Criminal Code Act 1995

Act No. 12 of 1995 as amended

This compilation was prepared on 5 August 2009 taking into account amendments up to Act No. 70 of 2009

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

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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

Chapter 1—Codification

Division 1  3
  1.1 Codification............................................................................3

Chapter 2—General principles of criminal responsibility

Part 2.1—Purpose and application

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

Division 3—General

  3.1 Elements.................................................................................5
  3.2 Establishing guilt in respect of offences...............................5

Division 4—Physical elements

  4.1 Physical elements .................................................................6
  4.2 Voluntariness.........................................................................6
  4.3 Omissions..............................................................................7

Division 5—Fault elements

  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

  6.1 Strict liability...............................................................10
  6.2 Absolute liability ............................................................10
Part 2.3—Circumstances in which there is no criminal responsibility

Division 7—Circumstances involving lack of capacity

7.1 Children under 10

7.2 Children over 10 but under 14

7.3 Mental impairment

Division 8—Intoxication

8.1 Definition—self-induced intoxication

8.2 Intoxication (offences involving basic intent)

8.3 Intoxication (negligence as fault element)

8.4 Intoxication (relevance to defences)

8.5 Involuntary intoxication

Division 9—Circumstances involving mistake or ignorance

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

9.2 Mistake of fact (strict liability)

9.3 Mistake or ignorance of statute law

9.4 Mistake or ignorance of subordinate legislation

9.5 Claim of right

Division 10—Circumstances involving external factors

10.1 Intervening conduct or event

10.2 Duress

10.3 Sudden or extraordinary emergency

10.4 Self-defence

10.5 Lawful authority

Part 2.4—Extensions of criminal responsibility

Division 11

11.1 Attempt

11.2 Complicity and common purpose

11.3 Innocent agency

11.4 Incitement

11.5 Conspiracy

11.6 References in Acts to offences

Part 2.5—Corporate criminal responsibility

Division 12

12.1 General principles

12.2 Physical elements

12.3 Fault elements other than negligence

12.4 Negligence

12.5 Mistake of fact (strict liability)
12.6 Intervening conduct or event .......................................................... 31

Part 2.6—Proof of criminal responsibility

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

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 ....................... 43

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 Australia ................................................................. 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 ...... 52
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

Criminal Code Act 1995 v
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 ........................................................................ 62
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 ............................................................................. 65
71.16 Jurisdictional requirement ................................................................................................... 65
71.17 Exclusion of this Division if State/Territory laws provide for corresponding offences . .................................................................................................................. 67
71.18 Double jeopardy .................................................................................................................... 67
71.19 Saving of other laws .............................................................................................................. 67
71.20 Bringing proceedings under this Division ............................................................................. 67
71.21 Ministerial certificates relating to proceedings ...................................................................... 68
71.22 Jurisdiction of State courts preserved .................................................................................. 68
71.23 Definitions ............................................................................................................................. 69

Division 72—Explosives and lethal devices 71

Subdivision A—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 Subdivision ............................................................................. 74
72.8 Ministerial certificates relating to proceedings .......................................................................... 74
72.9 Jurisdiction of State courts preserved ....................................................................................... 75
72.10 Definitions ................................................................................................................................... 75

Subdivision B—Plastic explosives 75
72.11 Purpose ....................................................................................................................................... 75
72.12 Trafficking in unmarked plastic explosives etc. ...................................................................... 75
72.13 Importing or exporting unmarked plastic explosives etc. ...................................................... 76
72.14 Manufacturing unmarked plastic explosives etc. ................................................................... 76
72.15 Possessing unmarked plastic explosives etc. .......................................................................... 77
72.16 Defences ...................................................................................................................................... 77
72.17 Packaging requirements for plastic explosives ....................................................................... 78
72.18 Authorisation for research etc..........................................................79
72.19 Authorisation for defence and police purposes—15 year
    limit .....................................................................................................80
72.20 Authorisation for existing stocks—3 year limit...............................81
72.21 Authorisation of manufacturers—6 month transitional period ....82
72.22 Authorisation for overseas defence purposes—7 day limit.............83
72.23 Authorisation for overseas Australian Federal Police
    purposes—7 day limit.........................................................................84
72.24 Forfeited plastic explosives ..........................................................84
72.25 Surrendered plastic explosives .......................................................85
72.26 Destruction of plastic explosives obtained overseas for
    defence purposes ...............................................................................85
72.27 Destruction of plastic explosives obtained overseas for
    Australian Federal Police purposes....................................................86
72.28 Delegation by Minister ..................................................................86
72.29 Delegation by Minister for Defence ..............................................86
72.30 Review by Administrative Appeals Tribunal of authorisation
    decisions ............................................................................................87
72.31 Geographical jurisdiction ...............................................................87
72.32 Saving of other laws .......................................................................87
72.33 Marking requirements ....................................................................87
72.34 Detection agents and minimum manufacture concentrations......88
72.35 Presumption as to concentration of detection agent.......................89
72.36 Definitions ....................................................................................89

Division 73—People smuggling and related offences 93
    Subdivision A—People smuggling offences 93
        73.1 Offence of people smuggling.....................................................93
        73.2 Aggravated offence of people smuggling (exploitation etc.) ....93
        73.3 Aggravated offence of people smuggling (at least 5 people) ....94
        73.4 Jurisdictional requirement .......................................................95
        73.5 Attorney-General’s consent required.........................................96
    Subdivision B—Document offences related to people smuggling
    and unlawful entry into foreign countries 96
        73.6 Meaning of travel or identity document ......................................96
        73.7 Meaning of false travel or identity document .........................96
        73.8 Making, providing or possessing a false travel or identity
            document ....................................................................................97
        73.9 Providing or possessing a travel or identity document issued
            or altered dishonestly or as a result of threats...............................98
        73.10 Providing or possessing a travel or identity document to be
            used by a person who is not the rightful user.................................99
        73.11 Taking possession of or destroying another person’s travel or
            identity document .......................................................................99
        73.12 Jurisdictional requirement .......................................................100

Criminal Code Act 1995  vii
Chapter 5—The security of the Commonwealth

Part 5.1—Treason and sedition

Division 80—Treason and sedition

80.1A Definition of organisation .................................................. 101
80.1 Treason .................................................................................. 101
80.2 Sedition .................................................................................. 103
80.3 Defence for acts done in good faith ........................................ 105
80.4 Extended geographical jurisdiction for offences .................... 107
80.5 Attorney-General’s consent required ................................ 107
80.6 Division not intended to exclude State or Territory law ........... 107

Part 5.2—Offences relating to espionage and similar activities

Division 90—Preliminary

90.1 Definitions ................................................................................ 108

Division 91—Offences relating to espionage and similar activities

91.1 Espionage and similar activities .............................................. 110
91.2 Defence—information lawfully available .............................. 112

Division 93—Prosecutions and hearings

93.1 Institution of prosecution ....................................................... 113
93.2 Hearing in camera etc ........................................................... 113

Division 94—Forfeiture

94.1 Forfeiture of articles etc .......................................................... 115

Part 5.3—Terrorism

Division 100—Preliminary

100.1 Definitions .............................................................................. 116
100.2 Referring States ................................................................. 120
100.3 Constitutional basis for the operation of this Part ................. 121
100.4 Application of provisions ................................................. 122
100.5 Application of Acts Interpretation Act 1901 ......................... 125
100.6 Concurrent operation intended ............................................ 125
100.7 Regulations may modify operation of this Part to deal with interaction between this Part and State and Territory laws ....... 126
100.8 Approval for changes to or affecting this Part ....................... 126

Division 101—Terrorism

101.1 Terrorist acts .......................................................................... 127
101.2 Providing or receiving training connected with terrorist acts ... 127
101.4 Possessing things connected with terrorist acts ................... 128
101.5 Collecting or making documents likely to facilitate terrorist acts ......................................................... 129
101.6 Other acts done in preparation for, or planning, terrorist acts ... 130
Division 102—Terrorist organisations

Subdivision A—Definitions
102.1 Definitions ..................................................................................... 131
102.1A Reviews by Parliamentary Joint Committee on ASIO, ASIS and DSD ............................................................................. 134

Subdivision B—Offences
102.2 Directing the activities of a terrorist organisation ....................... 136
102.3 Membership of a terrorist organisation ......................................... 136
102.4 Recruiting for a terrorist organisation ........................................... 137
102.5 Training a terrorist organisation or receiving training from a terrorist organisation ....................................................... 137
102.6 Getting funds to, from or for a terrorist organisation .................... 138
102.7 Providing support to a terrorist organisation ............................... 139
102.8 Associating with terrorist organisations ...................................... 139

Subdivision C—General provisions relating to offences
102.9 Extended geographical jurisdiction for offences ......................... 142
102.10 Alternative verdicts .................................................................... 142

Division 103—Financing terrorism
103.1 Financing terrorism ...................................................................... 143
103.2 Financing a terrorist ..................................................................... 143
103.3 Extended geographical jurisdiction for offences ......................... 144

Division 104—Control orders
Subdivision A—Object of this Division
104.1 Object of this Division .................................................................. 145

Subdivision B—Making an interim control order
104.2 Attorney-General’s consent to request an interim control order ................................................................. 145
104.3 Requesting the court to make an interim control order .............. 147
104.4 Making an interim control order ................................................. 147
104.5 Terms of an interim control order ............................................... 148

Subdivision C—Making an urgent interim control order
104.6 Requesting an urgent interim control order by electronic means ............................................................................ 150
104.7 Making an urgent interim control order by electronic means ........ 151
104.8 Requesting an urgent interim control order in person ................. 152
104.9 Making an urgent interim control order in person ..................... 153
104.10 Obtaining the Attorney-General’s consent within 4 hours .......... 153
104.11 Court to assume that exercise of power not authorised by urgent interim control order ......................................................... 154

Subdivision D—Confirming an interim control order

Criminal Code Act 1995
104.12 Service, explanation and notification of an interim control order .............................................................. 154
104.12A Election to confirm control order ........................................................................................................... 155
104.13 Lawyer may request a copy of an interim control order .......................................................... 157
104.14 Confirming an interim control order ................................................................................................... 157
104.15 When a declaration, or a revocation, variation or confirmation of a control order, is in force .................. 159
104.16 Terms of a confirmed control order .................................................................................................... 159
104.17 Service of a declaration, or a revocation, variation or confirmation of a control order ...................... 160

Subdivision E—Rights in respect of a control order 160
104.18 Application by the person for a revocation or variation of a control order .......................................................... 160
104.19 Application by the AFP Commissioner for a revocation or variation of a control order .................. 161
104.20 Revocation or variation of a control order .......................................................................................... 162
104.21 Lawyer may request a copy of a control order .................................................................................. 162
104.22 Treatment of photographs and impressions of fingerprints .......................................................... 163

