the overt act is not to be admitted unless the overt act is alleged in the indictment.
- (6) Section 24F of the *Crimes Act 1914* applies to this section in the same way it would if this section were a provision of Part II of that Act.
- (7) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.
- (8) In this section:

constable means a member or special member of the Australian Federal Police or a member of the police force or police service of a State or Territory.

organisation means:

- (a) a body corporate; or
- (b) an unincorporated body;

whether or not the body is based outside Australia, consists of persons who are not Australian citizens, or is part of a larger organisation.

Part 5.2—Offences relating to espionage and similar activities

Division 90—Preliminary

90.1 Definitions

(1) In this Part:

article includes any thing, substance or material.

information means information of any kind, whether true or false and whether in a material form or not, and includes:

- (a) an opinion; and
- (b) a report of a conversation.

intelligence or security agency has the meaning given by section 85ZL of the *Crimes Act 1914*.

record, in relation to information, means a record of information in any form, including but not limited to, a document, paper, database, software system or other article or system containing information or from which information can be derived.

security or defence of a country includes the operations, capabilities and technologies of, and methods and sources used by, the country's intelligence or security agencies.

sketch includes a representation of a place or thing.

the Commonwealth includes the Territories.

(2) In this Part, unless the contrary intention appears:

- (a) expressions referring to obtaining, recording, using, having in possession, communicating or retaining include obtaining, recording, using, having in possession, communicating or retaining in whole or in part, and whether the thing or information itself, or only the substance, effect or description of the thing or information, is obtained, recorded, used, possessed, communicated or retained; and

Schedule The Criminal Code

Chapter 5 The security of the Commonwealth

Part 5.2 Offences relating to espionage and similar activities

Division 90 Preliminary

Section 90.1

- (b) a reference to a sketch, document or article or to information is to be read as including a reference to a copy of, a part of or a copy of a part of a sketch, document or article or information.
- (3) For the purposes of this Part, a place that is occupied by, or a thing that is under the control of, the Commonwealth is taken to belong to the Commonwealth.
- (4) This Part applies to and in relation to a document or article regardless of who made it and what information it contains.

Division 91—Offences relating to espionage and similar activities

91.1 Espionage and similar activities

- (1) A person commits an offence if:
- (a) the person communicates, or makes available:
 - (i) information concerning the Commonwealth's security or defence; or
 - (ii) information concerning the security or defence of another country, being information that the person acquired (whether directly or indirectly) from the Commonwealth; and
 - (b) the person does so intending to prejudice the Commonwealth's security or defence; and
 - (c) the person's act results in, or is likely to result in, the information being communicated or made available to another country or a foreign organisation, or to a person acting on behalf of such a country or organisation.

Penalty: Imprisonment for 25 years.

- (2) A person commits an offence if:
- (a) the person communicates, or makes available:
 - (i) information concerning the Commonwealth's security or defence; or
 - (ii) information concerning the security or defence of another country, being information that the person acquired (whether directly or indirectly) from the Commonwealth; and
 - (b) the person does so:
 - (i) without lawful authority; and
 - (ii) intending to give an advantage to another country's security or defence; and
 - (c) the person's act results in, or is likely to result in, the information being communicated or made available to

Section 91.1

another country or a foreign organisation, or to a person acting on behalf of such a country or organisation.

Penalty: Imprisonment for 25 years.

(3) A person commits an offence if:

(a) the person makes, obtains or copies a record (in any form) of:

(i) information concerning the Commonwealth's security or defence; or

(ii) information concerning the security or defence of another country, being information that the person acquired (whether directly or indirectly) from the Commonwealth; and

(b) the person does so:

(i) intending that the record will, or may, be delivered to another country or a foreign organisation, or to a person acting on behalf of such a country or organisation; and

(ii) intending to prejudice the Commonwealth's security or defence.

Penalty: Imprisonment for 25 years.

(4) A person commits an offence if:

(a) the person makes, obtains or copies a record (in any form) of:

(i) information concerning the Commonwealth's security or defence; or

(ii) information concerning the security or defence of another country, being information that the person acquired (whether directly or indirectly) from the Commonwealth; and

(b) the person does so:

(i) without lawful authority; and

(ii) intending that the record will, or may, be delivered to another country or a foreign organisation, or to a person acting on behalf of such a country or organisation; and

(iii) intending to give an advantage to another country's security or defence.

Penalty: Imprisonment for 25 years.

Section 91.2

- (5) For the purposes of subparagraphs (3)(b)(i) and (4)(b)(ii), the person concerned does not need to have a particular country, foreign organisation or person in mind at the time when the person makes, obtains or copies the record.
- (6) A person charged with an offence under this section may only be remanded on bail by a judge of the Supreme Court of a State or Territory. This subsection has effect despite anything in section 93.1.

Note: Section 93.1 deals with how a prosecution is instituted.

- (7) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to offences under this section.

91.2 Defence—information lawfully available

- (1) It is a defence to a prosecution of an offence against subsection 91.1(1) or (2) that the information the person communicates or makes available is information that has already been communicated or made available to the public with the authority of the Commonwealth.
- (2) It is a defence to a prosecution of an offence against subsection 91.1(3) or (4) that the record of information the person makes, obtains or copies is a record of information that has already been communicated or made available to the public with the authority of the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matters in subsections (1) and (2). See subsection 13.3(3).

Schedule The Criminal Code

Chapter 5 The security of the Commonwealth

Part 5.2 Offences relating to espionage and similar activities

Division 93 Prosecutions and hearings

Section 93.1

Division 93—Prosecutions and hearings

93.1 Institution of prosecution

- (1) A prosecution under this Part may be instituted only by, or with the consent of, the Attorney-General or a person acting under the Attorney-General's direction.
- (2) However:
 - (a) a person charged with an offence against this Part may be arrested, or a warrant for his or her arrest may be issued and executed; and
 - (b) such a person may be remanded in custody or on bail; even if the consent of the Attorney-General or a person acting under his or her direction has not been obtained, but no further proceedings are to be taken until that consent has been obtained.
- (3) Nothing in this section prevents the discharging of the accused if proceedings are not continued within a reasonable time.

93.2 Hearing in camera etc.

- (1) This section applies to a hearing of an application or other proceedings before a federal court, a court exercising federal jurisdiction or a court of a Territory, whether under this Act or otherwise.
- (2) At any time before or during the hearing, the judge or magistrate, or other person presiding or competent to preside over the proceedings, may, if satisfied that it is in the interest of the security or defence of the Commonwealth:
 - (a) order that some or all of the members of the public be excluded during the whole or a part of the hearing; or
 - (b) order that no report of the whole or a specified part of, or relating to, the application or proceedings be published; or
 - (c) make such order and give such directions as he or she thinks necessary for ensuring that no person, without the approval of the court, has access (whether before, during or after the hearing) to any affidavit, exhibit, information or other

Section 93.2

document used in the application or the proceedings that is on the file in the court or in the records of the court.

- (3) A person commits an offence if the person contravenes an order made or direction given under this section.

Penalty: Imprisonment for 5 years.

Schedule The Criminal Code

Chapter 5 The security of the Commonwealth

Part 5.2 Offences relating to espionage and similar activities

Division 94 Forfeiture

Section 94.1

Division 94—Forfeiture

94.1 Forfeiture of articles etc.

A sketch, article, record or document which is made, obtained, recorded, retained, forged, possessed or otherwise dealt with in contravention of this Part is forfeited to the Commonwealth.

Part 5.3—Terrorism

Division 100—Preliminary

100.1 Definitions

(1) In this Part:

Commonwealth place has the same meaning as in the *Commonwealth Places (Application of Laws) Act 1970*.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

express amendment of the provisions of this Part or Chapter 2 means the direct amendment of the provisions (whether by the insertion, omission, repeal, substitution or relocation of words or matter).

funds means:

- (a) property and assets of every kind, whether tangible or intangible, movable or immovable, however acquired; and
- (b) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such property or assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, debt instruments, drafts and letters of credit.

organisation means a body corporate or an unincorporated body, whether or not the body:

- (a) is based outside Australia; or
- (b) consists of persons who are not Australian citizens; or
- (c) is part of a larger organisation.

referring State has the meaning given by section 100.2.

Section 100.1

terrorist act means an action or threat of action where:

- (a) the action falls within subsection (2) and does not fall within subsection (3); and
 - (b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and
 - (c) the action is done or the threat is made with the intention of:
 - (i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or
 - (ii) intimidating the public or a section of the public.
- (2) Action falls within this subsection if it:
- (a) causes serious harm that is physical harm to a person; or
 - (b) causes serious damage to property; or
 - (c) causes a person's death; or
 - (d) endangers a person's life, other than the life of the person taking the action; or
 - (e) creates a serious risk to the health or safety of the public or a section of the public; or
 - (f) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to:
 - (i) an information system; or
 - (ii) a telecommunications system; or
 - (iii) a financial system; or
 - (iv) a system used for the delivery of essential government services; or
 - (v) a system used for, or by, an essential public utility; or
 - (vi) a system used for, or by, a transport system.
- (3) Action falls within this subsection if it:
- (a) is advocacy, protest, dissent or industrial action; and
 - (b) is not intended:
 - (i) to cause serious harm that is physical harm to a person; or
 - (ii) to cause a person's death; or
 - (iii) to endanger the life of a person, other than the person taking the action; or
-

(iv) to create a serious risk to the health or safety of the public or a section of the public.

(4) In this Division:

- (a) a reference to any person or property is a reference to any person or property wherever situated, within or outside Australia; and
- (b) a reference to the public includes a reference to the public of a country other than Australia.

100.2 Referring States

- (1) A State is a *referring State* if the Parliament of the State has referred the matters covered by subsections (2) and (3) to the Parliament of the Commonwealth for the purposes of paragraph 51(xxxvii) of the Constitution:
 - (a) if and to the extent that the matters are not otherwise included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference under paragraph 51(xxxvii) of the Constitution); and
 - (b) if and to the extent that the matters are included in the legislative powers of the Parliament of the State.

This subsection has effect subject to subsection (5).

- (2) This subsection covers the matters to which the referred provisions relate to the extent of making laws with respect to those matters by including the referred provisions in this Code.
- (3) This subsection covers the matter of terrorist acts, and of actions relating to terrorist acts, to the extent of making laws with respect to that matter by making express amendment of this Part or Chapter 2.
- (4) A State is a *referring State* even if a law of the State provides that the reference to the Commonwealth Parliament of either or both of the matters covered by subsections (2) and (3) is to terminate in particular circumstances.
- (5) A State ceases to be a referring State if a reference by the State of either or both of the matters covered by subsections (2) and (3) terminate.

Section 100.3

(6) In this section:

referred provisions means the provisions of Part 5.3 of this Code as inserted by the *Criminal Code Amendment (Terrorism) Act 2002*, to the extent to which they deal with matters that are included in the legislative powers of the Parliaments of the States.

100.3 Constitutional basis for the operation of this Part

Operation in a referring State

- (1) The operation of this Part in a referring State is based on:
- (a) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)); and
 - (b) the legislative powers that the Commonwealth Parliament has in respect of matters to which this Part relates because those matters are referred to it by the Parliament of the referring State under paragraph 51(xxxvii) of the Constitution.

Note: The State reference fully supplements the Commonwealth Parliament's other powers by referring the matters to the Commonwealth Parliament to the extent to which they are not otherwise included in the legislative powers of the Commonwealth Parliament.

Operation in a non-referring State

- (2) The operation of this Part in a State that is not a referring State is based on the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).

Note: Subsection 100.4(5) identifies particular powers that are being relied on.

Operation in a Territory

- (3) The operation of this Part in the Northern Territory, the Australian Capital Territory or an external Territory is based on:
- (a) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of that Territory; and

- (b) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).

Despite subsection 22(3) of the *Acts Interpretation Act 1901*, this Part as applying in those Territories is a law of the Commonwealth.

Operation outside Australia

- (4) The operation of this Part outside Australia and the external Territories is based on:
 - (a) the legislative powers that the Commonwealth Parliament has under paragraph 51(xxix) of the Constitution; and
 - (b) the other legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).

100.4 Application of provisions

Part generally applies to all terrorist acts and preliminary acts

- (1) Subject to subsection (4), this Part applies to the following conduct:
 - (a) all actions or threats of action that constitute terrorist acts (no matter where the action occurs, the threat is made or the action, if carried out, would occur);
 - (b) all actions (*preliminary acts*) that relate to terrorist acts but do not themselves constitute terrorist acts (no matter where the preliminary acts occur and no matter where the terrorist acts to which they relate occur or would occur).

Note: See the following provisions:

- (a) subsection 101.1(2);
- (b) subsection 101.2(4);
- (c) subsection 101.4(4);
- (d) subsection 101.5(4);
- (e) subsection 101.6(3);
- (f) section 102.9.

Section 100.4

*Operation in relation to terrorist acts and preliminary acts
occurring in a State that is not a referring State*

- (2) Subsections (4) and (5) apply to conduct if the conduct is itself a terrorist act and:
- (a) the terrorist act consists of an action and the action occurs in a State that is not a referring State; or
 - (b) the terrorist act consists of a threat of action and the threat is made in a State that is not a referring State.
- (3) Subsections (4) and (5) also apply to conduct if the conduct is a preliminary act that occurs in a State that is not a referring State and:
- (a) the terrorist act to which the preliminary act relates consists of an action and the action occurs, or would occur, in a State that is not a referring State; or
 - (b) the terrorist act to which the preliminary act relates consists of a threat of action and the threat is made, or would be made, in a State that is not a referring State.
- (4) Notwithstanding any other provision in this Part, this Part applies to the conduct only to the extent to which the Parliament has power to legislate in relation to:
- (a) if the conduct is itself a terrorist act—the action or threat of action that constitutes the terrorist act; or
 - (b) if the conduct is a preliminary act—the action or threat of action that constitutes the terrorist act to which the preliminary act relates.
- (5) Without limiting the generality of subsection (4), this Part applies to the action or threat of action if:
- (a) the action affects, or if carried out would affect, the interests of:
 - (i) the Commonwealth; or
 - (ii) an authority of the Commonwealth; or
 - (iii) a constitutional corporation; or
 - (b) the threat is made to:
 - (i) the Commonwealth; or
 - (ii) an authority of the Commonwealth; or
 - (iii) a constitutional corporation; or
-

Section 100.5

- (c) the action is carried out by, or the threat is made by, a constitutional corporation; or
 - (d) the action takes place, or if carried out would take place, in a Commonwealth place; or
 - (e) the threat is made in a Commonwealth place; or
 - (f) the action involves, or if carried out would involve, the use of a postal service or other like service; or
 - (g) the threat is made using a postal or other like service; or
 - (h) the action involves, or if carried out would involve, the use of an electronic communication; or
 - (i) the threat is made using an electronic communication; or
 - (j) the action disrupts, or if carried out would disrupt, trade or commerce:
 - (i) between Australia and places outside Australia; or
 - (ii) among the States; or
 - (iii) within a Territory, between a State and a Territory or between 2 Territories; or
 - (k) the action disrupts, or if carried out would disrupt:
 - (i) banking (other than State banking not extending beyond the limits of the State concerned); or
 - (ii) insurance (other than State insurance not extending beyond the limits of the State concerned); or
 - (l) the action is, or if carried out would be, an action in relation to which the Commonwealth is obliged to create an offence under international law; or
 - (m) the threat is one in relation to which the Commonwealth is obliged to create an offence under international law.
- (6) To avoid doubt, subsections (2) and (3) apply to a State that is not a referring State at a particular time even if no State is a referring State at that time.

100.5 Application of *Acts Interpretation Act 1901*

- (1) The *Acts Interpretation Act 1901*, as in force on the day on which Schedule 1 to the *Criminal Code Amendment (Terrorism) Act 2003* commences, applies to this Part.

Section 100.6

- (2) Amendments of the *Acts Interpretation Act 1901* made after that day do not apply to this Part.

100.6 Concurrent operation intended

- (1) This Part is not intended to exclude or limit the concurrent operation of any law of a State or Territory.
- (2) Without limiting subsection (1), this Part is not intended to exclude or limit the concurrent operation of a law of a State or Territory that makes:
- (a) an act or omission that is an offence against a provision of this Part; or
 - (b) a similar act or omission;
an offence against the law of the State or Territory.
- (3) Subsection (2) applies even if the law of the State or Territory does any one or more of the following:
- (a) provides for a penalty for the offence that differs from the penalty provided for in this Part;
 - (b) provides for a fault element in relation to the offence that differs from the fault elements applicable to the offence under this Part;
 - (c) provides for a defence in relation to the offence that differs from the defences applicable to the offence under this Part.
- (4) If:
- (a) an act or omission of a person is an offence under this Part and is also an offence under the law of a State or Territory;
and
 - (b) the person has been punished for the offence under the law of the State or Territory;
- the person is not liable to be punished for the offence under this Part.

100.7 Regulations may modify operation of this Part to deal with interaction between this Part and State and Territory laws

- (1) The regulations may modify the operation of this Part so that:
 - (a) provisions of this Part do not apply to a matter that is dealt with by a law of a State or Territory specified in the regulations; or
 - (b) no inconsistency arises between the operation of a provision of this Part and the operation of a State or Territory law specified in the regulations.
- (2) Without limiting subsection (1), regulations made for the purposes of that subsection may provide that the provision of this Part does not apply to:
 - (a) a person specified in the regulations; or
 - (b) a body specified in the regulations; or
 - (c) circumstances specified in the regulations; or
 - (d) a person or body specified in the regulations in the circumstances specified in the regulations.
- (3) In this section:

matter includes act, omission, body, person or thing.

100.8 Approval for changes to or affecting this Part

- (1) This section applies to:
 - (a) an express amendment of this Part (including this section); and
 - (b) an express amendment of Chapter 2 that applies only to this Part (whether or not it is expressed to apply only to this Part).
- (2) An express amendment to which this section applies is not to be made unless the amendment is approved by:
 - (a) a majority of the group consisting of the States, the Australian Capital Territory and the Northern Territory; and
 - (b) at least 4 States.

Division 101—Terrorism

101.1 Terrorist acts

- (1) A person commits an offence if the person engages in a terrorist act.

Penalty: Imprisonment for life.

- (2) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

101.2 Providing or receiving training connected with terrorist acts

- (1) A person commits an offence if:
- (a) the person provides or receives training; and
 - (b) the training is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
 - (c) the person mentioned in paragraph (a) knows of the connection described in paragraph (b).

Penalty: Imprisonment for 25 years.

- (2) A person commits an offence if:
- (a) the person provides or receives training; and
 - (b) the training is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
 - (c) the person mentioned in paragraph (a) is reckless as to the existence of the connection described in paragraph (b).

Penalty: Imprisonment for 15 years.

- (3) A person commits an offence under this section even if the terrorist act does not occur.
- (4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.
- (5) If, in a prosecution for an offence (the *prosecuted offence*) against a subsection of this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond

reasonable doubt that the defendant is guilty of an offence (the *alternative offence*) against another subsection of this section, the trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

101.4 Possessing things connected with terrorist acts

- (1) A person commits an offence if:
- (a) the person possesses a thing; and
 - (b) the thing is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
 - (c) the person mentioned in paragraph (a) knows of the connection described in paragraph (b).

Penalty: Imprisonment for 15 years.

- (2) A person commits an offence if:
- (a) the person possesses a thing; and
 - (b) the thing is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
 - (c) the person mentioned in paragraph (a) is reckless as to the existence of the connection described in paragraph (b).

Penalty: Imprisonment for 10 years.

- (3) A person commits an offence under subsection (1) or (2) even if the terrorist act does not occur.
- (4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.
- (5) Subsections (1) and (2) do not apply if the possession of the thing was not intended to facilitate preparation for, the engagement of a person in, or assistance in a terrorist act.

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

- (6) If, in a prosecution for an offence (the *prosecuted offence*) against a subsection of this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond

Section 101.5

reasonable doubt that the defendant is guilty of an offence (the *alternative offence*) against another subsection of this section, the trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

101.5 Collecting or making documents likely to facilitate terrorist acts

- (1) A person commits an offence if:
- (a) the person collects or makes a document; and
 - (b) the document is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
 - (c) the person mentioned in paragraph (a) knows of the connection described in paragraph (b).

Penalty: Imprisonment for 15 years.

- (2) A person commits an offence if:
- (a) the person collects or makes a document; and
 - (b) the document is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
 - (c) the person mentioned in paragraph (a) is reckless as to the existence of the connection described in paragraph (b).

Penalty: Imprisonment for 10 years.

- (3) A person commits an offence under subsection (1) or (2) even if the terrorist act does not occur.
- (4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.
- (5) Subsections (1) and (2) do not apply if the collection or making of the document was not intended to facilitate preparation for, the engagement of a person in, or assistance in a terrorist act.

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

Section 101.6

- (6) If, in a prosecution for an offence (the *prosecuted offence*) against a subsection of this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the *alternative offence*) against another subsection of this section, the trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

101.6 Other acts done in preparation for, or planning, terrorist acts

- (1) A person commits an offence if the person does any act in preparation for, or planning, a terrorist act.
- Penalty: Imprisonment for life.
- (2) A person commits an offence under subsection (1) even if the terrorist act does not occur.
- (3) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

Division 102—Terrorist organisations

Subdivision A—Definitions

102.1 Definitions

(1) In this Division:

associate: a person associates with another person if the person meets or communicates with the other person.

close family member of a person means:

- (a) the person's spouse, de facto spouse or same-sex 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.

Hamas organisation means:

- (a) Hamas' Izz al-Din al-Qassam Brigades (by whatever name that organisation is known from time to time); or
- (b) an organisation derived from that organisation.

Hizballah organisation means:

- (a) the Hizballah External Security Organisation (by whatever name that organisation is known from time to time); or
- (b) an organisation derived from that organisation.

Lashkar-e-Tayyiba organisation means:

- (a) the Lashkar-e-Tayyiba organisation (by whatever name that organisation is known from time to time); or
- (b) an organisation derived from that organisation.

member of an organisation includes:

- (a) a person who is an informal member of the organisation; and
- (b) a person who has taken steps to become a member of the organisation; and
- (c) in the case of an organisation that is a body corporate—a director or an officer of the body corporate.

Section 102.1

recruit includes induce, incite and encourage.

terrorist organisation means:

- (a) an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act occurs); or
 - (b) an organisation that is specified by the regulations for the purposes of this paragraph (see subsections (2), (3) and (4)); or
 - (c) a Hizballah organisation, if that organisation is specified by the regulations for the purposes of this paragraph (see subsections (7), (8) and (9)); or
 - (d) a Hamas organisation, if that organisation is specified by the regulations for the purposes of this paragraph (see subsections (7), (8) and (10A)); or
 - (e) a Lashkar-e-Tayyiba organisation, if that organisation is specified by the regulations for the purposes of this paragraph (see subsections (7), (8) and (10C)).
- (2) Before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of *terrorist organisation* in this section, the Minister must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur).
- (2A) Before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of *terrorist organisation* in this section, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation.
- (3) Regulations for the purposes of paragraph (b) of the definition of *terrorist organisation* in this section cease to have effect on the second anniversary of the day on which they take effect. To avoid doubt, this subsection does not prevent:
- (a) the repeal of those regulations; or
 - (b) the cessation of effect of those regulations under subsection (4); or

Section 102.1

- (c) the making of new regulations the same in substance as those regulations (whether the new regulations are made or take effect before or after those regulations cease to have effect because of this subsection).
- (4) If:
- (a) an organisation is specified by regulations made for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in this section; and
 - (b) the Minister ceases to be satisfied that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur);
- the Minister must, by written notice published in the *Gazette*, make a declaration to the effect that the Minister has ceased to be so satisfied. The regulations, to the extent to which they specify the organisation, cease to have effect when the declaration is made.
- (5) To avoid doubt, subsection (4) does not prevent the organisation from being subsequently specified by regulations made for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in this section if the Minister becomes satisfied as mentioned in subsection (2).
- (6) If, under subsection (3) or (4), a regulation ceases to have effect, section 50 of the *Acts Interpretation Act 1901* applies as if the regulation had been repealed.
- (7) Before the Governor-General makes a regulation specifying:
- (a) a Hizballah organisation for the purposes of paragraph (c) of the definition of ***terrorist organisation*** in this section; or
 - (b) a Hamas organisation for the purposes of paragraph (d) of the definition of ***terrorist organisation*** in this section; or
 - (c) a Lashkar-e-Tayyiba organisation for the purposes of paragraph (e) of the definition of ***terrorist organisation*** in this section;
- the Minister must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur).

Section 102.1

- (8) Regulations for the purposes of paragraph (c), (d) or (e) of the definition of **terrorist organisation** in this section cease to have effect on the second anniversary of the day on which they take effect. To avoid doubt, this subsection does not prevent:
- (a) the repeal of those regulations; or
 - (b) the cessation of effect of those regulations under subsection (9), (10A) or (10C); or
 - (c) the making of new regulations the same in substance as those regulations (whether the new regulations are made or take effect before or after those regulations cease to have effect because of this subsection).
- (9) If:
- (a) a Hizballah organisation is specified by regulations made for the purposes of paragraph (c) of the definition of **terrorist organisation** in this section; and
 - (b) the Minister ceases to be satisfied that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur);
- the Minister must, by written notice published in the *Gazette*, make a declaration to the effect that the Minister has ceased to be so satisfied. The regulations, to the extent to which they specify the organisation, cease to have effect when the declaration is made.
- (10) To avoid doubt, subsection (9) does not prevent a Hizballah organisation from being subsequently specified by regulations made for the purposes of paragraph (c) of the definition of **terrorist organisation** in this section if the Minister again becomes satisfied as mentioned in subsection (7).
- (10A) If:
- (a) a Hamas organisation is specified by regulations made for the purposes of paragraph (d) of the definition of **terrorist organisation** in this section; and
 - (b) the Minister ceases to be satisfied that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur);

Section 102.1

the Minister must, by written notice published in the *Gazette*, make a declaration to the effect that the Minister has ceased to be so satisfied. The regulations, to the extent to which they specify the organisation, cease to have effect when the declaration is made.

(10B) To avoid doubt, subsection (10A) does not prevent a Hamas organisation from being subsequently specified by regulations made for the purposes of paragraph (d) of the definition of ***terrorist organisation*** in this section if the Minister again becomes satisfied as mentioned in subsection (7).

(10C) If:

- (a) a Lashkar-e-Tayyiba organisation is specified by regulations made for the purposes of paragraph (e) of the definition of ***terrorist organisation*** in this section; and
- (b) the Minister ceases to be satisfied that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur);

the Minister must, by written notice published in the *Gazette*, make a declaration to the effect that the Minister has ceased to be so satisfied. The regulations, to the extent to which they specify the organisation, cease to have effect when the declaration is made.

(10D) To avoid doubt, subsection (10C) does not prevent a Lashkar-e-Tayyiba organisation from being subsequently specified by regulations made for the purposes of paragraph (e) of the definition of ***terrorist organisation*** in this section if the Minister again becomes satisfied as mentioned in subsection (7).

(11) If:

- (a) at a particular time on a particular day, the Minister is satisfied on reasonable grounds that a particular Hizballah organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur); and
- (b) at a later time on that day, the Minister, or another Minister, makes a public announcement to the effect that:

Section 102.1

- (i) a regulation will be made specifying the organisation for the purposes of paragraph (c) of the definition of ***terrorist organisation*** in this section; and
 - (ii) the regulation will take effect at the time of the announcement; and
 - (c) the regulation is made within 60 days after the day on which the *Criminal Code Amendment (Hizballah) Act 2003* receives the Royal Assent;
- the regulation takes effect at the time of the announcement.

(11A) If:

- (a) at a particular time on a particular day, the Minister is satisfied on reasonable grounds that a particular Hamas organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur); and
 - (b) at a later time on that day, the Minister, or another Minister, makes a public announcement to the effect that:
 - (i) a regulation will be made specifying the organisation for the purposes of paragraph (d) of the definition of ***terrorist organisation*** in this section; and
 - (ii) the regulation will take effect at the time of the announcement; and
 - (c) the regulation is made within 60 days after the day on which the *Criminal Code Amendment (Hamas and Lashkar-e-Tayyiba) Act 2003* receives the Royal Assent;
- the regulation takes effect at the time of the announcement.

(11B) If:

- (a) at a particular time on a particular day, the Minister is satisfied on reasonable grounds that a particular Lashkar-e-Tayyiba organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur); and
- (b) at a later time on that day, the Minister, or another Minister, makes a public announcement to the effect that:

Section 102.1

- (i) a regulation will be made specifying the organisation for the purposes of paragraph (e) of the definition of ***terrorist organisation*** in this section; and
 - (ii) the regulation will take effect at the time of the announcement; and
- (c) the regulation is made within 60 days after the day on which the *Criminal Code Amendment (Hamas and Lashkar-e-Tayyiba) Act 2003* receives the Royal Assent; the regulation takes effect at the time of the announcement.
- (12) A copy of the announcement referred to in paragraph (11)(b), (11A)(b) or (11B)(b) must be published:
 - (a) on the Internet; and
 - (b) in a newspaper circulating in each State and the Northern Territory.
- (13) If, under subsection (8), (9), (10A) or (10C), a regulation ceases to have effect, section 50 of the *Acts Interpretation Act 1901* applies as if the regulation had been repealed.
- (14) The power to make regulations for the purposes of paragraph (c) of the definition of ***terrorist organisation*** in this section does not limit the power to make regulations specifying a Hizballah organisation for the purposes of paragraph (b) of that definition.
- (15) The power to make regulations for the purposes of paragraph (d) of the definition of ***terrorist organisation*** in this section does not limit the power to make regulations specifying a Hamas organisation for the purposes of paragraph (b) of that definition.
- (16) The power to make regulations for the purposes of paragraph (e) of the definition of ***terrorist organisation*** in this section does not limit the power to make regulations specifying a Lashkar-e-Tayyiba organisation for the purposes of paragraph (b) of that definition.
- (17) If:
 - (a) an organisation (the ***listed organisation***) is specified in regulations made for the purposes of paragraph (b), (c), (d) or (e) of the definition of ***terrorist organisation*** in this section; and

Section 102.1A

- (b) an individual or an organisation (which may be the listed organisation) makes an application (the *de-listing application*) to the Minister for a declaration under subsection (4), (9), (10A) or (10C), as the case requires, in relation to the listed organisation; and
 - (c) the de-listing application is made on the grounds that there is no basis for the Minister to be satisfied that the listed organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur); the Minister must consider the de-listing application.
- (18) Subsection (17) does not limit the matters that may be considered by the Minister for the purposes of subsections (4), (9), (10A) and (10C).

102.1A Reviews by Parliamentary Joint Committee on ASIO, ASIS and DSD

Review of listing regulation

- (1) If a regulation made after the commencement of this section specifies an organisation for the purposes of paragraph (b) of the definition of *terrorist organisation* in section 102.1, the Parliamentary Joint Committee on ASIO, ASIS and DSD may:
- (a) review the regulation as soon as possible after the making of the regulation; and
 - (b) report the Committee's comments and recommendations to each House of the Parliament before the end of the applicable disallowance period for that House.

Review of listing provisions

- (2) The Parliamentary Joint Committee on ASIO, ASIS and DSD has the following functions:
- (a) to review, as soon as possible after the third anniversary of the commencement of this section, the operation, effectiveness and implications of subsections 102.1(2), (2A), (4), (5), (6), (17) and (18) as in force after the commencement of this section;

Section 102.1A

- (b) to report the Committee's comments and recommendations to each House of the Parliament and to the Minister.

Review of listing regulation—extension of applicable disallowance period

- (3) If the Committee's report on a review of a regulation is tabled in a House of the Parliament:
- (a) during the applicable disallowance period for that House; and
 - (b) on or after the eighth sitting day of the applicable disallowance period;
- then whichever of the following provisions is applicable:
- (c) subsections 48(4), (5) and (5A) and section 48B of the *Acts Interpretation Act 1901*;
 - (d) Part 5 of the *Legislative Instruments Act 2003*;
- have or has effect, in relation to that regulation and that House, as if each period of 15 sitting days referred to in those provisions were extended in accordance with the table:

Extension of applicable disallowance period		
Item	If the Committee's report is tabled in that House...	extend the period of 15 sitting days by...
1	on the fifteenth sitting day of the applicable disallowance period	8 sitting days of that House
2	on the fourteenth sitting day of the applicable disallowance period	7 sitting days of that House
3	on the thirteenth sitting day of the applicable disallowance period	6 sitting days of that House
4	on the twelfth sitting day of the applicable disallowance period	5 sitting days of that House
5	on the eleventh sitting day of the applicable disallowance period	4 sitting days of that House
6	on the tenth sitting day of the applicable disallowance period	3 sitting days of that House
7	on the ninth sitting day of the applicable disallowance period	2 sitting days of that House
8	on the eighth sitting day of the applicable disallowance period	1 sitting day of that House

Applicable disallowance period

- (4) For the purposes of the application of this section to a regulation, the ***applicable disallowance period*** for a House of the Parliament means the period of 15 sitting days of that House after the regulation, or a copy of the regulation, was laid before that House in accordance with whichever of the following provisions was applicable:
- (a) paragraph 48(1)(c) of the *Acts Interpretation Act 1901*;
 - (b) section 38 of the *Legislative Instruments Act 2003*.

Subdivision B—Offences

102.2 Directing the activities of a terrorist organisation

- (1) A person commits an offence if:
- (a) the person intentionally directs the activities of an organisation; and
 - (b) the organisation is a terrorist organisation; and
 - (c) the person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

- (2) A person commits an offence if:
- (a) the person intentionally directs the activities of an organisation; and
 - (b) the organisation is a terrorist organisation; and
 - (c) the person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 15 years.

102.3 Membership of a terrorist organisation

- (1) A person commits an offence if:
- (a) the person intentionally is a member of an organisation; and
 - (b) the organisation is a terrorist organisation; and
 - (c) the person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 10 years.

Section 102.4

- (2) Subsection (1) does not apply if the person proves that he or she took all reasonable steps to cease to be a member of the organisation as soon as practicable after the person knew that the organisation was a terrorist organisation.

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

102.4 Recruiting for a terrorist organisation

- (1) A person commits an offence if:
- (a) the person intentionally recruits a person to join, or participate in the activities of, an organisation; and
 - (b) the organisation is a terrorist organisation; and
 - (c) the first-mentioned person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

- (2) A person commits an offence if:
- (a) the person intentionally recruits a person to join, or participate in the activities of, an organisation; and
 - (b) the organisation is a terrorist organisation; and
 - (c) the first-mentioned person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 15 years.

102.5 Training a terrorist organisation or receiving training from a terrorist organisation

- (1) A person commits an offence if:
- (a) the person intentionally provides training to, or intentionally receives training from, an organisation; and
 - (b) the organisation is a terrorist organisation; and
 - (c) the person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

Section 102.6

- (2) A person commits an offence if:
- (a) the person intentionally provides training to, or intentionally receives training from, an organisation; and
 - (b) the organisation is a terrorist organisation that is covered by paragraph (b), (c), (d) or (e) of the definition of **terrorist organisation** in subsection 102.1(1).

Penalty: Imprisonment for 25 years.

- (3) Subject to subsection (4), strict liability applies to paragraph (2)(b).
- (4) Subsection (2) does not apply unless the person is reckless as to the circumstance mentioned in paragraph (2)(b).

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

102.6 Getting funds to or from a terrorist organisation

- (1) A person commits an offence if:
- (a) the person intentionally receives funds from, or makes funds available to, an organisation (whether directly or indirectly); and
 - (b) the organisation is a terrorist organisation; and
 - (c) the person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

- (2) A person commits an offence if:
- (a) the person intentionally receives funds from, or makes funds available to, an organisation (whether directly or indirectly); and
 - (b) the organisation is a terrorist organisation; and
 - (c) the person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 15 years.

- (3) Subsections (1) and (2) do not apply to the person's receipt of funds from the organisation if the person proves that he or she received the funds solely for the purpose of the provision of:

Section 102.7

- (a) legal representation for a person in proceedings relating to this Division; or
- (b) assistance to the organisation for it to comply with a law of the Commonwealth or a State or Territory.

Note: A defendant bears a legal burden in relation to the matter in subsection (3) (see section 13.4).

102.7 Providing support to a terrorist organisation

- (1) A person commits an offence if:
 - (a) the person intentionally provides to an organisation support or resources that would help the organisation engage in an activity described in paragraph (a) of the definition of ***terrorist organisation*** in this Division; and
 - (b) the organisation is a terrorist organisation; and
 - (c) the person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

- (2) A person commits an offence if:
 - (a) the person intentionally provides to an organisation support or resources that would help the organisation engage in an activity described in paragraph (a) of the definition of ***terrorist organisation*** in this Division; and
 - (b) the organisation is a terrorist organisation; and
 - (c) the person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 15 years.

102.8 Associating with terrorist organisations

- (1) A person commits an offence if:
 - (a) on 2 or more occasions:
 - (i) the person intentionally associates with another person who is a member of, or a person who promotes or directs the activities of, an organisation; and
 - (ii) the person knows that the organisation is a terrorist organisation; and
 - (iii) the association provides support to the organisation; and

Section 102.8

- (iv) the person intends that the support assist the organisation to expand or to continue to exist; and
- (v) the person knows that the other person is a member of, or a person who promotes or directs the activities of, the organisation; and
- (b) the organisation is a terrorist organisation because of paragraph (b), (c), (d) or (e) of the definition of ***terrorist organisation*** in this Division (whether or not the organisation is a terrorist organisation because of paragraph (a) of that definition also).

Penalty: Imprisonment for 3 years.

- (2) A person commits an offence if:
- (a) the person has previously been convicted of an offence against subsection (1); and
 - (b) the person intentionally associates with another person who is a member of, or a person who promotes or directs the activities of, an organisation; and
 - (c) the person knows that the organisation is a terrorist organisation; and
 - (d) the association provides support to the organisation; and
 - (e) the person intends that the support assist the organisation to expand or to continue to exist; and
 - (f) the person knows that the other person is a member of, or a person who promotes or directs the activities of, the organisation; and
 - (g) the organisation is a terrorist organisation because of paragraph (b), (c), (d) or (e) of the definition of ***terrorist organisation*** in this Division (whether or not the organisation is a terrorist organisation because of paragraph (a) of that definition also).

Penalty: Imprisonment for 3 years.

- (3) Strict liability applies to paragraphs (1)(b) and (2)(g).
- (4) This section does not apply if:
- (a) the association is with a close family member and relates only to a matter that could reasonably be regarded (taking

Section 102.8

- into account the person's cultural background) as a matter of family or domestic concern; or
- (b) the association is in a place being used for public religious worship and takes place in the course of practising a religion; or
 - (c) the association is only for the purpose of providing aid of a humanitarian nature; or
 - (d) the association is only for the purpose of providing legal advice or legal representation in connection with:
 - (i) criminal proceedings or proceedings related to criminal proceedings (including possible criminal proceedings in the future); or
 - (ii) proceedings relating to whether the organisation in question is a terrorist organisation; or
 - (iii) a decision made or proposed to be made under Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*, or proceedings relating to such a decision or proposed decision; or
 - (iv) a listing or proposed listing under section 15 of the *Charter of the United Nations Act 1945* or an application or proposed application to revoke such a listing, or proceedings relating to such a listing or application or proposed listing or application; or
 - (v) proceedings conducted by a military commission of the United States of America established under a Military Order of 13 November 2001 made by the President of the United States of America and entitled "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism"; or
 - (vi) proceedings for a review of a decision relating to a passport or other travel document or to a failure to issue such a passport or other travel document (including a passport or other travel document that was, or would have been, issued by or on behalf of the government of a foreign country).