Subdivision F—Adding obligations, prohibitions or restrictions to a control order 163
104.23 Application by the AFP Commissioner for addition of obligations, prohibitions or restrictions .......... 163
104.24 Varying a control order ....................................................................................................................... 165
104.25 Terms of a varied control order .......................................................................................................... 166
104.26 Service and explanation of a varied control order ............................................................................. 166

Subdivision G—Contravening a control order 167
104.27 Offence for contravening a control order .......................................................................................... 167

Subdivision H—Miscellaneous 167
104.28 Special rules for young people ............................................................................................................. 167
104.28A Interlocutory proceedings ................................................................................................................. 167
104.29 Reporting requirements ....................................................................................................................... 168
104.30 Requirement to notify Attorney-General of declarations, revocations or variations .......................... 169
104.31 Queensland public interest monitor functions and powers not affected ........................................... 169
104.32 Sunset provision .................................................................................................................................. 169

Division 105—Preventative detention orders 170

Subdivision A—Preliminary 170
105.1 Object ................................................................................................................................................. 170
105.2 Issuing authorities for continued preventative detention orders .......................................................... 170
105.3 Police officer detaining person under a preventative detention order .................................................. 171
Subdivision B—Preventative detention orders

105.4 Basis for applying for, and making, preventative detention orders

105.5 No preventative detention order in relation to person under 16 years of age

105.5A Special assistance for person with inadequate knowledge of English language or disability

105.6 Restrictions on multiple preventative detention orders

105.7 Application for initial preventative detention order

105.8 Senior AFP member may make initial preventative detention order

105.9 Duration of initial preventative detention order

105.10 Extension of initial preventative detention order

105.10A Notice of application for continued preventative detention order

105.11 Application for continued preventative detention order

105.12 Judge, Federal Magistrate, AAT member or retired judge may make continued preventative detention order

105.13 Duration of continued preventative detention order

105.14 Extension of continued preventative detention order

105.14A Basis for applying for, and making, prohibited contact order

105.15 Prohibited contact order (person in relation to whom preventative detention order is being sought)

105.16 Prohibited contact order (person in relation to whom preventative detention order is already in force)

105.17 Revocation of preventative detention order or prohibited contact order

105.18 Status of person making continued preventative detention order

Subdivision C—Carrying out preventative detention orders

105.19 Power to detain person under preventative detention order

105.20 Endorsement of order with date and time person taken into custody

105.21 Requirement to provide name etc.

105.22 Power to enter premises

105.23 Power to conduct a frisk search

105.24 Power to conduct an ordinary search

105.25 Warrant under Division 3 of Part III of the Australian Security Intelligence Organisation Act 1979

105.26 Release of person from preventative detention

105.27 Arrangement for detainee to be held in State or Territory prison or remand centre

Subdivision D—Informing person detained about preventative detention order
105.28 Effect of initial preventative detention order to be explained to person detained .................................................. 198
105.29 Effect of continued preventative detention order to be explained to person detained ........................................... 200
105.30 Person being detained to be informed of extension of preventative detention order ............................................. 202
105.31 Compliance with obligations to inform ............................................................................................................... 202
105.32 Copy of preventative detention order ................................................................................................................ 203

Subdivision E—Treatment of person detained
105.33 Humane treatment of person being detained ........................................................................................................ 205
105.33A Detention of persons under 18 .......................................................................................................................... 205
105.34 Restriction on contact with other people .............................................................................................................. 205
105.35 Contacting family members etc. ......................................................................................................................... 206
105.36 Contacting Ombudsman etc. ............................................................................................................................. 207
105.37 Contacting lawyer ................................................................................................................................................ 207
105.38 Monitoring contact under section 105.35 or 105.37 ............................................................................................. 209
105.39 Special contact rules for person under 18 or incapable of managing own affairs .................................................. 210
105.40 Entitlement to contact subject to prohibited contact order .................................................................................. 212
105.41 Disclosure offences ................................................................................................................................................ 212
105.42 Questioning of person prohibited while person is detained .................................................................................... 218
105.43 Taking fingerprints, recordings, samples of handwriting or photographs .............................................................. 219
105.44 Use of identification material ................................................................................................................................ 221
105.45 Offences of contravening safeguards .................................................................................................................. 222

Subdivision F—Miscellaneous
105.46 Nature of functions of Federal Magistrate ........................................................................................................... 222
105.47 Annual report .......................................................................................................................................................... 223
105.48 Certain functions and powers not affected ............................................................................................................. 224
105.49 Queensland public interest monitor functions and powers not affected ................................................................. 224
105.50 Law relating to legal professional privilege not affected .......................................................................................... 224
105.51 Legal proceedings in relation to preventative detention orders ............................................................................. 224
105.52 Review by State and Territory courts .................................................................................................................... 226
105.53 Sunset provision ...................................................................................................................................................... 227

Division 106—Transitional provisions
106.1 Saving—regulations originally made for the purposes of paragraph (c) of the definition of terrorist organisation .......... 228
106.2 Saving—regulations made for the purposes of paragraph (a) of the definition of terrorist organisation .......................... 228
106.3 Application provision ................................................................................................................................................ 229
### Part 5.4—Harming Australians

**Division 115—Harming Australians**

115.1 Murder of an Australian citizen or a resident of Australia........... 230  
115.2 Manslaughter of an Australian citizen or a resident of Australia ................................................. 230  
115.3 Intentionally causing serious harm to an Australian citizen or a resident of Australia ................................................. 231  
115.4 Recklessly causing serious harm to an Australian citizen or a resident of Australia ................................................. 231  
115.5 Saving of other laws ........................................................................ 231  
115.6 Bringing proceedings under this Division ................................................. 231  
115.7 Ministerial certificates relating to proceedings ................................................. 232  
115.8 Geographical jurisdiction ........................................................................ 232  
115.9 Meaning of *causes* death or harm ................................................. 232  

### Chapter 7—The proper administration of Government

**Part 7.1—Preliminary**

**Division 130—Preliminary**

130.1 Definitions ........................................................................ 233  
130.2 When property belongs to a person ................................................. 234  
130.3 Dishonesty ........................................................................ 235  
130.4 Determination of dishonesty to be a matter for the trier of fact ........................................................................ 235  

**Part 7.2—Theft and other property offences**

**Division 131—Theft**

131.1 Theft ........................................................................ 236  
131.2 Special rules about the meaning of dishonesty ................................................. 236  
131.3 Appropriation of property ........................................................................ 237  
131.4 Theft of land or things forming part of land ................................................. 237  
131.5 Trust property ........................................................................ 237  
131.6 Obligation to deal with property in a particular way ................................................. 238  
131.7 Property obtained because of fundamental mistake ................................................. 238  
131.8 Property of a corporation sole ........................................................................ 239  
131.9 Property belonging to 2 or more persons ................................................. 239  
131.10 Intention of permanently depriving a person of property ................................................. 239  
131.11 General deficiency ........................................................................ 240  

**Division 132—Other property offences**

132.1 Receiving ........................................................................ 241  
132.2 Robbery ........................................................................ 244  
132.3 Aggravated robbery ........................................................................ 245  
132.4 Burglary ........................................................................ 246  

*Criminal Code Act 1995* xiii
Part 7.3—Fraudulent conduct

Division 133—Preliminary

133.1 Definitions

Division 134—Obtaining property or a financial advantage by deception

134.1 Obtaining property by deception
134.2 Obtaining a financial advantage by deception
134.3 Geographical jurisdiction

Division 135—Other offences involving fraudulent conduct

135.1 General dishonesty
135.2 Obtaining financial advantage
135.4 Conspiracy to defraud
135.5 Geographical jurisdiction

Part 7.4—False or misleading statements

Division 136—False or misleading statements in applications

136.1 False or misleading statements in applications

Division 137—False or misleading information or documents

137.1 False or misleading information
137.2 False or misleading documents
137.3 Geographical jurisdiction

Part 7.5—Unwarranted demands

Division 138—Preliminary

138.1 Unwarranted demand with menaces
138.2 Menaces

Division 139—Unwarranted demands

139.1 Unwarranted demands of a Commonwealth public official
139.2 Unwarranted demands made by a Commonwealth public official
139.3 Geographical jurisdiction

Part 7.6—Bribery and related offences

Division 140—Preliminary

140.1 Definition
140.2 Obtaining
Division 141—Bribery 274
141.1 Bribery of a Commonwealth public official .......................... 274

Division 142—Offences relating to bribery 276
142.1 Corrupting benefits given to, or received by, a Commonwealth public official ........................................ 276
142.2 Abuse of public office ............................................................ 277
142.3 Geographical jurisdiction ....................................................... 278

Part 7.7—Forgery and related offences 279
Division 143—Preliminary 279
143.1 Definitions ............................................................................. 279
143.2 False documents ..................................................................... 279
143.3 False Commonwealth documents .......................................... 280
143.4 Inducing acceptance of false documents ................................. 282

Division 144—Forgery 283
144.1 Forgery ................................................................................. 283

Division 145—Offences relating to forgery 285
145.1 Using forged document .......................................................... 285
145.2 Possession of forged document .............................................. 286
145.3 Possession, making or adaptation of devices etc. for making forgeries ......................................................... 288
145.4 Falsification of documents etc ................................................ 289
145.5 Giving information derived from false or misleading documents ............................................................. 290
145.6 Geographical jurisdiction ....................................................... 291

Part 7.8—Causing harm to, and impersonation and obstruction of, Commonwealth public officials 292
Division 146—Preliminary 292
146.1 Definitions ............................................................................. 292
146.2 Causing harm ......................................................................... 293

Division 147—Causing harm to Commonwealth public officials 294
147.1 Causing harm to a Commonwealth public official etc............... 294
147.2 Threatening to cause harm to a Commonwealth public official etc ............................................................. 295
147.3 Geographical jurisdiction ....................................................... 298

Division 148—Impersonation of Commonwealth public officials 299
148.1 Impersonation of an official by a non-official ......................... 299
148.2 Impersonation of an official by another official ...................... 300
148.3 Geographical jurisdiction ....................................................... 301

Division 149—Obstruction of Commonwealth public officials 302
149.1 Obstruction of Commonwealth public officials ...................... 302

Criminal Code Act 1995 xv
Part 7.20—Miscellaneous

Division 261—Miscellaneous

261.1 Saving of other laws ................................................................. 304
261.2 Contempt of court ................................................................. 304
261.3 Ancillary offences ................................................................. 304

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 .............................................................. 305
268.2 Outline of offences .............................................................. 305

Subdivision B—Genocide

268.3 Genocide by killing .............................................................. 306
268.4 Genocide by causing serious bodily or mental harm ............... 306
268.5 Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction ......................... 306
268.6 Genocide by imposing measures intended to prevent births ..... 307
268.7 Genocide by forcibly transferring children ............................. 307