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

Section 102.9

- (5) This section does not apply unless the person is reckless as to the circumstance mentioned in paragraph (1)(b) and (2)(g) (as the case requires).

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

- (6) This section does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.

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

- (7) A person who is convicted of an offence under subsection (1) in relation to the person's conduct on 2 or more occasions is not liable to be punished for an offence under subsection (1) for other conduct of the person that takes place:

- (a) at the same time as that conduct; or
- (b) within 7 days before or after any of those occasions.

Subdivision C—General provisions relating to offences

102.9 Extended geographical jurisdiction for offences

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

102.10 Alternative verdicts

- (1) This section applies if, in a prosecution for an offence (the *prosecuted offence*) against a subsection of a section of this Division, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the *alternative offence*) against another subsection of that section.
- (2) The trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Division 103—Financing terrorism

103.1 Financing terrorism

- (1) A person commits an offence if:
 - (a) the person provides or collects funds; and
 - (b) the person is reckless as to whether the funds will be used to facilitate or engage in a terrorist act.

Penalty: Imprisonment for life.

Note: Intention is the fault element for the conduct described in paragraph (1)(a). See subsection 5.6(1).

- (2) A person commits an offence under subsection (1) even if the terrorist act does not occur.
- (3) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

Division 106—Transitional provisions

106.1 Saving—regulations made for the purposes of the definition of *terrorist organisation*

- (1) If:
 - (a) regulations were made before commencement for the purposes of paragraph (c) of the definition of *terrorist organisation* in subsection 102.1(1), as in force before commencement; and
 - (b) the regulations were in force immediately before commencement;
the regulations have effect, after commencement, as if they had been made for the purposes of paragraph (b) of the definition of *terrorist organisation* in subsection 102.1(1), as in force after commencement.
- (2) In this section, *commencement* means the commencement of this section.

Part 5.4—Harming Australians

Division 104—Harming Australians

104.1 Murder of an Australian citizen or a resident of Australia

- (1) A person is guilty of an offence if:
- (a) the person engages in conduct outside Australia; and
 - (b) the conduct causes the death of another person; and
 - (c) the other person is an Australian citizen or a resident of Australia; and
 - (d) the first-mentioned person intends to cause, or is reckless as to causing, the death of the Australian citizen or resident of Australia or any other person by the conduct.

Penalty: Imprisonment for life.

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

104.2 Manslaughter of an Australian citizen or a resident of Australia

- (1) A person is guilty of an offence if:
- (a) the person engages in conduct outside Australia; and
 - (b) the conduct causes the death of another person; and
 - (c) the other person is an Australian citizen or a resident of Australia; and
 - (d) the first-mentioned person intends that the conduct will cause serious harm, or is reckless as to a risk that the conduct will cause serious harm, to the Australian citizen or resident of Australia or any other person.

Penalty: Imprisonment for 25 years.

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

104.3 Intentionally causing serious harm to an Australian citizen or a resident of Australia

- (1) A person is guilty of an offence if:
- (a) the person engages in conduct outside Australia; and
 - (b) the conduct causes serious harm to another person; and
 - (c) the other person is an Australian citizen or a resident of Australia; and
 - (d) the first-mentioned person intends to cause serious harm to the Australian citizen or resident of Australia or any other person by the conduct.

Penalty: Imprisonment for 20 years.

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

104.4 Recklessly causing serious harm to an Australian citizen or a resident of Australia

- (1) A person is guilty of an offence if:
- (a) the person engages in conduct outside Australia; and
 - (b) the conduct causes serious harm to another person; and
 - (c) the other person is an Australian citizen or a resident of Australia; and
 - (d) the first-mentioned person is reckless as to causing serious harm to the Australian citizen or resident of Australia or any other person by the conduct.

Penalty: Imprisonment for 15 years.

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

104.5 Saving of other laws

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

Section 104.6

104.6 Bringing proceedings under this Division

- (1) Proceedings for an offence under this Division must not be commenced without the Attorney-General's written consent.
- (2) However, a person may be arrested, charged, remanded in custody, or released on bail, in connection with an offence under this Division before the necessary consent has been given.

104.7 Ministerial certificates relating to proceedings

- (1) A Minister who administers one or more of the following Acts:
 - (a) the *Australian Citizenship Act 1948*;
 - (b) the *Migration Act 1958*;
 - (c) the *Passports Act 1938*;may issue a certificate stating that a person is or was an Australian citizen or a resident of Australia at a particular time.
- (2) In any proceedings, a certificate under this section is prima facie evidence of the matters in the certificate.

104.8 Geographical jurisdiction

Each offence against this Division applies:

- (a) whether or not a result of the conduct constituting the alleged offence occurs in Australia; and
- (b) if the alleged offence is an ancillary offence and the conduct to which the ancillary offence relates occurs outside Australia—whether or not the conduct constituting the ancillary offence occurs in Australia.

104.9 Meaning of *causes* death or harm

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

Chapter 7—The proper administration of Government

Part 7.1—Preliminary

Division 130—Preliminary

130.1 Definitions

In this Chapter:

duty:

- (a) in relation to a person who is a Commonwealth public official—means any authority, duty, function or power that:
 - (i) is conferred on the person as a Commonwealth public official; or
 - (ii) the person holds himself or herself out as having as a Commonwealth public official; and
- (b) in relation to a person who is a public official—means any authority, duty, function or power that:
 - (i) is conferred on the person as a public official; or
 - (ii) the person holds himself or herself out as having as a public official.

gain means:

- (a) a gain in property, whether temporary or permanent; or
 - (b) a gain by way of the supply of services;
- and includes keeping what one has.

loss means a loss in property, whether temporary or permanent, and includes not getting what one might get.

obtaining includes:

- (a) obtaining for another person; and
- (b) inducing a third person to do something that results in another person obtaining.

Section 130.2

property includes:

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

services includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities, but does not include rights or benefits being the supply of goods.

supply includes:

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

Note: The expression *person* includes a Commonwealth entity. This is the combined effect of paragraph 22(1)(a) of the *Acts Interpretation Act 1901* (which provides that *person* includes a body politic or corporate), and the definition of *person* in the Dictionary.

130.2 When property belongs to a person

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

130.3 Dishonesty

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

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

Note: The following provisions affect the meaning of *dishonesty*:

- (a) section 131.2 (theft);
- (b) section 134.1 (obtaining property by deception).

130.4 Determination of dishonesty to be a matter for the trier of fact

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

Part 7.2—Theft and other property offences

Division 131—Theft

131.1 Theft

- (1) A person is guilty of an offence if:
 - (a) the person dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property; and
 - (b) the property belongs to a Commonwealth entity.

Penalty: Imprisonment for 10 years.

- (2) For the purposes of this Code, an offence against subsection (1) is to be known as the offence of theft.
- (3) Absolute liability applies to the paragraph (1)(b) element of the offence of theft.
- (4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

Note: For alternative verdicts, see sections 132.1 and 134.1.

131.2 Special rules about the meaning of dishonesty

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

131.3 Appropriation of property

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

131.4 Theft of land or things forming part of land

- (1) For the purposes of this Division, a person cannot commit theft of land, except in the following cases:
 - (a) the case where the person appropriates anything forming part of the land by severing it or causing it to be severed;
 - (b) the case where:
 - (i) the person is a trustee or personal representative, or is authorised (by power of attorney, as liquidator of a company or otherwise) to sell or dispose of land belonging to another; and
 - (ii) the person appropriates the land, or anything forming part of it, by dealing with it in breach of the confidence reposed in the person.
- (2) For the purposes of this section, *land* does not include incorporeal hereditaments.

131.5 Trust property

- (1) For the purposes of this Division, if property is subject to a trust, the persons to whom the property belongs include any person who has a right to enforce the trust.

Section 131.6

- (2) Accordingly, for the purposes of this Division, an intention to defeat the trust is an intention to deprive any such person of the property.

131.6 Obligation to deal with property in a particular way

For the purposes of this Division, if:

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

the property or proceeds belong (as against the person) to the other.

131.7 Property obtained because of fundamental mistake

- (1) For the purposes of this Division, if:
- (a) a person gets property by another's fundamental mistake; and
 - (b) the person is under a legal obligation to make restoration (in whole or in part) of the property, its proceeds or value;
- then, to the extent of that obligation, the property or proceeds belongs (as against the person) to the person entitled to restoration.
- (2) For the purposes of this Division, an intention not to make restoration is:
- (a) an intention to permanently deprive the person so entitled of the property or proceeds; and
 - (b) an appropriation of the property or proceeds without the consent of the person entitled to restoration.
- (3) For the purposes of this section, a *fundamental mistake* is:
- (a) a mistake about the identity of the person getting the property; or
 - (b) a mistake as to the essential nature of the property; or
 - (c) a mistake about the amount of any money if the person getting the money is aware of the mistake at the time of getting the money.

(4) In this section:

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

131.8 Property of a corporation sole

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

131.9 Property belonging to 2 or more persons

If property belongs to 2 or more persons, a reference in this Division (other than paragraph 131.1(1)(b)) to the person to whom the property belongs is a reference to all of those persons.

131.10 Intention of permanently depriving a person of property

(1) For the purposes of this Division, if:

- (a) a person appropriates property belonging to another without meaning the other permanently to lose the thing itself; and
- (b) the person's intention is to treat the thing as the person's own to dispose of regardless of the other's rights;

the person has the intention of permanently depriving the other of it.

(2) For the purposes of this section, a borrowing or lending of a thing amounts to treating the thing as the borrower's or lender's own to dispose of regardless of another's rights if, and only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.

(3) For the purposes of this section, if:

- (a) a person has possession or control (lawfully or not) of property belonging to another; and
- (b) the person parts with the property under a condition as to its return that the person may not be able to perform; and

Schedule The Criminal Code

Chapter 7 The proper administration of Government

Part 7.2 Theft and other property offences

Division 131 Theft

Section 131.11

(c) the parting is done for purposes of the person's own and without the other's authority;

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

Note: See also paragraph 131.7(2)(a).

131.11 General deficiency

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

Division 132—Other property offences

132.1 Receiving

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

Penalty: Imprisonment for 10 years.

- (2) For the purposes of this Code, an offence against subsection (1) is to be known as the offence of receiving.
- (2A) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew or believed that the property belonged to a Commonwealth entity.

Stolen property

- (3) For the purposes of this section, property is ***stolen property*** if, and only if:
- (a) it is original stolen property (as defined by subsection (5)); or
 - (aa) it is previously received property (as defined by subsection (5A)); or
 - (b) it is tainted property (as defined by subsection (7)).

This subsection has effect subject to subsections (4) and (6).

- (4) For the purposes of this section, ***stolen property*** does not include land obtained in the course of an offence against section 134.1.

Original stolen property

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

Section 132.1

- (b) property, or a part of property, that:
 - (i) was obtained in the course of an offence against section 134.1 (whether or not the property, or the part of the property, is in the state it was in when it was so obtained); and
 - (ii) is in the possession or custody of the person who so obtained the property or the person for whom the property was so obtained.

Previously received property

- (5A) For the purposes of this section, ***previously received property*** is property that:
 - (a) was received in the course of an offence against subsection (1); and
 - (b) is in the possession or custody of the person who received the property in the course of that offence.
- (6) For the purposes of this section, property ceases to be original stolen property or previously received property:
 - (a) after the property is restored:
 - (i) to the person from whom it was appropriated or obtained; or
 - (ii) to other lawful possession or custody; or
 - (b) after:
 - (i) the person from whom the property was appropriated or obtained ceases to have any right to restitution in respect of the property; or
 - (ii) a person claiming through the person from whom the property was appropriated or obtained ceases to have any right to restitution in respect of the property.

Tainted property

- (7) For the purposes of this section, ***tainted property*** is property that:
 - (a) is (in whole or in part) the proceeds of sale of, or property exchanged for:
 - (i) original stolen property; or
 - (ii) previously received property; and

Section 132.1

- (b) if subparagraph (a)(i) applies—is in the possession or custody of:
 - (i) if the original stolen property was appropriated in the course of theft—the person who so appropriated the original stolen property; or
 - (ii) if the original stolen property was obtained in the course of an offence against section 134.1—the person who so obtained the property or the person for whom the property was so obtained; and
- (c) if subparagraph (a)(ii) applies—is in the possession or custody of the person who received the previously received property in the course of an offence against subsection (1).

Money transfers

- (8) For the purposes of this section, if, as a result of the application of subsection 134.1(9) or (10), an amount credited to an account held by a person is property obtained in the course of an offence against section 134.1:
 - (a) while the whole or any part of the amount remains credited to the account, the property is taken to be in the possession of the person; and
 - (b) if the person fails to take such steps as are reasonable in the circumstances to secure that the credit is cancelled—the person is taken to have received the property; and
 - (c) subsection (6) of this section does not apply to the property.

Note: Subsections 134.1(9) and (10) deal with money transfers.

Alternative verdicts

- (9) If, in a prosecution for an offence of theft or an offence against section 134.1, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence of receiving, the trier of fact may find the defendant not guilty of the offence of theft or the section 134.1 offence but guilty of the offence of receiving, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Section 132.2

- (10) If, in a prosecution for an offence of receiving, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence of theft or an offence against section 134.1, the trier of fact may find the defendant not guilty of the offence of receiving but guilty of the offence of theft or the section 134.1 offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Receiving property stolen before commencement

- (11) For the purposes of this section:
- (a) it is to be assumed that sections 131.1 and 134.1 had been in force at all times before the commencement of this section; and
 - (b) property that was appropriated or obtained at a time before the commencement of this section does not become **original stolen property** unless the property was appropriated or obtained in circumstances that (apart from paragraph (a)) amounted to an offence against a law of the Commonwealth in force at that time.

Obtaining

- (12) The definition of **obtaining** in section 130.1 does not apply to this section.

Note: See subsection 134.1(3).

Definition

- (13) In this section:

account has the same meaning as in section 133.1.

132.2 Robbery

- (1) A person is guilty of an offence if the person commits theft and:
- (a) immediately before committing theft, the person:
 - (i) uses force on another person; or
 - (ii) threatens to use force then and there on another person; with intent to commit theft or to escape from the scene; or

Section 132.3

- (b) at the time of committing theft, or immediately after committing theft, the person:
- (i) uses force on another person; or
 - (ii) threatens to use force then and there on another person; with intent to commit theft or to escape from the scene.

Penalty: Imprisonment for 15 years.

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

Note: **Theft** means an offence against section 131.1. Under section 131.1, an element of the offence of theft is that the property belongs to a Commonwealth entity.

- (3) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the property belonged to a Commonwealth entity.

132.3 Aggravated robbery

- (1) A person is guilty of an offence if the person:
- (a) commits a robbery in company with one or more other persons; or
 - (b) commits a robbery and, at the time of the robbery, has an offensive weapon with him or her.

Penalty: Imprisonment for 20 years.

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

Note: **Robbery** means an offence against section 132.2. Under section 132.2, an element of the offence of robbery is that the defendant commits theft. **Theft** means an offence against section 131.1. Under section 131.1, an element of the offence of theft is that the property belongs to a Commonwealth entity.

- (2A) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the property belonged to a Commonwealth entity.

Schedule The Criminal Code

Chapter 7 The proper administration of Government

Part 7.2 Theft and other property offences

Division 132 Other property offences

Section 132.4

(3) In this section:

offensive weapon includes:

- (a) an article made or adapted for use for causing injury to, or incapacitating, a person; or
- (b) an article where the person who has the article intends, or threatens to use, the article to cause injury to, or to incapacitate, another person.

132.4 Burglary

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

- (a) the person enters, or remains in, a building, as a trespasser, with intent to commit theft of a particular item of property in the building; and
- (b) the property belongs to a Commonwealth entity.

Penalty: Imprisonment for 13 years.

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

(2A) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the property belonged to a Commonwealth entity.

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

- (a) the person enters, or remains in, a building, as a trespasser, with intent to commit an offence in the building that involves causing harm to another person or damage to property; and
- (aa) the offence referred to in paragraph (a) is an offence against a law of the Commonwealth; and
- (b) the offence referred to in paragraph (a) is punishable by imprisonment for life or for a term of 5 years or more.

Penalty: Imprisonment for 13 years.

(3A) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the offence referred to in paragraph (3)(a) is an offence against a law of the Commonwealth.

Section 132.4

- (4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the offence referred to in paragraph (3)(a) is punishable by imprisonment for life or for a term of 5 years or more.
- (5) For the purposes of this Code, an offence against subsection (3) is also to be known as the offence of burglary.
- (6) A person is guilty of an offence if:
- (a) the person enters, or remains in, a building, as a trespasser, with intent to commit an offence in the building that involves causing harm to another person or damage to property; and
 - (aa) the offence referred to in paragraph (a) is an offence against a law of the Commonwealth, a State or a Territory; and
 - (b) the offence referred to in paragraph (a) is punishable by imprisonment for life or for a term of 5 years or more; and
 - (c) the building is owned or occupied by a Commonwealth entity.
- Penalty: Imprisonment for 13 years.
- (6A) In a prosecution for an offence against subsection (6), it is not necessary to prove that the defendant knew that the offence referred to in paragraph (6)(a) is an offence against a law of the Commonwealth, a State or a Territory.
- (7) In a prosecution for an offence against subsection (6), it is not necessary to prove that the defendant knew that the offence referred to in paragraph (6)(a) is punishable by imprisonment for life or for a term of 5 years or more.
- (8) Absolute liability applies to the paragraph (6)(c) element of the offence.
- (9) For the purposes of this Code, an offence against subsection (6) is also to be known as the offence of burglary.
- (10) For the purposes of this section, a person is taken not to be a trespasser:
- (a) merely because the person is permitted to enter, or remain in, a building for a purpose that is not the person's intended purpose; or

Schedule The Criminal Code

Chapter 7 The proper administration of Government

Part 7.2 Theft and other property offences

Division 132 Other property offences

Section 132.5

(b) if the person is permitted to enter, or remain in, a building as a result of fraud, misrepresentation or another person's mistake.

(12) In this section:

building includes:

- (a) a part of a building; or
- (b) a mobile home or a caravan; or
- (c) a structure (whether or not movable), a vehicle, or a vessel, that is used, designed or adapted for residential purposes.

132.5 Aggravated burglary

- (1) A person is guilty of an offence if the person:
- (a) commits a burglary in company with one or more other persons; or
 - (b) commits a burglary, and at the time of the burglary, has an offensive weapon with him or her.

Penalty: Imprisonment for 17 years.

- (2) For the purposes of this Code, an offence against subsection (1) is to be known as the offence of aggravated burglary.
- (3) In a prosecution for an offence against subsection (1) in relation to the offence of burglary created by subsection 132.4(1), it is not necessary to prove that the defendant knew that the property concerned belonged to a Commonwealth entity.
- (4) In a prosecution for an offence against subsection (1) in relation to the offence of burglary created by subsection 132.4(3), it is not necessary to prove that:
- (a) the defendant knew that the offence referred to in paragraph 132.4(3)(a) is an offence against a law of the Commonwealth; or
 - (b) the defendant knew that the offence referred to in paragraph 132.4(3)(a) is punishable by imprisonment for life or for a term of 5 years or more.

Section 132.6

- (5) In a prosecution for an offence against subsection (1) in relation to the offence of burglary created by subsection 132.4(6), it is not necessary to prove that:
- (a) the defendant knew that the offence referred to in paragraph 132.4(6)(a) is an offence against a law of the Commonwealth, a State or a Territory; or
 - (b) the defendant knew that the offence referred to in paragraph 132.4(6)(a) is punishable by imprisonment for life or for a term of 5 years or more; or
 - (c) the defendant knew that the building was owned or occupied by a Commonwealth entity.
- (6) In this section:
- offensive weapon* includes:
- (a) an article made or adapted for use for causing injury to, or incapacitating, a person; or
 - (b) an article where the person who has the article intends, or threatens to use, the article to cause injury to, or to incapacitate, another person.

132.6 Making off without payment

- (1) A person is guilty of an offence if:
- (a) the person, knowing that immediate payment for any goods or services supplied by another person is required or expected from him or her, dishonestly makes off:
 - (i) without having paid; and
 - (ii) with intent to avoid payment of the amount due; and
 - (b) the other person is a Commonwealth entity.
- Penalty: Imprisonment for 2 years.
- (2) Absolute liability applies to the paragraph (1)(b) element of the offence.
- (3) For the purposes of this section, *immediate payment* includes payment at the time of collecting goods in respect of which a service has been provided.

Section 132.7

132.7 Going equipped for theft or a property offence

- (1) A person is guilty of an offence if the person, when not at home, has with him or her any article with intent to use it in the course of, or in connection with, theft or a property offence.

Penalty: Imprisonment for 3 years.

- (2) In a prosecution for an offence against subsection (1) in relation to:
- (a) theft; or
 - (b) robbery; or
 - (c) aggravated robbery; or
 - (d) the offence of burglary created by subsection 132.4(1); or
 - (e) the offence of aggravated burglary that relates to the offence of burglary created by subsection 132.4(1); or
 - (f) an offence against section 134.1;

it is not necessary to prove that the defendant knew that the property concerned belonged to a Commonwealth entity.

- (3) In a prosecution for an offence against subsection (1) in relation to:
- (a) the offence of burglary created by subsection 132.4(3); or
 - (b) the offence of aggravated burglary that relates to the offence of burglary created by subsection 132.4(3);

it is not necessary to prove that:

- (c) the defendant knew that the offence referred to in paragraph 132.4(3)(a) is an offence against a law of the Commonwealth; or
- (d) the defendant knew that the offence referred to in paragraph 132.4(3)(a) is punishable by imprisonment for life or for a term of 5 years or more.

- (4) In a prosecution for an offence against subsection (1) in relation to:
- (a) the offence of burglary created by subsection 132.4(6); or
 - (b) the offence of aggravated burglary that relates to the offence of burglary created by subsection 132.4(6);

it is not necessary to prove that:

- (c) the defendant knew that the offence referred to in paragraph 132.4(6)(a) is an offence against a law of the Commonwealth, a State or a Territory; or

Section 132.8

- (d) the defendant knew that the offence referred to in paragraph 132.4(6)(a) is punishable by imprisonment for life or for a term of 5 years or more; or
 - (e) the defendant knew that the building was owned or occupied by a Commonwealth entity.
- (5) In this section:

property offence means:

- (a) robbery; or
- (b) aggravated robbery; or
- (c) burglary; or
- (d) aggravated burglary; or
- (e) an offence against subsection 132.8(1); or
- (f) an offence against section 134.1.

Note: It is an element of the offence of theft, and of each property offence, that the property belongs to a Commonwealth entity.

132.8 Dishonest taking or retention of property

Taking

- (1) A person is guilty of an offence if the person:
- (a) on a particular occasion, dishonestly takes one or more items of property belonging to a Commonwealth entity, where:
 - (i) the value or total value of the property is \$500 or more; or
 - (ii) the absence of the property from the possession, custody or control of the person who would otherwise have had possession, custody or control would be likely to cause substantial disruption to activities carried on by or on behalf of a Commonwealth entity; and
 - (b) does not have consent to do so from the person who has authority to give consent.

Penalty: Imprisonment for 2 years.

Schedule The Criminal Code

Chapter 7 The proper administration of Government

Part 7.2 Theft and other property offences

Division 132 Other property offences

Section 132.9

Retention

- (2) A person is guilty of an offence if the person:
- (a) on a particular occasion, takes one or more items of property belonging to a Commonwealth entity; and
 - (b) dishonestly retains any or all of those items; and
 - (c) does not have consent to the retention from the person who has authority to give consent; and
 - (d) either:
 - (i) at the time of the taking of the property, the value or total value of the property was \$500 or more; or
 - (ii) the absence of the property from the possession, custody or control of the person who would otherwise have had possession, custody or control is likely to cause substantial disruption to activities carried on by or on behalf of a Commonwealth entity.

Penalty: Imprisonment for 2 years.

132.9 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to each offence against this Division.

Part 7.3—Fraudulent conduct

Division 133—Preliminary

133.1 Definitions

In this Part:

account means an account (including a loan account, a credit card account or a similar account) with a bank or other financial institution.

deception means an intentional or reckless deception, whether by words or other conduct, and whether as to fact or as to law, and includes:

- (a) a deception as to the intentions of the person using the deception or any other person; and
- (b) conduct by a person that causes a computer, a machine or an electronic device to make a response that the person is not authorised to cause it to do.

Section 134.1

**Division 134—Obtaining property or a financial advantage
by deception**

134.1 Obtaining property by deception

- (1) A person is guilty of an offence if:
- (a) the person, by a deception, dishonestly obtains property belonging to another with the intention of permanently depriving the other of the property; and
 - (b) the property belongs to a Commonwealth entity.

Penalty: Imprisonment for 10 years.

- (2) Absolute liability applies to the paragraph (1)(b) element of the offence.

Obtaining property

- (3) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), a person (the **first person**) is taken to have **obtained** property if, and only if:
- (a) the first person obtains ownership, possession or control of it for himself or herself or for another person; or
 - (b) the first person enables ownership, possession or control of it to be retained by himself or herself; or
 - (c) the first person induces a third person to pass ownership, possession or control of it to another person; or
 - (d) the first person induces a third person to enable another person to retain ownership, possession or control of it; or
 - (e) subsection (9) or (10) applies.
- (4) The definition of **obtaining** in section 130.1 does not apply for the purposes of this section (or for the purposes of the application of section 132.1 to this section).
- (5) For the purposes of this section, a person's obtaining of property belonging to another may be dishonest even if the person or another person is willing to pay for the property.

Section 134.1

Intention of permanently depriving a person of property

- (6) For the purposes of this section, if:
- (a) a person obtains property belonging to another without meaning the other permanently to lose the thing itself; and
 - (b) the person's intention is to treat the thing as the person's own to dispose of regardless of the other's rights;
- the person has the intention of permanently depriving the other of it.
- (7) For the purposes of subsection (6), a borrowing or lending of a thing amounts to treating the thing as the borrower's or lender's own to dispose of regardless of another's rights if, and only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.
- (8) For the purposes of subsection (6), if:
- (a) a person has possession or control (lawfully or not) of property belonging to another; and
 - (b) the person parts with the property under a condition as to its return that the person may not be able to perform; and
 - (c) the parting is done for purposes of the person's own and without the other's authority;
- the parting is taken to amount to treating the property as the person's own to dispose of regardless of the other's rights.

Money transfers

- (9) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), if a person (the **first person**) causes an amount to be transferred from an account held by another person (the **second person**) to an account held by the first person:
- (a) the amount is taken to have been property that belonged to the second person; and
 - (b) the first person is taken to have obtained the property for himself or herself with the intention of permanently depriving the second person of the property.

Section 134.1

- (10) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), if a person (the *first person*) causes an amount to be transferred from an account held by another person (the *second person*) to an account held by a third person:
- (a) the amount is taken to have been property that belonged to the second person; and
 - (b) the first person is taken to have obtained the property for the third person with the intention of permanently depriving the second person of the property.
- (11) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), if:
- (a) a credit is made to an account (the *credited account*); and
 - (b) a debit is made to another account (the *debited account*); and
 - (c) either:
 - (i) the credit results from the debit; or
 - (ii) the debit results from the credit;
- the amount of the credit is taken to be transferred from the debited account to the credited account.
- (12) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), a person is taken to cause an amount to be transferred from an account if the person induces another person to transfer the amount from the account (whether or not the other person is the holder of the account).

General deficiency

- (13) A person may be convicted of an offence against this section involving all or any part of a general deficiency in money even though the deficiency is made up of any number of particular sums of money that were obtained over a period of time.
- (14) A person may be convicted of an offence against this section involving all or any part of a general deficiency in property other than money even though the deficiency is made up of any number of particular items of property that were obtained over a period of time.

Alternative verdicts

- (15) If, in a prosecution for an offence of theft, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against this section, the trier of fact may find the defendant not guilty of the offence of theft but guilty of the offence against this section, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.
- (16) If, in a prosecution for an offence against this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence of theft, the trier of fact may find the defendant not guilty of the offence against this section but guilty of the offence of theft, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

134.2 Obtaining a financial advantage by deception

- (1) A person is guilty of an offence if:
- (a) the person, by a deception, dishonestly obtains a financial advantage from another person; and
 - (b) the other person is a Commonwealth entity.

Penalty: Imprisonment for 10 years.

- (2) Absolute liability applies to the paragraph (1)(b) element of the offence.

134.3 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to each offence against this Division.

Section 135.1

Division 135—Other offences involving fraudulent conduct

135.1 General dishonesty

Obtaining a gain

- (1) A person is guilty of an offence if:
- (a) the person does anything with the intention of dishonestly obtaining a gain from another person; and
 - (b) the other person is a Commonwealth entity.

Penalty: Imprisonment for 5 years.

- (2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the other person was a Commonwealth entity.

Causing a loss

- (3) A person is guilty of an offence if:
- (a) the person does anything with the intention of dishonestly causing a loss to another person; and
 - (b) the other person is a Commonwealth entity.

Penalty: Imprisonment for 5 years.

- (4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the other person was a Commonwealth entity.

- (5) A person is guilty of an offence if:
- (a) the person dishonestly causes a loss, or dishonestly causes a risk of loss, to another person; and
 - (b) the first-mentioned person knows or believes that the loss will occur or that there is a substantial risk of the loss occurring; and
 - (c) the other person is a Commonwealth entity.

Penalty: Imprisonment for 5 years.

- (6) Absolute liability applies to the paragraph (5)(c) element of the offence.

Influencing a Commonwealth public official

- (7) A person is guilty of an offence if:
- (a) the person does anything with the intention of dishonestly influencing a public official in the exercise of the official's duties as a public official; and
 - (b) the public official is a Commonwealth public official; and
 - (c) the duties are duties as a Commonwealth public official.

Penalty: Imprisonment for 5 years.

- (8) In a prosecution for an offence against subsection (7), it is not necessary to prove that the defendant knew:
- (a) that the official was a Commonwealth public official; or
 - (b) that the duties were duties as a Commonwealth public official.

135.2 Obtaining financial advantage

- (1) A person is guilty of an offence if:
- (a) the person engages in conduct; and
 - (aa) as a result of that conduct, the person obtains a financial advantage for himself or herself from another person; and
 - (ab) the person knows or believes that he or she is not eligible to receive that financial advantage; and
 - (b) the other person is a Commonwealth entity.

Penalty: Imprisonment for 12 months.

- (1A) Absolute liability applies to the paragraph (1)(b) element of the offence.
- (2) A person is guilty of an offence if:
- (a) the person engages in conduct; and
 - (aa) as a result of that conduct, the person obtains a financial advantage for another person from a third person; and
 - (ab) the person knows or believes that the other person is not eligible to receive that financial advantage; and

Section 135.4

(b) the third person is a Commonwealth entity.

Penalty: Imprisonment for 12 months.

- (2A) Absolute liability applies to the paragraph (2)(b) element of the offence.
- (3) For the purposes of subsection (2), a person is taken to have obtained a financial advantage for another person from a Commonwealth entity if the first-mentioned person induces the Commonwealth entity to do something that results in the other person obtaining the financial advantage.
- (4) The definition of *obtaining* in section 130.1 does not apply to this section.

135.4 Conspiracy to defraud

Obtaining a gain

- (1) A person is guilty of an offence if:
- (a) the person conspires with another person with the intention of dishonestly obtaining a gain from a third person; and
 - (b) the third person is a Commonwealth entity.

Penalty: Imprisonment for 10 years.

- (2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the third person was a Commonwealth entity.

Causing a loss

- (3) A person is guilty of an offence if:
- (a) the person conspires with another person with the intention of dishonestly causing a loss to a third person; and
 - (b) the third person is a Commonwealth entity.

Penalty: Imprisonment for 10 years.

- (4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the third person was a Commonwealth entity.

- (5) A person is guilty of an offence if:
- (a) the person conspires with another person to dishonestly cause a loss, or to dishonestly cause a risk of loss, to a third person; and
 - (b) the first-mentioned person knows or believes that the loss will occur or that there is a substantial risk of the loss occurring; and
 - (c) the third person is a Commonwealth entity.

Penalty: Imprisonment for 10 years.

- (6) In a prosecution for an offence against subsection (5), it is not necessary to prove that the defendant knew that the third person was a Commonwealth entity.

Influencing a Commonwealth public official

- (7) A person is guilty of an offence if:
- (a) the person conspires with another person with the intention of dishonestly influencing a public official in the exercise of the official's duties as a public official; and
 - (b) the public official is a Commonwealth public official; and
 - (c) the duties are duties as a Commonwealth public official.

Penalty: Imprisonment for 10 years.

- (8) In a prosecution for an offence against subsection (7), it is not necessary to prove that the defendant knew:
- (a) that the official was a Commonwealth public official; or
 - (b) that the duties were duties as a Commonwealth public official.

General provisions

- (9) For a person to be guilty of an offence against this section:
- (a) the person must have entered into an agreement with one or more other persons; and
 - (b) the person and at least one other party to the agreement must have intended to do the thing pursuant to the agreement; and
 - (c) the person or at least one other party to the agreement must have committed an overt act pursuant to the agreement.

Section 135.5

- (10) A person may be found guilty of an offence against this section even if:
- (a) obtaining the gain, causing the loss, causing the risk of loss, or influencing the Commonwealth public official, as the case may be, is impossible; or
 - (b) the only other party to the agreement is a body corporate; or
 - (c) each other party to the agreement is a person who is not criminally responsible; or
 - (d) subject to subsection (11), all other parties to the agreement have been acquitted of the offence.
- (11) A person cannot be found guilty of an offence against this section if:
- (a) all other parties to the agreement have been acquitted of such an offence; and
 - (b) a finding of guilt would be inconsistent with their acquittal.
- (12) A person cannot be found guilty of an offence against this section if, before the commission of an overt act pursuant to the agreement, the person:
- (a) withdrew from the agreement; and
 - (b) took all reasonable steps to prevent the doing of the thing.
- (13) A court may dismiss a charge of an offence against this section if the court thinks that the interests of justice require the court to do so.
- (14) Proceedings for an offence against this section must not be commenced without the consent of the Director of Public Prosecutions. However, before the necessary consent has been given, a person may be:
- (a) arrested for an offence against this section; or
 - (b) charged with an offence against this section; or
 - (c) remanded in custody or released on bail in connection with an offence against this section.

135.5 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to each offence against this Division.

Part 7.4—False or misleading statements

Division 136—False or misleading statements in applications

136.1 False or misleading statements in applications

Knowledge

- (1) A person is guilty of an offence if:
- (a) the person makes a statement (whether orally, in a document or in any other way); and
 - (b) the person does so knowing that the statement:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the statement is misleading; and
 - (c) the statement is made in, or in connection with:
 - (i) an application for a licence, permit or authority; or
 - (ii) an application for registration; or
 - (iii) an application or claim for a benefit; and
 - (d) any of the following subparagraphs applies:
 - (i) the statement is made to a Commonwealth entity;
 - (ii) the statement is made to a person who is exercising powers or performing functions under, or in connection with, a law of the Commonwealth;
 - (iii) the statement is made in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

- (1A) Absolute liability applies to each of the subparagraph (1)(d)(i), (ii) and (iii) elements of the offence.
- (2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the statement is not false or misleading in a material particular.

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

Schedule The Criminal Code

Chapter 7 The proper administration of Government

Part 7.4 False or misleading statements

Division 136 False or misleading statements in applications

Section 136.1

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

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

Recklessness

- (4) A person is guilty of an offence if:
- (a) the person makes a statement (whether orally, in a document or in any other way); and
 - (b) the person does so reckless as to whether the statement:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the statement is misleading; and
 - (c) the statement is made in, or in connection with:
 - (i) an application for a licence, permit or authority; or
 - (ii) an application for registration; or
 - (iii) an application or claim for a benefit; and
 - (d) any of the following subparagraphs applies:
 - (i) the statement is made to a Commonwealth entity;
 - (ii) the statement is made to a person who is exercising powers or performing functions under, or in connection with, a law of the Commonwealth;
 - (iii) the statement is made in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 6 months.

- (4A) Absolute liability applies to each of the subparagraph (4)(d)(i), (ii) and (iii) elements of the offence.

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

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

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

Section 136.1

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

Alternative verdicts

- (7) If, in a prosecution for an offence against subsection (1), the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against subsection (4), the trier of fact may find the defendant not guilty of the offence against subsection (1) but guilty of the offence against subsection (4), so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Geographical jurisdiction

- (8) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1) or (4).

Definition

- (9) In this section:

benefit includes any advantage and is not limited to property.

Section 137.1

Division 137—False or misleading information or documents

137.1 False or misleading information

- (1) A person is guilty of an offence if:
- (a) the person gives information to another person; and
 - (b) the person does so knowing that the information:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the information is misleading; and
 - (c) any of the following subparagraphs applies:
 - (i) the information is given to a Commonwealth entity;
 - (ii) the information is given to a person who is exercising powers or performing functions under, or in connection with, a law of the Commonwealth;
 - (iii) the information is given in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

- (1A) Absolute liability applies to each of the subparagraph (1)(c)(i), (ii) and (iii) elements of the offence.

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

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

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

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

- (4) Subsection (1) does not apply as a result of subparagraph (1)(c)(i) if, before the information was given by a person to the Commonwealth entity, the Commonwealth entity did not take

Section 137.2

reasonable steps to inform the person of the existence of the offence against subsection (1).

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

- (5) Subsection (1) does not apply as a result of subparagraph (1)(c)(ii) if, before the information was given by a person (the *first person*) to the person mentioned in that subparagraph (the *second person*), the second person did not take reasonable steps to inform the first person of the existence of the offence against subsection (1).

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

- (6) For the purposes of subsections (4) and (5), it is sufficient if the following form of words is used:
“Giving false or misleading information is a serious offence”.

137.2 False or misleading documents

- (1) A person is guilty of an offence if:
- (a) the person produces a document to another person; and
 - (b) the person does so knowing that the document is false or misleading; and
 - (c) the document is produced in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

- (2) Subsection (1) does not apply if the document is not false or misleading in a material particular.

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

- (3) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:
- (a) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and

Schedule The Criminal Code

Chapter 7 The proper administration of Government

Part 7.4 False or misleading statements

Division 137 False or misleading information or documents

Section 137.3

- (b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

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

137.3 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to each offence against this Division.

Part 7.5—Unwarranted demands

Division 138—Preliminary

138.1 Unwarranted demand with menaces

- (1) For the purposes of this Part, a person (the *first person*) makes an *unwarranted demand with menaces* of another person if, and only if:
 - (a) the first person makes a demand with menaces of the other person; and
 - (b) the first person does not believe that he or she has reasonable grounds for making the demand; and
 - (c) the first person does not reasonably believe that the use of the menaces is a proper means of reinforcing the demand.
- (2) This Part applies to a demand whether or not it is for property.
- (3) This Part applies to a demand with menaces, whether or not the menaces relate to conduct to be engaged in by the person making the demand.