Subdivision C—Crimes against humanity

268.8 Crime against humanity—murder ............................................. 308
268.9 Crime against humanity—extermination ................................... 308
268.10 Crime against humanity—enslavement .................................... 309
268.11 Crime against humanity—deportation or forcible transfer of population ................................................................. 309
268.12 Crime against humanity—imprisonment or other severe deprivation of physical liberty ..................................................... 310
268.13 Crime against humanity—torture .......................................... 310
268.14 Crime against humanity—rape ............................................. 311
268.15 Crime against humanity—sexual slavery ............................... 312
268.16 Crime against humanity—enforced prostitution ..................... 313
268.17 Crime against humanity—forced pregnancy ........................... 314
268.18 Crime against humanity—enforced sterilisation ....................... 314
268.19 Crime against humanity—sexual violence ............................. 315
268.20 Crime against humanity—persecution .................................... 317
268.21 Crime against humanity—enforced disappearance of persons ... 318
268.22 Crime against humanity—apartheid ....................................... 319
268.23 Crime against humanity—other inhumane act ....................... 319

Subdivision D—War crimes that are grave breaches of the Geneva Conventions and of Protocol I to the Geneva Conventions

xvi Criminal Code Act 1995
268.24 War crime—wilful killing .............................................................320
268.25 War crime—torture .....................................................................320
268.26 War crime—inhumane treatment ..................................................321
268.27 War crime—biological experiments ............................................321
268.28 War crime—wilfully causing great suffering .................................322
268.29 War crime—destruction and appropriation of property ...............322
268.30 War crime—compelling service in hostile forces .........................323
268.31 War crime—denying a fair trial ....................................................323
268.32 War crime—unlawful deportation or transfer .................................324
268.33 War crime—unlawful confinement ..............................................324
268.34 War crime—taking hostages .........................................................325
268.35 War crime—attacking civilians .....................................................326
268.36 War crime—attacking civilian objects .............................................326
268.37 War crime—attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission ..........................326
268.38 War crime—excessive incidental death, injury or damage ...............327
268.39 War crime—attacking undefended places .....................................328
268.40 War crime—killing or injuring a person who is hors de combat ........328
268.41 War crime—improper use of a flag of truce .....................................329
268.42 War crime—improper use of a flag, insignia or uniform of the adverse party ...............................................................329
268.43 War crime—improper use of a flag, insignia or uniform of the United Nations ..........................................................330
268.44 War crime—improper use of the distinctive emblems of the Geneva Conventions ...............................................................330
268.45 War crime—transfer of population ..................................................331
268.46 War crime—attacking protected objects ........................................331
268.47 War crime—mutilation ..................................................................332
268.48 War crime—medical or scientific experiments ..................................332
268.49 War crime—treacherously killing or injuring ..................................333
268.50 War crime—denying quarter ..........................................................334
268.51 War crime—destroying or seizing the enemy’s property ..................335
268.52 War crime—depriving nationals of the adverse power of rights or actions ..............................................................335
268.53 War crime—compelling participation in military operations ..............335
268.54 War crime—pillaging ......................................................................336
268.55 War crime—employing poison or poisoned weapons ....................336
268.56 War crime—employing prohibited gases, liquids, materials or devices .................................................................................337
268.57 War crime—employing prohibited bullets .....................................337
268.58 War crime—outrages upon personal dignity ....................................337

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

326
268.35 War crime—attacking civilians .....................................................326
268.36 War crime—attacking civilian objects .............................................326
268.37 War crime—attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission ..........................326
268.38 War crime—excessive incidental death, injury or damage ...............327
268.39 War crime—attacking undefended places .....................................328
268.40 War crime—killing or injuring a person who is hors de combat ........328
268.41 War crime—improper use of a flag of truce .....................................329
268.42 War crime—improper use of a flag, insignia or uniform of the adverse party ...............................................................329
268.43 War crime—improper use of a flag, insignia or uniform of the United Nations ..........................................................330
268.44 War crime—improper use of the distinctive emblems of the Geneva Conventions ...............................................................330
268.45 War crime—transfer of population ..................................................331
268.46 War crime—attacking protected objects ........................................331
268.47 War crime—mutilation ..................................................................332
268.48 War crime—medical or scientific experiments ..................................332
268.49 War crime—treacherously killing or injuring ..................................333
268.50 War crime—denying quarter ..........................................................334
268.51 War crime—destroying or seizing the enemy’s property ..................335
268.52 War crime—depriving nationals of the adverse power of rights or actions ..............................................................335
268.53 War crime—compelling participation in military operations ..............335
268.54 War crime—pillaging ......................................................................336
268.55 War crime—employing poison or poisoned weapons ....................336
268.56 War crime—employing prohibited gases, liquids, materials or devices .................................................................................337
268.57 War crime—employing prohibited bullets .....................................337
268.58 War crime—outrages upon personal dignity ....................................337

Criminal Code Act 1995 xvii
268.59 War crime—rape .................................................................338
268.60 War crime—sexual slavery .................................................339
268.61 War crime—enforced prostitution .......................................340
268.62 War crime—forced pregnancy ............................................341
268.63 War crime—enforced sterilisation .......................................342
268.64 War crime—sexual violence ...............................................342
268.65 War crime—using protected persons as shields .................344
268.66 War crime—attacking persons or objects using the distinctive emblems of the Geneva Conventions ......................344
268.67 War crime—starvation as a method of warfare .....................345
268.68 War crime—using, conscripting or enlisting children ..........345

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 347
268.69 Definition of religious personnel .......................................347
268.70 War crime—murder ..............................................................347
268.71 War crime—mutilation ..........................................................348
268.72 War crime—cruel treatment .................................................349
268.73 War crime—torture ...............................................................350
268.74 War crime—outrages upon personal dignity .......................350
268.75 War crime—taking hostages ................................................352
268.76 War crime—sentencing or execution without due process ....352

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 354
268.77 War crime—attacking civilians ......................................354
268.78 War crime—attacking persons or objects using the distinctive emblems of the Geneva Conventions .......................354
268.79 War crime—attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission .....................355
268.80 War crime—attacking protected objects ..............................356
268.81 War crime—pillaging ..............................................................357
268.82 War crime—rape .................................................................357
268.83 War crime—sexual slavery ................................................359
268.84 War crime—enforced prostitution .......................................359
268.85 War crime—forced pregnancy .............................................361
268.86 War crime—enforced sterilisation ........................................361
268.87 War crime—sexual violence .................................................362
268.88 War crime—using, conscripting or enlisting children ..........363
268.89 War crime—displacing civilians ........................................365
268.90 War crime—treacherously killing or injuring .......................365
268.91 War crime—denying quarter ................................................366
268.92 War crime—mutilation..............................................................366
268.93 War crime—medical or scientific experiments ......................367
268.94 War crime—destroying or seizing an adversary’s property.....368

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

268.95 War crime—medical procedure.............................................369
268.96 War crime—removal of blood, tissue or organs for transplantation ..................................................369
268.97 War crime—attack against works or installations containing dangerous forces resulting in excessive loss of life or injury to civilians .................................................................370
268.98 War crime—attacking undefended places or demilitarized zones.................................................................371
268.99 War crime—unjustifiable delay in the repatriation of prisoners of war or civilians ..................................................371
268.100 War crime—apartheid .............................................................372
268.101 War crime—attacking protected objects...............................372

Subdivision J—Crimes against the administration of the justice of the International Criminal Court

268.102 Perjury ..................................................................................373
268.103 Falsifying evidence.................................................................373
268.104 Destroying or concealing evidence ........................................374
268.105 Deceiving witnesses ...............................................................374
268.106 Corrupting witnesses or interpreters ......................................374
268.107 Threatening witnesses or interpreters .................................375
268.108 Preventing witnesses or interpreters ......................................376
268.109 Preventing production of things in evidence.........................376
268.110 Reprisals against witnesses ....................................................376
268.111 Reprisals against officials of the International Criminal Court ..............................................................377
268.112 Perverting the course of justice.............................................377
268.113 Receipt of a corrupting benefit by an official of the International Criminal Court ........................................378
268.114 Subdivision not to apply to certain conduct..........................378

Subdivision K—Miscellaneous

268.115 Responsibility of commanders and other superiors ............379
268.116 Defence of superior orders ....................................................380
268.117 Geographical jurisdiction ......................................................380
268.118 Double jeopardy .................................................................380
268.119 Offences related to exercise of jurisdiction of International Criminal Court ..............................................381
268.120 Saving of other laws ..............................................................381
268.121 Bringing proceedings under this Division ............................381
268.122 Attorney-General’s decisions in relation to consents to be final ..........................381
268.123 Legal representation .................................................................382
268.124 Proof of application of Geneva Conventions or Protocol I to the Geneva Conventions .................................................................382

Division 270—Slavery, sexual servitude and deceptive recruiting 384
270.1 Definition of slavery .................................................................384
270.2 Slavery is unlawful .....................................................................384
270.3 Slavery offences ........................................................................384
270.4 Definition of sexual servitude ....................................................385
270.5 Jurisdictional requirement .........................................................385
270.6 Sexual servitude offences ..........................................................386
270.7 Deceptive recruiting for sexual services .......................................386
270.8 Aggravated offences ...................................................................388
270.9 Alternative verdict if aggravated offence not proven .........388
270.12 Other laws not excluded .........................................................388
270.13 Double jeopardy .......................................................................389
270.14 External Territories ..................................................................389

Division 271—Trafficking in persons and debt bondage 390

Subdivision A—Definitions 390
271.1 Definitions ..............................................................................390

Subdivision B—Offences relating to trafficking in persons 390
271.2 Offence of trafficking in persons ...............................................390
271.3 Aggravated offence of trafficking in persons .........................393
271.4 Offence of trafficking in children ................................................394
271.5 Offence of domestic trafficking in persons ................................395
271.6 Aggravated offence of domestic trafficking in persons ..........397
271.7 Offence of domestic trafficking in children ...............................397

Subdivision C—Offences relating to debt bondage 398
271.8 Offence of debt bondage ............................................................398
271.9 Offence of aggravated debt bondage ............................................399

Subdivision D—General provisions relating to offences under this Division 399
271.10 Jurisdictional requirement for offences other than offences related to domestic trafficking in persons ........................................399
271.11 Jurisdictional requirement for offences related to domestic trafficking in persons .................................................................399
271.12 Other laws not excluded .............................................................400
271.13 Double jeopardy .......................................................................400

Criminal Code Act 1995
Chapter 9—Dangers to the community

Part 9.1—Serious drug offences

Division 300—Preliminary

300.1 Purpose

300.2 Definitions

300.3 Geographical jurisdiction

300.4 Concurrent operation intended

300.5 Particular identity of drugs, plants and precursors

Division 301—Listing additional drugs, plants and precursors

Subdivision A—Interim regulations

301.1 Interim regulations—controlled drugs and controlled plants

301.2 Interim regulations—controlled precursors

301.3 Interim regulations—border controlled drugs and border controlled plants

301.4 Interim regulations—border controlled precursors

301.5 Interim regulations—commercial, marketable and trafficable quantities

Subdivision B—Emergency determinations

301.6 Emergency determinations—controlled drugs and controlled plants

301.7 Emergency determinations—controlled precursors

301.8 Emergency determinations—border controlled drugs and border controlled plants

301.9 Emergency determinations—border controlled precursors

301.10 Emergency determinations—commercial, marketable and trafficable quantities

301.11 General rules—period of effect, publication etc.

301.12 General rule—inconsistency with regulations

Division 302—Trafficking controlled drugs

302.1 Meaning of traffics

302.2 Trafficking commercial quantities of controlled drugs

302.3 Trafficking marketable quantities of controlled drugs

302.4 Trafficking controlled drugs

302.5 Presumption where trafficable quantities are involved

302.6 Purchase of controlled drugs is not an ancillary offence

Division 303—Commercial cultivation of controlled plants

303.1 Meanings of cultivate and cultivates a plant

303.2 Meaning of product of a plant

303.3 Meaning of cultivates a plant for a commercial purpose

303.4 Cultivating commercial quantities of controlled plants

303.5 Cultivating marketable quantities of controlled plants
303.6  Cultivating controlled plants ............................................................ 418
303.7  Presumption where trafficable quantities are involved.................. 419

Division 304—Selling controlled plants 420
304.1  Selling commercial quantities of controlled plants...................... 420
304.2  Selling marketable quantities of controlled plants...................... 420
304.3  Selling controlled plants ............................................................... 420

Division 305—Commercial manufacture of controlled drugs 422
305.1  Meanings of manufacture and manufactures a substance ............ 422
305.2  Meaning of manufactures a substance for a commercial purpose .............................................................................. 422
305.3  Manufacturing commercial quantities of controlled drugs .......... 423
305.4  Manufacturing marketable quantities of controlled drugs .......... 423
305.5  Manufacturing controlled drugs ................................................... 424
305.6  Presumption where trafficable quantities are involved................ 424

Division 306—Pre-trafficking controlled precursors 425
306.1  Meaning of pre-traffics ................................................................. 425
306.2  Pre-trafficking commercial quantities of controlled precursors ...................................................................................... 425
306.3  Pre-trafficking marketable quantities of controlled precursors ...... 426
306.4  Pre-trafficking controlled precursors ............................................ 426
306.5  Presumption for pre-trafficking controlled precursors—sale...... 427
306.6  Presumptions for pre-trafficking controlled precursors—manufacture for drug manufacture .............................................................. 427
306.7  Presumptions for pre-trafficking controlled precursors—manufacture for sale .............................................................. 428
306.8  Presumptions for pre-trafficking controlled precursors—possession .................................................................................. 429

Division 307—Import-export offences 430
Subdivision A—Importing and exporting border controlled drugs or border controlled plants 430
307.1  Importing and exporting commercial quantities of border controlled drugs or border controlled plants ........................................ 430
307.2  Importing and exporting marketable quantities of border controlled drugs or border controlled plants ........................................ 430
307.3  Importing and exporting border controlled drugs or border controlled plants ................................................................. 431
307.4  Importing and exporting border controlled drugs or border controlled plants—no defence relating to lack of commercial intent........................................ 431

Subdivision B—Possessing unlawfully imported border controlled drugs or border controlled plants 432
307.5  Possessing commercial quantities of unlawfully imported border controlled drugs or border controlled plants ............... 432
307.6 Possessing marketable quantities of unlawfully imported border controlled drugs or border controlled plants........................................432
307.7 Possessing unlawfully imported border controlled drugs or border controlled plants...............................................................433

Subdivision C—Possessing border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported

307.8 Possessing commercial quantities of border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported.................................................................433
307.9 Possessing marketable quantities of border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported.................................................................434
307.10 Possessing border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported ........................................................................................435

Subdivision D—Importing and exporting border controlled precursors

307.11 Importing and exporting commercial quantities of border controlled precursors .....................................................................435
307.12 Importing and exporting marketable quantities of border controlled precursors .....................................................................436
307.13 Importing and exporting border controlled precursors ..................437
307.14 Presumptions for importing and exporting border controlled precursors ......................................................................................437

Division 308—Possession offences

308.1 Possessing controlled drugs...........................................................439
308.2 Possessing controlled precursors ...................................................440
308.3 Possessing plant material, equipment or instructions for commercial cultivation of controlled plants ........................................440
308.4 Possessing substance, equipment or instructions for commercial manufacture of controlled drugs ........................................441

Division 309—Drug offences involving children

309.1 Children not criminally responsible for offences against this Division..........................................................................................442
309.2 Supplying controlled drugs to children.........................................442
309.3 Supplying marketable quantities of controlled drugs to children for trafficking.................................................................442
309.4 Supplying controlled drugs to children for trafficking ...............443
309.5 Presumption where trafficable quantities are involved .................443
309.6 Meaning of procures an individual to traffic.................................443
309.7 Procuring children for trafficking marketable quantities of controlled drugs.................................................................444
309.8 Procuring children for trafficking controlled drugs .....................444
309.9 Meaning of procures an individual to pre-traffic .........................445

Criminal Code Act 1995 xxiii
309.10 Procuring children for pre-trafficking marketable quantities of controlled precursors ................................................................. 445
309.11 Procuring children for pre-trafficking controlled precursors ....... 445
309.12 Procuring children for importing or exporting marketable quantities of border controlled drugs or border controlled plants ............................................................................................. 446
309.13 Procuring children for importing or exporting border controlled drugs or border controlled plants ........................................ 446
309.14 Procuring children for importing or exporting marketable quantities of border controlled precursors ........................................... 447
309.15 Procuring children for importing or exporting border controlled precursors ..................................................................... 448

Division 310—Harm and danger to children under 14 from serious drug offences 450
310.1 Children not criminally responsible for offences against this Division ................................................................................................. 450
310.2 Danger from exposure to unlawful manufacturing ........................ 450
310.3 Harm from exposure to unlawful manufacturing........................... 451
310.4 Aggravated offences—manufacturing controlled drugs and controlled precursors ..................................................................... 452

Division 311—Combining quantities of drugs, plants or precursors 454
Subdivision A—Combining different parcels on the same occasion 454
311.1 Combining different parcels on the same occasion ........................ 454
Subdivision B—Combining parcels from organised commercial activities 455
311.2 Business of trafficking controlled drugs ....................................... 455
311.3 Business of pre-trafficking by selling controlled precursors ......... 456
311.4 Business of importing or exporting border controlled drugs or border controlled plants ............................................................................................. 457
311.5 Business of importing or exporting border controlled precursors ..................................................................... 457
311.6 Business of supplying controlled drugs to children ...................... 458
311.7 General rules—combining parcels from organised commercial activities ............................................................................................. 459
Subdivision C—Combining parcels from multiple offences 460
311.8 Multiple offences—trafficking controlled drugs ........................... 460
311.9 Multiple offences—cultivating controlled plants .............................. 460
311.10 Multiple offences—selling controlled plants .................................. 460
311.11 Multiple offences—manufacturing controlled drugs .................... 461
311.12 Multiple offences—pre-trafficking controlled precursors ............. 461
311.13 Multiple offences—importing or exporting border controlled drugs or border controlled plants ............................................................................................. 462
311.14 Multiple offences—possessing unlawfully imported border controlled drugs or border controlled plants ........................................462
311.15 Multiple offences—possessing border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported ..................................................463
311.16 Multiple offences—importing or exporting border controlled precursors .............................................................................463
311.17 Multiple offences—supplying controlled drugs to children for trafficking ........................................................................464
311.18 Multiple offences—procuring children for trafficking controlled drugs ................................................................................464
311.19 Multiple offences—procuring children for pre-trafficking controlled precursors .....................................................................465
311.20 Multiple offences—procuring children for importing or exporting border controlled drugs or border controlled plants...........465
311.21 Multiple offences—procuring children for importing or exporting border controlled precursors ........................................466
311.22 General rules—combining parcels from multiple offences ........466

Division 312—Working out quantities of drugs, plants or precursors 467
312.1 Working out quantities of drugs and precursors in mixtures .......467
312.2 Working out quantities where different kinds of drugs, plants or precursors are involved ..........................................................467

Division 313—Defences and alternative verdicts 470
313.1 Defence—conduct justified or excused by or under a law of a State or Territory .................................................................470
313.2 Defence—reasonable belief that conduct is justified or excused by or under a law ....................................................................470
313.3 Alternative verdict—offence not proved ........................................470
313.4 Alternative verdict—mistake as to quantity of drug, plant or precursor ....................................................................................471
313.5 Alternative verdict—mistake as to identity of drug, plant or precursor ....................................................................................472

Division 314—Drugs, plants, precursors and quantities 473
314.1 Controlled drugs .............................................................................473
314.2 Controlled plants ...........................................................................475
314.3 Controlled precursors ....................................................................476
314.4 Border controlled drugs .................................................................476
314.5 Border controlled plants .................................................................484
314.6 Border controlled precursors ..........................................................484

Part 9.4—Dangerous weapons 486

Division 360—Cross-border firearms trafficking 486
360.1 Disposal and acquisition of a firearm ........................................486
360.2 Cross-border offence of disposal or acquisition of a firearm........486
360.3 Taking or sending a firearm across borders...............................487
360.4 Concurrent operation intended ..............................................488

Part 9.6—Contamination of goods
380.1 Definitions..............................................................................489
380.2 Contaminating goods..............................................................489
380.3 Threatening to contaminate goods..........................................491
380.4 Making false statements about contamination of goods.........493
380.5 Extended geographical jurisdiction—category D...................495

Chapter 10—National infrastructure
496

Part 10.2—Money laundering
496

Division 400—Money laundering
496
400.1 Definitions..............................................................................496
400.2 Meaning of dealing with money or other property ..................498
400.3 Dealing in proceeds of crime etc.—money or property worth $1,000,000 or more .........................................................499
400.4 Dealing in proceeds of crime etc.—money or property worth $100,000 or more .................................................................500
400.5 Dealing in proceeds of crime etc.—money or property worth $50,000 or more .................................................................501
400.6 Dealing in proceeds of crime etc.—money or property worth $10,000 or more .................................................................503
400.7 Dealing in proceeds of crime etc.—money or property worth $1,000 or more .................................................................504
400.8 Dealing in proceeds of crime etc.—money or property of any value .................................................................505
400.9 Possession etc. of property reasonably suspected of being proceeds of crime etc. .................................................................506
400.10 Mistake of fact as to the value of money or property ............508
400.11 Proof of certain matters relating to kinds of offences not required.................................................................509
400.12 Combining several contraventions in a single charge ..........509
400.13 Proof of other offences is not required ..................................510
400.14 Alternative verdicts ...............................................................510
400.15 Geographical jurisdiction .......................................................511
400.16 Saving of other laws ...............................................................511