138.2 Menaces

- (1) For the purposes of this Part, *menaces* includes:
 - (a) a threat (whether express or implied) of conduct that is detrimental or unpleasant to another person; or
 - (b) a general threat of detrimental or unpleasant conduct that is implied because of the status, office or position of the maker of the threat.

Threat against an individual

- (2) For the purposes of this Part, a threat against an individual is taken not to be *menaces* unless:
 - (a) both:
 - (i) the threat would be likely to cause the individual to act unwillingly; and

Schedule The Criminal Code

Chapter 7 The proper administration of Government

Part 7.5 Unwarranted demands

Division 138 Preliminary

Section 138.2

- (ii) the maker of the threat is aware of the vulnerability of the individual to the threat; or
- (b) the threat would be likely to cause a person of normal stability and courage to act unwillingly.

Threat against a person who is not an individual

- (3) For the purposes of this Part, a threat against a person who is not an individual is taken not to be *menaces* unless:
 - (a) the threat would ordinarily cause an unwilling response; or
 - (b) the threat would be likely to cause an unwilling response because of a particular vulnerability of which the maker of the threat is aware.

Division 139—Unwarranted demands

139.1 Unwarranted demands of a Commonwealth public official

A person is guilty of an offence if:

- (a) the person makes an unwarranted demand with menaces of another person; and
- (b) the demand or the menaces are directly or indirectly related to:
 - (i) the other person's capacity as a Commonwealth public official; or
 - (ii) any influence the other person has in the other person's capacity as a Commonwealth public official; and
- (c) the first-mentioned person does so with the intention of:
 - (i) obtaining a gain; or
 - (ii) causing a loss; or
 - (iii) influencing the official in the exercise of the official's duties as a Commonwealth public official.

Penalty: Imprisonment for 12 years.

139.2 Unwarranted demands made by a Commonwealth public official

A Commonwealth public official is guilty of an offence if:

- (a) the official makes an unwarranted demand with menaces of another person; and
- (b) the demand or the menaces are directly or indirectly related to:
 - (i) the official's capacity as a Commonwealth public official; or
 - (ii) any influence the official has in the official's capacity as a Commonwealth public official; and
- (c) the official does so with the intention of:
 - (i) obtaining a gain; or
 - (ii) causing a loss; or

Schedule The Criminal Code

Chapter 7 The proper administration of Government

Part 7.5 Unwarranted demands

Division 139 Unwarranted demands

Section 139.3

- (iii) influencing another Commonwealth public official in the exercise of the other official's duties as a Commonwealth public official.

Penalty: Imprisonment for 12 years.

139.3 Geographical jurisdiction

Section 15.3 (extended geographical jurisdiction—category C) applies to each offence against this Division.

Part 7.6—Bribery and related offences

Division 140—Preliminary

140.1 Definition

In this Part:

benefit includes any advantage and is not limited to property.

140.2 Obtaining

- (1) For the purposes of this Part, a person is taken to have obtained a benefit for another person if the first-mentioned person induces a third person to do something that results in the other person obtaining the benefit.
- (2) The definition of *obtaining* in section 130.1 does not apply to this Part.

Division 141—Bribery

141.1 Bribery of a Commonwealth public official

Giving a bribe

- (1) A person is guilty of an offence if:
- (a) the person dishonestly:
 - (i) provides a benefit to another person; or
 - (ii) causes a benefit to be provided to another person; or
 - (iii) offers to provide, or promises to provide, a benefit to another person; or
 - (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and
 - (b) the person does so with the intention of influencing a public official (who may be the other person) in the exercise of the official's duties as a public official; and
 - (c) the public official is a Commonwealth public official; and
 - (d) the duties are duties as a Commonwealth public official.

Penalty: Imprisonment for 10 years.

- (2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew:
- (a) that the official was a Commonwealth public official; or
 - (b) that the duties were duties as a Commonwealth public official.

Receiving a bribe

- (3) A Commonwealth public official is guilty of an offence if:
- (a) the official dishonestly:
 - (i) asks for a benefit for himself, herself or another person; or
 - (ii) receives or obtains a benefit for himself, herself or another person; or

Section 141.1

- (iii) agrees to receive or obtain a benefit for himself, herself or another person; and
- (b) the official does so with the intention:
 - (i) that the exercise of the official's duties as a Commonwealth public official will be influenced; or
 - (ii) of inducing, fostering or sustaining a belief that the exercise of the official's duties as a Commonwealth public official will be influenced.

Penalty: Imprisonment for 10 years.

Geographical jurisdiction

- (4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1) or (3).

Division 142—Offences relating to bribery

142.1 Corrupting benefits given to, or received by, a Commonwealth public official

Giving a corrupting benefit

- (1) A person is guilty of an offence if:
- (a) the person dishonestly:
 - (i) provides a benefit to another person; or
 - (ii) causes a benefit to be provided to another person; or
 - (iii) offers to provide, or promises to provide, a benefit to another person; or
 - (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and
 - (b) the receipt, or expectation of the receipt, of the benefit would tend to influence a public official (who may be the other person) in the exercise of the official's duties as a public official; and
 - (c) the public official is a Commonwealth public official; and
 - (d) the duties are duties as a Commonwealth public official.

Penalty: Imprisonment for 5 years.

- (2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew:
- (a) that the official was a Commonwealth public official; or
 - (b) that the duties were duties as a Commonwealth public official.

Receiving a corrupting benefit

- (3) A Commonwealth public official is guilty of an offence if:
- (a) the official dishonestly:
 - (i) asks for a benefit for himself, herself or another person;
- or

Section 142.2

- (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 receipt, or expectation of the receipt, of the benefit would tend to influence a Commonwealth public official (who may be the first-mentioned official) in the exercise of the official's duties as a Commonwealth public official.

Penalty: Imprisonment for 5 years.

Benefit in the nature of a reward

- (4) For the purposes of subsections (1) and (3), it is immaterial whether the benefit is in the nature of a reward.

142.2 Abuse of public office

- (1) A Commonwealth public official is guilty of an offence if:
 - (a) the official:
 - (i) exercises any influence that the official has in the official's capacity as a Commonwealth public official; or
 - (ii) engages in any conduct in the exercise of the official's duties as a Commonwealth public official; or
 - (iii) uses any information that the official has obtained in the official's capacity as a Commonwealth public official; and
 - (b) the official does so with the intention of:
 - (i) dishonestly obtaining a benefit for himself or herself or for another person; or
 - (ii) dishonestly causing a detriment to another person.

Penalty: Imprisonment for 5 years.

- (2) A person is guilty of an offence if:
 - (a) the person has ceased to be a Commonwealth public official in a particular capacity; and
 - (b) the person uses any information that the person obtained in that capacity as a Commonwealth public official; and

Schedule The Criminal Code

Chapter 7 The proper administration of Government

Part 7.6 Bribery and related offences

Division 142 Offences relating to bribery

Section 142.3

(c) the person does so with the intention of:

- (i) dishonestly obtaining a benefit for himself or herself or for another person; or
- (ii) dishonestly causing a detriment to another person.

Penalty: Imprisonment for 5 years.

(3) Paragraph (2)(a) applies to a cessation by a person:

- (a) whether or not the person continues to be a Commonwealth public official in some other capacity; and
- (b) whether the cessation occurred before, at or after the commencement of this section.

142.3 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to each offence against this Division.

Part 7.7—Forgery and related offences

Division 143—Preliminary

143.1 Definitions

(1) In this Part:

document includes:

- (a) any paper or other material on which there is writing; or
- (b) any paper or other material on which there are marks, figures, symbols or perforations that are:
 - (i) capable of being given a meaning by persons qualified to interpret them; or
 - (ii) capable of being responded to by a computer, a machine or an electronic device; or
- (c) any article or material (for example, a disk or a tape) from which information is capable of being reproduced with or without the aid of any other article or device.

false Commonwealth document has the meaning given by section 143.3.

false document has the meaning given by section 143.2.

information means information, whether in the form of data, text, sounds, images or in any other form.

- (2) The following are examples of things covered by the definition of *document* in subsection (1):
- (a) a credit card;
 - (b) a debit card;
 - (c) a card by means of which property can be obtained.

143.2 False documents

- (1) For the purposes of this Part, a document is a *false document* if, and only if:

Section 143.2

- (a) the document, or any part of the document:
 - (i) purports to have been made in the form in which it is made by a person who did not make it in that form; or
 - (ii) purports to have been made in the form in which it is made on the authority of a person who did not authorise its making in that form; or
 - (b) the document, or any part of the document:
 - (i) purports to have been made in the terms in which it is made by a person who did not make it in those terms; or
 - (ii) purports to have been made in the terms in which it is made on the authority of a person who did not authorise its making in those terms; or
 - (c) the document, or any part of the document:
 - (i) purports to have been altered in any respect by a person who did not alter it in that respect; or
 - (ii) purports to have been altered in any respect on the authority of a person who did not authorise its alteration in that respect; or
 - (d) the document, or any part of the document:
 - (i) purports to have been made or altered by a person who did not exist; or
 - (ii) purports to have been made or altered on the authority of a person who did not exist; or
 - (e) the document, or any part of the document, purports to have been made or altered on a date on which, at a time at which, at a place at which, or otherwise in circumstances in which, it was not made or altered.
- (2) For the purposes of this Part, a person is taken to *make* a false document if the person alters a document so as to make it a false document (whether or not it was already a false document before the alteration).
- (3) This section has effect as if a document that purports to be a true copy of another document were the original document.

143.3 False Commonwealth documents

- (1) For the purposes of this Part, a document is a *false Commonwealth document* if, and only if:
- (a) the document, or any part of the document:
 - (i) purports to have been made in the form in which it is made by a Commonwealth entity, or a Commonwealth public official, who did not make it in that form; or
 - (ii) purports to have been made in the form in which it is made on the authority of a Commonwealth entity, or a Commonwealth public official, who did not authorise its making in that form; or
 - (b) the document, or any part of the document:
 - (i) purports to have been made in the terms in which it is made by a Commonwealth entity, or a Commonwealth public official, who did not make it in those terms; or
 - (ii) purports to have been made in the terms in which it is made on the authority of a Commonwealth entity, or a Commonwealth public official, who did not authorise its making in those terms; or
 - (c) the document, or any part of the document:
 - (i) purports to have been altered in any respect by a Commonwealth entity, or a Commonwealth public official, who did not alter it in that respect; or
 - (ii) purports to have been altered in any respect on the authority of a Commonwealth entity, or a Commonwealth public official, who did not authorise its alteration in that respect; or
 - (d) the document, or any part of the document:
 - (i) purports to have been made or altered by a Commonwealth entity, or a Commonwealth public official, who did not exist; or
 - (ii) purports to have been made or altered on the authority of a Commonwealth entity, or a Commonwealth public official, who did not exist; or
 - (e) the document, or any part of the document, purports to have been made or altered by a Commonwealth entity, or a Commonwealth public official, on a date on which, at a time

Section 143.4

at which, at a place at which, or otherwise in circumstances in which, it was not made or altered.

- (2) For the purposes of this Part, a person is taken to *make* a false Commonwealth document if the person alters a document so as to make it a false Commonwealth document (whether or not it was already a false Commonwealth document before the alteration).
- (3) This section has effect as if a document that purports to be a true copy of another document were the original document.
- (4) A reference in this section to a *Commonwealth public official* is a reference to a person in the person's capacity as a Commonwealth public official.

143.4 Inducing acceptance of false documents

If it is necessary for the purposes of this Part to prove an intent to induce a person in the person's capacity as a public official to accept a false document as genuine, it is not necessary to prove that the defendant intended so to induce a particular person in the person's capacity as a public official.

Division 144—Forgery

144.1 Forgery

- (1) A person is guilty of an offence if:
- (a) the person makes a false document with the intention that the person or another will use it:
 - (i) to dishonestly induce a third person in the third person's capacity as a public official to accept it as genuine; and
 - (ii) if it is so accepted, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and
 - (b) the capacity is a capacity as a Commonwealth public official.

Penalty: Imprisonment for 10 years.

- (2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the capacity was a capacity as a Commonwealth public official.
- (3) A person is guilty of an offence if:
- (a) the person makes a false document with the intention that the person or another will use it:
 - (i) to dishonestly cause a computer, a machine or an electronic device to respond to the document as if the document were genuine; and
 - (ii) if it is so responded to, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and
 - (b) the response is in connection with the operations of a Commonwealth entity.

Penalty: Imprisonment for 10 years.

- (4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the response was in connection with the operations of a Commonwealth entity.
- (5) A person is guilty of an offence if:

Section 144.1

- (a) the person makes a false document with the intention that the person or another will use it:
 - (i) to dishonestly induce a third person to accept it as genuine; and
 - (ii) if it is so accepted, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and
- (b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.

- (6) In a prosecution for an offence against subsection (5), it is not necessary to prove that the defendant knew that the false document was a false Commonwealth document.
- (7) A person is guilty of an offence if:
 - (a) the person makes a false document with the intention that the person or another will use it:
 - (i) to dishonestly cause a computer, a machine or an electronic device to respond to the document as if the document were genuine; and
 - (ii) if it is so responded to, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and
 - (b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.

- (8) In a prosecution for an offence against subsection (7), it is not necessary to prove that the defendant knew that the false document was a false Commonwealth document.
- (9) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1), (3), (5) or (7).

Division 145—Offences relating to forgery

145.1 Using forged document

- (1) A person is guilty of an offence if:
- (a) the person knows that a document is a false document and uses it with the intention of:
 - (i) dishonestly inducing another person in the other person's capacity as a public official to accept it as genuine; and
 - (ii) if it is so accepted, dishonestly obtaining a gain, dishonestly causing a loss, or dishonestly influencing the exercise of a public duty or function; and
 - (b) the capacity is a capacity as a Commonwealth public official.

Penalty: Imprisonment for 10 years.

- (2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the capacity was a capacity as a Commonwealth public official.

- (3) A person is guilty of an offence if:
- (a) the person knows that a document is a false document and uses it with the intention of:
 - (i) dishonestly causing a computer, a machine or an electronic device to respond to the document as if the document were genuine; and
 - (ii) if it is so responded to, dishonestly obtaining a gain, dishonestly causing a loss, or dishonestly influencing the exercise of a public duty or function; and
 - (b) the response is in connection with the operations of a Commonwealth entity.

Penalty: Imprisonment for 10 years.

- (4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the response was in connection with the operations of a Commonwealth entity.

Section 145.2

- (5) A person is guilty of an offence if:
- (a) the person knows that a document is a false document and uses it with the intention of:
 - (i) dishonestly inducing another person to accept it as genuine; and
 - (ii) if it is so accepted, dishonestly obtaining a gain, dishonestly causing a loss, or dishonestly influencing the exercise of a public duty or function; and
 - (b) the false document is a false Commonwealth document.
- Penalty: Imprisonment for 10 years.
- (6) In a prosecution for an offence against subsection (5), it is not necessary to prove that the defendant knew that the false document was a false Commonwealth document.
- (7) A person is guilty of an offence if:
- (a) the person knows that a document is a false document and uses it with the intention of:
 - (i) dishonestly causing a computer, a machine or an electronic device to respond to the document as if the document were genuine; and
 - (ii) if it is so responded to, dishonestly obtaining a gain, dishonestly causing a loss, or dishonestly influencing the exercise of a public duty or function; and
 - (b) the false document is a false Commonwealth document.
- Penalty: Imprisonment for 10 years.
- (8) In a prosecution for an offence against subsection (7), it is not necessary to prove that the defendant knew that the false document was a false Commonwealth document.

145.2 Possession of forged document

- (1) A person is guilty of an offence if:
- (a) the person knows that a document is a false document and has it in his or her possession with the intention that the person or another will use it:

Section 145.2

- (i) to dishonestly induce a third person in the third person's capacity as a public official to accept it as genuine; and
 - (ii) if it is so accepted, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and
- (b) the capacity is a capacity as a Commonwealth public official.

Penalty: Imprisonment for 10 years.

- (2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the capacity was a capacity as a Commonwealth public official.
- (3) A person is guilty of an offence if:
- (a) the person knows that a document is a false document and has it in his or her possession with the intention that the person or another will use it:
 - (i) to dishonestly cause a computer, a machine or an electronic device to respond to the document as if the document were genuine; and
 - (ii) if it is so responded to, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and
 - (b) the response is in connection with the operations of a Commonwealth entity.

Penalty: Imprisonment for 10 years.

- (4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the response was in connection with the operations of a Commonwealth entity.
- (5) A person is guilty of an offence if:
- (a) the person knows that a document is a false document and has it in his or her possession with the intention that the person or another will use it:
 - (i) to dishonestly induce a third person to accept it as genuine; and
 - (ii) if it is so accepted, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

Schedule The Criminal Code

Chapter 7 The proper administration of Government

Part 7.7 Forgery and related offences

Division 145 Offences relating to forgery

Section 145.3

(b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.

(6) In a prosecution for an offence against subsection (5), it is not necessary to prove that the defendant knew that the false document was a false Commonwealth document.

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

(a) the person knows that a document is a false document and has it in his or her possession with the intention that the person or another will use it:

(i) to dishonestly cause a computer, a machine or an electronic device to respond to the document as if the document were genuine; and

(ii) if it is so responded to, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.

(8) In a prosecution for an offence against subsection (7), it is not necessary to prove that the defendant knew that the false document was a false Commonwealth document.

145.3 Possession, making or adaptation of devices etc. for making forgeries

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

(a) the person knows that a device, material or other thing is designed or adapted for the making of a false document (whether or not the device, material or thing is designed or adapted for another purpose); and

(b) the person has the device, material or thing in his or her possession with the intention that the person or another person will use it to commit an offence against section 144.1.

Penalty: Imprisonment for 10 years.

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

Section 145.3

- (a) the person makes or adapts a device, material or other thing;
and
- (b) the person knows that the device, material or other thing is
designed or adapted for the making of a false document
(whether or not the device, material or thing is designed or
adapted for another purpose); and
- (c) the person makes or adapts the device, material or thing with
the intention that the person or another person will use it to
commit an offence against section 144.1.

Penalty: Imprisonment for 10 years.

- (3) A person is guilty of an offence if:
- (a) the person knows that a device, material or other thing is
designed or adapted for the making of a false Commonwealth
document (whether or not the device, material or thing is
designed or adapted for another purpose); and
 - (b) the person has the device, material or thing in his or her
possession; and
 - (c) the person does not have a reasonable excuse for having the
device, material or thing in his or her possession.

Penalty: Imprisonment for 2 years.

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

- (4) A person is guilty of an offence if:
- (a) the person makes or adapts a device, material or other thing;
and
 - (b) the person knows that the device, material or other thing is
designed or adapted for the making of a false Commonwealth
document (whether or not the device, material or thing is
designed or adapted for another purpose).

Penalty: Imprisonment for 2 years.

Note: See also section 10.5 (lawful authority).

Section 145.4

145.4 Falsification of documents etc.

- (1) A person is guilty of an offence if:
- (a) the person dishonestly damages, destroys, alters, conceals or falsifies a document; and
 - (b) the document is:
 - (i) kept, retained or issued for the purposes of a law of the Commonwealth; or
 - (ii) made by a Commonwealth entity or a person in the capacity of a Commonwealth public official; or
 - (iii) held by a Commonwealth entity or a person in the capacity of a Commonwealth public official; and
 - (c) the first-mentioned person does so with the intention of:
 - (i) obtaining a gain; or
 - (ii) causing a loss.

Penalty: Imprisonment for 7 years.

- (1A) Absolute liability applies to the paragraph (1)(b) element of the offence.

- (2) A person is guilty of an offence if:
- (a) the person dishonestly damages, destroys, alters, conceals or falsifies a document; and
 - (b) the person does so with the intention of:
 - (i) obtaining a gain from another person; or
 - (ii) causing a loss to another person; and
 - (c) the other person is a Commonwealth entity.

Penalty: Imprisonment for 7 years.

- (3) In a prosecution for an offence against subsection (2), it is not necessary to prove that the defendant knew that the other person was a Commonwealth entity.

145.5 Giving information derived from false or misleading documents

- (1) A person is guilty of an offence if:
- (a) the person dishonestly gives information to another person; and
 - (b) the information was derived, directly or indirectly, from a document that, to the knowledge of the first-mentioned person, is false or misleading in a material particular; and
 - (c) the document is:
 - (i) kept, retained or issued for the purposes of a law of the Commonwealth; or
 - (ii) made by a Commonwealth entity or a person in the capacity of a Commonwealth public official; or
 - (iii) held by a Commonwealth entity or a person in the capacity of a Commonwealth public official; and
 - (d) the first-mentioned person does so with the intention of:
 - (i) obtaining a gain; or
 - (ii) causing a loss.

Penalty: Imprisonment for 7 years.

- (1A) Absolute liability applies to the paragraph (1)(c) element of the offence.

- (2) A person is guilty of an offence if:
- (a) the person dishonestly gives information to another person; and
 - (b) the information was derived, directly or indirectly, from a document that, to the knowledge of the first-mentioned person, is false or misleading in a material particular; and
 - (c) the first-mentioned person does so with the intention of:
 - (i) obtaining a gain from another person; or
 - (ii) causing a loss to another person; and
 - (d) the other person is a Commonwealth entity.

Penalty: Imprisonment for 7 years.

Schedule The Criminal Code

Chapter 7 The proper administration of Government

Part 7.7 Forgery and related offences

Division 145 Offences relating to forgery

Section 145.6

- (3) In a prosecution for an offence against subsection (2), it is not necessary to prove that the defendant knew that the other person was a Commonwealth entity.

145.6 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to each offence against this Division.

Part 7.8—Causing harm to, and impersonation and obstruction of, Commonwealth public officials

Division 146—Preliminary

146.1 Definitions

In this Part:

Commonwealth law enforcement officer means a person who is:

- (a) a member or special member of the Australian Federal Police; or
- (b) a member of the Board of the Australian Crime Commission established under section 7B of the *Australian Crime Commission Act 2002*; or
- (ba) an examiner (within the meaning of that Act); or
- (c) a member of the staff of the ACC (within the meaning of that Act); or
- (d) the Chief Executive Officer of Customs; or
- (e) a person employed in the Australian Customs Service.

fear includes apprehension.

harm means:

- (a) physical harm (whether temporary or permanent); or
- (b) harm to a person's mental health (whether temporary or permanent);

but does not include being subjected to a force or impact that is within the limits of what is reasonably acceptable as incidental to:

- (c) social interaction; or
- (d) life in the community.

Schedule The Criminal Code

Chapter 7 The proper administration of Government

Part 7.8 Causing harm to, and impersonation and obstruction of, Commonwealth public officials

Division 146 Preliminary

Section 146.2

harm to a person's mental health includes significant psychological harm to the person, but does not include a reference to ordinary emotional reactions (for example, distress, grief, fear or anger).

physical harm includes:

- (a) unconsciousness; and
- (b) pain; and
- (c) disfigurement; and
- (d) infection with a disease; and
- (e) any physical contact with a person that the person might reasonably object to in the circumstances (whether or not the person was aware of it at the time).

serious harm means any harm (including the cumulative effect of more than one harm) that:

- (a) endangers, or is likely to endanger, a person's life; or
- (b) is, or is likely to be, significant and longstanding.

146.2 Causing harm

For the purposes of this Part, a person's conduct is taken to cause harm if it substantially contributes to harm.

Division 147—Causing harm to Commonwealth public officials

147.1 Causing harm to a Commonwealth public official etc.

Causing harm to a Commonwealth public official

- (1) A person (the *first person*) is guilty of an offence if:
- (a) the first person engages in conduct; and
 - (b) the first person's conduct causes harm to a public official; and
 - (c) the first person intends that his or her conduct cause harm to the official; and
 - (d) the harm is caused without the consent of the official; and
 - (e) the first person engages in his or her conduct because of:
 - (i) the official's status as a public official; or
 - (ii) any conduct engaged in by the official in the official's capacity as a public official; and
 - (ea) the public official is a Commonwealth public official; and
 - (eb) if subparagraph (e)(i) applies—the status mentioned in that subparagraph was status as a Commonwealth public official; and
 - (ec) if subparagraph (e)(ii) applies—the conduct mentioned in that subparagraph was engaged in by the official in the official's capacity as a Commonwealth public official.

Penalty:

- (f) if the official is a Commonwealth judicial officer or a Commonwealth law enforcement officer—imprisonment for 13 years; or
 - (g) in any other case—imprisonment for 10 years.
- (1A) Absolute liability applies to the paragraphs (1)(ea), (eb) and (ec) elements of the offence.

Schedule The Criminal Code

Chapter 7 The proper administration of Government

Part 7.8 Causing harm to, and impersonation and obstruction of, Commonwealth public officials

Division 147 Causing harm to Commonwealth public officials

Section 147.1

(1B) If:

(a) a person is charged with an offence against subsection (1);
and

(b) the public official concerned is a Commonwealth judicial officer or a Commonwealth law enforcement officer;

a court of summary jurisdiction may, with the consent of the defendant and the prosecutor and if the court is satisfied that it is proper to do so, determine the charge summarily.

(1C) If a court of summary jurisdiction convicts a person of an offence against subsection (1) in accordance with subsection (1B), the penalty that the court may impose is a sentence of imprisonment not exceeding 2 years or a fine not exceeding 120 penalty units, or both.

Causing harm to a former Governor-General, former Minister or former Parliamentary Secretary

(2) A person (the **first person**) is guilty of an offence if:

(a) the first person engages in conduct; and

(b) the first person's conduct causes harm to another person; and

(c) the other person is a former Governor-General, a former Minister or a former Parliamentary Secretary; and

(d) the first person intends that his or her conduct cause harm to the other person; and

(e) the harm is caused without the consent of the other person;
and

(f) the first person engages in his or her conduct because of:

(i) the other person's status as a former Governor-General, former Minister or former Parliamentary Secretary; or

(ii) any conduct engaged in by the other person in the other person's former capacity as a Governor-General, Minister or Parliamentary Secretary.

Penalty: Imprisonment for 10 years.

147.2 Threatening to cause harm to a Commonwealth public official etc.

Threatening to cause serious harm

- (1) A person (the *first person*) is guilty of an offence if:
- (a) the first person makes to another person (the *second person*) a threat to cause serious harm to the second person or to a third person; and
 - (b) the second person or the third person is a public official; and
 - (c) the first person:
 - (i) intends the second person to fear that the threat will be carried out; or
 - (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
 - (d) the first person makes the threat because of:
 - (i) the official's status as a public official; or
 - (ii) any conduct engaged in by the official in the official's capacity as a public official; and
 - (da) the official is a Commonwealth public official; and
 - (db) if subparagraph (d)(i) applies—the status mentioned in that subparagraph was status as a Commonwealth public official; and
 - (dc) if subparagraph (d)(ii) applies—the conduct mentioned in that subparagraph was engaged in by the official in the official's capacity as a Commonwealth public official.

Penalty:

- (e) if the official is a Commonwealth judicial officer or a Commonwealth law enforcement officer—imprisonment for 9 years; or
 - (f) in any other case—imprisonment for 7 years.
- (1A) Absolute liability applies to the paragraphs (1)(da), (db) and (dc) elements of the offence.

Schedule The Criminal Code

Chapter 7 The proper administration of Government

Part 7.8 Causing harm to, and impersonation and obstruction of, Commonwealth public officials

Division 147 Causing harm to Commonwealth public officials

Section 147.2

Threatening to cause harm

- (2) A person (the **first person**) is guilty of an offence if:
- (a) the first person makes to another person (the **second person**) a threat to cause harm to the second person or to a third person; and
 - (b) the second person or the third person is a public official; and
 - (c) the first person:
 - (i) intends the second person to fear that the threat will be carried out; or
 - (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
 - (d) the first person makes the threat because of:
 - (i) the official's status as a public official; or
 - (ii) any conduct engaged in by the official in the official's capacity as a public official; and
 - (e) the official is a Commonwealth public official; and
 - (f) if subparagraph (d)(i) applies—the status mentioned in that subparagraph was status as a Commonwealth public official; and
 - (g) if subparagraph (d)(ii) applies—the conduct mentioned in that subparagraph was engaged in by the official in the official's capacity as a Commonwealth public official.

Penalty: Imprisonment for 2 years

- (2A) Absolute liability applies to the paragraphs (2)(e), (f) and (g) elements of the offence.

Threatening to cause serious harm to a former Governor-General, former Minister or former Parliamentary Secretary

- (3) A person (the **first person**) is guilty of an offence if:
- (a) the first person makes to another person (the **second person**) a threat to cause serious harm to the second person or to a third person; and
 - (b) the second person or the third person is a former Governor-General, a former Minister or a former Parliamentary Secretary; and

Section 147.3

- (c) the first person:
 - (i) intends the second person to fear that the threat will be carried out; or
 - (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
- (d) the first person makes the threat because of:
 - (i) the second or third person's status as a former Governor-General, a former Minister or a former Parliamentary Secretary; or
 - (ii) any conduct engaged in by the second or third person in the second or third person's former capacity as a Governor-General, a Minister or a Parliamentary Secretary.

Penalty: Imprisonment for 7 years.

Threats

- (4) For the purposes of this section, a *threat* may be:
 - (a) express or implied; or
 - (b) conditional or unconditional.

Unnecessary to prove that a threatened person actually feared harm

- (5) In a prosecution for an offence against this section, it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

147.3 Geographical jurisdiction

Section 15.3 (extended geographical jurisdiction—category C) applies to each offence against this Division.

Schedule The Criminal Code

Chapter 7 The proper administration of Government

Part 7.8 Causing harm to, and impersonation and obstruction of, Commonwealth public officials

Division 148 Impersonation of Commonwealth public officials

Section 148.1

Division 148—Impersonation of Commonwealth public officials

148.1 Impersonation of an official by a non-official

- (1) A person other than a Commonwealth public official is guilty of an offence if:
- (a) on a particular occasion, the person impersonates another person in that other person's capacity as a Commonwealth public official; and
 - (b) the first-mentioned person does so knowing it to be in circumstances when the official is likely to be on duty; and
 - (c) the first-mentioned person does so with intent to deceive.

Penalty: Imprisonment for 2 years.

- (2) A person other than a Commonwealth public official is guilty of an offence if:
- (a) the person falsely represents himself or herself to be a Commonwealth public official in a particular capacity; and
 - (b) the person does so in the course of doing an act, or attending a place, in the assumed capacity of such an official.

Penalty: Imprisonment for 2 years.

- (2A) For the purposes of subsection (2), it is immaterial whether that capacity as a Commonwealth public official exists or is fictitious.

- (3) A person other than a Commonwealth public official is guilty of an offence if:
- (a) the person:
 - (i) impersonates another person in that other person's capacity as a Commonwealth public official; or
 - (ii) falsely represents himself or herself to be a Commonwealth public official in a particular capacity; and
 - (b) the first-mentioned person does so with the intention of:
 - (i) obtaining a gain; or

- (ii) causing a loss; or
- (iii) influencing the exercise of a public duty or function;
and
- (c) if subparagraph (a)(i) applies—the first-mentioned person also does so with intent to deceive.

Penalty: Imprisonment for 5 years.

- (3A) For the purposes of subparagraph (3)(a)(ii), it is immaterial whether that capacity as a Commonwealth public official exists or is fictitious.
- (4) The definition of *duty* in section 130.1 does not apply to this section.
- (5) To avoid doubt, for the purposes of this section:
 - (a) *impersonation* does not include conduct engaged in solely for satirical purposes; and
 - (b) *false representation* does not include conduct engaged in solely for satirical purposes.

148.2 Impersonation of an official by another official

- (1) A Commonwealth public official is guilty of an offence if:
 - (a) on a particular occasion, the official impersonates another person in that other person's capacity as a Commonwealth public official; and
 - (b) the first-mentioned official does so knowing it to be in circumstances when the other official is likely to be on duty; and
 - (c) the first-mentioned official does so with intent to deceive.

Penalty: Imprisonment for 2 years.

- (2) A Commonwealth public official is guilty of an offence if:
 - (a) the official falsely represents himself or herself to be a Commonwealth public official in a particular capacity; and
 - (b) the official does so in the course of doing an act, or attending a place, in the assumed capacity of such an official.

Schedule The Criminal Code

Chapter 7 The proper administration of Government

Part 7.8 Causing harm to, and impersonation and obstruction of, Commonwealth public officials

Division 148 Impersonation of Commonwealth public officials

Section 148.3

Penalty: Imprisonment for 2 years.

- (2A) For the purposes of subsection (2), it is immaterial whether that capacity as a Commonwealth public official exists or is fictitious.
- (3) A Commonwealth public official is guilty of an offence if:
- (a) the official:
 - (i) impersonates another person in the other person's capacity as a Commonwealth public official; or
 - (ii) falsely represents himself or herself to be a Commonwealth public official in a particular capacity; and
 - (b) the first-mentioned official does so with the intention of:
 - (i) obtaining a gain; or
 - (ii) causing a loss; or
 - (iii) influencing the exercise of a public duty or function; and
 - (c) if subparagraph (a)(i) applies—the first-mentioned official also does so with intent to deceive.

Penalty: Imprisonment for 5 years.

- (3A) For the purposes of subparagraph (3)(a)(ii), it is immaterial whether that capacity as a Commonwealth public official exists or is fictitious.
- (4) The definition of *duty* in section 130.1 does not apply to this section.
- (5) To avoid doubt, for the purposes of this section:
- (a) *impersonation* does not include conduct engaged in solely for satirical purposes; and
 - (b) *false representation* does not include conduct engaged in solely for satirical purposes.

148.3 Geographical jurisdiction

Section 15.3 (extended geographical jurisdiction—category C) applies to each offence against this Division.

Division 149—Obstruction of Commonwealth public officials

149.1 Obstruction of Commonwealth public officials

- (1) A person is guilty of an offence if:
- (a) the person knows that another person is a public official; and
 - (b) the first-mentioned person obstructs, hinders, intimidates or resists the official in the performance of the official's functions; and
 - (c) the official is a Commonwealth public official; and
 - (d) the functions are functions as a Commonwealth public official.

Penalty: Imprisonment for 2 years.

- (2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew:
- (a) that the official was a Commonwealth public official; or
 - (b) that the functions were functions as a Commonwealth public official.
- (3) For the purposes of this section, it is immaterial whether the defendant was aware that the public official was performing the official's functions.
- (4) Section 15.3 (extended geographical jurisdiction—category C) applies to an offence against subsection (1).
- (5) The definition of *duty* in section 130.1 does not apply to this section.
- (6) In this section:
- function:*
- (a) in relation to a person who is a public official—means any authority, duty, function or power that is conferred on the person as a public official; or

Schedule The Criminal Code

Chapter 7 The proper administration of Government

Part 7.8 Causing harm to, and impersonation and obstruction of, Commonwealth public officials

Division 149 Obstruction of Commonwealth public officials

Section 149.1

- (b) in relation to a person who is a Commonwealth public official—means any authority, duty, function or power that is conferred on the person as a Commonwealth public official.

Part 7.20—Miscellaneous

Division 261—Miscellaneous

261.1 Saving of other laws

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

261.2 Contempt of court

This Chapter does not limit the power of a court to punish a contempt of the court.

261.3 Ancillary offences

To avoid doubt, subsection 11.6(2) does not apply to the following provisions:

- (a) subsection 131.1(2) (theft);
- (b) subsection 132.1(2) (receiving);
- (c) subsection 132.2(2) (robbery);
- (d) subsection 132.3(2) (aggravated robbery);
- (e) subsections 132.4(2), (5) and (9) (burglary);
- (f) subsection 132.5(2) (aggravated burglary);
- (g) the definitions of *aggravated burglary*, *aggravated robbery*, *burglary*, *receiving*, *robbery* and *theft* in the Dictionary.

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.1

Chapter 8—Offences against humanity and related offences

Division 268—Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Subdivision A—Introductory

268.1 Purpose of Division

- (1) The purpose of this Division is to create certain offences that are of international concern and certain related offences.
- (2) It is the Parliament's intention that the jurisdiction of the International Criminal Court is to be complementary to the jurisdiction of Australia with respect to offences in this Division that are also crimes within the jurisdiction of that Court.
- (3) Accordingly, the *International Criminal Court Act 2002* does not affect the primacy of Australia's right to exercise its jurisdiction with respect to offences created by this Division that are also crimes within the jurisdiction of the International Criminal Court.

268.2 Outline of offences

- (1) Subdivision B creates offences each of which is called *genocide*.
 - (2) Subdivision C creates offences each of which is called a *crime against humanity*.
 - (3) Subdivisions D, E, F, G and H create offences each of which is called a *war crime*.
 - (4) Subdivision J creates offences each of which is called a *crime against the administration of the justice of the International Criminal Court*.
-

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.3

Subdivision B—Genocide

268.3 Genocide by killing

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

- (a) the perpetrator causes the death of one or more persons; and
- (b) the person or persons belong to a particular national, ethnical, racial or religious group; and
- (c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.

Penalty: Imprisonment for life.

268.4 Genocide by causing serious bodily or mental harm

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

- (a) the perpetrator causes serious bodily or mental harm to one or more persons; and
- (b) the person or persons belong to a particular national, ethnical, racial or religious group; and
- (c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.

Penalty: Imprisonment for life.

(2) In subsection (1):

causes serious bodily or mental harm includes, but is not restricted to, commits acts of torture, rape, sexual violence or inhuman or degrading treatment.

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

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

- (a) the perpetrator inflicts certain conditions of life upon one or more persons; and
- (b) the person or persons belong to a particular national, ethnical, racial or religious group; and

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.6

- (c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such; and
- (d) the conditions of life are intended to bring about the physical destruction of that group, in whole or in part.

Penalty: Imprisonment for life.

(2) In subsection (1):

conditions of life includes, but is not restricted to, intentional deprivation of resources indispensable for survival, such as deprivation of food or medical services, or systematic expulsion from homes.

268.6 Genocide by imposing measures intended to prevent births

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

- (a) the perpetrator imposes certain measures upon one or more persons; and
- (b) the person or persons belong to a particular national, ethnical, racial or religious group; and
- (c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such; and
- (d) the measures imposed are intended to prevent births within that group.

Penalty: Imprisonment for life.

268.7 Genocide by forcibly transferring children

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

- (a) the perpetrator forcibly transfers one or more persons; and
- (b) the person or persons belong to a particular national, ethnical, racial or religious group; and
- (c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such; and
- (d) the transfer is from that group to another national, ethnical, racial or religious group; and
- (e) the person or persons are under the age of 18 years; and

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.8

(f) the perpetrator knows that, or is reckless as to whether, the person or persons are under that age.

Penalty: Imprisonment for life.

(2) In subsection (1):

forcibly transfers one or more persons includes transfers one or more persons:

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

Subdivision C—Crimes against humanity

268.8 Crime against humanity—murder

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

- (a) the perpetrator causes the death of one or more persons; and
- (b) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for life.

268.9 Crime against humanity—extermination

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

- (a) the perpetrator causes the death of one or more persons; and
- (b) the perpetrator's conduct constitutes, or takes place as part of, a mass killing of members of a civilian population; and
- (c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for life.