Part 10.5—Postal services
512

Division 470—Preliminary
512
470.1 Definitions..............................................................................512
470.2 Dishonesty..............................................................................514
470.3 Determination of dishonesty to be a matter for the trier of fact.........................................................................................514
Division 471—Postal offences

471.1 Theft of mail-receptacles, articles or postal messages ......................515
471.2 Receiving stolen mail-receptacles, articles or postal messages ..................................................516
471.3 Taking or concealing of mail-receptacles, articles or postal messages ........................................518
471.4 Dishonest removal of postage stamps or postmarks ..........................518
471.5 Dishonest use of previously used, defaced or obliterated stamps ..................................................518
471.6 Damaging or destroying mail-receptacles, articles or postal messages ..................................................................................................................................................................................519
471.7 Tampering with mail-receptacles .....................................................519
471.8 Dishonestly obtaining delivery of articles ........................................520
471.9 Geographical jurisdiction ........................................................................520
471.10 Hoaxes—explosives and dangerous substances .................................520
471.11 Using a postal or similar service to make a threat ...............................521
471.12 Using a postal or similar service to menace, harass or cause offence ..................................................................................................................................................................................522
471.13 Causing a dangerous article to be carried by a postal or similar service ..................................................................................................................................................................................522
471.14 Geographical jurisdiction ........................................................................523
471.15 Causing an explosive, or a dangerous or harmful substance, to be carried by post ..................................................................................................................................................................................523

Division 472—Miscellaneous

472.1 Saving of other laws ...........................................................................524
472.2 Interpretation of other laws .................................................................524

Part 10.6—Telecommunications Services

Division 473—Preliminary

473.1 Definitions ..........................................................................................525
473.2 Possession or control of data or material in the form of data ..............532
473.3 Producing, supplying or obtaining data or material in the form of data ..................................................................................................................................................................................532
473.4 Determining whether material is offensive ........................................532

Division 474—Telecommunications offences

Subdivision A—Dishonesty with respect to carriage services

474.1 Dishonesty .............................................................................................533
474.2 General dishonesty with respect to a carriage service provider ...............533

Subdivision B—Interference with telecommunications

474.3 Person acting for a carrier or carriage service provider .......................534
474.4 Interception devices ................................................................................534
474.5 Wrongful delivery of communications ................................................535
474.6 Interference with facilities .............................................................536
474.7 Modification etc. of a telecommunications device identifier .......537
474.8 Possession or control of data or a device with intent to
modify a telecommunications device identifier ..............................538
474.9 Producing, supplying or obtaining data or a device with
intent to modify a telecommunications device identifier ..........539
474.10 Copying subscription-specific secure data.................................540
474.11 Possession or control of data or a device with intent to copy
an account identifier .......................................................................542
474.12 Producing, supplying or obtaining data or a device with
intent to copy an account identifier .................................................543

Subdivision C—Offences related to use of telecommunications 544
474.13 Use of a carriage service ............................................................544
474.14 Using a telecommunications network with intention to
commit a serious offence ...............................................................545
474.15 Using a carriage service to make a threat .................................546
474.16 Using a carriage service for a hoax threat .................................547
474.17 Using a carriage service to menace, harass or cause offence ....547
474.18 Improper use of emergency call service ....................................547
474.19 Using a carriage service for child pornography material ...........548
474.20 Possessing, controlling, producing, supplying or obtaining
child pornography material for use through a carriage service .......549
474.21 Defences in respect of child pornography material .....................549
474.22 Using a carriage service for child abuse material .....................551
474.23 Possessing, controlling, producing, supplying or obtaining
child abuse material for use through a carriage service ...............551
474.24 Defences in respect of child abuse material ..............................552
474.25 Obligations of Internet service providers and Internet content
hosts ...............................................................................................554
474.26 Using a carriage service to procure persons under 16 years of
age .....................................................................................................554
474.27 Using a carriage service to “groom” persons under 16 years
of age ..............................................................................................555
474.28 Provisions relating to offences against sections 474.26 and
474.27 ..............................................................................................557
474.29 Defences to offences against section 474.26 or 474.27 ..........559
474.29A Using a carriage service for suicide related material ...............559
474.29B Possessing, controlling, producing, supplying or obtaining
suicide related material for use through a carriage service ..........561
474.30 Defences for NRS employees and emergency call persons .......562

Division 475—Miscellaneous 563
475.1 Saving of other laws .................................................................563
475.2 Geographical jurisdiction ..........................................................563
Part 10.7—Computer offences

Division 476—Preliminary

476.1 Definitions.................................................................564
476.2 Meaning of unauthorised access, modification or impairment ............................................565
476.3 Geographical jurisdiction .............................................566
476.4 Saving of other laws ..................................................566
476.5 Liability for certain acts.............................................566

Division 477—Serious computer offences

477.1 Unauthorised access, modification or impairment with intent to commit a serious offence.................................................................569
477.2 Unauthorised modification of data to cause impairment ..........................570
477.3 Unauthorised impairment of electronic communication..........................572

Division 478—Other computer offences

478.1 Unauthorised access to, or modification of, restricted data ...............573
478.2 Unauthorised impairment of data held on a computer disk etc.................................................................573
478.3 Possession or control of data with intent to commit a computer offence .................................................................574
478.4 Producing, supplying or obtaining data with intent to commit a computer offence .................................................................575

Part 10.8—Financial information offences

480.1 Definitions.................................................................576
480.2 Dishonesty .................................................................577
480.3 Constitutional application of this Part ..................................577
480.4 Dishonestly obtaining or dealing in personal financial information .................................................................577
480.5 Possession or control of thing with intent to dishonestly obtain or deal in personal financial information .................................................................577
480.6 Importation of thing with intent to dishonestly obtain or deal in personal financial information .................................................................578

Dictionary

579

Notes

593
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

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.

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.
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.
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.
9.3 Mistake or ignorance of statute law

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

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

9.4 Mistake or ignorance of subordinate legislation

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

(2) Subsection (1) does not apply, and the person is not criminally responsible for the offence in those circumstances, if:
   (a) the subordinate legislation is expressly to the contrary effect; or
   (c) at the time of the conduct, the subordinate legislation:
      (i) has not been made available to the public (by means of the Register under the Legislative Instruments Act 2003 or otherwise); and
      (ii) has not otherwise been made available to persons likely to be affected by it in such a way that the person would have become aware of its contents by exercising due diligence.

(3) In this section:

   available includes available by sale.
Section 9.5

*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.

(2) This section applies if and only if the person carrying out the conduct reasonably believes that:
Section 10.4

(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).
Section 11.2

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.

(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
Section 11.3

(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
Section 11.5

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

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

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

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

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

11.5 Conspiracy

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

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

(2) For the person to be guilty:

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

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

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

(2A) Subsection (2) has effect subject to subsection (7A).
Section 11.5

(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:
   - an offence against, under or created by the *Crimes Act 1914*; or
   - an offence against, under or created by a particular provision of the *Crimes Act 1914*; or
   - an offence arising out of the first-mentioned law or another law of the Commonwealth; or
   - an offence arising out of a particular provision; or
   - 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 take place.

**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:
Section 12.6

(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.
Section 14.1

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
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).

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:
Section 15.1

(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:
      (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
Section 15.2

(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.

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.
Section 15.3

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.

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:
Section 15.4

(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
   (b) from a point in Australia to a point outside Australia; that conduct is taken to have occurred partly in Australia.
Section 16.3

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.
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 70.1  

*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


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Section 70.1

(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.

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

*Benefit that is not legitimately due*

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

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

(b) the value of the benefit;

(c) any official tolerance of the benefit.

*Business advantage that is not legitimately due*

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

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

(b) the value of the business advantage;

(c) any official tolerance of the business advantage.
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

### 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:

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Place of Conduct</th>
<th>Requirement or Permitted Benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>an employee or official of a foreign government body</td>
<td>in the place where the central administration of the body is located</td>
<td>a written law in force in that place</td>
</tr>
<tr>
<td>2</td>
<td>an individual who performs work for a foreign government body under a contract</td>
<td>in the place where the central administration of the body is located</td>
<td>a written law in force in that place</td>
</tr>
<tr>
<td>3</td>
<td>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</td>
<td>in the foreign country or in the part of the foreign country, as the case may be</td>
<td>a written law in force in the foreign country or in the part of the foreign country, as the case may be</td>
</tr>
<tr>
<td>4</td>
<td>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</td>
<td>in the foreign country or in the part of the foreign country, as the case may be</td>
<td>a written law in force in the foreign country or in the part of the foreign country, as the case may be</td>
</tr>
<tr>
<td>5</td>
<td>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)</td>
<td>in the place where the central administration of the body is located</td>
<td>a written law in force in that place</td>
</tr>
</tbody>
</table>
## Defence of lawful conduct

<table>
<thead>
<tr>
<th>Item</th>
<th>In a case where the person’s conduct occurred in relation to this kind of foreign public official...</th>
<th>and if it were assumed that the person’s conduct had occurred wholly...</th>
<th>this written law requires or permits the provision of the benefit...</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>a member of the executive, judiciary or magistracy of a foreign country or of part of a foreign country</td>
<td>in the foreign country or in the part of the foreign country, as the case may be</td>
<td>a written law in force in the foreign country or in the part of the foreign country, as the case may be</td>
</tr>
<tr>
<td>7</td>
<td>an employee of a public international organisation</td>
<td>in the place where the headquarters of the organisation is located</td>
<td>a written law in force in that place</td>
</tr>
<tr>
<td>8</td>
<td>an individual who performs work for a public international organisation under a contract</td>
<td>in the place where the headquarters of the organisation is located</td>
<td>a written law in force in that place</td>
</tr>
<tr>
<td>9</td>
<td>an individual who holds or performs the duties of a public office or position in a public international organisation</td>
<td>in the place where the headquarters of the organisation is located</td>
<td>a written law in force in that place</td>
</tr>
<tr>
<td>10</td>
<td>an individual who is otherwise in the service of a public international organisation</td>
<td>in the place where the headquarters of the organisation is located</td>
<td>a written law in force in that place</td>
</tr>
<tr>
<td>11</td>
<td>a member or officer of the legislature of a foreign country or of part of a foreign country</td>
<td>in the foreign country or in the part of the foreign country, as the case may be</td>
<td>a written law in force in the foreign country or in the part of the foreign country, as the case may be</td>
</tr>
</tbody>
</table>

Note: A defendant bears an evidential burden in relation to the matter in subsection (1). See subsection 13.3(3).
Section 70.4

(2) A person is not guilty of an offence against section 70.2 if:
   (a) the person’s conduct occurred in relation to a foreign public
       official covered by paragraph (l) of the definition of foreign
       public official in section 70.1 (which deals with
       intermediaries of foreign public officials covered by other
       paragraphs of that definition); and
   (b) assuming that the first-mentioned person’s conduct had
       occurred instead in relation to:
       (i) the other foreign public official of whom the
           first-mentioned foreign public official was an authorised
           intermediary; or
       (ii) the other foreign public official in relation to whom the
           first-mentioned foreign public official held himself or
           herself out to be an authorised intermediary;
       subsection (1) would have applied in relation to the
       first-mentioned person.

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

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

70.4 Defence—facilitation payments

(1) A person is not guilty of an offence against section 70.2 if:
   (a) the value of the benefit was of a minor nature; and
   (b) the person’s conduct was engaged in for the sole or dominant
       purpose of expediting or securing the performance of a
       routine government action of a minor nature; and
   (c) as soon as practicable after the conduct occurred, the person
       made a record of the conduct that complies with
       subsection (3); and
   (d) any of the following subparagraphs applies:
       (i) the person has retained that record at all relevant times;
Section 70.4

(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
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

(d) does not involve encouraging a decision about:
   (i) whether to award new business; or
   (ii) whether to continue existing business with a particular person; or
   (iii) the terms of new business or existing business.

Content of records

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

70.5 Territorial and nationality requirements

(1) A person does not commit an offence against section 70.2 unless:
   (a) the conduct constituting the alleged offence occurs:
      (i) wholly or partly in Australia; or
      (ii) wholly or partly on board an Australian aircraft or an Australian ship; or
   (b) the conduct constituting the alleged offence occurs wholly outside Australia and:
      (i) at the time of the alleged offence, the person is an Australian citizen; or
      (ii) at the time of the alleged offence, the person is a resident of Australia; or
      (iii) at the time of the alleged offence, the person is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.
Bribery of foreign public officials  Division 70

Section 70.6

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.
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.
The Criminal Code

The integrity and security of the international community and foreign governments

Chapter 4

Offences against United Nations and associated personnel  Division 71

Section 71.4

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.

Maximum penalty: Imprisonment for 15 years.
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 (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.
Section 71.8

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
   (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).
Section 71.9

(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:
Section 71.11

(a) the person takes or detains another person without that other person’s consent; and
(b) that other person is a UN or associated person; and
(c) the UN or associated person is engaged in a UN operation that is not a UN enforcement action.

Maximum penalty: Imprisonment for 5 years.

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

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

Note 2: Section 71.13 defines aggravated offence.

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

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

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

Maximum penalty: Imprisonment for 10 years.

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

(2) Strict liability applies to paragraphs (1)(b), (d) and (e).
Section 71.12

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).
71.14 Defence—activities involving serious harm

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

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

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

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

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

71.15 Defence—medical or hygienic procedures

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

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

71.16 Jurisdictional requirement

(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
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 71.16

(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.
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 71.21

(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.


Note: The text of the Convention is set out in Australian Treaty Series 1995 No. 1. In 2000 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible 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
Division 71  Offences against United Nations and associated personnel

Section 71.23

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—Explosives and lethal devices

Subdivision A—International terrorist activities using explosive or lethal devices

72.1 Purpose

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

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

72.2 ADF members not liable for prosecution

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

72.3 Offences

(1) A person commits an offence if:

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

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

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

(i) a place of public use; or

(ii) a government facility; or

(iii) a public transportation system; or

(iv) an infrastructure facility; and

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

Penalty: Imprisonment for life.
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 Subdivision only if one or more of the following paragraphs applies and the circumstances relating to the alleged offence are not exclusively internal (see subsection (2)):
   (a) the conduct constituting the alleged offence occurs:
      (i) wholly or partly in Australia; or
      (ii) wholly or partly on board an Australian ship or an Australian aircraft;
   (b) at the time of the alleged offence, the person is an Australian citizen;
   (c) at the time of the alleged offence, the person is a stateless person whose habitual residence is in Australia;
   (d) the conduct is subject to the jurisdiction of another State Party to the Convention established in accordance with paragraph 1 or 2 of Article 6 of the Convention and the person is in Australia;
(e) the alleged offence is committed against a government facility of the Commonwealth, or of a State or Territory, that is located outside Australia;
(f) the alleged offence is committed against:
   (i) an Australian citizen; or
   (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory;
(g) by engaging in the conduct constituting the alleged offence, the person intends to compel a legislative, executive or judicial institution of the Commonwealth, a State or a Territory to do or omit to do an act.

(2) The circumstances relating to the alleged offence are exclusively internal if:
   (a) the conduct constituting the alleged offence occurs wholly within Australia; and
   (b) the alleged offender is an Australian citizen; and
   (c) all of the persons against whom the offence is committed are Australian citizens or bodies corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and
   (d) the alleged offender is in Australia; and
   (e) no other State Party to the Convention has a basis under paragraph 1 or 2 of Article 6 of the Convention for exercising jurisdiction in relation to the conduct.

72.5 Saving of other laws

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

72.6 Double jeopardy and foreign offences

If a person has been convicted or acquitted of an offence in respect of conduct under the law of a foreign country, the person cannot be convicted of an offence under this Subdivision in respect of that conduct.
Division 72 Explosives and lethal devices

Section 72.7

72.7 Bringing proceedings under this Subdivision

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

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

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

(4) In determining whether to bring proceedings for an offence under this Subdivision, the Attorney-General must also have regard to:
   (a) whether the conduct constituting the offence also gives rise to an offence under a law of a State or Territory; and
   (b) whether a prosecution relating to the conduct under the State or Territory law has been or will be commenced.

72.8 Ministerial certificates relating to proceedings

(1) The Minister administering the Charter of the United Nations Act 1945 may issue a certificate stating any of the following matters:
   (a) that the Convention entered into force for Australia on a specified day;
   (b) that the Convention remains in force for Australia or any other State Party on a specified day;
   (c) a matter relevant to the establishment of jurisdiction by a State Party under paragraph 1 or 2 of Article 6 of the Convention.

(2) The Minister administering the Australian Citizenship Act 2007 may issue a certificate stating that:
   (a) a person is or was an Australian citizen at a particular time; or
   (b) a person is or was a stateless person whose habitual residence is or was in Australia at a particular time.

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

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

72.10 Definitions

In this Subdivision:

*Convention* means the Convention referred to in section 72.1.

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

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

*infrastructure facility* has the same meaning as in the Convention.

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

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

Subdivision B—Plastic explosives

72.11 Purpose

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

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

72.12 Trafficking in unmarked plastic explosives etc.

(1) A person commits an offence if:

(a) the person traffics in a substance; and

(b) the substance is a plastic explosive; and
Section 72.13

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

Penalty: Imprisonment for 10 years.

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

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

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

Note 2: For defences, see section 72.16.

72.13 Importing or exporting unmarked plastic explosives etc.

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

Penalty: Imprisonment for 10 years.

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

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

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

Note 2: For defences, see section 72.16.

72.14 Manufacturing unmarked plastic explosives etc.

(1) A person commits an offence if:
   (a) the person:
       (i) engages in the manufacture of a substance; or
       (ii) exercises control or direction over the manufacture of a substance; and
   (b) the substance is a plastic explosive; and
   (c) the plastic explosive breaches the first marking requirement; and
Section 72.15

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

Penalty: Imprisonment for 10 years.

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

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

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

Note 2: For defences, see section 72.16.

72.15 Possessing unmarked plastic explosives etc.

(1) A person commits an offence if:
   (a) the person possesses a substance; and
   (b) the substance is a plastic explosive; and
   (c) the plastic explosive breaches a marking requirement; and
   (d) the possession is not authorised under section 72.18, 72.19, 72.20, 72.21, 72.22 or 72.23.

Penalty: Imprisonment for 2 years.

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

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

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

Note 2: For defences, see section 72.16.

72.16 Defences

(1) If:
   (a) a person is charged with an offence against section 72.12, 72.13, 72.14 or 72.15; and
   (b) the prosecution alleges that the plastic explosive breached a particular marking requirement;

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

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

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

Division 72  Explosives and lethal devices

Section 72.17

(2) If:
(a) a person is charged with an offence against section 72.12, 72.13 or 72.15; and
(b) the prosecution alleges that the plastic explosive breached the second marking requirement;
it is a defence if the defendant proves that, at the time of the alleged offence:
(c) the plastic explosive contained a detection agent; and
(d) the concentration of the detection agent in the plastic explosive was not less than the minimum manufacture concentration for the detection agent; and
(e) the detection agent was homogenously distributed throughout the plastic explosive.

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

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

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

72.17 Packaging requirements for plastic explosives

(1) A person commits an offence if:
(a) the person manufactures a substance; and
(b) the substance is a plastic explosive; and
(c) within 24 hours after the manufacture of the plastic explosive, the person does not cause the plastic explosive to be contained, enclosed or packaged in a wrapper with:
(i) the expression “PLASTIC EXPLOSIVE” (in upper-case lettering); and
(ii) the date of manufacture of the plastic explosive; and
(iii) if the plastic explosive is of a prescribed type—that type; and
(iv) if the plastic explosive contains a detection agent for the purpose of meeting the first marking requirement—the name of the detection agent; and
(v) if the plastic explosive contains a detection agent for the purpose of meeting the first marking requirement—the
concentration of the detection agent in the plastic explosive at the time of manufacture, expressed as a percentage by mass; legibly displayed on the outer surface of the wrapper.

Penalty: Imprisonment for 2 years.

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

**72.18 Authorisation for research etc.**

*Authorisation*

(1) A responsible Minister may, by writing, authorise:
   (a) the trafficking in; or
   (b) the import, export, manufacture or possession of;
   an unmarked plastic explosive.

(2) A responsible Minister must not give an authorisation under subsection (1) in relation to an unmarked plastic explosive unless the responsible Minister is satisfied that:
   (a) the plastic explosive is for use exclusively for one or more of the following:
       (i) research, development or testing of new or modified explosives;
       (ii) development or testing of explosives detection equipment;
       (iii) training in explosives detection;
       (iv) forensic science; or
   (b) both:
       (i) the plastic explosive is an integral part of an explosive device that was manufactured exclusively for defence purposes; and
       (ii) the explosive device is for use exclusively for defence purposes; or
   (c) the plastic explosive will, within 3 years after the commencement of this section, become an integral part of an explosive device manufactured exclusively for defence purposes.
The Criminal Code

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

Division 72  Explosives and lethal devices

Section 72.19

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

Conditions and restrictions

(4) An authorisation under subsection (1) is subject to such conditions and restrictions as are specified in the authorisation.

(5) A responsible Minister must not give an authorisation under subsection (1) in relation to an unmarked plastic explosive on grounds covered by paragraph (2)(a) unless the authorisation is subject to a condition imposing a limit as to the quantity of the plastic explosive.

Criteria

(6) In exercising a power conferred by this section in relation to:
   (a) the trafficking in; or
   (b) the import, export, manufacture or possession of;
   an unmarked plastic explosive, a responsible Minister must have regard to:
   (c) the Convention on the Marking of Plastic Explosives; and
   (d) whether the trafficking, import, export, manufacture or possession is reasonable; and
   (e) such other matters (if any) as the responsible Minister considers relevant.