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.10

(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 barter 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

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.12

- (c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish the lawfulness of the presence of the person or persons in the area; and
- (d) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 17 years.

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

(3) In subsection (1):

forcibly displaces one or more persons includes displaces one or more persons:

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

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

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator imprisons one or more persons or otherwise severely deprives one or more persons of physical liberty; and
 - (b) the perpetrator's conduct violates article 9, 14 or 15 of the Covenant; and
 - (c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 17 years.

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

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.13

268.13 Crime against humanity—torture

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

- (a) the perpetrator inflicts severe physical or mental pain or suffering upon one or more persons who are in the custody or under the control of the perpetrator; and
- (b) the pain or suffering does not arise only from, and is not inherent in or incidental to, lawful sanctions; and
- (c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

268.14 Crime against humanity—rape

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

- (a) the perpetrator sexually penetrates another person without the consent of that person; and
- (b) the perpetrator knows of, or is reckless as to, the lack of consent; and
- (c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

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

- (a) the perpetrator causes another person to sexually penetrate the perpetrator without the consent of the other person; and
- (b) the perpetrator knows of, or is reckless as to, the lack of consent; and
- (c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

(3) In this section:

consent means free and voluntary agreement.

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

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

(4) In this section:

sexually penetrate means:

- (a) penetrate (to any extent) the genitalia or anus of a person by any part of the body of another person or by any object manipulated by that other person; or
 - (b) penetrate (to any extent) the mouth of a person by the penis of another person; or
 - (c) continue to sexually penetrate as defined in paragraph (a) or (b).
- (5) In this section, being **reckless** as to a lack of consent to sexual penetration includes not giving any thought to whether or not the person is consenting to sexual penetration.
- (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.

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.15

268.15 Crime against humanity—sexual slavery

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator causes another person to enter into or remain in sexual slavery; and
 - (b) the perpetrator intends to cause, or is reckless as to causing, that sexual slavery; and
 - (c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

- (2) For the purposes of this section, *sexual slavery* is the condition of a person who provides sexual services and who, because of the use of force or threats:
- (a) is not free to cease providing sexual services; or
 - (b) is not free to leave the place or area where the person provides sexual services.

- (3) In this section:

sexual service means the use or display of the body of the person providing the service for the sexual gratification of others.

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

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.16

- (b) the perpetrator intends that he or she, or another person, will obtain pecuniary or other advantage in exchange for, or in connection with, the acts of a sexual nature; and
- (c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

consent means free and voluntary agreement.

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

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

threat of force or coercion includes:

- (a) a threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power; or
 - (b) taking advantage of a coercive environment.
- (3) In subsection (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person or persons are consenting to engaging in the act or acts of a sexual nature.

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.17

268.17 Crime against humanity—forced pregnancy

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

Penalty: Imprisonment for 25 years.

- (2) In subsection (1):

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

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

268.18 Crime against humanity—enforced sterilisation

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator deprives one or more persons of biological reproductive capacity; and
 - (b) the deprivation is not effected by a birth-control measure that has a non-permanent effect in practice; and
 - (c) the perpetrator's conduct is neither justified by the medical or hospital treatment of the person or persons nor carried out with the consent of the person or persons; and
 - (d) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.19

(2) In subsection (1):

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

268.19 Crime against humanity—sexual violence

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

(a) the perpetrator does either of the following:

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

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

- (b) the perpetrator's conduct is of a gravity comparable to the offences referred to in sections 268.14 to 268.18; and
- (c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

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

(3) In subsection (1):

consent means free and voluntary agreement.

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

- (a) the person submits to the act because of force or the fear of force to the person or to someone else;
- (b) the person submits to the act because the person is unlawfully detained;
- (c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;
- (d) the person is incapable of understanding the essential nature of the act;

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.20

- (e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);
- (f) the person submits to the act because of psychological oppression or abuse of power;
- (g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

threat of force or coercion includes:

- (a) a threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power; or
 - (b) taking advantage of a coercive environment.
- (4) In subsection (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person is consenting to the act or acts of a sexual nature.

268.20 Crime against humanity—persecution

- (1) A person (the ***perpetrator***) commits an offence if:
- (a) the perpetrator severely deprives one or more persons of any of the rights referred to in paragraph (b); and
 - (b) the rights are those guaranteed in articles 6, 7, 8 and 9, paragraph 2 of article 14, article 18, paragraph 2 of article 20, paragraph 2 of article 23 and article 27 of the Covenant; and
 - (c) the perpetrator targets the person or persons by reason of the identity of a group or collectivity or targets the group or collectivity as such; and
 - (d) the grounds on which the targeting is based are political, racial, national, ethnic, cultural, religious, gender or other grounds that are recognised in paragraph 1 of article 2 of the Covenant; and
 - (e) the perpetrator's conduct is committed in connection with another act that is:
 - (i) a proscribed inhumane act; or
 - (ii) genocide; or
 - (iii) a war crime; and

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.21

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

Penalty: Imprisonment for 17 years.

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

268.21 Crime against humanity—enforced disappearance of persons

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator arrests, detains or abducts one or more persons; and
 - (b) the arrest, detention or abduction is carried out by, or with the authorisation, support or acquiescence of, the government of a country or a political organisation; and
 - (c) the perpetrator intends to remove the person or persons from the protection of the law for a prolonged period of time; and
 - (d) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population; and
 - (e) after the arrest, detention or abduction, the government or organisation refuses to acknowledge the deprivation of freedom of, or to give information on the fate or whereabouts of, the person or persons.

Penalty: Imprisonment for 17 years.

- (2) A person (the *perpetrator*) commits an offence if:
 - (a) one or more persons have been arrested, detained or abducted; and
 - (b) the arrest, detention or abduction was carried out by, or with the authorisation, support or acquiescence of, the government of a country or a political organisation; and

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.22

- (c) the perpetrator refuses to acknowledge the deprivation of freedom, or to give information on the fate or whereabouts, of the person or persons; and
- (d) the refusal occurs with the authorisation, support or acquiescence of the government of the country or the political organisation; and
- (e) the perpetrator knows that, or is reckless as to whether, the refusal was preceded or accompanied by the deprivation of freedom; and
- (f) the perpetrator intends that the person or persons be removed from the protection of the law for a prolonged period of time; and
- (g) the arrest, detention or abduction occurred, and the refusal occurs, as part of a widespread or systematic attack directed against a civilian population; and
- (h) the perpetrator knows that the refusal is part of, or intends the refusal to be part of, such an attack.

Penalty: Imprisonment for 17 years.

268.22 Crime against humanity—apartheid

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

- (a) the perpetrator commits against one or more persons an act that is a proscribed inhumane act (as defined by the Dictionary) or an act that is of a nature and gravity similar to any such proscribed inhumane act; and
- (b) the perpetrator's conduct is committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups; and
- (c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish the character of the act; and
- (d) the perpetrator intends to maintain the regime by the conduct; and
- (e) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.23

Penalty: Imprisonment for 17 years.

268.23 Crime against humanity—other inhumane act

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

- (a) the perpetrator causes great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act; and
- (b) the act is of a character similar to another proscribed inhumane act as defined by the Dictionary; and
- (c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

Subdivision D—War crimes that are grave breaches of the Geneva Conventions and of Protocol I to the Geneva Conventions

268.24 War crime—wilful killing

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

- (a) the perpetrator causes the death of one or more persons; and
- (b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and
- (c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

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

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.25

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.

Penalty: Imprisonment for 25 years.

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.27

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

268.27 War crime—biological experiments

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator subjects one or more persons to a particular biological experiment; and
 - (b) the experiment seriously endangers the physical or mental health or integrity of the person or persons; and
 - (c) the perpetrator's conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
 - (d) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and
 - (e) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and
 - (f) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

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

268.28 War crime—wilfully causing great suffering

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator causes great physical or mental pain or suffering to, or serious injury to body or health of, one or more persons; and
 - (b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and
 - (c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.29

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

Penalty: Imprisonment for 25 years.

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

268.29 War crime—destruction and appropriation of property

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

- (a) the perpetrator destroys or appropriates property; and
- (b) the destruction or appropriation is not justified by military necessity; and
- (c) the destruction or appropriation is extensive and carried out unlawfully and wantonly; and
- (d) the property is protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and
- (e) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the property is so protected; and
- (f) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

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

268.30 War crime—compelling service in hostile forces

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

- (a) the perpetrator coerces one or more persons, by act or threat:
 - (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

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.31

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

Penalty: Imprisonment for 10 years.

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

268.31 War crime—denying a fair trial

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

Penalty: Imprisonment for 10 years.

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

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.32

268.32 War crime—unlawful deportation or transfer

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

Penalty: Imprisonment for 17 years.

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

268.33 War crime—unlawful confinement

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

Penalty: Imprisonment for 17 years.

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

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.34

268.34 War crime—taking hostages

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

Penalty: Imprisonment for 17 years.

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

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

268.35 War crime—attacking civilians

- A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator directs an attack; and
 - (b) the object of the attack is a civilian population as such or individual civilians not taking direct part in hostilities; and
 - (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.36

268.36 War crime—attacking civilian objects

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

- (a) the perpetrator directs an attack; and
- (b) the object of the attack is not a military objective; and
- (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

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

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

- (a) the perpetrator directs an attack; and
- (b) the object of the attack is personnel involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations; and
- (c) the personnel are entitled to the protection given to civilians under the Geneva Conventions or Protocol I to the Geneva Conventions; and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

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

- (a) the perpetrator directs an attack; and
- (b) the object of the attack is installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations; and
- (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.

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.38

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

268.38 War crime—excessive incidental death, injury or damage

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator launches an attack; and
 - (b) the perpetrator knows that the attack will cause incidental death or injury to civilians; and
 - (c) the perpetrator knows that the death or injury will be of such an extent as to be excessive in relation to the concrete and direct military advantage anticipated; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

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

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

268.39 War crime—attacking undefended places

- A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator attacks or bombards one or more towns, villages, dwellings or buildings; and
 - (b) the towns, villages, dwellings or buildings are open for unresisted occupation; and

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.40

- (c) the towns, villages, dwellings or buildings do not constitute military objectives; and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

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

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

Penalty: Imprisonment for life.

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

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

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

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.42

- (b) the perpetrator uses the flag in order to feign an intention to negotiate when there is no such intention on the part of the perpetrator; and
- (c) the perpetrator knows of, or is reckless as to, the illegal nature of such use of the flag; and
- (d) the perpetrator's conduct results in death or serious personal injury; and
- (e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

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

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

- (a) the perpetrator uses a flag, insignia or uniform of the adverse party; and
- (b) the perpetrator uses the flag, insignia or uniform while engaged in an attack or in order to shield, favour, protect or impede military operations; and
- (c) the perpetrator knows of, or is reckless as to, the illegal nature of such use of the flag, insignia or uniform; and
- (d) the perpetrator's conduct results in death or serious personal injury; and
- (e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

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

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

- (a) the perpetrator uses a flag, insignia or uniform of the United Nations; and
- (b) the perpetrator uses the flag, insignia or uniform without the authority of the United Nations; and

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.44

- (c) the perpetrator knows of, or is reckless as to, the illegal nature of such use of the flag, insignia or uniform; and
- (d) the perpetrator's conduct results in death or serious personal injury; and
- (e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

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

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator uses an emblem; and
 - (b) the emblem is one of the distinctive emblems of the Geneva Conventions; and
 - (c) the perpetrator uses the emblem for combatant purposes to invite the confidence of an adversary in order to lead him or her to believe that the perpetrator is entitled to protection, or that the adversary is obliged to accord protection to the perpetrator, with intent to betray that confidence; and
 - (d) the perpetrator knows of, or is reckless as to, the illegal nature of such use; and
 - (e) the perpetrator's conduct results in death or serious personal injury; and
 - (f) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

- (2) Strict liability applies to paragraph (1)(b).
- (3) In this section:

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

268.45 War crime—transfer of population

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

- (a) the perpetrator:
 - (i) authorises, organises or directs, or participates in the authorisation, organisation or direction of, or participates in, the transfer, directly or indirectly, of parts of the civilian population of the perpetrator's own country into territory that the country occupies; or
 - (ii) authorises, organises or directs, or participates in the authorisation, organisation or direction of, or participates in, the deportation or transfer of all or parts of the population of territory occupied by the perpetrator's own country within or outside that territory; and
- (b) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

268.46 War crime—attacking protected objects

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.

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.47

268.47 War crime—mutilation

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling or removing organs or appendages of, the person or persons; and
 - (b) the perpetrator's conduct causes the death of the person or persons; and
 - (c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
 - (d) the person or persons are in the power of an adverse party; and
 - (e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

- (2) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling or removing organs or appendages of, the person or persons; and
 - (b) the perpetrator's conduct seriously endangers the physical or mental health, or the integrity, of the person or persons; and
 - (c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
 - (d) the person or persons are in the power of an adverse party; and
 - (e) the conduct takes place in the context of, and is associated with, an international armed conflict.

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

268.48 War crime—medical or scientific experiments

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator subjects one or more persons to a medical or scientific experiment; and
 - (b) the experiment causes the death of the person or persons; and
 - (c) the perpetrator's conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
 - (d) the person or persons are in the power of an adverse party; and
 - (e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

- (2) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator subjects one or more persons to a medical or scientific experiment; and
 - (b) the experiment seriously endangers the physical or mental health, or the integrity, of the person or persons; and
 - (c) the perpetrator's conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
 - (d) the person or persons are in the power of an adverse party; and
 - (e) the conduct takes place in the context of, and is associated with, an international armed conflict.

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

268.49 War crime—treacherously killing or injuring

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator invites the confidence or belief of one or more persons that the perpetrator is entitled to protection, or that

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.50

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

- (b) the perpetrator kills the person or persons; and
- (c) the perpetrator makes use of that confidence or belief in killing the person or persons; and
- (d) the person or persons belong to an adverse party; and
- (e) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

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

- (a) the perpetrator invites the confidence or belief of one or more persons that the perpetrator is entitled to protection, or that the person or persons are obliged to accord protection to the perpetrator; and
- (b) the perpetrator injures the person or persons; and
- (c) the perpetrator makes use of that confidence or belief in injuring the person or persons; and
- (d) the person or persons belong to an adverse party; and
- (e) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

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

268.50 War crime—denying quarter

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

- (a) the perpetrator declares or orders that there are to be no survivors; and
- (b) the declaration or order is given with the intention of threatening an adversary or conducting hostilities on the basis that there are to be no survivors; and
- (c) the perpetrator is in a position of effective command or control over the subordinate forces to which the declaration or order is directed; and

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.51

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

Penalty: Imprisonment for life.

268.51 War crime—destroying or seizing the enemy's property

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator destroys or seizes certain property; and
 - (b) the property is property of an adverse party; and
 - (c) the property is protected from the destruction or seizure under article 18 of the Third Geneva Convention, article 53 of the Fourth Geneva Convention or article 54 of Protocol I to the Geneva Conventions; and
 - (d) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the property is so protected; and
 - (e) the destruction or seizure is not justified by military necessity; and
 - (f) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

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

268.52 War crime—depriving nationals of the adverse power of rights or actions

- A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator effects the abolition, suspension or termination of admissibility in a court of law of certain rights or actions; and
 - (b) the abolition, suspension or termination is directed at the nationals of an adverse party; and
 - (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 10 years.

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.53

268.53 War crime—compelling participation in military operations

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator coerces one or more persons by act or threat to take part in military operations against that person's or those persons' own country or forces; and
 - (b) the person or persons are nationals of an adverse party; and
 - (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 10 years.

- (2) It is not a defence to a prosecution for an offence against subsection (1) that the person or persons were in the service of the perpetrator at a time before the beginning of the international armed conflict.

268.54 War crime—pillaging

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

- (a) the perpetrator appropriates certain property; and
- (b) the perpetrator intends to deprive the owner of the property and to appropriate it for private or personal use; and
- (c) the appropriation is without the consent of the owner; and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

268.55 War crime—employing poison or poisoned weapons

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

- (a) the perpetrator employs a substance or employs a weapon that releases a substance as a result of its employment; and
- (b) the substance is such that it causes death or serious damage to health in the ordinary course of events through its toxic properties; and
- (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.56

Penalty: Imprisonment for 25 years.

**268.56 War crime—employing prohibited gases, liquids, materials
or devices**

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

- (a) the perpetrator employs a gas or other analogous substance or device; and
- (b) the gas, substance or device is such that it causes death or serious damage to health in the ordinary course of events through its asphyxiating or toxic properties; and
- (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

268.57 War crime—employing prohibited bullets

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

- (a) the perpetrator employs certain bullets; and
- (b) the bullets are such that their use violates the Hague Declaration because they expand or flatten easily in the human body; and
- (c) the perpetrator knows that, or is reckless as to whether, the nature of the bullets is such that their employment will uselessly aggravate suffering or the wounding effect; and
- (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

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.59

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

Penalty: Imprisonment for 17 years.

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

Penalty: Imprisonment for 17 years.

268.59 War crime—rape

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator sexually penetrates another person without the consent of that person; and
 - (b) the perpetrator knows about, or is reckless as to, the lack of consent; and
 - (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

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

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.60

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

(4) In this section:

sexually penetrate means:

- (a) penetrate (to any extent) the genitalia or anus of a person by any part of the body of another person or by any object manipulated by that other person; or
- (b) penetrate (to any extent) the mouth of a person by the penis of another person; or
- (c) continue to sexually penetrate as defined in paragraph (a) or (b).

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

(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

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.61

- (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:

sexual service means the use or display of the body of the person providing the service for the sexual gratification of others.

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);
- (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

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.63

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

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

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

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

268.63 War crime—enforced sterilisation

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

- (a) the perpetrator deprives one or more persons of biological reproductive capacity; and
- (b) the deprivation is not effected by a birth-control measure that has a non-permanent effect in practice; and
- (c) the perpetrator's conduct is neither justified by the medical or hospital treatment of the person or persons nor carried out with the consent of the person or persons; and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(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;

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.64

- (ii) causes one or more persons to engage in an act or acts of a sexual nature;
without the consent of the person or persons, including by being reckless as to whether there is consent; and
- (b) the perpetrator's conduct is of a gravity comparable to the offences referred to in sections 268.59 to 268.63; and
- (c) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

- (2) Strict liability applies to paragraph (1)(b).
- (3) In subsection (1):

consent means free and voluntary agreement.

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

- (a) the person submits to the act because of force or the fear of force to the person or to someone else;
- (b) the person submits to the act because the person is unlawfully detained;
- (c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;
- (d) the person is incapable of understanding the essential nature of the act;
- (e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);
- (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.

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.65

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

268.65 War crime—using protected persons as shields

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator uses the presence of one or more civilians, prisoners of war, military, medical or religious personnel or persons who are *hors de combat*; and
 - (b) the perpetrator intends the perpetrator's conduct to render a military objective immune from attack or to shield, favour or impede military operations; and
 - (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty:

- (a) if the conduct results in the death of any of the persons referred to in paragraph (a)—imprisonment for life; or
 - (b) otherwise—imprisonment for 17 years.
- (2) In this section:

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

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

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator attacks one or more persons; and
 - (b) the person or persons are using, in conformity with the Geneva Conventions or the Protocols to the Geneva Conventions, any of the distinctive emblems of the Geneva Conventions; and
 - (c) the perpetrator intends the persons so using such an emblem to be the object of the attack; and
-

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.67

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

Penalty: Imprisonment for life.

- (2) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator attacks one or more buildings, medical units or transports or other objects; and
 - (b) the buildings, units or transports or other objects are using, in conformity with the Geneva Conventions or the Protocols to the Geneva Conventions, any of the distinctive emblems of the Geneva Conventions; and
 - (c) the perpetrator intends the buildings, units or transports or other objects so using such an emblem to be the object of the attack; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 20 years.

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

268.67 War crime—starvation as a method of warfare

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator uses as a method of warfare:
 - (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).

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.68

268.68 War crime—using, conscripting or enlisting children

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator uses one or more persons to participate actively in hostilities; 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 for a contravention of this subsection: Imprisonment for 10 years.

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:

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.70

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

268.70 War crime—murder

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator causes the death of one or more persons; and
 - (b) the person or persons are not taking an active part in the hostilities; and
 - (c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

- (2) To avoid doubt, a reference in subsection (1) to a person or persons who are not taking an active part in the hostilities includes a reference to:
- (a) a person or persons who are *hors de combat*; or
 - (b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

268.71 War crime—mutilation

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling 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

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.71

- (d) the person or persons are not taking an active part in the hostilities; and
- (e) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and
- (f) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

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

- (a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling or removing organs or appendages of, the person or persons; and
- (b) the perpetrator's conduct seriously endangers the physical or mental health, or the integrity, of the person or persons; and
- (c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
- (d) the person or persons are not taking an active part in the hostilities; and
- (e) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and
- (f) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

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

- (a) a person or persons who are *hors de combat*; or
- (b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

268.72 War crime—cruel treatment

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator inflicts severe physical or mental pain or suffering upon one or more persons; and
 - (b) the person or persons are not taking an active part in the hostilities; and
 - (c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

- (2) To avoid doubt, a reference in subsection (1) to a person or persons who are not taking an active part in the hostilities includes a reference to:
- (a) a person or persons who are *hors de combat*; or
 - (b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

268.73 War crime—torture

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator inflicts severe physical or mental pain or suffering upon one or more persons; and
 - (b) the perpetrator inflicts the pain or suffering for the purpose of:
 - (i) obtaining information or a confession; or
 - (ii) a punishment, intimidation or coercion; or
 - (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

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.74

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

Penalty: Imprisonment for 25 years.

- (2) To avoid doubt, a reference in subsection (1) to a person or persons who are not taking an active part in the hostilities includes a reference to:
 - (a) a person or persons who are *hors de combat*; or
 - (b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

268.74 War crime—outrages upon personal dignity

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator severely humiliates, degrades or otherwise violates the dignity of one or more persons; and
 - (b) the person or persons are not taking an active part in the hostilities; and
 - (c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.

- (2) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator severely humiliates, degrades or otherwise violates the dignity of the body or bodies of one or more dead persons; and
 - (b) the dead person or dead persons were not, before his, her or their death, taking an active part in the hostilities; and
 - (c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the dead person or dead persons were not, before his, her or their death, taking an active part in the hostilities; and

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.75

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

Penalty: Imprisonment for 17 years.

- (3) To avoid doubt, a reference in this section to a person or persons who are not, or a dead person or dead persons who were not before his, her or their death, taking an active part in the hostilities includes a reference to:
 - (a) a person or persons who:
 - (i) are *hors de combat*; or
 - (ii) are civilians, medical personnel or religious personnel who are not taking an active part in the hostilities; or
 - (b) a dead person or dead persons who, before his, her or their death:
 - (i) were *hors de combat*; or
 - (ii) were civilians, medical personnel or religious personnel who were not taking an active part in the hostilities;as the case may be.

268.75 War crime—taking hostages

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator seizes, detains or otherwise holds hostage one or more persons; and
 - (b) the perpetrator threatens to kill, injure or continue to detain the person or persons; and
 - (c) the perpetrator intends to compel the government of a country, an international organisation or a person or group of persons to act or refrain from acting as an explicit or implicit condition for either the safety or the release of the person or persons; and
 - (d) the person or persons are not taking an active part in the hostilities; and
 - (e) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.76

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

Penalty: Imprisonment for 17 years.

- (2) To avoid doubt, a reference in subsection (1) to a person or persons who are not taking an active part in the hostilities includes a reference to:
 - (a) a person or persons who are *hors de combat*; or
 - (b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

268.76 War crime—sentencing or execution without due process

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator passes a sentence on one or more persons; and
 - (b) the person or persons are not taking an active part in the hostilities; and
 - (c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and
 - (d) either of the following applies:
 - (i) there was no previous judgment pronounced by a court;
 - (ii) the court that rendered judgment did not afford the essential guarantees of independence and impartiality or other judicial guarantees; and
 - (e) if the court did not afford other judicial guarantees—those guarantees are guarantees set out in articles 14, 15 and 16 of the Covenant; and
 - (f) the perpetrator knows of:
 - (i) if subparagraph (d)(i) applies—the absence of a previous judgment; or
 - (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

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.76

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

Penalty: Imprisonment for 10 years.

- (2) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator executes one or more persons; and
 - (b) the person or persons are not taking an active part in the hostilities; and
 - (c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and
 - (d) either of the following applies:
 - (i) there was no previous judgment pronounced by a court;
 - (ii) the court that rendered judgment did not afford the essential guarantees of independence and impartiality or other judicial guarantees; and
 - (e) if the court did not afford other judicial guarantees—those guarantees are guarantees set out in articles 14, 15 and 16 of the Covenant; and
 - (f) the perpetrator knows of:
 - (i) if subparagraph (d)(i) applies—the absence of a previous judgment; or
 - (ii) if subparagraph (d)(ii) applies—the failure to afford the relevant guarantees and the fact that they are indispensable to a fair trial; and
 - (g) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

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

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.77

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

Subdivision G—War crimes that are other serious violations of the laws and customs applicable in an armed conflict that is not an international armed conflict

268.77 War crime—attacking civilians

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

- (a) the perpetrator directs an attack; and
- (b) the object of the attack is a civilian population as such or individual civilians not taking direct part in hostilities; and
- (c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

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

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

- (a) the perpetrator attacks one or more persons; and
- (b) the person or persons are using, in conformity with the Geneva Conventions or the Protocols to the Geneva Conventions, any of the distinctive emblems of the Geneva Conventions; and
- (c) the perpetrator intends the persons so using such an emblem to be the object of the attack; and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

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

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.79

- (a) the perpetrator attacks one or more buildings, medical units or transports or other objects; and
- (b) the buildings, units or transports or other objects are using, in conformity with the Geneva Conventions or the Protocols to the Geneva Conventions, any of the distinctive emblems of the Geneva Conventions; and
- (c) the perpetrator intends the buildings, units or transports or other objects so using such an emblem to be the object of the attack; and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 20 years.

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

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

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator directs an attack; and
 - (b) the object of the attack is personnel involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations; and
 - (c) the personnel are entitled to the protection given to civilians under the Geneva Conventions or Protocol II to the Geneva Conventions; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

- (2) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator directs an attack; and
 - (b) the object of the attack is installations, material, units or vehicles involved in a humanitarian assistance or

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.80

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

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

- (a) the perpetrator directs an attack; and
- (b) the object of the attack is any one or more of the following that are not military objectives:
 - (i) buildings dedicated to religion, education, art, science or charitable purposes;
 - (ii) historic monuments;
 - (iii) hospitals or places where the sick and wounded are collected; and
- (c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 20 years.

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

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.82

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

Penalty: Imprisonment for 20 years.

268.82 War crime—rape

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

- (a) the perpetrator sexually penetrates another person without the consent of that person; and
(b) the perpetrator knows of, or is reckless as to, the lack of consent; and
(c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

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

- (a) the perpetrator causes another person to sexually penetrate the perpetrator without the consent of the other person; and
(b) the perpetrator knows of, or is reckless as to, the lack of consent; and
(c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

- (3) In this section:

consent means free and voluntary agreement.

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

- (a) the person submits to the act because of force or the fear of force to the person or to someone else;
(b) the person submits to the act because the person is unlawfully detained;

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.83

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

(4) In this section:

sexually penetrate means:

- (a) penetrate (to any extent) the genitalia or anus of a person by any part of the body of another person or by any object manipulated by that other person; or
 - (b) penetrate (to any extent) the mouth of a person by the penis of another person; or
 - (c) continue to sexually penetrate as defined in paragraph (a) or (b).
- (5) In this section, being *reckless* as to a lack of consent to sexual penetration includes not giving any thought to whether or not the person is consenting to sexual penetration.
- (6) In this section, the genitalia or other parts of the body of a person include surgically constructed genitalia or other parts of the body of the person.

268.83 War crime—sexual slavery

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator causes another person to enter into or remain in sexual slavery; and
 - (b) the perpetrator intends to cause, or is reckless as to causing, that sexual slavery; and

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.84

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

Penalty: Imprisonment for 25 years.

- (2) For the purposes of this section, *sexual slavery* is the condition of a person who provides sexual services and who, because of the use of force or threats:
 - (a) is not free to cease providing sexual services; or
 - (b) is not free to leave the place or area where the person provides sexual services.
- (3) In this section:

sexual service means the use or display of the body of the person providing the service for the sexual gratification of others.

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.

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.85

(2) In subsection (1):

consent means free and voluntary agreement.

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

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

threat of force or coercion includes:

- (a) a threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power; or
 - (b) taking advantage of a coercive environment.
- (3) In subsection (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person is consenting to the act or acts of a sexual nature.

268.85 War crime—forced pregnancy

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

- (a) the perpetrator unlawfully confines one or more women forcibly made pregnant; and
- (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

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.86

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

Penalty: Imprisonment for 25 years.

- (2) In subsection (1):

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

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

268.86 War crime—enforced sterilisation

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

- (a) the perpetrator deprives one or more persons of biological reproductive capacity; and
- (b) the deprivation is not effected by a birth-control measure that has a non-permanent effect in practice; and
- (c) the perpetrator's conduct is neither justified by the medical or hospital treatment of the person or persons nor carried out with the consent of the person or persons; and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

- (2) In subsection (1):

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

268.87 War crime—sexual violence

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

- (a) the perpetrator does either of the following:

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.87

- (i) commits an act or acts of a sexual nature against one or more persons;
- (ii) causes one or more persons to engage in an act or acts of a sexual nature;
without the consent of the person or persons, including by being reckless as to whether there is consent; and
- (b) the perpetrator's conduct is of a gravity comparable to the offences referred to in sections 268.82 to 268.87; and
- (c) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

- (2) Strict liability applies to paragraph (1)(b).
- (3) In subsection (1):

consent means free and voluntary agreement.

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

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

threat of force or coercion includes:

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

- (b) taking advantage of a coercive environment.
- (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

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator uses one or more persons to participate actively in hostilities; and
 - (b) the person or persons are under the age of 15 years; and
 - (c) the perpetrator knows that, or is reckless as to whether, the person or persons are under that age; 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 an armed force or group; and
 - (b) the person or persons are under the age of 15 years; and
 - (c) the perpetrator knows that, or is reckless as to whether, the person or persons are under that age; 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 an armed force or group; and
 - (b) the person or persons are under the age of 15 years; and
 - (c) the perpetrator knows that, or is reckless as to whether, the person or persons are under that age; and

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.89

- (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 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:

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.91

- (a) the perpetrator invites the confidence or belief of one or more persons that the perpetrator is entitled to protection, or that the person or persons are obliged to accord protection to the perpetrator; and
- (b) the perpetrator injures the person or persons; and
- (c) the perpetrator makes use of that confidence or belief in injuring the person or persons; and
- (d) the person or persons belong to an adverse party; and
- (e) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

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

268.91 War crime—denying quarter

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

- (a) the perpetrator declares or orders that there are to be no survivors; and
- (b) the declaration or order is given with the intention of threatening an adversary or conducting hostilities on the basis that there are to be no survivors; and
- (c) the perpetrator is in a position of effective command or control over the subordinate forces to which the declaration or order is directed; and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

268.92 War crime—mutilation

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

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

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.93

- (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.

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

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.94

- (c) the perpetrator's conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
- (d) the person or persons are in the power of another party to the conflict; and
- (e) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

- (2) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator subjects one or more persons to a medical or scientific experiment; and
 - (b) the experiment seriously endangers the physical or mental health, or the integrity, of the person or persons; and
 - (c) the perpetrator's conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
 - (d) the person or persons are in the power of another party to the conflict; and
 - (e) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

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

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

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator destroys or seizes certain property; and
 - (b) the property is property of an adversary; and
 - (c) the property is protected from the destruction or seizure under article 14 of Protocol II to the Geneva Conventions; and

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.95

- (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 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.

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.96

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

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator removes from one or more persons blood, tissue or organs for transplantation; and
 - (b) in the case of the removal of blood—the removal:
 - (i) is not for transfusion; or
 - (ii) is for transfusion without the consent of the person or persons; and
 - (c) in the case of the removal of skin—the removal:
 - (i) is not for grafting; or
 - (ii) is for grafting without the consent of the person or persons; and
 - (d) the intent of the removal is non-therapeutic; and
 - (e) the removal is not carried out under conditions consistent with generally accepted medical standards and controls designed for the benefit of the person or persons and of the recipient; and
 - (f) the person or persons are in the power of, or are interned, detained or otherwise deprived of liberty by, an adverse party as a result of an international armed conflict; and
 - (g) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

- (2) In subsection (1):

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

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

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

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.98

- (a) the perpetrator launches an attack against works or installations containing dangerous forces; and
- (b) the attack is such that it will cause loss of life, injury to civilians, or damage to civilian objects, to such an extent as to be excessive in relation to the concrete and direct military advantage anticipated; and
- (c) the perpetrator knows that the attack will cause loss of life, injury to civilians, or damage to civilian objects, to such an extent; and
- (d) the attack results in death or serious injury to body or health; and
- (e) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.98 War crime—attacking undefended places or demilitarized zones

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

- (a) the perpetrator attacks one or more towns, villages, dwellings, buildings or demilitarized zones; and
- (b) the towns, villages, dwellings or buildings are open for unresisted occupation; and
- (c) the attack results in death or serious injury to body or health; and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

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

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.100

- (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 as to, the factual circumstances that establish the character of the act; and
- (c) the perpetrator's conduct is committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups; and
- (d) the perpetrator intends to maintain the regime by the conduct; and
- (e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

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;

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.102

- (iii) places of worship; and
- (c) the monuments, works of art and places of worship constitute the cultural or spiritual heritage of peoples and have been given special protection by special arrangement (for example, within the framework of a competent international organisation); and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 20 years.

Subdivision J—Crimes against the administration of the justice of the International Criminal Court

268.102 Perjury

- (1) A person commits the offence of perjury if:
 - (a) the person makes a sworn statement in or for the purposes of a proceeding before the International Criminal Court; and
 - (b) the statement is false.

Penalty: Imprisonment for 10 years.

- (2) A person who is an interpreter commits the offence of perjury if:
 - (a) the person, by a sworn statement, gives an interpretation of a statement or other thing in or for the purposes of a proceeding before the International Criminal Court; and
 - (b) the interpretation is false or misleading.

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.

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.104

Penalty: Imprisonment for 7 years.

- (2) A person commits an offence if the person:
- (a) uses evidence that is false evidence and that the person believes is false evidence; and
 - (b) is reckless as to whether or not the use of the evidence could:
 - (i) influence a decision on the institution of a proceeding before the International Criminal Court; or
 - (ii) influence the outcome of such a proceeding.

Penalty: Imprisonment for 7 years.

- (3) For the purposes of this section, **making** evidence includes altering evidence, but does not include perjury.

268.104 Destroying or concealing evidence

- (1) A person commits an offence if the person destroys or conceals evidence with the intention of:
- (a) influencing a decision on the institution of a proceeding before the International Criminal Court; or
 - (b) influencing the outcome of such a proceeding.

Penalty: Imprisonment for 7 years.

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

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.

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.106

268.106 Corrupting witnesses or interpreters

- (1) A person commits an offence if the person provides, or offers or promises to provide, a benefit to another person with the intention that the other person or a third person will:
- (a) not attend as a witness at a proceeding before the International Criminal Court; or
 - (b) give false evidence at such a proceeding; or
 - (c) withhold true evidence at such a proceeding.

Penalty: Imprisonment for 5 years.

- (2) A person commits an offence if the person asks for, or receives or agrees to receive, a benefit for himself, herself or another person with the intention that he, she or another person will:
- (a) not attend as a witness at a proceeding before the International Criminal Court; or
 - (b) give false evidence at such a proceeding; or
 - (c) withhold true evidence at such a proceeding.

Penalty: Imprisonment for 5 years.

- (3) A person commits an offence if the person provides, or offers or promises to provide, a benefit to another person with the intention that the other person or a third person will:
- (a) not attend as an interpreter at a proceeding before the International Criminal Court; or
 - (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

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.108

- (b) give false evidence at such a proceeding; or
- (c) withhold true evidence at such a proceeding.

Penalty: Imprisonment for 7 years.

- (2) A person commits an offence if the person causes or threatens to cause any detriment to another person with the intention that the other person or a third person will:
 - (a) not attend as an interpreter at a proceeding before the International Criminal Court; or
 - (b) give a false or misleading interpretation as an interpreter in such a proceeding.

Penalty: Imprisonment for 7 years.

268.108 Preventing witnesses or interpreters

- (1) A person commits an offence if the person, by his or her conduct, intentionally prevents another person from attending as a witness or interpreter at a proceeding before the International Criminal Court.

Penalty: Imprisonment for 5 years.

- (2) This section does not apply to conduct that constitutes an offence against section 268.105, 268.106, 268.107, 268.109 or 268.110.

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:

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.111

- (a) because of anything done by the other person in or for the purposes of the proceeding; and
- (b) in the belief that the other person was a witness who had done that thing.

Penalty: Imprisonment for 5 years.

- (2) It is a defence to a prosecution for an offence against subsection (1) that:
 - (a) the detriment to the witness was not (apart from this section) an offence; and
 - (b) the witness committed perjury in the proceeding before the International Criminal Court.

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

- (3) In this section:

witness includes:

- (a) a person who attends at a proceeding before the International Criminal Court as a witness but is not called as a witness; or
- (b) an interpreter.

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:

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.112

- (a) because of anything done by a third person who is an official of that Court; and
- (b) in the belief that the third person was an official of that Court who had done that thing for the purposes of a proceeding before that Court.

Penalty: Imprisonment for 5 years.

268.112 Perverting the course of justice

- (1) A person commits an offence if the person, by his or her conduct, intentionally perverts the course of justice in respect of the International Criminal Court.

Penalty: Imprisonment for 5 years.

- (2) This section does not apply to conduct that constitutes the publication of any matter.
- (3) In this section:

perverts includes obstructs, prevents or defeats.

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.

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.114

- (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
 - (b) the military commander or person failed to take all necessary and reasonable measures within his or her power to prevent

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.116

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
 - (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).

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.117

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.

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.

Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court **Division 268**

Section 268.121

268.121 Bringing proceedings under this Division

- (1) Proceedings for an offence under this Division must not be commenced without the Attorney-General's written consent.
- (2) An offence against this Division may only be prosecuted in the name of the Attorney-General.
- (3) However, a person may be arrested, charged, remanded in custody, or released on bail, in connection with an offence under this Division before the necessary consent has been given.

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

- (1) Subject to any jurisdiction of the High Court under the Constitution, a decision by the Attorney-General to give, or to refuse to give, a consent under section 268.121:
 - (a) is final; and
 - (b) must not be challenged, appealed against, reviewed, quashed or called in question; and
 - (c) is not subject to prohibition, mandamus, injunction, declaration or certiorari.
- (2) The reference in subsection (1) to a decision includes a reference to the following:
 - (a) a decision to vary, suspend, cancel or revoke a consent that has been given;
 - (b) a decision to impose a condition or restriction in connection with the giving of, or a refusal to give, a consent or to remove a condition or restriction so imposed;
 - (c) a decision to do anything preparatory to the making of a decision to give, or to refuse to give, a consent or preparatory to the making of a decision referred to in paragraph (a) or (b), including a decision for the taking of evidence or the holding of an inquiry or investigation;
 - (d) a decision doing or refusing to do anything else in connection with a decision to give, or to refuse to give, a consent or a decision referred to in paragraph (a), (b) or (c);

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.123

- (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.

Division 270—Slavery, sexual servitude and deceptive recruiting

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:
- (a) possesses a slave or exercises over a slave any of the other powers attaching to the right of ownership; or
 - (b) engages in slave trading; or
 - (c) enters into any commercial transaction involving a slave; or
 - (d) exercises control or direction over, or provides finance for:
 - (i) any act of slave trading; or
 - (ii) any commercial transaction involving a slave;

is guilty of an offence.

Penalty: Imprisonment for 25 years.

- (2) A person who:
- (a) whether within or outside Australia:
 - (i) enters into any commercial transaction involving a slave; or
 - (ii) exercises control or direction over, or provides finance for, any commercial transaction involving a slave; or
 - (iii) exercises control or direction over, or provides finance for, any act of slave trading; and

Division 270 Slavery, sexual servitude and deceptive recruiting

Section 270.4

(b) is reckless as to whether the transaction or act involves a slave, slavery or slave trading;
is guilty of an offence.

Penalty: Imprisonment for 17 years.

(3) In this section:

slave trading includes:

- (a) the capture, transport or disposal of a person with the intention of reducing the person to slavery; or
 - (b) the purchase or sale of a slave.
- (4) A person who engages in any conduct with the intention of securing the release of a person from slavery is not guilty of an offence against this section.
- (5) The defendant bears a legal burden of proving the matter mentioned in subsection (4).

270.4 Definition of *sexual servitude*

- (1) For the purposes of this Division, *sexual servitude* 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.

(2) In this section:

sexual service means the commercial use or display of the body of the person providing the service for the sexual gratification of others.

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.

270.5 Jurisdictional requirement

A person commits an offence against section 270.6 or 270.7 only if:

- (a) all of the following subparagraphs apply:
 - (i) the person is an Australian citizen, a resident of Australia, a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory or any other body corporate that carries on its activities principally in Australia; and
 - (ii) the conduct constituting the offence is engaged in outside Australia; and
 - (iii) the sexual services to which the alleged offence relates are provided, or to be provided, outside Australia; or
- (b) both:
 - (i) the conduct constituting the alleged offence is to any extent engaged in outside Australia; and
 - (ii) the sexual services to which the alleged offence relates are to any extent provided, or to be provided, within Australia; or
- (c) both:
 - (i) the conduct constituting the alleged offence is to any extent engaged in within Australia; and
 - (ii) the sexual services to which the alleged offence relates are to any extent provided, or to be provided, outside Australia.

270.6 Sexual servitude offences

- (1) A person:
 - (a) whose conduct causes another person to enter into or remain in sexual servitude; and
 - (b) who intends to cause, or is reckless as to causing, that sexual servitude;is guilty of an offence.

Penalty:

- (c) in the case of an aggravated offence (see section 270.8)—
imprisonment for 19 years; or

Section 270.7

(d) in any other case—imprisonment for 15 years.

(2) A person:

(a) who conducts any business that involves the sexual servitude of other persons; and

(b) who knows about, or is reckless as to, that sexual servitude; is guilty of an offence.

Penalty:

(c) in the case of an aggravated offence (see section 270.8)—imprisonment for 19 years; or

(d) in any other case—imprisonment for 15 years.

(3) In this section:

conducting a business includes:

(a) taking any part in the management of the business; or

(b) exercising control or direction over the business; or

(c) providing finance for the business.

270.7 Deceptive recruiting for sexual services

(1) A person who, with the intention of inducing another person to enter into an engagement to provide sexual services, deceives that other person about the fact that the engagement will involve the provision of sexual services is guilty of an offence.

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.

(2) In this section:

sexual service means the commercial use or display of the body of the person providing the service for the sexual gratification of others.

270.8 Aggravated offences

- (1) For the purposes of this Division, an offence against section 270.6 or 270.7 is an **aggravated offence** if the offence was committed against a person who is under 18.
- (2) If the prosecution intends to prove an aggravated offence, the charge must allege that the offence was committed against a person under that age.
- (3) In order to prove an aggravated offence, the prosecution must prove that the defendant intended to commit, or was reckless as to committing, the offence against a person under that age.

270.9 Alternative verdict if aggravated offence not proven

If, on a trial for an aggravated offence against section 270.6 or 270.7, the jury is not satisfied that the defendant is guilty of an aggravated offence, but is otherwise satisfied that he or she is guilty of an offence against that section, it may find the defendant not guilty of the aggravated offence but guilty of an offence against that section.

270.10 No nationality requirement

In determining whether a person has committed an offence against this Division (other than an offence to which paragraph 270.5(a) applies), it does not matter whether the person is or is not an Australian citizen or a resident of Australia.

270.11 Attorney-General's consent required

- (1) Proceedings for an offence against this Division must not be commenced without the Attorney-General's written consent if:
 - (a) the conduct constituting the alleged offence is to any extent engaged in outside Australia; and
 - (b) the person alleged to have committed the offence is not:
 - (i) an Australian citizen; or
 - (ii) a resident of Australia; or

Schedule The Criminal Code

Chapter 8 Offences against humanity and related offences

Division 270 Slavery, sexual servitude and deceptive recruiting

Section 270.12

- (iii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; or
 - (iv) any other body corporate that carries on its activities principally in Australia.
- (2) However, a person may be arrested for, charged with, or remanded in custody or released on bail in connection with an offence against this Division before the necessary consent has been given.

270.12 Other laws not excluded

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.

270.13 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.

270.14 External Territories

In this Division:

Australia, when used in a geographical sense, includes the external Territories.

Chapter 9—Dangers to the community

Part 9.4—Dangerous weapons

Division 360—Cross-border firearms trafficking

360.1 Disposal and acquisition of a firearm

- (1) For the purposes of this Division, and without limitation, a person *disposes* of a firearm if any of the following applies:
 - (a) the person sells the firearm (whether or not the person to whom the firearm is sold also acquires physical control of the firearm);
 - (b) the person hires, leases or rents the firearm to another person;
 - (c) the person passes physical control of the firearm to another person (whether or not the person to whom physical control is passed also acquires ownership of the firearm).
- (2) For the purposes of this Division, and without limitation, a person *acquires* a firearm if any of the following applies:
 - (a) the person purchases the firearm (whether or not the person also acquires physical control of the firearm);
 - (b) the person hires, leases or rents the firearm from another person;
 - (c) the person obtains physical control of the firearm (whether or not the person also acquires ownership of the firearm).

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

- (1) A person is guilty of an offence if:
 - (a) in the course of trade or commerce among the States, between Territories or between a Territory and a State, the person engages in conduct that constitutes an offence against a firearm law; and
 - (b) the primary element of the offence is:
 - (i) the disposal of a firearm by the person; or

Section 360.3

- (ii) the acquisition of a firearm by the person.

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

- (2) Absolute liability applies to the paragraph (1)(a) element of the offence.
- (3) In this section:

firearm means a firearm within the meaning of the firearm law concerned.

firearm law means a law of a State or Territory which is prescribed by the regulations for the purposes of this Division.

360.3 Taking or sending a firearm across borders

- (1) A person is guilty of an offence if:
- (a) in the course of trade or commerce among the States, between Territories or between a Territory and a State, the person takes or sends a firearm from one State or Territory to another State or Territory; and
 - (b) the person does so intending that the firearm will be disposed of in the other State or Territory (whether by the person or another); and
 - (c) the person knows that, or is reckless as to whether:
 - (i) the disposal of the firearm; or
 - (ii) any acquisition of the firearm that results from the disposal;would happen in circumstances that would constitute an offence against the firearm law of that other State or Territory.

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

- (2) In this section:

firearm means a firearm within the meaning of the firearm law mentioned in paragraph (1)(c).

Section 360.4

firearm law means a law of a State or Territory which is prescribed by the regulations for the purposes of this Division.

360.4 Concurrent operation intended

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

Section 380.1

Part 9.6—Contamination of goods

380.1 Definitions

(1) In this Part:

constitutional trade and commerce means trade and commerce:

- (a) with other countries; or
- (b) among the States; or
- (c) between a State and a Territory; or
- (d) between 2 Territories.

contaminate goods includes:

- (a) interfere with the goods; or
- (b) make it appear that the goods have been contaminated or interfered with.

goods includes any substance:

- (a) whether or not for human consumption; and
- (b) whether natural or manufactured; and
- (c) whether or not incorporated or mixed with other goods.

(2) A reference in this Part to economic loss caused through public awareness of the contamination of goods includes a reference to economic loss caused through:

- (a) members of the public not purchasing or using those goods or similar things; or
- (b) steps taken to avoid public alarm or anxiety or to avoid harm to members of the public.

380.2 Contaminating goods

Offence based on implied nationhood power

- (1) A person is guilty of an offence if:
- (a) the person contaminates goods; and
 - (b) the person does so with intent:

Section 380.2

- (i) to cause public alarm or anxiety in Australia; or
- (ii) to cause widespread, or nationally significant, economic loss in Australia through public awareness of the contamination, or possible contamination, of the goods; or
- (iii) to cause harm to, or create a risk of harm to, public health in Australia.

Penalty: Imprisonment for 10 years.

Offences based on other constitutional powers

- (2) A person is guilty of an offence if:
- (a) the person contaminates goods; and
 - (b) the person does so with intent to cause:
 - (i) public alarm or anxiety; or
 - (ii) economic loss through public awareness of the contamination, or possible contamination, of the goods; and
 - (c) any of the following subparagraphs applies:
 - (i) the loss is a loss to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);
 - (ii) the loss is a loss to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
 - (iii) the goods belong to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);
 - (iv) the goods belong to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
 - (v) the person is a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);

Section 380.3

- (vi) the person is a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
- (vii) the loss takes the form of detriment to constitutional trade and commerce;
- (viii) the goods are in the course of, or intended for, constitutional trade and commerce;
- (ix) the contamination occurs outside Australia and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
- (x) the loss is a loss to the Commonwealth or a Commonwealth authority.

Penalty: Imprisonment for 10 years.

- (3) Absolute liability applies to paragraph (2)(c).

380.3 Threatening to contaminate goods

Offence based on implied nationhood power

- (1) A person is guilty of an offence if:
- (a) the person makes a threat that goods will be contaminated;
and
 - (b) the person does so with intent:
 - (i) to cause public alarm or anxiety in Australia; or
 - (ii) to cause widespread, or nationally significant, economic loss in Australia through public awareness of the contamination, or possible contamination, of the goods;
or
 - (iii) to cause harm to, or create a risk of harm to, public health in Australia.

Penalty: Imprisonment for 10 years.

Offences based on other constitutional powers

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

Section 380.3

- (a) the person makes a threat that goods will be contaminated;
and
- (b) the person does so with intent to cause:
 - (i) public alarm or anxiety; or
 - (ii) economic loss through public awareness of the contamination, or possible contamination, of the goods;
and
- (c) any of the following subparagraphs applies:
 - (i) the loss is a loss to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);
 - (ii) the loss is a loss to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
 - (iii) the goods belong to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);
 - (iv) the goods belong to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
 - (v) the person is a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);
 - (vi) the person is a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
 - (vii) the loss takes the form of detriment to constitutional trade and commerce;
 - (viii) the goods are in the course of, or intended for, constitutional trade and commerce;
 - (ix) the person makes the threat in Australia using a postal or other like service or an electronic communication;

Section 380.4

- (x) the person makes the threat outside Australia and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
- (xi) the loss is a loss to the Commonwealth or a Commonwealth authority;
- (xii) the threat is made to the Commonwealth or a Commonwealth authority.

Penalty: Imprisonment for 10 years.

- (3) Absolute liability applies to paragraph (2)(c).

380.4 Making false statements about contamination of goods

Offence based on implied nationhood power

- (1) A person is guilty of an offence if:
 - (a) the person makes a statement that the person believes to be false; and
 - (b) the person does so with the intention of inducing the person to whom the statement is made or others to believe that goods have been contaminated; and
 - (c) the person does so with intent:
 - (i) to cause public alarm or anxiety in Australia; or
 - (ii) to cause widespread, or nationally significant, economic loss in Australia through public awareness of the contamination, or possible contamination, of the goods; or
 - (iii) to cause harm to, or create a risk of harm to, public health in Australia.

Penalty: Imprisonment for 10 years.

Offence based on other constitutional powers

- (2) A person is guilty of an offence if:
 - (a) the person makes a statement that the person believes to be false; and

Section 380.4

- (b) the person does so with the intention of inducing the person to whom the statement is made or others to believe that goods have been contaminated; and
- (c) the person does so with intent to cause:
 - (i) public alarm or anxiety; or
 - (ii) economic loss through public awareness of the contamination, or possible contamination, of the goods; and
- (d) any of the following subparagraphs applies:
 - (i) the loss is a loss to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);
 - (ii) the loss is a loss to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
 - (iii) the goods belong to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);
 - (iv) the goods belong to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
 - (v) the person is a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);
 - (vi) the person is a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
 - (vii) the loss takes the form of detriment to constitutional trade and commerce;
 - (viii) the goods are in the course of, or intended for, constitutional trade and commerce;

Section 380.5

- (ix) the person makes the statement in Australia using a postal or other like service or an electronic communication;
- (x) the person makes the statement outside Australia and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
- (xi) the loss is a loss to the Commonwealth or a Commonwealth authority;
- (xii) the statement is made to the Commonwealth or a Commonwealth authority.

Penalty: Imprisonment for 10 years.

- (3) Absolute liability applies to paragraph (2)(d).
- (4) For the purposes of this section, making a statement includes conveying information by any means.

380.5 Extended geographical jurisdiction—category D

Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection 380.2(1) or (2), 380.3 (1) or (2) or 380.4(1) or (2).

Chapter 10—National infrastructure

Part 10.2—Money laundering

Division 400—Money laundering

400.1 Definitions

- (1) In this Division:

ADI (authorised deposit-taking institution) means:

- (a) a body corporate that is an ADI for the purposes of the *Banking Act 1959*; or
- (b) the Reserve Bank of Australia; or
- (c) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution.

deals with money or other property has the meaning given by section 400.2.

instrument of crime: money or other property is an instrument of crime if it is used in the commission of, or used to facilitate the commission of, an offence that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

proceeds of crime means any money or other property that is derived or realised, directly or indirectly, by any person from the commission of an offence that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

property means real or personal property of every description, whether situated in Australia or elsewhere and whether tangible or intangible, and includes an interest in any such real or personal property.

- (2) To avoid doubt, a reference in this Division to ***money or other property*** includes a reference to financial instruments, cards and

Section 400.2

other objects that represent money or can be exchanged for money, whether or not they have intrinsic value.

400.2 Meaning of *dealing with money or other property*

- (1) For the purposes of this Division, a person *deals with money or other property* if:
- (a) the person does any of the following:
 - (i) receives, possesses, conceals or disposes of money or other property;
 - (ii) imports money or other property into, or exports money or other property from, Australia;
 - (iii) engages in a banking transaction relating to money or other property; and
 - (b) the money or other property is proceeds of crime, or could become an instrument of crime, in relation to an offence that is a Commonwealth indictable offence or a foreign indictable offence.
- (2) For the purposes of this Division, a person *deals with money or other property* if:
- (a) the person does any of the following:
 - (i) receives, possesses, conceals or disposes of money or other property;
 - (ii) imports money or other property into, or exports money or other property from, Australia;
 - (iii) engages in a banking transaction relating to money or other property; and
 - (b) the person does any of the matters referred to in paragraph (a):
 - (i) in the course of or for the purposes of importation of goods into, or exportation of goods from, Australia; or
 - (ii) by means of a communication using a postal, telegraphic or telephonic service within the meaning of paragraph 51(xx) of the Constitution; or
 - (iii) in the course of banking (other than State banking that does not extend beyond the limits of the State concerned).

(3) In this section:

banking transaction includes:

- (a) any transaction made at an ADI; and
- (b) any transaction involving a money order.

Commonwealth indictable offence means an offence against a law of the Commonwealth, or a law of a Territory (other than the Australian Capital Territory and the Northern Territory), that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

export money or other property, from Australia, includes transfer money or other property from Australia by an electronic communication.

foreign indictable offence means an offence against a law of a foreign country constituted by conduct that, if it had occurred in Australia, would have constituted an offence against:

- (a) a law of the Commonwealth; or
 - (b) a law of a State or Territory connected with the offence;
- that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

Note: See subsection (4) for when a law of a State or Territory is connected with the offence.

import money or other property, into Australia, includes transfer money or other property to Australia by an electronic communication.

- (4) For the purposes of the definition of **foreign indictable offence** in subsection (3), a State or Territory is connected with the offence if:
- (a) a dealing in money or property takes place in the State or Territory; and
 - (b) the money or property would be proceeds of crime, or could become an instrument of crime, in relation to the offence if the offence were a foreign indictable offence.

Section 400.3

400.3 Dealing in proceeds of crime etc.—money or property worth \$1,000,000 or more

- (1) A person is guilty of an offence if:
- (a) the person deals with money or other property; and
 - (b) either:
 - (i) the money or property is, and the person believes it to be, proceeds of crime; or
 - (ii) the person intends that the money or property will become an instrument of crime; and
 - (c) at the time of the dealing, the value of the money and other property is \$1,000,000 or more.

Penalty: Imprisonment for 25 years, or 1500 penalty units, or both.

- (2) A person is guilty of an offence if:
- (a) the person deals with money or other property; and
 - (b) either:
 - (i) the money or property is proceeds of crime; or
 - (ii) there is a risk that the money or property will become an instrument of crime; and
 - (c) the person is reckless as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
 - (d) at the time of the dealing, the value of the money and other property is \$1,000,000 or more.

Penalty: Imprisonment for 12 years, or 720 penalty units, or both.

- (3) A person is guilty of an offence if:
- (a) the person deals with money or other property; and
 - (b) either:
 - (i) the money or property is proceeds of crime; or
 - (ii) there is a risk that the money or property will become an instrument of crime; and
 - (c) the person is negligent as to the fact that the money or property is proceeds of crime or the fact that there is a risk

Section 400.4

that it will become an instrument of crime (as the case requires); and

- (d) at the time of the dealing, the value of the money and other property is \$1,000,000 or more.

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

- (4) Absolute liability applies to paragraphs (1)(c), (2)(d) and (3)(d).

Note: Section 400.10 provides for a defence of mistake of fact in relation to these paragraphs.

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

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

- (a) the person deals with money or other property; and
(b) either:
(i) the money or property is, and the person believes it to be, proceeds of crime; or
(ii) the person intends that the money or property will become an instrument of crime; and
(c) at the time of the dealing, the value of the money and other property is \$100,000 or more.

Penalty: Imprisonment for 20 years, or 1200 penalty units, or both.

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

- (a) the person deals with money or other property; and
(b) either:
(i) the money or property is proceeds of crime; or
(ii) there is a risk that the money or property will become an instrument of crime; and
(c) the person is reckless as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
(d) at the time of the dealing, the value of the money and other property is \$100,000 or more.

Section 400.5

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

- (3) A person is guilty of an offence if:
- (a) the person deals with money or other property; and
 - (b) either:
 - (i) the money or property is proceeds of crime; or
 - (ii) there is a risk that the money or property will become an instrument of crime; and
 - (c) the person is negligent as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
 - (d) at the time of the dealing, the value of the money and other property is \$100,000 or more.

Penalty: Imprisonment for 4 years, or 240 penalty units, or both.

- (4) Absolute liability applies to paragraphs (1)(c), (2)(d) and (3)(d).

Note: Section 400.10 provides for a defence of mistake of fact in relation to these paragraphs.

400.5 Dealing in proceeds of crime etc.—money or property worth \$50,000 or more

- (1) A person is guilty of an offence if:
- (a) the person deals with money or other property; and
 - (b) either:
 - (i) the money or property is, and the person believes it to be, proceeds of crime; or
 - (ii) the person intends that the money or property will become an instrument of crime; and
 - (c) at the time of the dealing, the value of the money and other property is \$50,000 or more.

Penalty: Imprisonment for 15 years, or 900 penalty units, or both.

- (2) A person is guilty of an offence if:
- (a) the person deals with money or other property; and
 - (b) either:
 - (i) the money or property is proceeds of crime; or

Section 400.6

- (ii) there is a risk that the money or property will become an instrument of crime; and
- (c) the person is reckless as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
- (d) at the time of the dealing, the value of the money and other property is \$50,000 or more.

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

- (3) A person is guilty of an offence if:
 - (a) the person deals with money or other property; and
 - (b) either:
 - (i) the money or property is proceeds of crime; or
 - (ii) there is a risk that the money or property will become an instrument of crime; and
 - (c) the person is negligent as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
 - (d) at the time of the dealing, the value of the money and other property is \$50,000 or more.

Penalty: Imprisonment for 3 years, or 180 penalty units, or both.

- (4) Absolute liability applies to paragraphs (1)(c), (2)(d) and (3)(d).

Note: Section 400.10 provides for a defence of mistake of fact in relation to these paragraphs.

400.6 Dealing in proceeds of crime etc.—money or property worth \$10,000 or more

- (1) A person is guilty of an offence if:
 - (a) the person deals with money or other property; and
 - (b) either:
 - (i) the money or property is, and the person believes it to be, proceeds of crime; or
 - (ii) the person intends that the money or property will become an instrument of crime; and

Section 400.6

(c) at the time of the dealing, the value of the money and other property is \$10,000 or more.

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

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

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

(b) either:

(i) the money or property is proceeds of crime; or

(ii) there is a risk that the money or property will become an instrument of crime; and

(c) the person is reckless as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and

(d) at the time of the dealing, the value of the money and other property is \$10,000 or more.

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

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

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

(b) either:

(i) the money or property is proceeds of crime; or

(ii) there is a risk that the money or property will become an instrument of crime; and

(c) the person is negligent as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and

(d) at the time of the dealing, the value of the money and other property is \$10,000 or more.

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

(4) Absolute liability applies to paragraphs (1)(c), (2)(d) and (3)(d).

Note: Section 400.10 provides for a defence of mistake of fact in relation to these paragraphs.

400.7 Dealing in proceeds of crime etc.—money or property worth \$1,000 or more

- (1) A person is guilty of an offence if:
- (a) the person deals with money or other property; and
 - (b) either:
 - (i) the money or property is, and the person believes it to be, proceeds of crime; or
 - (ii) the person intends that the money or property will become an instrument of crime; and
 - (c) at the time of the dealing, the value of the money and other property is \$1,000 or more.

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

- (2) A person is guilty of an offence if:
- (a) the person deals with money or other property; and
 - (b) either:
 - (i) the money or property is proceeds of crime; or
 - (ii) there is a risk that the money or property will become an instrument of crime; and
 - (c) the person is reckless as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
 - (d) at the time of the dealing, the value of the money and other property is \$1,000 or more.

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

- (3) A person is guilty of an offence if:
- (a) the person deals with money or other property; and
 - (b) either:
 - (i) the money or property is proceeds of crime; or
 - (ii) there is a risk that the money or property will become an instrument of crime; and
 - (c) the person is negligent as to the fact that the money or property is proceeds of crime or the fact that there is a risk

Section 400.8

that it will become an instrument of crime (as the case requires); and

- (d) at the time of the dealing, the value of the money and other property is \$1,000 or more.

Penalty: Imprisonment for 12 months, or 60 penalty units, or both.

- (4) Absolute liability applies to paragraphs (1)(c), (2)(d) and (3)(d).

Note: Section 400.10 provides for a defence of mistake of fact in relation to these paragraphs.

400.8 Dealing in proceeds of crime etc.—money or property of any value

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

- (a) the person deals with money or other property; and
(b) either:
(i) the money or property is, and the person believes it to be, proceeds of crime; or
(ii) the person intends that the money or property will become an instrument of crime.

Penalty: Imprisonment for 12 months, or 60 penalty units, or both.

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

- (a) the person deals with money or other property; and
(b) either:
(i) the money or property is proceeds of crime; or
(ii) there is a risk that the money or property will become an instrument of crime; and
(c) the person is reckless as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires).

Penalty: Imprisonment for 6 months, or 30 penalty units, or both.

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

- (a) the person deals with money or other property; and
(b) either:

Section 400.9

- (i) the money or property is proceeds of crime; or
- (ii) there is a risk that the money or property will become an instrument of crime; and
- (c) the person is negligent as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires).

Penalty: 10 penalty units.

400.9 Possession etc. of property reasonably suspected of being proceeds of crime etc.

- (1) A person is guilty of an offence if:
 - (a) the person:
 - (i) receives, possesses, conceals or disposes of money or other property; or
 - (ii) imports money or other property into, or exports money or other property from, Australia; and
 - (b) it is reasonable to suspect either or both of the following:
 - (i) the money or property is proceeds of crime in relation to a Commonwealth indictable offence or a foreign indictable offence;
 - (ii) the money or property is proceeds of crime, and the person's conduct referred to in paragraph (a) takes place in circumstances referred to in subsection (3).

Penalty: Imprisonment for 2 years, or 50 penalty units, or both.

- (2) Without limiting paragraph (1)(b), that paragraph is taken to be satisfied if:
 - (a) the conduct referred to in paragraph (1)(a) involves a number of transactions that are structured or arranged to avoid the reporting requirements of the *Financial Transaction Reports Act 1988* that would otherwise apply to the transactions; or
 - (b) the conduct involves using one or more accounts held with ADIs in false names; or
 - (c) the value of the money and property involved in the conduct is, in the opinion of the trier of fact, grossly out of proportion to the defendant's income and expenditure; or

Section 400.10

- (d) the conduct involves a significant cash transaction within the meaning of the *Financial Transaction Reports Act 1988*, and the defendant:
 - (i) has contravened his or her obligations under that Act relating to reporting the transaction; or
 - (ii) has given false or misleading information in purported compliance with those obligations; or
- (e) the defendant:
 - (i) has stated that the conduct was engaged in on behalf of or at the request of another person; and
 - (ii) has not provided information enabling the other person to be identified and located.
- (3) Subparagraph (1)(b)(ii) applies if the conduct in question takes place:
 - (a) in the course of or for the purposes of importation of goods into, or exportation of goods from, Australia; or
 - (b) by means of a communication using a postal, telegraphic or telephonic service within the meaning of paragraph 51(xx) of the Constitution; or
 - (c) in the course of banking (other than State banking that does not extend beyond the limits of the State concerned).
- (4) Absolute liability applies to paragraph (1)(b).
- (5) This section does not apply if the defendant proves that he or she had no reasonable grounds for suspecting that the money or property was derived or realised, directly or indirectly, from some form of unlawful activity.

Note: A defendant bears a legal burden in relation to the matter in subsection (5) (see section 13.4).

400.10 Mistake of fact as to the value of money or property

- (1) A person is not criminally responsible for an offence against section 400.3, 400.4, 400.5, 400.6 or 400.7 in relation to money or property if:
 - (a) at or before the time of dealing with the money or property, the person considered what was the value of the money or

property, and was under a mistaken but reasonable belief about that value; and

- (b) had the value been what the person believed it to be, the person's conduct would have constituted another offence against this Division for which the maximum penalty, in penalty units, is less than the maximum penalty, in penalty units, for the offence charged.

Example: Assume that a person deals with money or property that is the proceeds of crime. While the person believes it to be proceeds of crime, he or she is under a mistaken but reasonable belief that it is worth \$90,000 when it is in fact worth \$120,000.

That belief is a defence to an offence against subsection 400.4(1) (which deals with money or property of a value of \$100,000 or more). However, the person would be guilty of an offence against subsection 400.5(1) (which deals with money or property of a value of \$10,000 or more). Section 400.14 allows for an alternative verdict of guilty of an offence against subsection 400.5(1).

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

- (2) A person may be regarded as having considered what the value of the money or property was if:
 - (a) he or she had considered, on a previous occasion, what the value of the money or property was in the circumstances surrounding that occasion; and
 - (b) he or she honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

400.11 Proof of certain matters relating to kinds of offences not required

In a prosecution for an offence against a provision of this Division, it is not necessary to prove the existence of any fault element in relation to any of the following:

- (a) whether an offence may be dealt with as an indictable offence;
- (b) whether an offence is an indictable offence;
- (c) whether an offence is a Commonwealth indictable offence;
- (d) whether an offence is a foreign indictable offence.

Section 400.12

400.12 Combining several contraventions in a single charge

- (1) A single charge of an offence against a provision of this Division may be about 2 or more instances of the defendant engaging in conduct (at the same time or different times) that constitutes an offence against a provision of this Division.
- (2) If:
 - (a) a single charge is about 2 or more such instances; and
 - (b) the value of the money and other property dealt with is an element of the offence in question;that value is taken to be the sum of the values of the money and other property dealt with in respect of each of those instances.

400.13 Proof of other offences is not required

- (1) To avoid doubt, it is not necessary, in order to prove for the purposes of this Division that money or property is proceeds of crime, to establish:
 - (a) a particular offence was committed in relation to the money or property; or
 - (b) a particular person committed an offence in relation to the money or property.
- (2) To avoid doubt, it is not necessary, in order to prove for the purposes of this Division an intention or risk that money or property will be an instrument of crime, to establish that:
 - (a) an intention or risk that a particular offence will be committed in relation to the money or property; or
 - (b) an intention or risk that a particular person will commit an offence in relation to the money or property.

400.14 Alternative verdicts

If, on a trial for an offence against a provision of this Division (the *offence charged*), the trier of fact:

- (a) is not satisfied that the defendant is guilty of the offence charged; but

Section 400.15

(b) is otherwise satisfied that the defendant is guilty of another offence against this Division for which the maximum penalty, in penalty units, is less than the maximum penalty, in penalty units, for the offence charged;
the trier of fact may find the defendant not guilty of the offence charged but guilty of the other offence, so long as the person has been accorded procedural fairness in relation to that finding of guilt.

400.15 Geographical jurisdiction

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

400.16 Saving of other laws

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

Part 10.5—Postal services

Division 470—Preliminary

470.1 Definitions

In this Part:

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

article in the course of post means an article that is being carried by post, and includes an article that has been collected or received by or on behalf of Australia Post for carriage by post, but has not been delivered by or on behalf of Australia Post.

Australia Post means the Australian Postal Corporation.

carry, in relation to an article, has the same meaning as in the *Australian Postal Corporation Act 1989*.

carry by post has the same meaning as in the *Australian Postal Corporation Act 1989*.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

mail-receptacle means a mail-bag, package, parcel, container, wrapper, receptacle or similar thing that:

- (a) belongs to, or is in the possession of, Australia Post; and
- (b) is used, or intended for use, in the carriage of articles by post (whether or not it actually contains such articles).

postage stamp has the same meaning as in the *Australian Postal Corporation Act 1989*.

postal message means:

- (a) a material record of an unwritten communication:
 - (i) carried by post; or

Section 470.1

- (ii) collected or received by Australia Post for carriage by post; or
- (b) a material record issued by Australia Post as a record of an unwritten communication:
 - (i) carried by post; or
 - (ii) collected or received by Australia Post for carriage by post.

postal or similar service means:

- (a) a postal service (within the meaning of paragraph 51(v) of the Constitution); or
- (b) a courier service, to the extent to which the service is a postal or other like service (within the meaning of paragraph 51(v) of the Constitution); or
- (c) a packet or parcel carrying service, to the extent to which the service is a postal or other like service (within the meaning of paragraph 51(v) of the Constitution); or
- (d) any other service that is a postal or other like service (within the meaning of paragraph 51(v) of the Constitution); or
- (e) a courier service that is provided by a constitutional corporation; or
- (f) a packet or parcel carrying service that is provided by a constitutional corporation; or
- (g) a courier service that is provided in the course of, or in relation to, trade or commerce:
 - (i) between Australia and a place outside Australia; or
 - (ii) among the States; or
 - (iii) between a State and a Territory or between 2 Territories; or
- (h) a packet or parcel carrying service that is provided in the course of, or in relation to, trade or commerce:
 - (i) between Australia and a place outside Australia; or
 - (ii) among the States; or
 - (iii) between a State and a Territory or between 2 Territories.

property has the same meaning as in Chapter 7.

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

Section 470.2

470.2 Dishonesty

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

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

470.3 Determination of dishonesty to be a matter for the trier of fact

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

Division 471—Postal offences

471.1 Theft of mail-receptacles, articles or postal messages

- (1) A person is guilty of an offence if:
- (a) the person dishonestly appropriates:
 - (i) a mail-receptacle; or
 - (ii) an article in the course of post (including an article that appears to have been lost or wrongly delivered by or on behalf of Australia Post or lost in the course of delivery to Australia Post); or
 - (iii) a postal message; and
 - (b) the person does so with the intention of permanently depriving another person of the mail-receptacle, article or postal message.

Penalty: Imprisonment for 10 years.

Dishonesty

- (2) For the purposes of this section, a person's appropriation of a mail-receptacle, article or postal message may be dishonest even if the person or another person is willing to pay for the mail-receptacle, article or postal message.

Intention of permanently depriving a person of a mail-receptacle, article or postal message

- (3) For the purposes of this section, if:
- (a) a person appropriates a mail-receptacle, article or postal message without meaning another permanently to lose the thing itself; and
 - (b) the person's intention is to treat the thing as the person's own to dispose of regardless of the other's rights;
- the person has the intention of permanently depriving the other of it.
- (4) For the purposes of subsection (3), a borrowing or lending of a thing amounts to treating the thing as the borrower's or lender's

Section 471.2

own to dispose of regardless of another's rights if, and only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.

471.2 Receiving stolen mail-receptacles, articles or postal messages

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

Penalty: Imprisonment for 10 years.

Stolen property

- (2) For the purposes of this section, property is **stolen property** if, and only if:
- (a) it is original stolen property (as defined by subsection (3)); or
 - (b) it is tainted property (as defined by subsection (5)).

This subsection has effect subject to subsection (4).

Original stolen property

- (3) For the purposes of this section, **original stolen property** is property, or a part of property, that:
- (a) was appropriated in the course of an offence against section 471.1 (whether or not the property, or the part of the property, is in the state it was in when it was so appropriated); and
 - (b) is in the possession or custody of the person who so appropriated the property.
- (4) For the purposes of this section, property ceases to be original stolen property:
- (a) after the property is restored:
 - (i) to the person from whom it was appropriated; or
 - (ii) to other lawful possession or custody; or
 - (b) after:
 - (i) the person from whom the property was appropriated ceases to have any right to restitution in respect of the property; or

Section 471.2

- (ii) a person claiming through the person from whom the property was appropriated ceases to have any right to restitution in respect of the property.

Tainted property

- (5) For the purposes of this section, ***tainted property*** is property that:
- (a) is (in whole or in part) the proceeds of sale of, or property exchanged for, original stolen property; and
 - (b) is in the possession or custody of the person who so appropriated the original stolen property.

Alternative verdicts

- (6) If, in a prosecution for an offence against section 471.1, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against this section, the trier of fact may find the defendant not guilty of the offence against section 471.1 but guilty of the offence against this section, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.
- (7) If, in a prosecution for an offence against this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against section 471.1, the trier of fact may find the defendant not guilty of the offence against this section but guilty of the offence against section 471.1, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Receiving stolen property before commencement

- (8) For the purposes of this section:
- (a) it is to be assumed that section 471.1 had been in force at all times before the commencement of this section; and
 - (b) property that was appropriated at a time before the commencement of this section does not become ***stolen property*** unless the property was appropriated in circumstances that (apart from paragraph (a)) amounted to an offence against a law of the Commonwealth in force at that time.

Section 471.3

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

A person is guilty of an offence if the person dishonestly takes or conceals:

- (a) a mail-receptacle; or
- (b) an article in the course of post (including an article that appears to have been lost or wrongly delivered by or on behalf of Australia Post or lost in the course of delivery to Australia Post); or
- (c) a postal message.

Penalty: Imprisonment for 5 years.

471.4 Dishonest removal of postage stamps or postmarks

A person is guilty of an offence if the person dishonestly:

- (a) removes any postage stamp affixed to, or printed on, an article; or
- (b) removes any postmark from a postage stamp that has previously been used for postal services.

Penalty: Imprisonment for 12 months.

471.5 Dishonest use of previously used, defaced or obliterated stamps

(1) A person is guilty of an offence if the person dishonestly uses for postal services a postage stamp:

- (a) that has previously been used for postal services; or
- (b) that has been obliterated; or
- (c) that has been defaced.

Penalty: Imprisonment for 12 months.

(2) If, in proceedings for an offence against subsection (1), it is proved that the defendant caused an article to or on which was affixed or printed a postage stamp:

- (a) that had previously been used for postal services; or
- (b) that had been obliterated; or

- (c) that had been defaced;
to be carried by post, it is presumed, in the absence of evidence to the contrary, that the defendant used the stamp for postal services.
- (3) The burden of proof in respect of evidence to the contrary is an evidential burden of proof.

471.6 Damaging or destroying mail-receptacles, articles or postal messages

- (1) A person is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the person's conduct causes damage to, or the destruction of:
 - (i) a mail-receptacle; or
 - (ii) an article in the course of post (including an article that appears to have been lost or wrongly delivered by or on behalf of Australia Post or lost in the course of delivery to Australia Post); or
 - (iii) a postal message; and
 - (c) the person:
 - (i) intends that his or her conduct cause that damage; or
 - (ii) is reckless as to whether his or her conduct causes that damage.

Penalty: Imprisonment for 10 years.

- (2) For the purposes of this section, a person's conduct is taken to cause the destruction of a thing if the person's conduct causes the physical loss of the thing by interfering with the thing (including by removing any restraint over the thing or abandoning the thing).
- (3) For the purposes of this section, a person's conduct is taken to cause damage to a thing if:
- (a) the person's conduct causes any loss of a use of the function of the thing by interfering with the thing; or
 - (b) the person's conduct causes the thing to be defaced.

Section 471.7

471.7 Tampering with mail-receptacles

- (1) A person is guilty of an offence if the person dishonestly:
- (a) opens a mail-receptacle; or
 - (b) tampers with a mail-receptacle.

Penalty: Imprisonment for 5 years.

- (2) A person is guilty of an offence if:
- (a) the person intentionally opens a mail-receptacle; and
 - (b) the person is not authorised by Australia Post to open the mail-receptacle; and
 - (c) the person does so knowing that he or she is not authorised by Australia Post to open the mail-receptacle.

Penalty: Imprisonment for 2 years.

471.8 Dishonestly obtaining delivery of articles

A person is guilty of an offence if the person dishonestly obtains delivery of, or receipt of, an article in the course of post that is not directed to the person.

Penalty: Imprisonment for 5 years.

471.9 Geographical jurisdiction

Section 15.3 (extended geographical jurisdiction—category C) applies to an offence against section 471.1, 471.2, 471.3, 471.4, 471.5, 471.6, 471.7 or 471.8.

471.10 Hoaxes—explosives and dangerous substances

- (1) A person is guilty of an offence if:
- (a) the person causes an article to be carried by a postal or similar service; and
 - (b) the person does so with the intention of inducing a false belief that:
 - (i) the article consists of, encloses or contains an explosive or a dangerous or harmful substance or thing; or

Section 471.11

- (ii) an explosive, or a dangerous or harmful substance or thing, has been or will be left in any place.