72.19 Authorisation for defence and police purposes—15 year limit

Authorisation

(1) A responsible Minister may, by writing, authorise:
   (a) the trafficking in; or
   (b) the import, export or possession of;
   an unmarked plastic explosive that was:
   (c) manufactured before the commencement of this section; or
   (d) manufactured after the commencement of this section in accordance with an authorisation given under subsection 72.21(2).
The Criminal Code Schedule
The integrity and security of the international community and foreign governments
Chapter 4
Explosives and lethal devices Division 72

Section 72.20

(2) A responsible Minister must not give an authorisation under subsection (1) in relation to an unmarked plastic explosive unless the responsible Minister is satisfied that the plastic explosive is exclusively for use in connection with:
   (a) the operation of the Australian Defence Force; or
   (b) the operation in Australia of a visiting force (within the meaning of the Defence (Visiting Forces) Act 1963); or
   (c) the operation of:
      (i) the Australian Federal Police; or
      (ii) the police force or police service of a State or Territory.

Conditions and restrictions

(3) An authorisation under subsection (1) is subject to such conditions and restrictions as are specified in the authorisation.

Criteria

(4) In exercising a power conferred by this section in relation to:
   (a) the trafficking in; or
   (b) the import, export or possession of;
   an unmarked plastic explosive, a responsible Minister must have regard to:
   (c) the Convention on the Marking of Plastic Explosives; and
   (d) whether the trafficking, import, export or possession is reasonable; and
   (e) such other matters (if any) as the responsible Minister considers relevant.

Sunset

(5) This section ceases to have effect at the end of 15 years after its commencement.

72.20 Authorisation for existing stocks—3 year limit

Authorisation

(1) A responsible Minister may, by writing, authorise:
   (a) the trafficking in; or
Section 72.21

(b) the import, export or possession of;
an unmarked plastic explosive that was manufactured before the commencement of this section.

Conditions and restrictions

(2) An authorisation under subsection (1) is subject to such conditions and restrictions as are specified in the authorisation.

(3) A responsible Minister must not give an authorisation under subsection (1) in relation to an unmarked plastic explosive unless the authorisation is subject to a condition that, within 3 years after the commencement of this section:
   (a) the plastic explosive will not exist; or
   (b) the plastic explosive will be made permanently ineffective.

Criteria

(4) In exercising a power conferred by this section in relation to:
   (a) the trafficking in; or
   (b) the import, export or possession of;
an unmarked plastic explosive, a responsible Minister must have regard to:
   (c) the Convention on the Marking of Plastic Explosives; and
   (d) whether the trafficking, import, export or possession is reasonable; and
   (e) such other matters (if any) as the responsible Minister considers relevant.

72.21 Authorisation of manufacturers—6 month transitional period

Object

(1) The object of this section is to allow manufacturers a 6 month transitional period for compliance with sections 72.12, 72.14 and 72.15.

Authorisation

(2) A responsible Minister may, by writing, authorise:
Section 72.22

(a) the manufacture of an unmarked plastic explosive after the commencement of this section; or
(b) the trafficking in an unmarked plastic explosive manufactured after the commencement of this section; or
(c) the possession of an unmarked plastic explosive manufactured after the commencement of this section.

(3) A responsible Minister must not give an authorisation under subsection (2) in relation to an unmarked plastic explosive unless the responsible Minister is satisfied that the plastic explosive is exclusively for use in connection with:
   (a) the operation of the Australian Defence Force; or
   (b) the operation in Australia of a visiting force (within the meaning of the Defence (Visiting Forces) Act 1963); or
   (c) the operation of:
      (i) the Australian Federal Police; or
      (ii) the police force or police service of a State or Territory.

Conditions and restrictions

(4) An authorisation under subsection (2) is subject to such conditions and restrictions as are specified in the authorisation.

Sunset

(5) This section ceases to have effect at the end of 6 months after its commencement.

72.22 Authorisation for overseas defence purposes—7 day limit

(1) A member of the Australian Defence Force is authorised to possess, import or traffic in an unmarked plastic explosive if:
   (a) the plastic explosive was obtained in the course of the operation outside Australia of the Australian Defence Force; and
   (b) the member believes on reasonable grounds that there is insufficient time to obtain an authorisation under this Subdivision because of:
      (i) an emergency; or
      (ii) any other sudden or unexpected circumstances.
Section 72.23

(2) An authorisation under subsection (1) ceases to have effect at the end of the seventh day after the day on which the plastic explosive was obtained.

72.23 Authorisation for overseas Australian Federal Police purposes—7 day limit

(1) A member of the Australian Federal Police is authorised to possess, import or traffic in an unmarked plastic explosive if:

(a) the plastic explosive was obtained in the course of the operation outside Australia of the Australian Federal Police; and

(b) the member believes on reasonable grounds that there is insufficient time to obtain an authorisation under this Subdivision because of:

(i) an emergency; or

(ii) any other sudden or unexpected circumstances.

(2) An authorisation under subsection (1) ceases to have effect at the end of the seventh day after the day on which the plastic explosive was obtained.

72.24 Forfeited plastic explosives

(1) If a court:

(a) convicts a person of an offence against this Subdivision in relation to a plastic explosive; or

(b) makes an order under section 19B of the Crimes Act 1914 in respect of a person charged with an offence against this Subdivision in relation to a plastic explosive;

the court may order the forfeiture to the Commonwealth of the plastic explosive.

(2) A plastic explosive forfeited to the Commonwealth under subsection (1) becomes the property of the Commonwealth.

(3) A plastic explosive forfeited to the Commonwealth under subsection (1) is to be dealt with in such manner as a responsible Minister directs.
(4) Without limiting subsection (3), a responsible Minister may direct that a plastic explosive forfeited to the Commonwealth under subsection (1) be:
   (a) destroyed; or
   (b) used exclusively for one or more of the purposes covered by paragraph 72.18(2)(a).

Note 1: See also section 10.5 (lawful authority).
Note 2: See also section 229 of the Customs Act 1901 (forfeiture of goods that have been unlawfully imported or exported).

### 72.25 Surrendered plastic explosives

(1) A person may surrender a plastic explosive to the Commonwealth at a place, and in a manner, prescribed for the purposes of this subsection.

(2) A plastic explosive surrendered to the Commonwealth under subsection (1) becomes the property of the Commonwealth.

(3) A plastic explosive surrendered to the Commonwealth under subsection (1) is to be dealt with in such manner as a responsible Minister directs.

(4) Without limiting subsection (3), a responsible Minister may direct that a plastic explosive surrendered to the Commonwealth under subsection (1) be:
   (a) destroyed; or
   (b) used exclusively for one or more of the purposes covered by paragraph 72.18(2)(a).

Note: See also section 10.5 (lawful authority).

### 72.26 Destruction of plastic explosives obtained overseas for defence purposes

A member of the Australian Defence Force may destroy an unmarked plastic explosive if the plastic explosive was obtained in the course of the operation outside Australia of the Australian Defence Force.
Schedule  The Criminal Code

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

Division 72  Explosives and lethal devices

Section 72.27

72.27  Destruction of plastic explosives obtained overseas for Australian Federal Police purposes

A member of the Australian Federal Police may destroy an unmarked plastic explosive if the plastic explosive was obtained in the course of the operation outside Australia of the Australian Federal Police.

72.28  Delegation by Minister

(1) The Minister may, by writing, delegate to:
   (a) the Secretary of the Department; or
   (b) an SES employee, or an acting SES employee, in the Department, where the employee occupies or acts in a position with a classification of Senior Executive Band 3; all or any of the Minister’s powers under sections 72.18, 72.19, 72.20, 72.21, 72.24 and 72.25.

(2) A delegate is, in the exercise of a power delegated under subsection (1), subject to the written directions of the Minister.

72.29  Delegation by Minister for Defence

(1) The Minister for Defence may, by writing, delegate to:
   (a) an SES employee, or an acting SES employee, in the Department of Defence, where the employee occupies or acts in a position with a classification of Senior Executive Band 3; or
   (b) an officer of the Australian Navy who holds the rank of Vice-Admiral or a higher rank; or
   (c) an officer of the Australian Army who holds the rank of Lieutenant-General or a higher rank; or
   (d) an officer of the Australian Air Force who holds the rank of Air Marshal or a higher rank; or
   (e) an officer of the Australian Defence Force who is on deployment as the Commander of an Australian Task Force, contingent or force element that is operating outside Australia;

all or any of the powers of the Minister for Defence under sections 72.18, 72.19, 72.20, 72.21, 72.24 and 72.25.
(2) A delegate must not exercise a power delegated under subsection (1) unless the exercise of the power relates to:
   (a) the operation of the Australian Defence Force; or
   (b) the operation in Australia of a visiting force (within the meaning of the Defence (Visiting Forces) Act 1963); or
   (c) the operation outside Australia of a person who, under a contract, performs services for the Australian Defence Force.

(3) A delegate is, in the exercise of a power delegated under subsection (1), subject to the written directions of the Minister for Defence.

72.30 Review by Administrative Appeals Tribunal of authorisation decisions

(1) An application may be made to the Administrative Appeals Tribunal for review of a decision refusing to give an authorisation under subsection 72.18(1), 72.19(1), 72.20(1) or 72.21(2).

(2) An application may be made to the Administrative Appeals Tribunal for review of a decision to specify a condition or restriction in an authorisation under subsection 72.18(1), 72.19(1), 72.20(1) or 72.21(2), but such an application may only be made by a person to whom the authorisation applies.

72.31 Geographical jurisdiction

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

72.32 Saving of other laws

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

72.33 Marking requirements

(1) This section sets out the marking requirements for a plastic explosive.
Concentration of detection agent at time of manufacture

(2) The first marking requirement is that, at the time of the manufacture of the plastic explosive, all of the following conditions were satisfied:

(a) the plastic explosive contained a detection agent;
(b) the concentration of the detection agent in the plastic explosive was not less than the minimum manufacture concentration for the detection agent;
(c) the detection agent was homogenously distributed throughout the plastic explosive.

Note: For minimum manufacture concentration, see section 72.34.

Freshness

(3) The second marking requirement is that less than 10 years have elapsed since the manufacture of the plastic explosive.

Interpretation

(4) In determining whether a plastic explosive manufactured before the commencement of this section breached the first marking requirement, assume that this section and sections 72.34 and 72.36 had been in force at the time of manufacture.

72.34 Detection agents and minimum manufacture concentrations

For the purposes of this Subdivision, the following table defines:

(a) detection agent; and
(b) the minimum manufacture concentration for each detection agent.