Penalty: Imprisonment for 10 years.

- (2) To avoid doubt, the definition of *carry by post* in section 470.1 does not apply to this section.

471.11 Using a postal or similar service to make a threat

Threat to kill

- (1) A person (the *first person*) is guilty of an offence if:
 - (a) the first person uses a postal or similar service to make to another person (the *second person*) a threat to kill the second person or a third person; and
 - (b) the first person intends the second person to fear that the threat will be carried out.

Penalty: Imprisonment for 10 years.

Threat to cause serious harm

- (2) A person (the *first person*) is guilty of an offence if:
 - (a) the first person uses a postal or similar service to make to another person (the *second person*) a threat to cause serious harm to the second person or a third person; and
 - (b) the first person intends the second person to fear that the threat will be carried out.

Penalty: Imprisonment for 7 years.

Actual fear not necessary

- (3) In a prosecution for an offence against this section, it is not necessary to prove that the person receiving the threat actually feared that the threat would be carried out.

Definitions

- (4) In this section:
fear includes apprehension.

Section 471.12

threat to cause serious harm to a person includes a threat to substantially contribute to serious harm to the person.

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

A person is guilty of an offence if:

- (a) the person uses a postal or similar service; and
- (b) the person does so in a way (whether by the method of use or the content of a communication, or both) that reasonable persons would regard as being, in all the circumstances, menacing, harassing or offensive.

Penalty: Imprisonment for 2 years.

471.13 Causing a dangerous article to be carried by a postal or similar service

Offence

- (1) A person (the *first person*) is guilty of an offence if:
 - (a) the first person causes an article to be carried by a postal or similar service; and
 - (b) the person does so in a way that gives rise to a danger of death or serious harm to another person; and
 - (c) the first person is reckless as to the danger of death or serious harm.

Penalty: Imprisonment for 10 years.

Danger of death or serious harm

- (2) For the purposes of this section, if a person's conduct exposes another person to the risk of catching a disease that may give rise to a danger of death or serious harm to the other person, the conduct is taken to give rise to a danger of death or serious harm to the other person.
- (3) For the purposes of this section, a person's conduct gives rise to a danger of death or serious harm if the conduct is ordinarily capable

of creating a real, and not merely a theoretical, danger of death or serious harm.

- (4) For the purposes of this section, a person's conduct may give rise to a danger of death or serious harm whatever the statistical or arithmetical calculation of the degree of risk of death or serious harm involved.
- (5) In a prosecution for an offence against subsection (1), it is not necessary to prove that a specific person was actually placed in danger of death or serious harm by the conduct concerned.

Definition

- (6) To avoid doubt, the definition of *carry by post* in section 470.1 does not apply to this section.

471.14 Geographical jurisdiction

Section 15.1 (extended geographical jurisdiction—category A) applies to an offence against section 471.10, 471.11, 471.12 or 471.13.

471.15 Causing an explosive, or a dangerous or harmful substance, to be carried by post

Offence

- (1) A person is guilty of an offence if:
 - (a) the person causes an article to be carried by post; and
 - (b) the article consists of, encloses or contains:
 - (i) an explosive; or
 - (ii) a dangerous or harmful substance or thing that the regulations say must not, without exception, be carried by post.

Penalty: Imprisonment for 10 years.

Schedule The Criminal Code
Chapter 10 National infrastructure
Part 10.5 Postal services
Division 471 Postal offences

Section 471.15

Geographical jurisdiction

- (2) Section 15.3 (extended geographical jurisdiction—category C) applies to an offence against subsection (1).

Division 472—Miscellaneous

472.1 Saving of other laws

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

472.2 Interpretation of other laws

In determining the meaning of a provision of:

- (a) Part VIIA of the *Crimes Act 1914*; or
- (b) the *Australian Postal Corporation Act 1989*;

this Part is to be disregarded.

Part 10.6—Telecommunications Services

Division 473—Preliminary

473.1 Definitions

In this Part:

access in relation to material includes:

- (a) the display of the material by a computer or any other output of the material from a computer; or
- (b) the copying or moving of the material to any place in a computer or to a data storage device; or
- (c) in the case of material that is a program—the execution of the program.

account identifier means:

- (a) something that:
 - (i) contains subscription-specific secure data; and
 - (ii) is installed, or capable of being installed, in a mobile telecommunications device; or
- (b) anything else that:
 - (i) allows a particular mobile telecommunications account to be identified; and
 - (ii) is prescribed by the regulations as an account identifier for the purposes of this Part.

Note: Paragraph (a)—This would include a SIM card.

carriage service provider has the same meaning as in the *Telecommunications Act 1997*.

Note: See also section 474.3 respecting persons who are taken to be carriage service providers in relation to certain matters.

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

Note: See also section 474.3 respecting persons who are taken to be carriers in relation to certain matters.

carry includes transmit, switch and receive.

child abuse material means:

- (a) material that depicts a person, or a representation of a person, who:
 - (i) is, or appears to be, under 18 years of age; and
 - (ii) is, or appears to be, a victim of torture, cruelty or physical abuse;and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or
- (b) material that describes a person who:
 - (i) is, or is implied to be, under 18 years of age; and
 - (ii) is, or is implied to be, a victim of torture, cruelty or physical abuse;and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive.

child pornography material means:

- (a) material that depicts a person, or a representation of a person, who is, or appears to be, under 18 years of age and who:
 - (i) is engaged in, or appears to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or
 - (ii) is in the presence of a person who is engaged in, or appears to be engaged in, a sexual pose or sexual activity;and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or
- (b) material the dominant characteristic of which is the depiction, for a sexual purpose, of:
 - (i) a sexual organ or the anal region of a person who is, or appears to be, under 18 years of age; or
 - (ii) a representation of such a sexual organ or anal region; or
 - (iii) the breasts, or a representation of the breasts, of a female person who is, or appears to be, under 18 years of age;

Section 473.1

in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

(c) material that describes a person who is, or is implied to be, under 18 years of age and who:

(i) is engaged in, or is implied to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or

(ii) is in the presence of a person who is engaged in, or is implied to be engaged in, a sexual pose or sexual activity;

and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

(d) material that describes:

(i) a sexual organ or the anal region of a person who is, or is implied to be, under 18 years of age; or

(ii) the breasts of a female person who is, or is implied to be, under 18 years of age;

and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive.

communication in the course of telecommunications carriage

means a communication that is being carried by a carrier or carriage service provider, and includes a communication that has been collected or received by a carrier or carriage service provider for carriage, but has not yet been delivered by the carrier or carriage service provider.

connected, in relation to a telecommunications network, includes connection otherwise than by means of physical contact (for example, a connection by means of radiocommunication).

control of data, or material that is in the form of data, has the meaning given by section 473.2.

depict includes contain data from which a visual image (whether still or moving) can be generated.

describe includes contain data from which text or sounds can be generated.

Section 473.1

emergency call person has the same meaning as in the *Telecommunications Act 1997*.

emergency service number has the same meaning as in the *Telecommunications Act 1997*.

emergency service organisation has the same meaning as in section 147 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

facility has the same meaning as in the *Telecommunications Act 1997*.

intelligence or security officer means an officer or employee of:

- (a) the Australian Security Intelligence Organisation; or
- (b) the Australian Secret Intelligence Service; or
- (c) the Office of National Assessments; or
- (d) that part of the Department of Defence known as the Defence Signals Directorate; or
- (e) that part of the Department of Defence known as the Defence Intelligence Organisation;

and includes a staff member (within the meaning of the *Intelligence Services Act 2001*) of the Australian Security Intelligence Organisation, the Australian Secret Intelligence Service or the Defence Signals Directorate.

interception device means an apparatus or device that:

- (a) is of a kind that is capable of being used to enable a person to intercept a communication passing over a telecommunications system; and
- (b) could reasonably be regarded as having been designed:
 - (i) for the purpose of; or
 - (ii) for purposes including the purpose of; using it in connection with the interception of communications passing over a telecommunications system; and
- (c) is not designed principally for the reception of communications transmitted by radiocommunications.

Section 473.1

Terms used in this definition that are defined in the *Telecommunications (Interception) Act 1979* have the same meaning in this definition as they have in that Act.

Internet content host has the same meaning as in Schedule 5 to the *Broadcasting Services Act 1992*.

Internet service provider has the same meaning as in Schedule 5 to the *Broadcasting Services Act 1992*.

law enforcement officer means any of the following:

- (a) the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*);
- (b) a member, or employee, of the police force of a State or Territory;
- (c) a member of the staff of the Australian Crime Commission (within the meaning of the *Australian Crime Commission Act 2002*);
- (d) a member of a police force, or other law enforcement agency, of a foreign country;
- (e) the Director of Public Prosecutions or a person performing a similar function under a law of a State or Territory;
- (f) a member of the staff of the Office of the Director of Public Prosecutions (within the meaning of the *Director of Public Prosecutions Act 1983*) or of a similar body established under a law of a State or Territory.

loss means a loss in property, whether temporary or permanent, and includes not getting what one might get.

material includes material in any form, or combination of forms, capable of constituting a communication.

mobile telecommunications account means an account with a carriage service provider for the supply of a public mobile telecommunications service to an end-user.

mobile telecommunications device means an item of customer equipment (within the meaning of the *Telecommunications Act*

Section 473.1

1997) that is used, or is capable of being used, in connection with a public mobile telecommunications service.

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

NRS provider has the same meaning as in Part 3 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

obtaining includes:

- (a) obtaining for another person; and
- (b) inducing a third person to do something that results in another person obtaining.

obtaining data, or material that is in the form of data, has the meaning given by section 473.3.

possession of data, or material that is in the form of data, has the meaning given by section 473.2.

producing data, or material that is in the form of data, has the meaning given by section 473.3.

property has the same meaning as in Chapter 7.

public mobile telecommunications service has the same meaning as in the *Telecommunications Act 1997*.

radiocommunication has the same meaning as in the *Radiocommunications Act 1992*.

serious offence against a foreign law means an offence against a law of a foreign country constituted by conduct that, if it had occurred in Australia, would have constituted a serious offence against a law of the Commonwealth, a State or a Territory.

serious offence against a law of the Commonwealth, a State or a Territory means an offence against a law of the Commonwealth, a State or a Territory that is punishable by imprisonment:

- (a) for life; or
- (b) for a period of 5 or more years.

Section 473.2

subscription-specific secure data means data that is used, or is capable of being used, to:

- (a) allow a carrier to identify a particular mobile telecommunications account (whether an existing account or an account that may be set up in the future); and
- (b) allow a mobile telecommunications device in which an account identifier that contains the data is installed to access the public mobile telecommunication service to which that account relates.

supplying data, or material that is in the form of data, has the meaning given by section 473.3.

telecommunications device identifier means:

- (a) an electronic identifier of a mobile telecommunications device that is:
 - (i) installed in the device by the manufacturer; and
 - (ii) is capable of being used to distinguish that particular device from other mobile telecommunications devices;or
- (b) any other form of identifier that is prescribed by the regulations as a telecommunications device identifier for the purposes of this Part.

Note: Paragraph (a)—For example, GSM mobile phones use an industry-recognised International Mobile Equipment Identity (IMEI) number. This number identifies the particular phone, as compared to the SIM card number which identifies a particular telecommunications account. Carriers are able to block service to lost and stolen mobile phones based on their IMEI numbers.

telecommunications network has the same meaning as in the *Telecommunications Act 1997*.

473.2 Possession or control of data or material in the form of data

A reference in this Part to a person having possession or control of data, or material that is in the form of data, includes a reference to the person:

- (a) having possession of a computer or data storage device that holds or contains the data; or

- (b) having possession of a document in which the data is recorded; or
- (c) having control of data held in a computer that is in the possession of another person (whether inside or outside Australia).

473.3 Producing, supplying or obtaining data or material in the form of data

A reference in this Part to a person producing, supplying or obtaining data, or material that is in the form of data, includes a reference to the person:

- (a) producing, supplying or obtaining data held or contained in a computer or data storage device; or
- (b) producing, supplying or obtaining a document in which the data is recorded.

473.4 Determining whether material is offensive

The matters to be taken into account in deciding for the purposes of this Part whether reasonable persons would regard particular material, or a particular use of a carriage service, as being, in all the circumstances, offensive, include:

- (a) the standards of morality, decency and propriety generally accepted by reasonable adults; and
- (b) the literary, artistic or educational merit (if any) of the material; and
- (c) the general character of the material (including whether it is of a medical, legal or scientific character).

Division 474—Telecommunications offences

Subdivision A—Dishonesty with respect to carriage services

474.1 Dishonesty

- (1) For the purposes of this Subdivision, *dishonest* means:
 - (a) dishonest according to the standards of ordinary people; and
 - (b) known by the defendant to be dishonest according to the standards of ordinary people.
- (2) In a prosecution for an offence against this Subdivision, the determination of dishonesty is a matter for the trier of fact.

474.2 General dishonesty with respect to a carriage service provider

Obtaining a gain

- (1) A person is guilty of an offence if the person does anything with the intention of dishonestly obtaining a gain from a carriage service provider by way of the supply of a carriage service.

Penalty: Imprisonment for 5 years.

Causing a loss

- (2) A person is guilty of an offence if the person does anything with the intention of dishonestly causing a loss to a carriage service provider in connection with the supply of a carriage service.

Penalty: Imprisonment for 5 years.

- (3) A person is guilty of an offence if:
 - (a) the person dishonestly causes a loss, or dishonestly causes a risk of loss, to a carriage service provider in connection with the supply of a carriage service; and
 - (b) the person knows or believes that the loss will occur or that there is a substantial risk of the loss occurring.

Penalty: Imprisonment for 5 years.

Subdivision B—Interference with telecommunications

474.3 Person acting for a carrier or carriage service provider

- (1) For the purposes of this Subdivision, a person who does any thing for or on behalf of a carrier, or on behalf of persons at least one of whom is a carrier, is, in respect of:
 - (a) the doing by that person of that thing; or
 - (b) any rental, fee or charge payable for or in relation to the doing by that person of that thing; or
 - (c) the operation by that person of a facility in connection with the doing of that thing; or
 - (d) a facility belonging to that person; or
 - (e) the operation by that person of a satellite;taken to be a carrier.
- (2) For the purposes of this Subdivision, a person who does any thing for or on behalf of a carriage service provider, or on behalf of persons at least one of whom is a carriage service provider, is, in respect of:
 - (a) the doing by that person of that thing; or
 - (b) any rental, fee or charge payable for or in relation to the doing by that person of that thing; or
 - (c) the operation by that person of a facility in connection with the doing of that thing; or
 - (d) a facility belonging to that person; or
 - (e) the operation by that person of a satellite;taken to be a carriage service provider.

474.4 Interception devices

- (1) A person is guilty of an offence if:
 - (a) the person:
 - (i) manufactures; or
 - (ii) advertises, displays or offers for sale; or
 - (iii) sells; or
 - (iv) possesses;

Section 474.5

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

(b) the apparatus or device is an interception device.

Penalty: Imprisonment for 5 years.

- (2) A person is not criminally responsible for an offence against subsection (1) if the person possesses the interception device in the course of the person's duties relating to the interception of communications that does not constitute a contravention of subsection 7(1) of the *Telecommunications (Interception) Act 1979*.

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

- (3) A person is not criminally responsible for an offence against subsection (1) if the applicable conduct mentioned in subparagraphs (1)(a)(i) to (iv) is in circumstances specified in regulations made for the purposes of this subsection.

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

474.5 Wrongful delivery of communications

- (1) A person is guilty of an offence if:
- (a) a communication is in the course of telecommunications carriage; and
 - (b) the person causes the communication to be received by a person or carriage service other than the person or service to whom it is directed.

Penalty: Imprisonment for 1 year.

- (2) A person is not criminally responsible for an offence against subsection (1) if the person engages in the conduct referred to in paragraph (1)(b) with the consent or authorisation of the person to whom, or the person operating the carriage service to which, the communication is directed.

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

474.6 Interference with facilities

- (1) A person is guilty of an offence if the person tampers with, or interferes with, a facility owned or operated by:
- (a) a carrier; or
 - (b) a carriage service provider; or
 - (c) a nominated carrier.

Penalty: Imprisonment for 1 year.

- (2) For the purposes of an offence against subsection (1), absolute liability applies to the physical element of circumstance of the offence, that the facility is owned or operated by a carrier, a carriage service provider or a nominated carrier.

- (3) A person is guilty of an offence if:
- (a) the person tampers with, or interferes with, a facility owned or operated by:
 - (i) a carrier; or
 - (ii) a carriage service provider; or
 - (iii) a nominated carrier; and
 - (b) this conduct results in hindering the normal operation of a carriage service supplied by a carriage service provider.

Penalty: Imprisonment for 2 years.

- (4) For the purposes of an offence against subsection (3), absolute liability applies to the following physical elements of circumstance of the offence:
- (a) that the facility is owned or operated by a carrier, a carriage service provider or a nominated carrier;
 - (b) that the carriage service is supplied by a carriage service provider.
- (5) A person is guilty of an offence if:
- (a) the person uses or operates any apparatus or device (whether or not it is comprised in, connected to or used in connection with a telecommunications network); and
 - (b) this conduct results in hindering the normal operation of a carriage service supplied by a carriage service provider.

Section 474.7

Penalty: Imprisonment for 2 years.

- (6) For the purposes of an offence against subsection (5), absolute liability applies to the physical element of circumstance of the offence, that the carriage service is supplied by a carriage service provider.
- (7) A person is not criminally responsible for an offence against subsection (5) if:
- (a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in good faith in the course of his or her duties; and
 - (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

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

Note 2: See also subsection 475.1(2) for the interaction between this defence and the *Radiocommunications Act 1992*.

- (8) For the purposes of this section, a facility is taken to be owned or operated by a nominated carrier if the *Telecommunications Act 1997* applies, under section 81A of that Act, as if that facility were owned or operated by the nominated carrier.

474.7 Modification etc. of a telecommunications device identifier

- (1) A person is guilty of an offence if the person:
- (a) modifies a telecommunications device identifier; or
 - (b) interferes with the operation of a telecommunications device identifier.

Penalty: Imprisonment for 2 years.

- (2) A person is not criminally responsible for an offence against subsection (1) if the person is:
- (a) the manufacturer of the mobile telecommunications device in which the telecommunications device identifier is installed; or
 - (b) an employee or agent of the manufacturer who is acting on behalf of the manufacturer; or
 - (c) acting with the consent of the manufacturer.

Section 474.8

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

- (3) A person is not criminally responsible for an offence against subsection (1) if:
- (a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
 - (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

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

Note 2: This subsection merely creates a defence to an offence against subsection (1) and does not operate to authorise any conduct that requires a warrant under some other law.

474.8 Possession or control of data or a device with intent to modify a telecommunications device identifier

- (1) A person is guilty of an offence if:
- (a) the person has possession or control of any thing or data; and
 - (b) the person has that possession or control with the intention that the thing or data be used:
 - (i) by the person; or
 - (ii) by another person;in committing an offence against subsection 474.7(1) (modification of a telecommunications device identifier).

Penalty: Imprisonment for 2 years.

- (2) A person may be found guilty of an offence against subsection (1) even if committing the offence against subsection 474.7(1) (modification of a telecommunications device identifier) is impossible.
- (3) It is not an offence to attempt to commit an offence against subsection (1).
- (4) A person is not criminally responsible for an offence against subsection (1) if the person is:

Section 474.9

- (a) the manufacturer of the mobile telecommunications device in which the telecommunications device identifier is installed; or
- (b) an employee or agent of the manufacturer who is acting on behalf of the manufacturer; or
- (c) acting with the consent of the manufacturer.

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

- (5) A person is not criminally responsible for an offence against subsection (1) if:
- (a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
 - (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

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

Note 2: This subsection merely creates a defence to an offence against subsection (1) and does not operate to authorise any conduct that requires a warrant under some other law.

474.9 Producing, supplying or obtaining data or a device with intent to modify a telecommunications device identifier

- (1) A person is guilty of an offence if:
- (a) the person produces, supplies or obtains any thing or data; and
 - (b) the person does so with the intention that the thing or data be used:
 - (i) by the person; or
 - (ii) by another person;in committing an offence against subsection 474.7(1) (modification of a telecommunications device identifier).

Penalty: Imprisonment for 2 years.

- (2) A person may be found guilty of an offence against subsection (1) even if committing the offence against subsection 474.7(1)

(modification of a telecommunications device identifier) is impossible.

- (3) It is not an offence to attempt to commit an offence against subsection (1).
- (4) A person is not criminally responsible for an offence against subsection (1) if the person is:
- (a) the manufacturer of the mobile telecommunications device in which the telecommunications device identifier is installed; or
 - (b) an employee or agent of the manufacturer who is acting on behalf of the manufacturer; or
 - (c) acting with the consent of the manufacturer.

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

- (5) A person is not criminally responsible for an offence against subsection (1) if:
- (a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
 - (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

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

Note 2: This subsection merely creates a defence to an offence against subsection (1) and does not operate to authorise any conduct that requires a warrant under some other law.

474.10 Copying subscription-specific secure data

Copying subscription-specific secure data from an existing account identifier

- (1) A person is guilty of an offence if the person:
- (a) copies the subscription-specific secure data from an account identifier; and
 - (b) does so with the intention that the data will be copied (whether by the person or by someone else) onto something that:

Section 474.10

- (i) is an account identifier; or
- (ii) will, once the data is copied onto it, be capable of operating as an account identifier.

Penalty: Imprisonment for 2 years.

Copying subscription-specific secure data onto a new account identifier

- (2) A person is guilty of an offence if:
- (a) subscription-specific secure data is copied from an account identifier (whether by the person or by someone else); and
 - (b) the person copies that data onto something that:
 - (i) is an account identifier; or
 - (ii) will, once the data is copied onto it, be capable of operating as an account identifier.

This is so whether or not the person knows which particular account identifier the subscription-specific secure data is copied from.

Penalty: Imprisonment for 2 years.

Defences

- (3) A person is not criminally responsible for an offence against subsection (1) or (2) if the person is:
- (a) the carrier who operates the facilities used, or to be used, in the supply of the public mobile telecommunications service to which the subscription-specific secure data relates; or
 - (b) an employee or agent of that carrier who is acting on behalf of that carrier; or
 - (c) acting with the consent of that carrier.

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

- (4) A person is not criminally responsible for an offence against subsection (1) or (2) if:
- (a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and

- (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

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

Note 2: This subsection merely creates a defence to an offence against subsection (1) or (2) and does not operate to authorise any conduct that requires a warrant under some other law.

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

- (1) A person is guilty of an offence if:
- (a) the person has possession or control of any thing or data; and
 - (b) the person has that possession or control with the intention that the thing or data be used:
 - (i) by the person; or
 - (ii) by another person;
- in committing an offence against subsection 474.10(1) (copying subscription-specific secure data from an account identifier) or 474.10(2) (copying subscription-specific secure data onto an account identifier).

Penalty: Imprisonment for 2 years.

- (2) A person may be found guilty of an offence against subsection (1) even if committing the offence against subsection 474.10(1) (copying subscription-specific secure data from an account identifier) or 474.10(2) (copying subscription-specific secure data onto an account identifier) is impossible.
- (3) It is not an offence to attempt to commit an offence against subsection (1).

Defences

- (4) A person is not criminally responsible for an offence against subsection (1) if the person is:
- (a) the carrier who operates the facilities used, or to be used, in the supply of the public mobile telecommunications service to which the subscription-specific secure data relates; or

Section 474.12

- (b) an employee or agent of that carrier who is acting on behalf of that carrier; or
- (c) acting with the consent of that carrier.

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

- (5) A person is not criminally responsible for an offence against subsection (1) if:
 - (a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
 - (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

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

Note 2: This subsection merely creates a defence to an offence against subsection (1) and does not operate to authorise any conduct that requires a warrant under some other law.

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

- (1) A person is guilty of an offence if:
 - (a) the person produces, supplies or obtains any thing or data; and
 - (b) the person does so with the intention that the thing or data be used:
 - (i) by the person; or
 - (ii) by another person;
- in committing an offence against subsection 474.10(1) (copying subscription-specific secure data from an account identifier) or 474.10(2) (copying subscription-specific secure data onto an account identifier).

Penalty: Imprisonment for 2 years.

- (2) A person may be found guilty of an offence against subsection (1) even if committing the offence against subsection 474.10(1) (copying subscription-specific secure data from an account

identifier) or 474.10(2) (copying subscription-specific secure data onto an account identifier) is impossible.

- (3) It is not an offence to attempt to commit an offence against subsection (1).

Defences

- (4) A person is not criminally responsible for an offence against subsection (1) if the person is:
- (a) the carrier who operates the facilities used, or to be used, in the supply of the public mobile telecommunications service to which the subscription-specific secure data relates; or
 - (b) an employee or agent of that carrier who is acting on behalf of that carrier; or
 - (c) acting with the consent of that carrier.

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

- (5) A person is not criminally responsible for an offence against subsection (1) if:
- (a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
 - (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

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

Note 2: This subsection merely creates a defence to an offence against subsection (1) and does not operate to authorise any conduct that requires a warrant under some other law.

Subdivision C—Offences related to use of telecommunications

474.13 Use of a carriage service

For the purposes of this Subdivision, a person is taken not to *use a carriage service* by engaging in particular conduct if:

- (a) the person is a carrier and, in engaging in that conduct, is acting solely in the person's capacity as a carrier; or

Section 474.14

- (b) the person is a carriage service provider and, in engaging in that conduct, is acting solely in the person's capacity as a carriage service provider; or
- (c) the person is an Internet service provider and, in engaging in that conduct, is acting solely in the person's capacity as an Internet service provider; or
- (d) the person is an Internet content host and, in engaging in that conduct, is acting solely in the person's capacity as an Internet content host.

474.14 Using a telecommunications network with intention to commit a serious offence

- (1) A person is guilty of an offence if:
 - (a) the person:
 - (i) connects equipment to a telecommunications network; and
 - (ii) intends by this to commit, or to facilitate the commission of, an offence (whether by that person or another person); and
 - (b) the offence is:
 - (i) a serious offence against a law of the Commonwealth, a State or a Territory; or
 - (ii) a serious offence against a foreign law.
- (2) A person is guilty of an offence if:
 - (a) the person uses equipment connected to a telecommunications network in the commission of, or to facilitate the commission of, an offence (whether by that person or another person); and
 - (b) the offence is:
 - (i) a serious offence against a law of the Commonwealth, a State or a Territory; or
 - (ii) a serious offence against a foreign law.
- (3) A person who is guilty of an offence against subsection (1) or (2) is punishable, on conviction, by a penalty not exceeding the penalty applicable to the serious offence.

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

Note: For *absolute liability*, see section 6.2.

- (5) A person may be found guilty of an offence against subsection (1) or (2) even if committing the serious offence is impossible.
- (6) It is not an offence to attempt to commit an offence against subsection (1) or (2).

474.15 Using a carriage service to make a threat

Threat to kill

- (1) A person (the **first person**) is guilty of an offence if:
- (a) the first person uses a carriage service to make to another person (the **second person**) a threat to kill the second person or a third person; and
 - (b) the first person intends the second person to fear that the threat will be carried out.

Penalty: Imprisonment for 10 years.

Threat to cause serious harm

- (2) A person (the **first person**) is guilty of an offence if:
- (a) the first person uses a carriage service to make to another person (the **second person**) a threat to cause serious harm to the second person or a third person; and
 - (b) the first person intends the second person to fear that the threat will be carried out.

Penalty: Imprisonment for 7 years.

Actual fear not necessary

- (3) In a prosecution for an offence against this section, it is not necessary to prove that the person receiving the threat actually feared that the threat would be carried out.

Definitions

- (4) In this section:

Section 474.16

fear includes apprehension.

threat to cause serious harm to a person includes a threat to substantially contribute to serious harm to the person.

474.16 Using a carriage service for a hoax threat

A person is guilty of an offence if:

- (a) the person uses a carriage service to send a communication; and
- (b) the person does so with the intention of inducing a false belief that an explosive, or a dangerous or harmful substance or thing, has been or will be left in any place.

Penalty: Imprisonment for 10 years.

474.17 Using a carriage service to menace, harass or cause offence

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

- (a) the person uses a carriage service; and
- (b) the person does so in a way (whether by the method of use or the content of a communication, or both) that reasonable persons would regard as being, in all the circumstances, menacing, harassing or offensive.

Penalty: Imprisonment for 3 years.

(2) Without limiting subsection (1), that subsection applies to menacing, harassing or causing offence to:

- (a) an employee of the NRS provider; or
- (b) an emergency call person; or
- (c) an employee of an emergency service organisation; or
- (d) an APS employee in the Attorney-General's Department acting as a National Security Hotline call taker.

474.18 Improper use of emergency call service

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

- (a) makes a call to an emergency service number; and

Section 474.19

- (b) does so with the intention of inducing a false belief that an emergency exists.

Penalty: Imprisonment for 3 years.

- (2) A person is guilty of an offence if:
 - (a) the person makes a call to an emergency service number; and
 - (b) the person makes the call otherwise than for the purpose of reporting an emergency; and
 - (c) the call is a vexatious one.

Penalty: Imprisonment for 3 years.

- (3) In determining whether a call by a person to an emergency service number is a vexatious one, have regard to:
 - (a) the content of the call; and
 - (b) the number, frequency and content of previous calls the person has made to emergency service numbers otherwise than for the purpose of reporting emergencies; and
 - (c) any other relevant matter.

474.19 Using a carriage service for child pornography material

- (1) A person is guilty of an offence if:
 - (a) the person:
 - (i) uses a carriage service to access material; or
 - (ii) uses a carriage service to cause material to be transmitted to the person; or
 - (iii) uses a carriage service to transmit material; or
 - (iv) uses a carriage service to make material available; or
 - (v) uses a carriage service to publish or otherwise distribute material; and
 - (b) the material is child pornography material.

Penalty: Imprisonment for 10 years.

- (2) To avoid doubt, the following are the fault elements for the physical elements of an offence against subsection (1):
 - (a) intention is the fault element for the conduct referred to in paragraph (1)(a);

Section 474.20

(b) recklessness is the fault element for the circumstances referred to in paragraph (1)(b).

Note: For the meaning of *intention* and *recklessness* see sections 5.2 and 5.4.

(3) As well as the general defences provided for in Part 2.3, defences are provided for under section 474.21 in relation to this section.

474.20 Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service

- (1) A person is guilty of an offence if:
- (a) the person:
 - (i) has possession or control of material; or
 - (ii) produces, supplies or obtains material; and
 - (b) the material is child pornography material; and
 - (c) the person has that possession or control, or engages in that production, supply or obtaining, with the intention that the material be used:
 - (i) by that person; or
 - (ii) by another person;
- in committing an offence against section 474.19 (using a carriage service for child pornography material).

Penalty: Imprisonment for 10 years.

- (2) A person may be found guilty of an offence against subsection (1) even if committing the offence against section 474.19 (using a carriage service for child pornography material) is impossible.
- (3) It is not an offence to attempt to commit an offence against subsection (1).

474.21 Defences in respect of child pornography material

- (1) A person is not criminally responsible for an offence against section 474.19 (using a carriage service for child pornography material) or 474.20 (possessing etc. child pornography material for

Section 474.21

use through a carriage service) because of engaging in particular conduct if the conduct:

- (a) is of public benefit; and
- (b) does not extend beyond what is of public benefit.

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

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

- (2) For the purposes of subsection (1), conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in:
 - (a) enforcing a law of the Commonwealth, a State or a Territory; or
 - (b) monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or a Territory; or
 - (c) the administration of justice; or
 - (d) conducting scientific, medical or educational research that has been approved by the Minister in writing for the purposes of this section.
- (3) A person is not criminally responsible for an offence against section 474.19 (using a carriage service for child pornography material) or 474.20 (possessing etc. child pornography material for use through a carriage service) if:
 - (a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
 - (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

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

- (4) A person is not criminally responsible for an offence against section 474.19 (using a carriage service for child pornography material) or 474.20 (possessing etc. child pornography material for use through a carriage service) if the person engages in the conduct in good faith for the sole purpose of:
 - (a) assisting the Australian Broadcasting Authority to detect:

Section 474.22

(i) prohibited content (within the meaning of Schedule 5 to the *Broadcasting Services Act 1992*); or

(ii) potential prohibited content (within the meaning of that Schedule);

in the performance of the Authority's functions under that Schedule; or

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

(i) a recognised alternative access-prevention arrangement (within the meaning of clause 40 of Schedule 5 to the *Broadcasting Services Act 1992*); or

(ii) a designated alternative access-prevention arrangement (within the meaning of clause 60 of that Schedule).

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

474.22 Using a carriage service for child abuse material

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

(a) the person:

(i) uses a carriage service to access material; or

(ii) uses a carriage service to cause material to be transmitted to the person; or

(iii) uses a carriage service to transmit material; or

(iv) uses a carriage service to make material available; or

(v) uses a carriage service to publish or otherwise distribute material; and

(b) the material is child abuse material.

Penalty: Imprisonment for 10 years.

(2) To avoid doubt, the following are the fault elements for the physical elements of an offence against subsection (1):

(a) intention is the fault element for the conduct referred to in paragraph (1)(a);

(b) recklessness is the fault element for the circumstances referred to in paragraph (1)(b).

Note: For the meaning of *intention* and *recklessness* see sections 5.2 and 5.4.

- (3) As well as the general defences provided for in Part 2.3, defences are provided for under section 474.24 in relation to this section.

474.23 Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service

- (1) A person is guilty of an offence if:
- (a) the person:
 - (i) has possession or control of material; or
 - (ii) produces, supplies or obtains material; and
 - (b) the material is child abuse material; and
 - (c) the person has that possession or control, or engages in that production, supply or obtaining, with the intention that the material be used:
 - (i) by that person; or
 - (ii) by another person;
- in committing an offence against section 474.22 (using a carriage service for child abuse material).

Penalty: Imprisonment for 10 years.

- (2) A person may be found guilty of an offence against subsection (1) even if committing the offence against section 474.22 (using a carriage service for child abuse material) is impossible.
- (3) It is not an offence to attempt to commit an offence against subsection (1).

474.24 Defences in respect of child abuse material

- (1) A person is not criminally responsible for an offence against section 474.22 (using a carriage service for child abuse material) or 474.23 (possessing etc. child abuse material for use through a carriage service) because of engaging in particular conduct if the conduct:
- (a) is of public benefit; and
 - (b) does not extend beyond what is of public benefit.

In determining whether the person is, under this subsection, not criminally responsible for the offence, the question whether the

Section 474.24

conduct is of public benefit is a question of fact and the person's motives in engaging in the conduct are irrelevant.

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

- (2) For the purposes of subsection (1), conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in:
- (a) enforcing a law of the Commonwealth, a State or a Territory; or
 - (b) monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or a Territory; or
 - (c) the administration of justice; or
 - (d) conducting scientific, medical or educational research that has been approved by the Minister in writing for the purposes of this section.
- (3) A person is not criminally responsible for an offence against section 474.22 (using a carriage service for child abuse material) or 474.23 (possessing etc. child abuse material for use through a carriage service) if:
- (a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
 - (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

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

- (4) A person is not criminally responsible for an offence against section 474.22 (using a carriage service for child abuse material) or 474.23 (possessing etc. child abuse material for use through a carriage service) if the person engages in the conduct in good faith for the sole purpose of:
- (a) assisting the Australian Broadcasting Authority to detect:
 - (i) prohibited content (within the meaning of Schedule 5 to the *Broadcasting Services Act 1992*); or
 - (ii) potential prohibited content (within the meaning of that Schedule);in the performance of the Authority's functions under that Schedule; or

Section 474.25

- (b) manufacturing or developing, or updating, content filtering technology (including software) in accordance with:
 - (i) a recognised alternative access-prevention arrangement (within the meaning of clause 40 of Schedule 5 to the *Broadcasting Services Act 1992*); or
 - (ii) a designated alternative access-prevention arrangement (within the meaning of clause 60 of that Schedule).

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

474.25 Obligations of Internet service providers and Internet content hosts

A person commits an offence if the person:

- (a) is an Internet service provider or an Internet content host; and
- (b) is aware that the service provided by the person can be used to access particular material that the person has reasonable grounds to believe is:
 - (i) child pornography material; or
 - (ii) child abuse material; and
- (c) does not refer details of the material to the Australian Federal Police within a reasonable time after becoming aware of the existence of the material.

Penalty: 100 penalty units.

474.26 Using a carriage service to procure persons under 16 years of age

- (1) A person (the *sender*) commits an offence if:
 - (a) the sender uses a carriage service to transmit a communication to another person (the *recipient*); and
 - (b) the sender does this with the intention of procuring the recipient to engage in, or submit to, sexual activity with the sender; and
 - (c) the recipient is someone who is, or who the sender believes to be, under 16 years of age; and
 - (d) the sender is at least 18 years of age.

Section 474.27

Penalty: Imprisonment for 15 years.

- (2) A person (the *sender*) commits an offence if:
- (a) the sender uses a carriage service to transmit a communication to another person (the *recipient*); and
 - (b) the sender does this with the intention of procuring the recipient to engage in, or submit to, sexual activity with another person; and
 - (c) the recipient is someone who is, or who the sender believes to be, under 16 years of age; and
 - (d) the other person referred to in paragraph (b) is someone who is, or who the sender believes to be, at least 18 years of age.

Penalty: Imprisonment for 15 years.

- (3) A person (the *sender*) commits an offence if:
- (a) the sender uses a carriage service to transmit a communication to another person (the *recipient*); and
 - (b) the sender does this with the intention of procuring the recipient to engage in, or submit to, sexual activity with another person; and
 - (c) the recipient is someone who is, or who the sender believes to be, under 16 years of age; and
 - (d) the other person referred to in paragraph (b) is someone who is, or who the sender believes to be, under 18 years of age; and
 - (e) the sender intends that the sexual activity referred to in paragraph (b) will take place in the presence of:
 - (i) the sender; or
 - (ii) another person who is, or who the sender believes to be, at least 18 years of age.

Penalty: Imprisonment for 15 years.

474.27 Using a carriage service to “groom” persons under 16 years of age

- (1) A person (the *sender*) commits an offence if:
- (a) the sender uses a carriage service to transmit a communication to another person (the *recipient*); and

- (b) the communication includes material that is indecent; and
- (c) the sender does this with the intention of making it easier to procure the recipient to engage in, or submit to, sexual activity with the sender; and
- (d) the recipient is someone who is, or who the sender believes to be, under 16 years of age; and
- (e) the sender is at least 18 years of age.

Penalty: Imprisonment for 12 years.

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

- (a) the sender uses a carriage service to transmit a communication to another person (the *recipient*); and
- (b) the communication includes material that is indecent; and
- (c) the sender does this with the intention of making it easier to procure the recipient to engage in, or submit to, sexual activity with another person; and
- (d) the recipient is someone who is, or who the sender believes to be, under 16 years of age; and
- (e) the other person referred to in paragraph (c) is someone who is, or who the sender believes to be, at least 18 years of age.

Penalty: Imprisonment for 12 years.

(3) A person (the *sender*) commits an offence if:

- (a) the sender uses a carriage service to transmit a communication to another person (the *recipient*); and
- (b) the communication includes material that is indecent; and
- (c) the sender does this with the intention of making it easier to procure the recipient to engage in, or submit to, sexual activity with another person; and
- (d) the recipient is someone who is, or who the sender believes to be, under 16 years of age; and
- (e) the other person referred to in paragraph (c) is someone who is, or who the sender believes to be, under 18 years of age; and
- (f) the sender intends that the sexual activity referred to in paragraph (c) will take place in the presence of:
 - (i) the sender; or

Section 474.28

- (ii) another person who is, or who the sender believes to be, at least 18 years of age.

Penalty: Imprisonment for 15 years.

- (4) In a prosecution for an offence against subsection (1), (2) or (3), whether material is indecent is a matter for the trier of fact.
- (5) In this section:

indecent means indecent according to the standards of ordinary people.

474.28 Provisions relating to offences against sections 474.26 and 474.27

Age-related issues

- (1) For the purposes of an offence against section 474.26 or 474.27, absolute liability applies to the physical element of circumstance of the offence that the recipient is someone who is under 16 years of age.

Note 1: For *absolute liability*, see section 6.2.

Note 2: For a defence based on belief about age, see section 474.29.

- (2) For the purposes of an offence against subsection 474.26(2) or (3) or 474.27(2) or (3), absolute liability applies to the physical elements of circumstance of the offence that the other person referred to in paragraph 474.26(2)(b) or (3)(e) or 474.27(2)(c) or (3)(f) is at least 18 years of age.

Note 1: For *absolute liability*, see section 6.2.

Note 2: For a defence based on belief about age, see section 474.29.

- (3) For the purposes of sections 474.26 and 474.27, evidence that the recipient was represented to the sender as being under or of a particular age is, in the absence of evidence to the contrary, proof that the sender believed the recipient to be under or of that age.
- (4) For the purposes of sections 474.26 and 474.27, evidence that the other person referred to in paragraph 474.26(2)(b) or (3)(e) or 474.27(2)(c) or (3)(f) was represented to the sender as being:
- (a) at least 18 years of age; or

- (b) over or of a particular age;
is, in the absence of evidence to the contrary, proof that the sender believed the other person to be at least 18 years of age or over of that age.
- (5) In determining for the purposes of sections 474.26 and 474.27 how old a person is or was at a particular time, a jury or court may treat any of the following as admissible evidence:
- (a) the person's appearance;
 - (b) medical or other scientific opinion;
 - (c) a document that is or appears to be an official or medical record from a country outside Australia;
 - (d) a document that is or appears to be a copy of such a record.
- (6) Subsection (5) does not make any other kind of evidence inadmissible, and does not affect a prosecutor's duty to do all he or she can to adduce the best possible evidence for determining the question.
- (7) If, on a trial for an offence against sections 474.26 and 474.27, evidence may be treated as admissible because of subsection (5), the court must warn the jury that it must be satisfied beyond reasonable doubt in determining the question.

Impossibility of sexual activity taking place

- (8) A person may be found guilty of an offence against section 474.26 or 474.27 even if it is impossible for the sexual activity referred to in that section to take place.

Fictitious recipient

- (9) For the purposes of sections 474.26 and 474.27, it does not matter that the recipient to whom the sender believes the sender is transmitting the communication is a fictitious person represented to the sender as a real person.

Attempt not offence

- (10) It is not an offence to attempt to commit an offence against section 474.26 or 474.27.

Section 474.29

Definitions

(11) In sections 474.26 and 474.27 and this section:

procure a person to engage in sexual activity includes:

- (a) encourage, entice or recruit the person to engage in that activity; or
- (b) induce the person (whether by threats, promises or otherwise) to engage in that activity.

sexual activity means:

- (a) sexual intercourse as defined in section 50AC of the *Crimes Act 1914*; or
- (b) an act of indecency as defined in section 50AB of that Act; or
- (c) any other activity of a sexual or indecent nature that involves the human body, or bodily actions or functions.

The activity referred to in paragraph (c) need not involve physical contact between people.

474.29 Defences to offences against section 474.26 or 474.27

(1) It is a defence to a prosecution for an offence against section 474.26 or 474.27 that the defendant believed at the time the communication was transmitted that the recipient was not under 16 years of age.

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

(2) It is a defence to a prosecution for an offence against subsection 474.26(2) or (3) or 474.27(2) or (3) that the defendant believed at the time the communication was transmitted that the other person referred to in paragraph 474.26(2)(b) or (3)(e) or 474.27(2)(c) or (3)(f) was not at least 18 years of age.

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

(3) In determining whether the defendant had the belief referred to in subsection (1) or (2), the jury may take into account whether the alleged belief was reasonable in the circumstances.

474.30 Defences for NRS employees and emergency call persons

- (1) A person is not criminally responsible for an offence against a provision of this Subdivision in relation to particular conduct if the person:
 - (a) is an employee of the NRS provider; and
 - (b) engages in the conduct in good faith in the course of the person's duties as such an employee.

- (2) A person is not criminally responsible for an offence against a provision of this Subdivision in relation to particular conduct if the person:
 - (a) is an emergency call person; and
 - (b) engages in the conduct in good faith in the course of the person's duties as such an emergency call person.

Division 475—Miscellaneous

475.1 Saving of other laws

- (1) This Part is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.
- (2) Without limiting subsection (1), a provision in this Part to the effect that a person is not criminally responsible for an offence against a provision of this Part in relation to particular conduct does not make the conduct lawful if it would otherwise be unlawful under the *Radiocommunications Act 1992*.

475.2 Geographical jurisdiction

Section 15.1 (extended geographical jurisdiction—category A) applies to each offence against this Part.

Part 10.7—Computer offences

Division 476—Preliminary

476.1 Definitions

(1) In this Part:

access to data held in a computer means:

- (a) the display of the data by the computer or any other output of the data from the computer; or
- (b) the copying or moving of the data to any other place in the computer or to a data storage device; or
- (c) in the case of a program—the execution of the program.

Commonwealth computer means a computer owned, leased or operated by a Commonwealth entity.

electronic communication means a communication of information in any form by means of guided or unguided electromagnetic energy.

impairment of electronic communication to or from a computer includes:

- (a) the prevention of any such communication; or
- (b) the impairment of any such communication on an electronic link or network used by the computer;

but does not include a mere interception of any such communication.

modification, in respect of data held in a computer, means:

- (a) the alteration or removal of the data; or
- (b) an addition to the data.

unauthorised access, modification or impairment has the meaning given in section 476.2.

(2) In this Part, a reference to:

- (a) access to data held in a computer; or

Section 476.2

- (b) modification of data held in a computer; or
- (c) the impairment of electronic communication to or from a computer;

is limited to such access, modification or impairment caused, whether directly or indirectly, by the execution of a function of a computer.

476.2 Meaning of *unauthorised access, modification or impairment*

- (1) In this Part:
 - (a) access to data held in a computer; or
 - (b) modification of data held in a computer; or
 - (c) the impairment of electronic communication to or from a computer; or
 - (d) the impairment of the reliability, security or operation of any data held on a computer disk, credit card or other device used to store data by electronic means;by a person is unauthorised if the person is not entitled to cause that access, modification or impairment.
- (2) Any such access, modification or impairment caused by the person is not unauthorised merely because he or she has an ulterior purpose for causing it.
- (3) For the purposes of an offence under this Part, a person causes any such unauthorised access, modification or impairment if the person's conduct substantially contributes to it.
- (4) For the purposes of subsection (1), if:
 - (a) a person causes any access, modification or impairment of a kind mentioned in that subsection; and
 - (b) the person does so:
 - (i) under a warrant issued under the law of the Commonwealth, a State or a Territory; or
 - (ii) under an emergency authorisation given to the person under Part 3 of the *Surveillance Devices Act 2004* or under a law of a State or Territory that makes provision to similar effect; or
 - (iii) under a tracking device authorisation given to the person under section 39 of that Act;

the person is entitled to cause that access, modification or impairment.

476.3 Geographical jurisdiction

Section 15.1 (extended geographical jurisdiction—Category A) applies to offences under this Part.

476.4 Saving of other laws

- (1) This Part is not intended to exclude or limit the operation of any other law of the Commonwealth, a State or a Territory.
- (2) Subsection (1) has effect subject to section 476.5.

476.5 Liability for certain acts

- (1) A staff member or agent of ASIS or DSD (the *agency*) is not subject to any civil or criminal liability for any computer-related act done outside Australia if the act is done in the proper performance of a function of the agency.
- (2) A person is not subject to any civil or criminal liability for any act done inside Australia if:
 - (a) the act is preparatory to, in support of, or otherwise directly connected with, overseas activities of the agency concerned; and
 - (b) the act:
 - (i) taken together with a computer-related act, event, circumstance or result that took place, or was intended to take place, outside Australia, could amount to an offence; but
 - (ii) in the absence of that computer-related act, event, circumstance or result, would not amount to an offence; and
 - (c) the act is done in the proper performance of a function of the agency.

Section 476.5

- (2A) Subsection (2) is not intended to permit any act in relation to premises, persons, computers, things, or carriage services in Australia, being:
- (a) an act that ASIO could not do without a Minister authorising it by warrant issued under Division 2 of Part III of the *Australian Security Intelligence Organisation Act 1979* or under Part III of the *Telecommunications (Interception) Act 1979*; or
 - (b) an act to obtain information that ASIO could not obtain other than in accordance with section 283 of the *Telecommunications Act 1997*.
- (2B) The Inspector-General of Intelligence and Security may give a certificate in writing certifying any fact relevant to the question of whether an act was done in the proper performance of a function of an agency.
- (2C) In any proceedings, a certificate given under subsection (2B) is prima facie evidence of the facts certified.
- (3) In this section:

ASIS means the Australian Secret Intelligence Service.

civil or criminal liability means any civil or criminal liability (whether under this Part, under another law or otherwise).

computer-related act, event, circumstance or result means an act, event, circumstance or result involving:

- (a) the reliability, security or operation of a computer; or
- (b) access to, or modification of, data held in a computer or on a data storage device; or
- (c) electronic communication to or from a computer; or
- (d) the reliability, security or operation of any data held in or on a computer, computer disk, credit card, or other data storage device; or
- (e) possession or control of data held in a computer or on a data storage device; or
- (f) producing, supplying or obtaining data held in a computer or on a data storage device.

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

staff member means:

- (a) in relation to ASIS—the Director-General of ASIS or a member of the staff of ASIS (whether an employee of ASIS, a consultant to ASIS, or a person who is made available by another Commonwealth or State authority or other person to perform services for ASIS); and
- (b) in relation to DSD—the Director of DSD or a member of the staff of DSD (whether an employee of DSD, a consultant to DSD, or a person who is made available by another Commonwealth or State authority or other person to perform services for DSD).

Division 477—Serious computer offences

477.1 Unauthorised access, modification or impairment with intent to commit a serious offence

Intention to commit a serious Commonwealth, State or Territory offence

- (1) A person is guilty of an offence if:
 - (a) the person causes:
 - (i) any unauthorised access to data held in a computer; or
 - (ii) any unauthorised modification of data held in a computer; or
 - (iii) any unauthorised impairment of electronic communication to or from a computer; and
 - (b) the unauthorised access, modification or impairment is caused by means of a carriage service; and
 - (c) the person knows the access, modification or impairment is unauthorised; and
 - (d) the person intends to commit, or facilitate the commission of, a serious offence against a law of the Commonwealth, a State or a Territory (whether by that person or another person) by the access, modification or impairment.
- (2) Absolute liability applies to paragraph (1)(b).
- (3) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the offence was:
 - (a) an offence against a law of the Commonwealth, a State or a Territory; or
 - (b) a serious offence.

Intention to commit a serious Commonwealth offence

- (4) A person is guilty of an offence if:
 - (a) the person causes:
 - (i) any unauthorised access to data held in a computer; or

Section 477.1

- (ii) any unauthorised modification of data held in a computer; or
 - (iii) any unauthorised impairment of electronic communication to or from a computer; and
 - (b) the person knows the access, modification or impairment is unauthorised; and
 - (c) the person intends to commit, or facilitate the commission of, a serious offence against a law of the Commonwealth (whether by that person or another person) by the access, modification or impairment.
- (5) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the offence was:
- (a) an offence against a law of the Commonwealth; or
 - (b) a serious offence.

Penalty

- (6) A person who is guilty of an offence against this section is punishable, on conviction, by a penalty not exceeding the penalty applicable to the serious offence.

Impossibility

- (7) A person may be found guilty of an offence against this section even if committing the serious offence is impossible.

No offence of attempt

- (8) It is not an offence to attempt to commit an offence against this section.

Meaning of serious offence

- (9) In this section:

serious offence means an offence that is punishable by imprisonment for life or a period of 5 or more years.

Section 477.2

477.2 Unauthorised modification of data to cause impairment

- (1) A person is guilty of an offence if:
- (a) the person causes any unauthorised modification of data held in a computer; and
 - (b) the person knows the modification is unauthorised; and
 - (c) the person is reckless as to whether the modification impairs or will impair:
 - (i) access to that or any other data held in any computer; or
 - (ii) the reliability, security or operation, of any such data; and
 - (d) one or more of the following applies:
 - (i) the data that is modified is held in a Commonwealth computer;
 - (ii) the data that is modified is held on behalf of the Commonwealth in a computer;
 - (iii) the modification of the data is caused by means of a carriage service;
 - (iv) the modification of the data is caused by means of a Commonwealth computer;
 - (v) the modification of the data impairs access to, or the reliability, security or operation of, other data held in a Commonwealth computer;
 - (vi) the modification of the data impairs access to, or the reliability, security or operation of, other data held on behalf of the Commonwealth in a computer;
 - (vii) the modification of the data impairs access to, or the reliability, security or operation of, other data by means of a carriage service.

Penalty: 10 years imprisonment.

- (2) Absolute liability applies to paragraph (1)(d).
- (3) A person may be guilty of an offence against this section even if there is or will be no actual impairment to:
- (a) access to data held in a computer; or
 - (b) the reliability, security or operation, of any such data.

- (4) A conviction for an offence against this section is an alternative verdict to a charge for an offence against section 477.3 (unauthorised impairment of electronic communication).

477.3 Unauthorised impairment of electronic communication

- (1) A person is guilty of an offence if:
- (a) the person causes any unauthorised impairment of electronic communication to or from a computer; and
 - (b) the person knows that the impairment is unauthorised; and
 - (c) one or both of the following applies:
 - (i) the electronic communication is sent to or from the computer by means of a carriage service;
 - (ii) the electronic communication is sent to or from a Commonwealth computer.

Penalty: 10 years imprisonment.

- (2) Absolute liability applies to paragraph (1)(c).
- (3) A conviction for an offence against this section is an alternative verdict to a charge for an offence against section 477.2 (unauthorised modification of data to cause impairment).

Division 478—Other computer offences

478.1 Unauthorised access to, or modification of, restricted data

- (1) A person is guilty of an offence if:
- (a) the person causes any unauthorised access to, or modification of, restricted data; and
 - (b) the person intends to cause the access or modification; and
 - (c) the person knows that the access or modification is unauthorised; and
 - (d) one or more of the following applies:
 - (i) the restricted data is held in a Commonwealth computer;
 - (ii) the restricted data is held on behalf of the Commonwealth;
 - (iii) the access to, or modification of, the restricted data is caused by means of a carriage service.

Penalty: 2 years imprisonment.

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

- (3) In this section:

restricted data means data:

- (a) held in a computer; and
- (b) to which access is restricted by an access control system associated with a function of the computer.

478.2 Unauthorised impairment of data held on a computer disk etc.

- (1) A person is guilty of an offence if:
- (a) the person causes any unauthorised impairment of the reliability, security or operation of data held on:
 - (i) a computer disk; or
 - (ii) a credit card; or
 - (iii) another device used to store data by electronic means;and
 - (b) the person intends to cause the impairment; and

Section 478.3

- (c) the person knows that the impairment is unauthorised; and
- (d) the computer disk, credit card or other device is owned or leased by a Commonwealth entity.

Penalty: 2 years imprisonment.

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

478.3 Possession or control of data with intent to commit a computer offence

- (1) A person is guilty of an offence if:
 - (a) the person has possession or control of data; and
 - (b) the person has that possession or control with the intention that the data be used, by the person or another person, in:
 - (i) committing an offence against Division 477; or
 - (ii) facilitating the commission of such an offence.

Penalty: 3 years imprisonment.

- (2) A person may be found guilty of an offence against this section even if committing the offence against Division 477 is impossible.

No offence of attempt

- (3) It is not an offence to attempt to commit an offence against this section.

Meaning of possession or control of data

- (4) In this section, a reference to a person having possession or control of data includes a reference to the person:
 - (a) having possession of a computer or data storage device that holds or contains the data; or
 - (b) having possession of a document in which the data is recorded; or
 - (c) having control of data held in a computer that is in the possession of another person (whether inside or outside Australia).

Section 478.4

478.4 Producing, supplying or obtaining data with intent to commit a computer offence

- (1) A person is guilty of an offence if:
- (a) the person produces, supplies or obtains data; and
 - (b) the person does so with the intention that the data be used, by the person or another person, in:
 - (i) committing an offence against Division 477; or
 - (ii) facilitating the commission of such an offence.

Penalty: 3 years imprisonment.

- (2) A person may be found guilty of an offence against this section even if committing the offence against Division 477 is impossible.

No offence of attempt

- (3) It is not an offence to attempt to commit an offence against this section.

Meaning of producing, supplying or obtaining data

- (4) In this section, a reference to a person producing, supplying or obtaining data includes a reference to the person:
- (a) producing, supplying or obtaining data held or contained in a computer or data storage device; or
 - (b) producing, supplying or obtaining a document in which the data is recorded.

Part 10.8—Financial information offences

480.1 Definitions

- (1) In this Part:

ADI (authorised deposit-taking institution) means a corporation that is an ADI for the purposes of the *Banking Act 1959*.

dealing in personal financial information includes supplying or using financial information.

deception means an intentional or reckless deception, whether by words or other conduct, and whether as to fact or as to law, and includes:

- (a) a deception as to the intentions of the person using the deception or any other person; and
- (b) conduct by a person that causes a computer, a machine or an electronic device to make a response that the person is not authorised to cause it to do.

dishonest has the meaning given by section 480.2.

obtaining personal financial information includes possessing or making personal financial information.

personal financial information means information relating to a person that may be used (whether alone or in conjunction with other information) to access funds, credit or other financial benefits.

- (2) For the purposes of this Part, a person is taken to obtain or deal in personal information without the consent of the person to whom the information relates if the consent of that person is obtained by any deception.
- (3) This Part extends to personal information relating to:
- (a) an individual; or
 - (b) a corporation; or
 - (c) a living or dead person.

Section 480.2

480.2 Dishonesty

- (1) For the purposes of this Part, *dishonest* means:
 - (a) dishonest according to the standards of ordinary people; and
 - (b) known by the defendant to be dishonest according to the standards of ordinary people.
- (2) In a prosecution for an offence against this Part, the determination of dishonesty is a matter for the trier of fact.

480.3 Constitutional application of this Part

This Part applies to personal financial information only if:

- (a) the funds concerned represent amounts that have been deposited with or lent to, or are otherwise to be provided or made available by, an ADI or a constitutional corporation; or
- (b) the credit or other financial benefits concerned are provided, or made available, by an ADI or a constitutional corporation.

480.4 Dishonestly obtaining or dealing in personal financial information

A person is guilty of an offence if the person:

- (a) dishonestly obtains, or deals in, personal financial information; and
- (b) obtains, or deals in, that information without the consent of the person to whom the information relates.

Penalty: Imprisonment for 5 years.

480.5 Possession or control of thing with intent to dishonestly obtain or deal in personal financial information

- (1) A person is guilty of an offence if:
 - (a) the person has possession or control of any thing; and
 - (b) the person has that possession or control with the intention that the thing be used:
 - (i) by the person; or
 - (ii) by another person;

Section 480.6

to commit an offence against section 480.4 (dishonestly obtaining or dealing in personal financial information) or to facilitate the commission of that offence.

Penalty: Imprisonment for 3 years.

- (2) A person may be found guilty of an offence against subsection (1) even if committing the offence against section 480.4 (dishonestly obtaining or dealing in personal financial information) is impossible.
- (3) It is not an offence to attempt to commit an offence against subsection (1).

480.6 Importation of thing with intent to dishonestly obtain or deal in personal financial information

A person is guilty of an offence if the person:

- (a) imports a thing into Australia; and
- (b) does so with the intention that the thing be used:
 - (i) by the person; or
 - (ii) by another person;

in committing an offence against section 480.3 (dishonestly obtaining or dealing in personal financial information) or to facilitate the commission of that offence.

Penalty: Imprisonment for 3 years.

Dictionary

aggravated burglary means an offence against section 132.5.

aggravated robbery means an offence against section 132.3.

ancillary offence means:

- (a) an offence against section 11.1, 11.4 or 11.5; or
- (b) an offence against a law of the Commonwealth, to the extent to which the offence arises out of the operation of section 11.2 or 11.3.

attack directed against a civilian population means a course of conduct involving the multiple commission of any one or more proscribed inhumane acts against any civilian population pursuant to, or in furtherance of, a state or organisational policy to engage in that course of conduct.

Australia, when used in a geographical sense, includes the external Territories.

Australian aircraft means:

- (a) an aircraft registered, or required to be registered, under the Civil Aviation Regulations as an Australian aircraft; or
- (b) an aircraft (other than a defence aircraft) that is owned by, or in the possession or control of, a Commonwealth entity; or
- (c) a defence aircraft.

Australian ship means:

- (a) a ship registered, or required to be registered, under the *Shipping Registration Act 1981*; or
- (b) an unregistered ship that has Australian nationality; or
- (c) a defence ship.

benefit includes any advantage and is not limited to property.

burglary means an offence against section 132.4.

carriage service has the same meaning as in the *Telecommunications Act 1997*.

Commonwealth authority means a body established by or under a law of the Commonwealth, but does not include:

- (a) a body established by or under:
 - (i) the *Aboriginal Councils and Associations Act 1976*; or
 - (ii) the *Australian Capital Territory (Self-Government) Act 1988*; or
 - (iii) the *Corporations Act 2001*; or
 - (iv) the *Norfolk Island Act 1979*; or
 - (v) the *Northern Territory (Self-Government) Act 1978*; or
 - (vi) Part 2 of Chapter 2 of Schedule 1B to the *Workplace Relations Act 1996*; or
- (b) a body specified in the regulations.

Commonwealth contract means a contract, to which a Commonwealth entity is a party, under which services are to be, or were to be, provided to a Commonwealth entity.

Commonwealth entity means:

- (a) the Commonwealth; or
- (b) a Commonwealth authority.

Commonwealth judicial officer means:

- (a) a Justice of the High Court; or
- (b) a judge or justice of a court created by the Parliament (other than the Federal Magistrates Court); or
- (c) a Federal Magistrate; or
- (d) a registrar or other officer of the High Court; or
- (e) a judicial registrar, registrar or other officer of a court created by the Parliament; or
- (f) a judge, justice, magistrate or other judicial officer of a court of a State or Territory who acts in the exercise of federal jurisdiction; or
- (g) a judicial registrar, registrar or other officer of a court of a State or Territory who exercises powers, or performs functions, incidental to the exercise of federal jurisdiction; or
- (h) a judge, justice, magistrate or other judicial officer of a court of a State or Territory who acts in the exercise of jurisdiction under a law in force in a Territory (other than the Australian

Capital Territory, the Northern Territory or the Territory of Norfolk Island); or

- (i) a judicial registrar, registrar or other officer of a court of a State or Territory who exercises powers, or performs functions, incidental to the exercise of jurisdiction under a law in force in a Territory (other than the Australian Capital Territory, the Northern Territory or the Territory of Norfolk Island).

Commonwealth public official means:

- (a) the Governor-General; or
- (b) a person appointed to administer the Government of the Commonwealth under section 4 of the Constitution; or
- (c) a Minister; or
- (d) a Parliamentary Secretary; or
- (e) a member of either House of the Parliament; or
- (f) an individual who holds an appointment under section 67 of the Constitution; or
- (g) the Administrator, an Acting Administrator, or a Deputy Administrator, of the Northern Territory; or
- (h) the Administrator, an Acting Administrator, or a Deputy Administrator, of Norfolk Island; or
- (i) a Commonwealth judicial officer; or
- (j) an APS employee; or
- (k) an individual employed by the Commonwealth otherwise than under the *Public Service Act 1999*; or
- (l) a member of the Australian Defence Force; or
- (m) a member or special member of the Australian Federal Police; or
- (n) an individual who holds or performs the duties of an office established by or under a law of the Commonwealth, other than:
 - (i) the *Aboriginal Councils and Associations Act 1976*; or
 - (ii) the *Australian Capital Territory (Self-Government) Act 1988*; or
 - (iii) the *Corporations Act 2001*; or
 - (iv) the *Norfolk Island Act 1979*; or

- (v) the *Northern Territory (Self-Government) Act 1978*; or
- (vi) Part 2 of Chapter 2 of Schedule 1B to the *Workplace Relations Act 1996*; or
- (o) an officer or employee of a Commonwealth authority; or
- (p) an individual who is a contracted service provider for a Commonwealth contract; or
- (q) an individual who is an officer or employee of a contracted service provider for a Commonwealth contract and who provides services for the purposes (whether direct or indirect) of the Commonwealth contract; or
- (r) an individual who exercises powers, or performs functions, conferred on the person by or under a law of the Commonwealth, other than:
 - (i) the *Aboriginal Councils and Associations Act 1976*; or
 - (ii) the *Australian Capital Territory (Self-Government) Act 1988*; or
 - (iii) the *Corporations Act 2001*; or
 - (iv) the *Norfolk Island Act 1979*; or
 - (v) the *Northern Territory (Self-Government) Act 1978*; or
 - (vi) Part 2 of Chapter 2 of Schedule 1B to the *Workplace Relations Act 1996*; or
- (vii) a provision specified in the regulations; or
- (s) an individual who exercises powers, or performs functions, conferred on the person under a law in force in the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands (whether the law is a law of the Commonwealth or a law of the Territory concerned); or
- (t) the Registrar, or a Deputy Registrar, of Aboriginal Corporations.

communication includes any communication:

- (a) whether between persons and persons, things and things or persons and things; and
- (b) whether the communication is:
 - (i) in the form of text; or
 - (ii) in the form of speech, music or other sounds; or
 - (iii) in the form of visual images (still or moving); or
 - (iv) in the form of signals; or

- (v) in the form of data; or
- (vi) in any other form; or
- (vii) in any combination of forms.

conduct is defined in subsection 4.1(2).

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

contracted service provider, for a Commonwealth contract, means:

- (a) a person who is a party to the Commonwealth contract and who is responsible for the provision of services to a Commonwealth entity under the Commonwealth contract; or
- (b) a subcontractor for the Commonwealth contract.

Covenant means the International Covenant on Civil and Political Rights, a copy of the English text of which is set out in Schedule 2 to the *Human Rights and Equal Opportunity Commission Act 1986*.

crime against humanity means an offence under Subdivision C of Division 268.

crime against the administration of the justice of the International Criminal Court means an offence under Subdivision J of Division 268.

data includes:

- (a) information in any form; or
- (b) any program (or part of a program).

data held in a computer includes:

- (a) data held in any removable data storage device for the time being held in a computer; or
- (b) data held in a data storage device on a computer network of which the computer forms a part.

data storage device means a thing (for example, a disk or file server) containing, or designed to contain, data for use by a computer.

death means:

- (a) the irreversible cessation of all function of a person's brain (including the brain stem); or
- (b) the irreversible cessation of circulation of blood in a person's body.

defence aircraft means an aircraft of any part of the Australian Defence Force, and includes an aircraft that is being commanded or piloted by a member of that Force in the course of his or her duties as such a member.

defence ship means a ship of any part of the Australian Defence Force, and includes a ship that is being operated or commanded by a member of that Force in the course of his or her duties as such a member.

detaining a person includes causing the person to remain where he or she is.

detriment includes any disadvantage and is not limited to personal injury or to loss of or damage to property.

distinctive emblems of the Geneva Conventions means the emblems, identity cards, signs, signals, insignia or uniforms to which subsection 15(1) of the *Geneva Conventions Act 1957* applies.

electronic communication means a communication by means of guided or unguided electromagnetic energy or both.

employee includes a servant.

engage in conduct is defined in subsection 4.1(2).

evidence includes anything that may be used as evidence.

evidential burden is defined in subsection 13.3(6).

First Geneva Convention means the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted at Geneva on 12 August 1949, a copy of the English text of which (not including the annexes) is set out in Schedule 1 to the *Geneva Conventions Act 1957*.

foreign country includes:

- (a) a colony or overseas territory; and
- (b) a territory outside Australia, where a foreign country is to any extent responsible for the international relations of the territory; and
- (c) a territory outside Australia that is to some extent self-governing, but that is not recognised as an independent sovereign state by Australia.

Fourth Geneva Convention means the Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted at Geneva on 12 August 1949, a copy of the English text of which (not including the annexes) is set out in Schedule 4 to the *Geneva Conventions Act 1957*.

Geneva Conventions means the First Geneva Convention, the Second Geneva Convention, the Third Geneva Convention and the Fourth Geneva Convention.

genocide means an offence under Subdivision B of Division 268.

Hague Declaration means the Hague Declarations Concerning the Prohibition of Using Bullets which Expand or Flatten Easily in the Human Body, adopted at the Hague on 29 July 1899.

harm means physical harm or harm to a person's mental health, whether temporary or permanent. However, it does not include being subjected to any force or impact that is within the limits of what is acceptable as incidental to social interaction or to life in the community.

harm to a person's mental health includes significant psychological harm, but does not include mere ordinary emotional reactions such as those of only distress, grief, fear or anger.

hors de combat: a person is *hors de combat* if:

- (a) the person is in the power of an adverse party; and
- (b) the person:
 - (i) clearly expresses an intention to surrender; or
 - (ii) has been rendered unconscious or is otherwise incapacitated by wounds or sickness and is therefore incapable of defending himself or herself; and

(c) the person abstains from any hostile act and does not attempt to escape.

ICC Statute means the Statute of the International Criminal Court done at Rome on 17 July 1998, a copy of the English text of which is set out in Schedule 1 to the *International Criminal Court Act 2002*.

intention has the meaning given in section 5.2.

international armed conflict includes a military occupation.

International Criminal Court means the International Criminal Court established under the ICC Statute.

interpreter includes a person who interprets signs or other things made or done by a person who cannot speak adequately for the purpose of giving evidence in a proceeding before the International Criminal Court.

knowledge has the meaning given in section 5.3.

law means a law of the Commonwealth, and includes this Code.

legal burden is defined in subsection 13.1(3).

negligence has the meaning given in section 5.5.

offence means an offence against a law of the Commonwealth.

person includes a Commonwealth authority that is not a body corporate, and **another** has a corresponding meaning.

Note: This definition supplements paragraph 22(1)(a) of the *Acts Interpretation Act 1901*. That paragraph provides that **person** includes a body politic or corporate as well as an individual.

physical harm includes unconsciousness, pain, disfigurement, infection with a disease and any physical contact with a person that the person might reasonably object to in the circumstances (whether or not the person was aware of it at the time).

primary offence means an offence against a law of the Commonwealth, other than an ancillary offence.

proscribed inhumane act means any of the following acts:

- (a) an act that is described in paragraph 268.8(a);
- (b) an act that is described in paragraph 268.9(1)(a) and is committed as mentioned in paragraph 268.9(1)(b);
- (c) an act that is described in paragraph 268.10(1)(a);
- (d) an act that is described in paragraph 268.11(1)(a) and to which paragraph 268.11(1)(b) applies;
- (e) an act that is described in paragraph 268.12(1)(a) and to which paragraph 268.12(1)(b) applies;
- (f) an act that is described in paragraph 268.13(a) and to which paragraph 268.13(b) applies;
- (g) an act that is described in paragraph 268.14(1)(a) or (2)(a);
- (h) an act that is described in paragraph 268.15(1)(a);
- (i) an act that is described in paragraph 268.16(1)(a) and to which paragraph 268.16(1)(b) applies;
- (j) an act that is described in paragraph 268.17(1)(a) and to which paragraph 268.17(1)(b) applies;
- (k) an act that is described in paragraphs 268.18(1)(a) and (b) and to which paragraph 268.18(1)(c) applies;
- (l) an act that is described in paragraph 268.19(1)(a) and is of the gravity mentioned in paragraph 268.19(1)(b);
- (m) an act that is described in paragraph 268.20(1)(a) and is committed as mentioned in paragraphs 268.20(1)(c), (d) and (e);
- (n) an act that is described in paragraph 268.21(1)(a) and to which paragraphs 268.21(1)(b) and (c) apply;
- (o) an act that is described in paragraph 268.21(2)(c) and is committed as mentioned in paragraph 268.21(2)(d);
- (p) an act that is described in paragraph 268.22(a) and is committed as mentioned in paragraph 268.22(b);
- (q) an act that is described in paragraph 268.23(a) and to which paragraph 268.23(b) applies.

Protocol I to the Geneva Conventions means the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), done at Geneva on 10 June 1977, a copy of the English text of which is set out in Schedule 5 to the *Geneva Conventions Act 1957*.

Protocol II to the Geneva Conventions means the Protocol Additional to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of Non-International Armed Conflicts done at Geneva on 10 June 1977.

Protocols to the Geneva Conventions means Protocol I to the Geneva Conventions and Protocol II to the Geneva Conventions.

public official includes:

- (a) a Commonwealth public official; and
- (b) an officer or employee of the Commonwealth or of a State or Territory; and
- (c) an individual who performs work for the Commonwealth, or for a State or Territory, under a contract; and
- (d) an individual who holds or performs the duties of an office established by a law of the Commonwealth or of a State or Territory; and
- (e) an individual who is otherwise in the service of the Commonwealth or of a State or Territory (including service as a member of a military force or police force); and
- (f) a member of the executive, judiciary or magistracy of the Commonwealth or of a State or Territory; and
- (g) a member of the legislature of the Commonwealth or of a State or Territory; and
- (h) an officer or employee of:
 - (i) an authority of the Commonwealth; or
 - (ii) an authority of a State or Territory.

receiving means an offence against section 132.1.

recklessness has the meaning given in section 5.4.

resident of Australia means an individual who is a resident of Australia.

robbery means an offence against section 132.2.

Second Geneva Convention means the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick and Shipwrecked Members of Armed Forces at Sea, adopted at Geneva on 12 August 1949, a copy of the English text of which (not

including the annexes) is set out in Schedule 2 to the *Geneva Conventions Act 1957*.

serious harm means harm (including the cumulative effect of any harm):

- (a) that endangers, or is likely to endanger, a person's life; or
- (b) that is or is likely to be significant and longstanding.

services provided to a Commonwealth entity includes services that consist of the provision of services to other persons in connection with the performance of the Commonwealth entity's functions.

sexually penetrate is defined in section 71.8.

sexual servitude has the meaning given by section 270.4.

slavery has the meaning given by section 270.1.

special liability provision means:

- (a) a provision that provides that absolute liability applies to one or more (but not all) of the physical elements of an offence; or
- (b) a provision that provides that, in a prosecution for an offence, it is not necessary to prove that the defendant knew a particular thing; or
- (c) a provision that provides that, in a prosecution for an offence, it is not necessary to prove that the defendant knew or believed a particular thing.

subcontractor, for a Commonwealth contract, means a person:

- (a) who is a party to a contract (the **subcontract**):
 - (i) with a contracted service provider for the Commonwealth contract (within the meaning of paragraph (a) of the definition of **contracted service provider**); or
 - (ii) with a subcontractor for the Commonwealth contract (under a previous application of this definition); and
- (b) who is responsible under the subcontract for the provision of services to a Commonwealth entity, or to a contracted service provider for the Commonwealth contract, for the purposes (whether direct or indirect) of the Commonwealth contract.

sworn statement means an oral statement made on oath or affirmation or a statement in a document verified on oath or affirmation.

taking a person includes causing the person to accompany another person and causing the person to be taken.

theft means an offence against section 131.1.

Third Geneva Convention means the Geneva Convention relative to the Protection of Prisoners of War, adopted at Geneva on 12 August 1949, a copy of the English text of which (not including the annexes) is set out in Schedule 3 to the *Geneva Conventions Act 1957*.

threat includes a threat made by any conduct, whether express or implied and whether conditional or unconditional.

war crime means an offence under Subdivision D, E, F, G or H of Division 268.

Table of Acts**Notes to the *Criminal Code Act 1995*****Note 1**

The *Criminal Code Act 1995* as shown in this compilation comprises Act No. 12, 1995 amended as indicated in the Tables below.

Section 3AA ceased to have effect and is taken to have been repealed on the day specified in subsection 2.2(2) of the *Criminal Code*.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, see Act No. 55, 2001.

For all other relevant information pertaining to application, saving or transitional provisions see Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Criminal Code Act 1995</i>	12, 1995	15 Mar 1995	1 Jan 1997 (see <i>Gazette</i> 1996, No. S534)	
<i>Criminal Code Amendment Act 1998</i>	12, 1998	13 Apr 1998	13 Apr 1998	—
<i>Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999</i>	43, 1999	17 June 1999	17 Dec 1999	—
<i>Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999</i>	104, 1999	24 Aug 1999	21 Sept 1999	—
<i>Criminal Code Amendment (Application) Act 2000</i>	4, 2000	29 Feb 2000	29 Feb 2000	—
<i>Criminal Code Amendment (United Nations and Associated Personnel) Act 2000</i>	124, 2000	26 Oct 2000	1 Jan 2001 (see <i>Gazette</i> 2000, No. GN45)	—
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001</i>	24, 2001	6 Apr 2001	S. 4(1) and (2): (a) Schedule 1 (item 3): 4 May 2001 (a)	S. 4(1) and (2)
<i>Corporations (Repeals, Consequential and Transitional) Act 2001</i>	55, 2001	28 June 2001	Ss. 4–14 and Schedule 3 (items 148–150): 15 July 2001 (see <i>Gazette</i> 2001, No. S285) (b)	Ss. 4–14
<i>Cybercrime Act 2001</i>	161, 2001	1 Oct 2001	21 Dec 2001 (see <i>Gazette</i> 2001, No. S529)	S. 4
<i>Criminal Code Amendment (Anti-hoax and Other Measures) Act 2002</i>	9, 2002	4 Apr 2002	Schedule 1: 16 Oct 2001 (c) Remainder: Royal Assent	—
<i>International Criminal Court (Consequential Amendments) Act 2002</i>	42, 2002	27 June 2002	Schedules 1–7: 26 Sept 2002 (see s. 2(1) and <i>Gazette</i> 2002, No. GN38) Remainder: 28 June 2002	—
<i>Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002</i>	58, 2002	3 July 2002	Schedule 1: 8 Sept 2002 (see <i>Gazette</i> 2002, No. S331) Remainder: Royal Assent	—
<i>Security Legislation Amendment (Terrorism) Act 2002</i>	65, 2002	5 July 2002	S. 4: Royal Assent Schedule 1 (item 2): 6 July 2002 Schedule 1 (items 4, 5): (d)	S. 4 (am. by 40, 2003, Sch. 2 [item 1]) Sch. 1 (item 5)
as amended by				
<i>Criminal Code Amendment (Terrorism) Act 2003</i>	40, 2003	27 May 2003	(see 40, 2003 below)	—
<i>Suppression of the Financing of Terrorism Act 2002</i>	66, 2002	5 July 2002	Schedule 1 (item 1): Royal Assent Schedule 1 (item 2): 6 July 2002 Schedule 1 (item 3): (e)	—
<i>Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002</i>	86, 2002	11 Oct 2002	Ss. 1–3: Royal Assent Remainder: 1 Jan 2003 (see s. 2(1) and <i>Gazette</i> 2002, No. GN44)	—
<i>Criminal Code Amendment (Terrorist Organisations) Act 2002</i>	89, 2002	23 Oct 2002	23 Oct 2002	Sch. 1 (item 3)

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Criminal Code Amendment (Espionage and Related Matters) Act 2002</i>	91, 2002	31 Oct 2002	S. 4: Royal Assent Schedule 1 (item 5): 28 Nov 2002	S. 4
<i>Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002</i>	105, 2002	14 Nov 2002	Schedule 3 (items 38–40): 12 May 2003	—
as amended by				
<i>Workplace Relations Legislation Amendment Act 2002</i>	127, 2002	11 Dec 2002	Schedule 3 (items 53–55): (f)	—
<i>Criminal Code Amendment (Offences Against Australians) Act 2002</i>	106, 2002	14 Nov 2002	Ss. 1–3: Royal Assent Remainder: 1 Oct 2002	—
<i>Australian Crime Commission Establishment Act 2002</i>	125, 2002	10 Dec 2002	Schedule 2 (items 31, 32): 1 Jan 2003	—
<i>Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002</i>	141, 2002	19 Dec 2002	Schedules 1, 2 and Schedule 3 (items 1–22, 24–26): 16 Jan 2003 Schedule 3 (item 23): 1 Jan 2003 (see s. 2(1) and <i>Gazette</i> 2002, No. GN44) Remainder: Royal Assent	—
<i>Criminal Code Amendment (Terrorism) Act 2003</i>	40, 2003	27 May 2003	Schedules 1 and 2: 29 May 2003 (see <i>Gazette</i> 2003, No. S175) Remainder: Royal Assent	—
<i>Criminal Code Amendment (Hizballah) Act 2003</i>	44, 2003	24 June 2003	Ss. 1–3: Royal Assent Remainder: (g)	—
<i>Criminal Code Amendment (Hamas and Lashkar-e-Tayyiba) Act 2003</i>	109, 2003	7 Nov 2003	5 Nov 2003	—
<i>Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003</i>	140, 2003	17 Dec 2003	S. 4 and Schedule 1 (item 16): (h)	S. 4
<i>Criminal Code Amendment (Terrorist Organisations) Act 2004</i>	7, 2004	10 Mar 2004	10 Mar 2004	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Anti-terrorism Act 2004</i>	104, 2004	30 June 2004	1 July 2004	—
<i>Anti-terrorism Act (No. 2) 2004</i>	124, 2004	16 Aug 2004	Schedule 3: 17 Aug 2004 Remainder: Royal Assent	—
<i>Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No. 2) 2004</i>	127, 2004	31 Aug 2004	Schedule 1 (items 1, 6–23, 30): 1 Mar 2005 Schedules 2–4: 28 Sept 2004	Sch. 1 (item 30) and Sch. 4 (items 2, 8)
<i>Surveillance Devices Act 2004</i>	152, 2004	15 Dec 2004	15 Dec 2004	—
<i>Australian Passports (Transitional and Consequential) Act 2005</i>	7, 2005	18 Feb 2005	Schedule 1 (item 6): [see s. 2 and Note 2]	—

Act Notes

- (a) The *Criminal Code Act 1995* was amended by Schedule 1 (item 3) only of the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*, subsections 2(1)(a) and (2) of which provide as follows:
- (1) Subject to this section, this Act commences at the later of the following times:
 - (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;
 - (2) Schedule 1 commences on the 28th day after the day on which this Act receives the Royal Assent.
- Item 15 commenced on 24 May 2001.
- (b) The *Criminal Code Act 1995* was amended by Schedule 3 (items 148–150) only of the *Corporations (Repeals, Consequential and Transitional) Act 2001*, subsection 2(3) of which provides as follows:
- (3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.
- (c) Subsection 2(1) (item 2) of the *Criminal Code Amendment (Anti-hoax and Other Measures) Act 2002* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
2. Schedule 1	2 pm (by legal time in the Australian Capital Territory) on 16 October 2001	16 October 2001

- (d) Subsection 2(1) (item 5) of the *Security Legislation Amendment (Terrorism) Act 2002* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
5. Schedule 1, items 4 and 5	Immediately after the start of the day after this Act receives the Royal Assent	6 July 2002

- (e) Subsection 2(1) (item 4) of the *Suppression of the Financing of Terrorism Act 2002* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
4. Schedule 1, item 3	Immediately after the start of the day after this Act receives the Royal Assent	6 July 2002

- (f) Subsection 2(1) (item 32) of the *Workplace Relations Legislation Amendment Act 2002* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Act Notes

Provision(s)	Commencement	Date/Details
32. Schedule 3, items 53 to 55	Immediately before the commencement of items 38, 39 and 40 of Schedule 3 to the <i>Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002</i>	12 May 2003

(g) Subsection 2(1) (item 2) of the *Criminal Code Amendment (Hizballah) Act 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
2. Schedule 1	On 29 May 2003, immediately after the commencement of Schedule 1 to the <i>Criminal Code Amendment (Terrorism) Act 2003</i>	29 May 2003

(h) Subsection 2(1) (items 2 and 3) of the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003* provide as follows:

- (1) Each provision of this Act specified in column 1 of the table commences on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
2. Sections 4 and 5	Immediately after the commencement of sections 3 to 62 of the <i>Legislative Instruments Act 2003</i>	1 January 2005
3. Schedule 1	Immediately after the commencement of sections 3 to 62 of the <i>Legislative Instruments Act 2003</i>	1 January 2005

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 2.....	am. No. 12, 1998
S. 3AA.....	ad. No. 24, 2001 rep. No. 12, 1995
S. 3A	ad. No. 43, 1999
S. 3B	ad. No. 43, 1999 am. No. 137, 2000
S. 5.....	ad. No. 137, 2000
Schedule	
Chapter 2	
Part 2.1	
Division 2	
S. 2.2	am. No. 12, 1998; No. 4, 2000
S. 2.3	ad. No. 12, 1998
Part 2.2	
Division 3	
Note to s. 3.2	
Renumbered Note 1	No. 137, 2000
Note 2 to s. 3.2.....	ad. No. 137, 2000
Division 4	
S. 4.1	am. No. 137, 2000; No. 161, 2001
Division 5	
S. 5.1	am. No. 137, 2000
S. 5.6	am. No. 137, 2000
Part 2.3	
Division 9	
S. 9.3	am. No. 127, 2004
S. 9.4	am. No. 140, 2003; No. 127, 2004
Division 10	
S. 10.5	ad. No. 137, 2000
Part 2.4	
Division 11	
S. 11.1	am. No. 137, 2000
S. 11.2	am. No. 137, 2000; No. 127, 2004
S. 11.4	am. No. 137, 2000
S. 11.5	am. No. 137, 2000
S. 11.6	am. No. 137, 2000
Part 2.7	
Part 2.7	ad. No. 137, 2000

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 14	
S. 14.1	ad. No. 137, 2000
Division 15	
S. 15.1	ad. No. 137, 2000
S. 15.2	ad. No. 137, 2000
S. 15.3	ad. No. 137, 2000
S. 15.4	ad. No. 137, 2000
Division 16	
S. 16.1	ad. No. 137, 2000
S. 16.2	ad. No. 137, 2000
S. 16.3	ad. No. 137, 2000
S. 16.4	ad. No. 137, 2000
Chapter 4	
Chapt. 4	ad. No. 43, 1999
Division 70	
S. 70.1	ad. No. 43, 1999 am. No. 137, 2000
S. 70.2	ad. No. 43, 1999
S. 70.3	ad. No. 43, 1999
S. 70.4	ad. No. 43, 1999
S. 70.5	ad. No. 43, 1999 am. No. 137, 2000
S. 70.6	ad. No. 43, 1999
Division 71	
Div. 71	ad. No. 124, 2000
S. 71.1	ad. No. 124, 2000
S. 71.2	ad. No. 124, 2000
S. 71.3	ad. No. 124, 2000
S. 71.4	ad. No. 124, 2000
S. 71.5	ad. No. 124, 2000
S. 71.6	ad. No. 124, 2000
S. 71.7	ad. No. 124, 2000
S. 71.8	ad. No. 124, 2000
S. 71.9	ad. No. 124, 2000
S. 71.10	ad. No. 124, 2000
S. 71.11	ad. No. 124, 2000
S. 71.12	ad. No. 124, 2000
S. 71.13	ad. No. 124, 2000
S. 71.14	ad. No. 124, 2000
S. 71.15	ad. No. 124, 2000
S. 71.16	ad. No. 124, 2000
S. 71.17	ad. No. 124, 2000

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 71.18	ad. No. 124, 2000
S. 71.19	ad. No. 124, 2000
S. 71.20	ad. No. 124, 2000
S. 71.21	ad. No. 124, 2000
S. 71.22	ad. No. 124, 2000
S. 71.23	ad. No. 124, 2000
Division 72	
Div. 72	ad. No. 58, 2002
S. 72.1	ad. No. 58, 2002
S. 72.2	ad. No. 58, 2002
S. 72.3	ad. No. 58, 2002
S. 72.4	ad. No. 58, 2002
S. 72.5	ad. No. 58, 2002
S. 72.6	ad. No. 58, 2002
S. 72.7	ad. No. 58, 2002
S. 72.8	ad. No. 58, 2002
S. 72.9	ad. No. 58, 2002
S. 72.10	ad. No. 58, 2002
Division 73	
Div. 73	ad. No. 141, 2002
Subdivision A	
S. 73.1	ad. No. 141, 2002
S. 73.2	ad. No. 141, 2002
S. 73.3	ad. No. 141, 2002
S. 73.4	ad. No. 141, 2002
S. 73.5	ad. No. 141, 2002
Subdivision B	
S. 73.6	ad. No. 141, 2002
S. 73.7	ad. No. 141, 2002
S. 73.8	ad. No. 141, 2002
S. 73.9	ad. No. 141, 2002
S. 73.10	ad. No. 141, 2002
S. 73.11	ad. No. 141, 2002
S. 73.12	ad. No. 141, 2002
Chapter 5	
Heading to Chapt. 5	ad. No. 66, 2002
Part 5.1	
Part 5.1	ad. No. 65, 2002
Division 80	
S. 80.1	ad. No. 65, 2002
Part 5.2	
Part 5.2	ad. No. 91, 2002

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 90	
S. 90.1	ad. No. 91, 2002
Division 91	
S. 91.1	ad. No. 91, 2002
S. 91.2	ad. No. 91, 2002
Division 93	
S. 93.1	ad. No. 91, 2002
S. 93.2	ad. No. 91, 2002
Division 94	
S. 94.1	ad. No. 91, 2002
Part 5.3	
Part 5.3	ad. No. 66, 2002 rs. No. 40, 2003
Division 100	
Div. 100	ad. No. 66, 2002 rs. No. 40, 2003
S. 100.1	ad. No. 66, 2002 rs. No. 40, 2003
S. 100.2	ad. No. 66, 2002 rs. No. 40, 2003
S. 100.3	ad. No. 40, 2003
S. 100.4	ad. No. 40, 2003
S. 100.5	ad. No. 40, 2003
S. 100.6	ad. No. 40, 2003
S. 100.7	ad. No. 40, 2003
S. 100.8	ad. No. 40, 2003
Division 101	
Div. 101	ad. No. 65, 2002 rs. No. 40, 2003
S. 101.1	ad. No. 65, 2002 rs. No. 40, 2003
S. 101.2	ad. No. 65, 2002 rs. No. 40, 2003
S. 101.4	ad. No. 65, 2002 rs. No. 40, 2003
S. 101.5	ad. No. 65, 2002 rs. No. 40, 2003
S. 101.6	ad. No. 65, 2002 rs. No. 40, 2003
Division 102	
Div. 102	ad. No. 65, 2002 rs. No. 40, 2003

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision A	
S. 102.1	ad. No. 65, 2002 am. No. 89, 2002 rs. No. 40, 2003 am. Nos. 44 and 109, 2003; Nos. 7 and 124, 2004
S. 102.1A.....	ad. No. 7, 2004
Subdivision B	
S. 102.2	ad. No. 65, 2002 rs. No. 40, 2003
S. 102.3	ad. No. 65, 2002 rs. No. 40, 2003 am. Nos. 44 and 109, 2003; No. 104, 2004
S. 102.4	ad. No. 65, 2002 rs. No. 40, 2003
S. 102.5	ad. No. 65, 2002 rs. No. 40, 2003; No. 104, 2004
S. 102.6	ad. No. 65, 2002 rs. No. 40, 2003
S. 102.7	ad. No. 65, 2002 rs. No. 40, 2003
S. 102.8	ad. No. 124, 2004
Subdivision C	
S. 102.9	ad. No. 65, 2002 rs. No. 40, 2003
S. 102.10.....	ad. No. 65, 2002 rs. No. 40, 2003
Division 103	
Div. 103	ad. No. 66, 2002 rs. No. 40, 2003
S. 103.1	ad. No. 66, 2002 rs. No. 40, 2003
Division 106	
Div. 106	ad. No. 40, 2003
S. 106.1	ad. No. 40, 2003
Part 5.4	
Part 5.4.....	ad. No. 106, 2002
Division 104	
S. 104.1	ad. No. 106, 2002
S. 104.2	ad. No. 106, 2002
S. 104.3	ad. No. 106, 2002
S. 104.4	ad. No. 106, 2002
S. 104.5	ad. No. 106, 2002
S. 104.6	ad. No. 106, 2002
S. 104.7	ad. No. 106, 2002
S. 104.8	ad. No. 106, 2002

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 104.9	ad. No. 106, 2002
Chapter 7	
Chapt. 7	ad. No. 137, 2000
Part 7.1	
Division 130	
S. 130.1	ad. No. 137, 2000
S. 130.2	ad. No. 137, 2000
S. 130.3	ad. No. 137, 2000
S. 130.4	ad. No. 137, 2000
Part 7.2	
Division 131	
S. 131.1	ad. No. 137, 2000
S. 131.2	ad. No. 137, 2000
S. 131.3	ad. No. 137, 2000
S. 131.4	ad. No. 137, 2000
S. 131.5	ad. No. 137, 2000
S. 131.6	ad. No. 137, 2000
S. 131.7	ad. No. 137, 2000 am. No. 141, 2002
S. 131.8	ad. No. 137, 2000
S. 131.9	ad. No. 137, 2000
S. 131.10	ad. No. 137, 2000
S. 131.11	ad. No. 137, 2000
Division 132	
S. 132.1	ad. No. 137, 2000
S. 132.2	ad. No. 137, 2000
S. 132.3	ad. No. 137, 2000
S. 132.4	ad. No. 137, 2000
S. 132.5	ad. No. 137, 2000
S. 132.6	ad. No. 137, 2000
S. 132.7	ad. No. 137, 2000
S. 132.8	ad. No. 137, 2000
S. 132.9	ad. No. 137, 2000
Part 7.3	
Division 133	
S. 133.1	ad. No. 137, 2000
Division 134	
S. 134.1	ad. No. 137, 2000
S. 134.2	ad. No. 137, 2000
S. 134.3	ad. No. 137, 2000
Division 135	
S. 135.1	ad. No. 137, 2000

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 135.2	ad. No. 137, 2000 am. No. 141, 2002; No. 127, 2004
S. 135.4	ad. No. 137, 2000
S. 135.5	ad. No. 137, 2000
Part 7.4	
Division 136	
S. 136.1	ad. No. 137, 2000 am. No. 141, 2002
Division 137	
S. 137.1	ad. No. 137, 2000 am. No. 141, 2002
S. 137.2	ad. No. 137, 2000
S. 137.3	ad. No. 137, 2000
Part 7.5	
Division 138	
S. 138.1	ad. No. 137, 2000
S. 138.2	ad. No. 137, 2000
Division 139	
S. 139.1	ad. No. 137, 2000
S. 139.2	ad. No. 137, 2000
S. 139.3	ad. No. 137, 2000
Part 7.6	
Division 140	
S. 140.1	ad. No. 137, 2000
S. 140.2	ad. No. 137, 2000
Division 141	
S. 141.1	ad. No. 137, 2000
Division 142	
S. 142.1	ad. No. 137, 2000
S. 142.2	ad. No. 137, 2000
S. 142.3	ad. No. 137, 2000
Part 7.7	
Division 143	
S. 143.1	ad. No. 137, 2000
S. 143.2	ad. No. 137, 2000
S. 143.3	ad. No. 137, 2000
S. 143.4	ad. No. 137, 2000
Division 144	
S. 144.1	ad. No. 137, 2000
Division 145	
S. 145.1	ad. No. 137, 2000
S. 145.2	ad. No. 137, 2000 am. No. 141, 2002

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 145.3	ad. No. 137, 2000
S. 145.4	ad. No. 137, 2000
S. 145.5	ad. No. 137, 2000
S. 145.6	ad. No. 137, 2000
Part 7.8	
Division 146	
S. 146.1	ad. No. 137, 2000 am. No. 125, 2002
S. 146.2	ad. No. 137, 2000
Division 147	
S. 147.1	ad. No. 137, 2000 am. No. 141, 2002
S. 147.2	ad. No. 137, 2000
S. 147.3	ad. No. 137, 2000
Division 148	
S. 148.1	ad. No. 137, 2000 am. No. 141, 2002
S. 148.2	ad. No. 137, 2000 am. No. 141, 2002
S. 148.3	ad. No. 137, 2000
Division 149	
S. 149.1	ad. No. 137, 2000
Part 7.20	
Division 261	
S. 261.1	ad. No. 137, 2000
S. 261.2	ad. No. 137, 2000
S. 261.3	ad. No. 137, 2000
Chapter 8	
Heading to Chapt. 8	rs. No. 42, 2002
Chapt. 8	ad. No. 104, 1999
Division 268	
Div. 268	ad. No. 42, 2002
Subdivision A	
S. 268.1	ad. No. 42, 2002
S. 268.2	ad. No. 42, 2002
Subdivision B	
S. 268.3	ad. No. 42, 2002
S. 268.4	ad. No. 42, 2002
S. 268.5	ad. No. 42, 2002
S. 268.6	ad. No. 42, 2002
S. 268.7	ad. No. 42, 2002
Subdivision C	
S. 268.8	ad. No. 42, 2002

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 268.9	ad. No. 42, 2002
S. 268.10	ad. No. 42, 2002
S. 268.11	ad. No. 42, 2002
S. 268.12	ad. No. 42, 2002
S. 268.13	ad. No. 42, 2002
S. 268.14	ad. No. 42, 2002
S. 268.15	ad. No. 42, 2002
S. 268.16	ad. No. 42, 2002
S. 268.17	ad. No. 42, 2002
S. 268.18	ad. No. 42, 2002
S. 268.19	ad. No. 42, 2002
S. 268.20	ad. No. 42, 2002
S. 268.21	ad. No. 42, 2002
S. 268.22	ad. No. 42, 2002
S. 268.23	ad. No. 42, 2002
Subdivision D	
S. 268.24	ad. No. 42, 2002
S. 268.25	ad. No. 42, 2002
S. 268.26	ad. No. 42, 2002
S. 268.27	ad. No. 42, 2002
S. 268.28	ad. No. 42, 2002
S. 268.29	ad. No. 42, 2002
S. 268.30	ad. No. 42, 2002
S. 268.31	ad. No. 42, 2002
S. 268.32	ad. No. 42, 2002
S. 268.33	ad. No. 42, 2002
S. 268.34	ad. No. 42, 2002
Subdivision E	
S. 268.35	ad. No. 42, 2002
S. 268.36	ad. No. 42, 2002
S. 268.37	ad. No. 42, 2002
S. 268.38	ad. No. 42, 2002
S. 268.39	ad. No. 42, 2002
S. 268.40	ad. No. 42, 2002
S. 268.41	ad. No. 42, 2002
S. 268.42	ad. No. 42, 2002
S. 268.43	ad. No. 42, 2002
S. 268.44	ad. No. 42, 2002
S. 268.45	ad. No. 42, 2002
S. 268.46	ad. No. 42, 2002
S. 268.47	ad. No. 42, 2002
S. 268.48	ad. No. 42, 2002

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 268.49	ad. No. 42, 2002
S. 268.50	ad. No. 42, 2002
S. 268.51	ad. No. 42, 2002
S. 268.52	ad. No. 42, 2002
S. 268.53	ad. No. 42, 2002
S. 268.54	ad. No. 42, 2002
S. 268.55	ad. No. 42, 2002
S. 268.56	ad. No. 42, 2002
S. 268.57	ad. No. 42, 2002
S. 268.58	ad. No. 42, 2002
S. 268.59	ad. No. 42, 2002
S. 268.60	ad. No. 42, 2002
S. 268.61	ad. No. 42, 2002
S. 268.62	ad. No. 42, 2002
S. 268.63	ad. No. 42, 2002
S. 268.64	ad. No. 42, 2002
S. 268.65	ad. No. 42, 2002
S. 268.66	ad. No. 42, 2002
S. 268.67	ad. No. 42, 2002
S. 268.68	ad. No. 42, 2002
Subdivision F	
S. 268.69	ad. No. 42, 2002
S. 268.70	ad. No. 42, 2002
S. 268.71	ad. No. 42, 2002
S. 268.72	ad. No. 42, 2002
S. 268.73	ad. No. 42, 2002
S. 268.74	ad. No. 42, 2002
S. 268.75	ad. No. 42, 2002
S. 268.76	ad. No. 42, 2002
Subdivision G	
S. 268.77	ad. No. 42, 2002
S. 268.78	ad. No. 42, 2002
S. 268.79	ad. No. 42, 2002
S. 268.80	ad. No. 42, 2002
S. 268.81	ad. No. 42, 2002
S. 268.82	ad. No. 42, 2002
S. 268.83	ad. No. 42, 2002
S. 268.84	ad. No. 42, 2002
S. 268.85	ad. No. 42, 2002
S. 268.86	ad. No. 42, 2002
S. 268.87	ad. No. 42, 2002
S. 268.88	ad. No. 42, 2002

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 268.89	ad. No. 42, 2002
S. 268.90	ad. No. 42, 2002
S. 268.91	ad. No. 42, 2002
S. 268.92	ad. No. 42, 2002
S. 268.93	ad. No. 42, 2002
S. 268.94	ad. No. 42, 2002
Subdivision H	
S. 268.95	ad. No. 42, 2002
S. 268.96	ad. No. 42, 2002
S. 268.97	ad. No. 42, 2002
S. 268.98	ad. No. 42, 2002
S. 268.99	ad. No. 42, 2002
S. 268.100	ad. No. 42, 2002
S. 268.101	ad. No. 42, 2002
Subdivision J	
S. 268.102	ad. No. 42, 2002
S. 268.103	ad. No. 42, 2002
S. 268.104	ad. No. 42, 2002
S. 268.105	ad. No. 42, 2002
S. 268.106	ad. No. 42, 2002
S. 268.107	ad. No. 42, 2002
S. 268.108	ad. No. 42, 2002
S. 268.109	ad. No. 42, 2002
S. 268.110	ad. No. 42, 2002
S. 268.111	ad. No. 42, 2002
S. 268.112	ad. No. 42, 2002
S. 268.113	ad. No. 42, 2002
S. 268.114	ad. No. 42, 2002
Subdivision K	
S. 268.115	ad. No. 42, 2002
S. 268.116	ad. No. 42, 2002
S. 268.117	ad. No. 42, 2002
S. 268.118	ad. No. 42, 2002
S. 268.119	ad. No. 42, 2002
S. 268.120	ad. No. 42, 2002
S. 268.121	ad. No. 42, 2002
S. 268.122	ad. No. 42, 2002
S. 268.123	ad. No. 42, 2002
S. 268.124	ad. No. 42, 2002
Division 270	
S. 270.1	ad. No. 104, 1999
S. 270.2	ad. No. 104, 1999

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 270.3	ad. No. 104, 1999
S. 270.4	ad. No. 104, 1999
S. 270.5	ad. No. 104, 1999
S. 270.6	ad. No. 104, 1999
S. 270.7	ad. No. 104, 1999
S. 270.8	ad. No. 104, 1999
S. 270.9	ad. No. 104, 1999
S. 270.10	ad. No. 104, 1999
S. 270.11	ad. No. 104, 1999
S. 270.12	ad. No. 104, 1999
S. 270.13	ad. No. 104, 1999
S. 270.14	ad. No. 104, 1999
Chapter 9	
Chapt. 9	ad. No. 141, 2002
Part 9.4	
Division 360	
S. 360.1	ad. No. 141, 2002
S. 360.2	ad. No. 141, 2002
S. 360.3	ad. No. 141, 2002
S. 360.4	ad. No. 141, 2002
Part 9.6	
Part 9.6	ad. No. 127, 2004
S. 380.1	ad. No. 127, 2004
S. 380.2	ad. No. 127, 2004
S. 380.3	ad. No. 127, 2004
S. 380.4	ad. No. 127, 2004
S. 380.5	ad. No. 127, 2004
Chapter 10	
Chapt. 10	ad. No. 137, 2000
Part 10.2	
Part 10.2	ad. No. 86, 2002
Division 400	
S. 400.1	ad. No. 86, 2002
S. 400.2	ad. No. 86, 2002
S. 400.3	ad. No. 86, 2002
S. 400.4	ad. No. 86, 2002
S. 400.5	ad. No. 86, 2002
S. 400.6	ad. No. 86, 2002
S. 400.7	ad. No. 86, 2002
S. 400.8	ad. No. 86, 2002
S. 400.9	ad. No. 86, 2002
S. 400.10	ad. No. 86, 2002

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 400.11	ad. No. 86, 2002
S. 400.12	ad. No. 86, 2002
S. 400.13	ad. No. 86, 2002
S. 400.14	ad. No. 86, 2002
S. 400.15	ad. No. 86, 2002
S. 400.16	ad. No. 86, 2002
Part 10.5	
Division 470	
S. 470.1	ad. No. 137, 2000 am. No. 9, 2002
S. 470.2	ad. No. 137, 2000
S. 470.3	ad. No. 137, 2000
Division 471	
S. 471.1	ad. No. 137, 2000
S. 471.2	ad. No. 137, 2000
S. 471.3	ad. No. 137, 2000
S. 471.4	ad. No. 137, 2000
S. 471.5	ad. No. 137, 2000
S. 471.6	ad. No. 137, 2000
S. 471.7	ad. No. 137, 2000
S. 471.8	ad. No. 137, 2000
S. 471.9	ad. No. 137, 2000 am. No. 9, 2002
S. 471.10	ad. No. 9, 2002
S. 471.11	ad. No. 9, 2002 am. No. 127, 2004
S. 471.12	ad. No. 9, 2002 am. No. 127, 2004
S. 471.13	ad. No. 9, 2002
S. 471.14	ad. No. 9, 2002 am. No. 9, 2002
S. 471.15	ad. No. 9, 2002
Division 472	
S. 472.1	ad. No. 137, 2000
S. 472.2	ad. No. 137, 2000
Part 10.6	
Part 10.6	rs. No. 127, 2004
Division 473	
S. 473.1	ad. No. 137, 2000 rs. No. 127, 2004
S. 473.2	ad. No. 137, 2000 rs. No. 127, 2004
S. 473.3	ad. No. 137, 2000 rs. No. 127, 2004

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 473.4	ad. No. 127, 2004
Division 474	
Subdivision A	
S. 474.1	ad. No. 137, 2000 rs. No. 127, 2004
S. 474.2	ad. No. 127, 2004
Subdivision B	
S. 474.3	ad. No. 127, 2004
S. 474.4	ad. No. 127, 2004
S. 474.5	ad. No. 127, 2004
S. 474.6	ad. No. 127, 2004
S. 474.7	ad. No. 127, 2004
S. 474.8	ad. No. 127, 2004
S. 474.9	ad. No. 127, 2004
S. 474.10	ad. No. 127, 2004
S. 474.11	ad. No. 127, 2004
S. 474.12	ad. No. 127, 2004
Subdivision C	
S. 474.13	ad. No. 127, 2004
S. 474.14	ad. No. 127, 2004
S. 474.15	ad. No. 127, 2004
S. 474.16	ad. No. 127, 2004
S. 474.17	ad. No. 127, 2004
S. 474.18	ad. No. 127, 2004
S. 474.19	ad. No. 127, 2004
S. 474.20	ad. No. 127, 2004
S. 474.21	ad. No. 127, 2004
S. 474.22	ad. No. 127, 2004
S. 474.23	ad. No. 127, 2004
S. 474.24	ad. No. 127, 2004
S. 474.25	ad. No. 127, 2004
S. 474.26	ad. No. 127, 2004
S. 474.27	ad. No. 127, 2004
S. 474.28	ad. No. 127, 2004
S. 474.29	ad. No. 127, 2004
S. 474.30	ad. No. 127, 2004
Division 475	
S. 475.1	ad. No. 137, 2000 rs. No. 127, 2004
S. 475.2	ad. No. 127, 2004
Part 10.7	
Part 10.7	ad. No. 161, 2001

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 476	
S. 476.1	ad. No. 161, 2001 am. No. 127, 2004
S. 476.2	ad. No. 161, 2001 am. No. 152, 2004
S. 476.3	ad. No. 161, 2001
S. 476.4	ad. No. 161, 2001
S. 476.5	ad. No. 161, 2001 am. No. 127, 2004
Division 477	
S. 477.1	ad. No. 161, 2001 am. No. 127, 2004
S. 477.2	ad. No. 161, 2001 am. No. 127, 2004
S. 477.3	ad. No. 161, 2001 am. No. 127, 2004
Division 478	
S. 478.1	ad. No. 161, 2001 am. No. 127, 2004
S. 478.2	ad. No. 161, 2001
S. 478.3	ad. No. 161, 2001
S. 478.4	ad. No. 161, 2001
Part 10.8	
Part 10.8	ad. No. 127, 2004
S. 480.1	ad. No. 127, 2004
S. 480.2	ad. No. 127, 2004
S. 480.3	ad. No. 127, 2004
S. 480.4	ad. No. 127, 2004
S. 480.5	ad. No. 127, 2004
S. 480.6	ad. No. 127, 2004
Dictionary	am. Nos. 43 and 104, 1999; Nos. 124 and 137, 2000; No. 55, 2001; No. 42, 2002; No. 105, 2002 (as am. by No. 127, 2002); No. 127, 2004

Table A

Note 2

Australian Passports (Transitional and Consequential) Act 2005
(No. 7, 2005)

The following amendment commences on 18 November 2005 unless proclaimed earlier:

Schedule 1

6 Paragraph 104.7(1)(c) of the *Criminal Code*

Omit “*Passports Act 1938*”, substitute “*Australian Passports Act 2005*”.

As at 1 March 2005 the amendment is not incorporated in this compilation.

Table A

Table A

Application, saving or transitional provisions

Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001 (No. 24, 2001)

4 Application of amendments

- (1) Subject to subsection (3), each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Cybercrime Act 2001 (No. 161, 2001)

4 Application—*Criminal Code* amendments

- (1) The amendments of the *Criminal Code* made by Schedule 1 apply to conduct that takes place after that Schedule commences.
- (2) For the purposes of this section, if conduct is alleged to have taken place between 2 dates, one before and one on or after the day on which Schedule 1 commences, the conduct is alleged to have taken place before Schedule 1 commences.

Table A

Security Legislation Amendment (Terrorism) Act 2002 (No. 65, 2002)

4 Public and independent review of operation of Security Acts relating to terrorism

- (1) The Attorney-General must cause a review of the operation, effectiveness and implications of amendments made by:
 - (a) the *Security Legislation Amendment (Terrorism) Act 2002*; and
 - (b) the *Suppression of the Financing of Terrorism Act 2002*; and
 - (c) the *Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002*; and
 - (d) the *Border Security Legislation Amendment Act 2002*; and
 - (e) the *Telecommunications Interception Legislation Amendment Act 2002*; and
 - (f) the *Criminal Code Amendment (Terrorism) Act 2003*.
- (2) The review must be undertaken as soon as practicable after the third anniversary of the commencement of the amendments.
- (3) The review is to be undertaken by a committee consisting of:
 - (a) up to two persons appointed by the Attorney-General, one of whom must be a retired judicial officer who shall be the Chair of the Committee; and
 - (b) the Inspector-General of Intelligence and Security; and
 - (c) the Privacy Commissioner; and
 - (d) the Human Rights Commissioner; and
 - (e) the Commonwealth Ombudsman; and
 - (f) two persons (who must hold a legal practising certificate in an Australian jurisdiction) appointed by the Attorney-General on the nomination of the Law Council of Australia.
- (4) The Attorney-General may reject a nomination made under subsection (3)(f). If the Attorney-General rejects a nomination, the Law Council of Australia may nominate another person.
- (5) The committee must provide for public submissions and public hearings as part of the review.

Table A

-
- (6) The committee must, within six months of commencing the review, give the Attorney-General and the Parliamentary Joint Committee on ASIO, ASIS and DSD a written report of the review which includes an assessment of matters in subsection (1), and alternative approaches or mechanisms as appropriate.
 - (7) The Attorney-General must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after its receipt by the Attorney-General.
 - (8) Before the copy of the report is tabled in Parliament, the Attorney-General may remove information from the copy of the report if the Attorney-General is satisfied on advice from the Director-General of Security or the Commissioner of the Australian Federal Police that its inclusion may:
 - (a) endanger a person's safety; or
 - (b) prejudice an investigation or prosecution; or
 - (c) compromise the operational activities or methodologies of the Australian Security Intelligence Organisation, the Australian Secret Intelligence Service, the Defence Signals Directorate or the Australian Federal Police.
 - (9) The Parliamentary Joint Committee on ASIO, ASIS and DSD must take account of the report of the review given to the Committee, when the Committee conducts its review under paragraph 29(1)(ba) of the *Intelligence Services Act 2001*.

Schedule 1**5 Application**

For the purpose of making regulations specifying an organisation for the purposes of paragraph (c) of the definition of ***terrorist organisation*** in section 102.1 of the *Criminal Code*, it does not matter whether the relevant decision of the Security Council of the United Nations was made before or after the commencement of this item.

Table A

Criminal Code Amendment (Terrorist Organisations) Act 2002 (No. 89, 2002)

Schedule 1

3 Effect of regulations made before commencement of this Act

In spite of anything in subsection 102.1(4) of the *Criminal Code* before it was repealed, or in the regulations concerned, regulations made for the purposes of paragraph (c) of the definition of ***terrorist organisation*** in section 102.1 of the *Criminal Code* that were notified in the *Gazette* before the commencement of this Act are deemed to have taken effect on 21 October 2002. Section 48 of the *Acts Interpretation Act 1901* has effect subject to this item.

Criminal Code Amendment (Espionage and Related Matters) Act 2002
(No. 91, 2002)

4 Transitional—pre-commencement offences

- (1) Despite the amendment or repeal of a provision by a Schedule to this Act, that provision continues to apply, after the commencement of this section, in relation to:
 - (a) an offence committed before the commencement of this section; or
 - (b) proceedings for an offence alleged to have been committed before the commencement of this section; or
 - (c) any matter connected with, or arising out of, such proceedings;as if the amendment or repeal had not been made.
- (2) Subsection (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

Table A*Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003* (No. 140, 2003)**4 Transitional provisions**

- (1) If legislation introduced into the Parliament before the commencing day but commencing on or after that day:
 - (a) authorises an instrument to be made in the exercise of a power delegated by the Parliament; and
 - (b) is expressed to require that instrument to be published as a statutory rule under the *Statutory Rules Publication Act 1903*; any instrument so made is taken to be an instrument referred to in paragraph 6(b) of the *Legislative Instruments Act 2003* despite the repeal by this Act of the *Statutory Rules Publication Act 1903*.
- (2) If legislation introduced into the Parliament before the commencing day but commencing on or after that day:
 - (a) authorises an instrument to be made in the exercise of a power delegated by the Parliament; and
 - (b) is expressed to declare that instrument to be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*; any instrument so made is taken to be an instrument referred to in subparagraph 6(d)(i) of the *Legislative Instruments Act 2003* despite the repeal by this Act of section 46A of the *Acts Interpretation Act 1901*.
- (3) If legislation that is in force immediately before the commencing day or that is introduced into the Parliament before that day but that commences on or after that day:
 - (a) authorised or authorises an instrument to be made in the exercise of a power delegated by the Parliament that adversely affects the rights of a person, or results in the imposition of liabilities on a person; and
 - (b) provided or provides that the instrument has effect, to the extent that it adversely affects those rights or results in the imposition of those liabilities, despite subsection 48(2) of the *Acts Interpretation Act 1901*, before the date of its notification in the *Gazette*;

Table A

that legislation is to be construed, on and after the commencing day or the day of its commencement, whichever last occurs, as if it had provided instead that the instrument, to the extent that it adversely affects those rights or results in the imposition of those liabilities, has effect, despite subsection 12(2) of the *Legislative Instruments Act 2003*, before its registration under that Act.

(4) If:

- (a) legislation (the *enabling legislation*) in force immediately before the commencing day:
 - (i) authorises the making of an instrument; and
 - (ii) does not declare such an instrument to be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901* but nonetheless makes provision for its disallowance by the application, with or without modification, of the provisions of Part XII of that Act; and
- (b) an instrument is made in the exercise of that authority on or after the commencing day; and
- (c) the instrument is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003* or otherwise;

the enabling legislation has effect, on and after the commencing day, as if:

- (d) it had declared such instruments to be disallowable instruments for the purposes of section 46B of the *Acts Interpretation Act 1901*; and
- (e) it had provided for such modifications of the operation of that section as are necessary to ensure that the effect of the applied provisions of Part XII of the *Acts Interpretation Act 1901* is preserved.

(5) In this section:

commencing day means the commencing day within the meaning of the *Legislative Instruments Act 2003*.

Table A*Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No. 2) 2004* (No. 127, 2004)**Schedule 1****30 Saving—existing regulations respecting interception devices**

- (1) Regulations made for the purposes of paragraph 85ZKB(2)(c) of the *Crimes Act 1914* and in force immediately before the commencement of item 1 of this Schedule continue in force as if they had been made for the purposes of subsection 474.4(3) of the *Criminal Code* as enacted by that item.
- (2) Subitem (1) does not prevent amendment or repeal of the regulations referred to in that subitem.

Schedule 4**2 Application of amendment**

The amendment made by item 1 applies to prosecutions brought after the commencement of that item.

8 Transitional—pre-commencement offences

- (1) Despite the amendment or repeal of a provision by this Part, that provision continues to apply, after the commencement of this item, in relation to:
 - (a) an offence committed before the commencement of this item; or
 - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
 - (c) any matter connected with, or arising out of, such proceedings;
 as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.