<table>
<thead>
<tr>
<th>Detection agents and minimum manufacture concentrations</th>
<th>Minimum manufacture concentration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item</td>
<td>Detection agent</td>
</tr>
<tr>
<td>1</td>
<td>Ethylene glycol dinitrate (EGDN)</td>
</tr>
<tr>
<td></td>
<td>(molecular formula: C₂H₄(NO₃)₂)</td>
</tr>
<tr>
<td></td>
<td>(molecular weight: 152)</td>
</tr>
</tbody>
</table>
The Criminal Code  
Schedule  
The integrity and security of the international community and foreign governments  
Chapter 4  
Explosives and lethal devices  
Division 72  

Section 72.35

**Detection agents and minimum manufacture concentrations**

<table>
<thead>
<tr>
<th>Item</th>
<th>Detection agent</th>
<th>Minimum manufacture concentration</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>2,3-Dimethyl-2,3-dinitrobutane (DMNB) (molecular formula: C₆H₁₂(NO₂)₂) (molecular weight: 176)</td>
<td>1% by mass</td>
</tr>
<tr>
<td>3</td>
<td>para-Mononitrotoluene (p-MNT) (molecular formula: C₇H₇NO₂) (molecular weight: 137)</td>
<td>0.5% by mass</td>
</tr>
<tr>
<td>4</td>
<td>a substance prescribed for the purposes of this table item</td>
<td>the concentration prescribed for the purposes of this table item in relation to the substance</td>
</tr>
</tbody>
</table>

### 72.35 Presumption as to concentration of detection agent

(1) This section applies in relation to a prosecution for an offence against this Subdivision.

(2) If no detection agent can be detected in a sample of a plastic explosive when tested using:

(a) a method generally accepted in the scientific community as a reliable means of measuring the concentration of detection agents in plastic explosives; or

(b) a method prescribed for the purposes of this paragraph;

it is presumed, unless the contrary is proved, that the plastic explosive breaches the first marking requirement.

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

### 72.36 Definitions

In this Subdivision:

**Convention on the Marking of Plastic Explosives** means:

(a) the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991; or

(b) if:

(i) the Convention is amended; and
Schedule  The Criminal Code
Chapter 4  The integrity and security of the international community and foreign governments

Division 72  Explosives and lethal devices

Section 72.36

(ii) the amendment binds Australia;
the Convention as so amended.

Note: In 2006, the text of the Convention was accessible through the Australian Treaties Library on the AustLII Internet site (www.austlii.edu.au).

Department of Defence means the Department that deals with matters relating to defence.

detection agent has the meaning given by section 72.34.

explosive device includes the following:
(a) a bomb;
(b) a grenade;
(c) a mine;
(d) a missile;
(e) a perforator;
(f) a projectile;
(g) a rocket;
(h) a shaped charge;
(i) a shell.

export includes take from Australia.

first marking requirement has the meaning given by subsection 72.33(2).

high explosive means an explosive with a velocity of detonation that is greater than the velocity of sound in the explosive (typically greater than 340 metres per second), and includes the following:
(a) cyclotetramethylenetetranitramine (HMX);
(b) pentaerythritol tetranitrate (PETN);
(c) cyclotrimethylenetetranitramine (RDX).

import includes bring into Australia.

manufacture a substance means any process by which a substance is produced, and includes the following:
(a) the process of transforming a substance into a different substance;
(b) the reprocessing of a substance.
marking requirement has the meaning given by section 72.33.

minimum manufacture concentration has the meaning given by section 72.34.

Minister for Defence means the Minister administering the Defence Act 1903.

plastic explosive means an explosive product (including an explosive product in flexible or elastic sheet form) that is:

(a) formulated with:
   (i) one or more high explosives which in their pure form have a vapour pressure less than $10^{-4}$ Pa at a temperature of 25°C; and
   (ii) a binder material; and
(b) as a mixture, malleable or flexible at normal room temperature.

possess a substance includes the following:

(a) receive or obtain possession of the substance;
(b) have control over the disposition of the substance (whether or not the substance is in the custody of the person);
(c) have joint possession of the substance.

responsible Minister means:

(a) the Minister; or
(b) the Minister for Defence.

second marking requirement has the meaning given by subsection 72.33(3).

traffic in a substance means:

(a) transfer the substance; or
(b) offer the substance for sale; or
(c) invite the making of offers to buy the substance; or
(d) prepare the substance for transfer with the intention of transferring any of it or believing that another person intends to transfer any of it; or
Section 72.36

(e) transport or deliver the substance with the intention of transferring any of it or believing that another person intends to transfer any of it; or

(f) guard or conceal the substance with the intention of transferring any of it or the intention of assisting another person to transfer any of it; or

(g) possess the substance with the intention of transferring any of it.

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

*transfer* means transfer ownership or possession.

*unmarked plastic explosive* means a plastic explosive that breaches a marking requirement.

*wrapper*, in relation to a plastic explosive, means a wrapper the inner surface of which is in contact with the plastic explosive.
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);
Division 73 People smuggling and related offences

Section 73.3

(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.

(3) In this section:

forcible 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
Schedule
The integrity and security of the international community and foreign governments

Chapter 4

People smuggling and related offences Division 73

Section 73.4

(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.

Criminal Code Act 1995 95
Schedule  The Criminal Code
Chapter 4  The integrity and security of the international community and foreign governments

Division 73  People smuggling and related offences

Section 73.5

73.5 Attorney-General’s consent required

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

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

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

73.6 Meaning of travel or identity document

(1) For the purposes of this Subdivision, a document is a travel or identity document if it is:

(a) a travel document; or

(b) an identity document.

73.7 Meaning of false travel or identity document

(1) For the purposes of this Subdivision, a travel or identity document is a false travel or identity document if, and only if:

(a) the document, or any part of the document:

(i) purports to have been made in the form in which it is made by a person who did not make it in that form; or

(ii) purports to have been made in the form in which it is made on the authority of a person who did not authorise its making in that form; or

(b) the document, or any part of the document:

(i) purports to have been made in the terms in which it is made by a person who did not make it in those terms; or

(ii) purports to have been made in the terms in which it is made on the authority of a person who did not authorise its making in those terms; or

(c) the document, or any part of the document:

(i) purports to have been altered in any respect by a person who did not alter it in that respect; or
The Criminal Code Schedule
The integrity and security of the international community and foreign governments

Chapter 4

People smuggling and related offences Division 73

Section 73.8

(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.
Schedule  The Criminal Code
Chapter 4  The integrity and security of the international community and foreign governments

Division 73  People smuggling and related offences

Section 73.9

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

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

(1) A person (the *first person*) is guilty of an offence if:
   (a) the first person provides or possesses a travel or identity document; and
   (b) the first person knows that:
      (i) the issue of the travel or identity document; or
      (ii) an alteration of the travel or identity document; has been obtained dishonestly or by threats; and
   (c) the first person intends that the document will be used to facilitate the entry of another person (the *other person*) into a foreign country, where the entry of the other person into the foreign country would not comply with the requirements under that country’s law for entry into the country; and
   (d) the first person provided or possessed the document:
      (i) having obtained (whether directly or indirectly) a benefit to do so; or
      (ii) with the intention of obtaining (whether directly or indirectly) a benefit.

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

(2) For the purposes of subsection (1), a *threat* may be:
   (a) express or implied; or
   (b) conditional or unconditional.

(3) For the purposes of subsection (1), *dishonest* means:
   (a) dishonest according to the standards of ordinary people; and
   (b) known by the defendant to be dishonest according to the standards of ordinary people.

(4) In a prosecution for an offence against this section, the determination of dishonesty is a matter for the trier of fact.

98  *Criminal Code Act 1995*
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 \textit{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 \textit{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 \textit{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 \textit{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.
Schedule  The Criminal Code

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

Division 73 People smuggling and related offences

Section 73.12

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 and sedition

Division 80—Treason and sedition

80.1A Definition of organisation

In this Division:

organisation means:
(a) a body corporate; or
(b) an unincorporated body;
whether or not the body is based outside Australia, consists of persons who are not Australian citizens, or is part of a larger organisation.

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
Section 80.1

(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

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

Note 2: There is a defence in section 80.3 for acts done in good faith.

(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.

(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.

(8) In this section:

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

80.2 Sedition

Urging the overthrow of the Constitution or Government

(1) A person commits an offence if the person urges another person to overthrow by force or violence:

(a) the Constitution; or
(b) the Government of the Commonwealth, a State or a Territory; or
(c) the lawful authority of the Government of the Commonwealth.

Penalty: Imprisonment for 7 years.

(2) Recklessness applies to the element of the offence under subsection (1) that it is:

(a) the Constitution; or
(b) the Government of the Commonwealth, a State or a Territory; or
(c) the lawful authority of the Government of the Commonwealth;

that the first-mentioned person urges the other person to overthrow.

Urging interference in Parliamentary elections

(3) A person commits an offence if the person urges another person to interfere by force or violence with lawful processes for an election of a member or members of a House of the Parliament.
Section 80.2

Penalty: Imprisonment for 7 years.

(4) Recklessness applies to the element of the offence under subsection (3) that it is lawful processes for an election of a member or members of a House of the Parliament that the first-mentioned person urges the other person to interfere with.

_Urging violence within the community_

(5) A person commits an offence if:
   (a) the person urges a group or groups (whether distinguished by race, religion, nationality or political opinion) to use force or violence against another group or other groups (as so distinguished); and
   (b) the use of the force or violence would threaten the peace, order and good government of the Commonwealth.

Penalty: Imprisonment for 7 years.

(6) Recklessness applies to the element of the offence under subsection (5) that it is a group or groups that are distinguished by race, religion, nationality or political opinion that the first-mentioned person urges the other person to use force or violence against.

_Urging a person to assist the enemy_

(7) A person commits an offence if:
   (a) the person urges another person to engage in conduct; and
   (b) the first-mentioned person intends the conduct to assist an organisation or country; and
   (c) the organisation or country is:
      (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 paragraph 80.1(1)(e) to be an enemy at war with the Commonwealth.

Penalty: Imprisonment for 7 years.
Urging a person to assist those engaged in armed hostilities

(8) A person commits an offence if:
   (a) the person urges another person to engage in conduct; and
   (b) the first-mentioned person intends the conduct to assist an organisation or country; and
   (c) the organisation or country is engaged in armed hostilities against the Australian Defence Force.

Penalty: Imprisonment for 7 years.

Defence

(9) Subsections (7) and (8) do not apply to engagement in conduct by way of, or for the purposes of, the provision of aid of a humanitarian nature.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (9). See subsection 13.3(3).

Note 2: There is a defence in section 80.3 for acts done in good faith.

80.3 Defence for acts done in good faith

(1) Sections 80.1 and 80.2 do not apply to a person who:
   (a) tries in good faith to show that any of the following persons are mistaken in any of his or her counsels, policies or actions:
      (i) the Sovereign;
      (ii) the Governor-General;
      (iii) the Governor of a State;
      (iv) the Administrator of a Territory;
      (v) an adviser of any of the above;
      (vi) a person responsible for the government of another country; or
   (b) points out in good faith errors or defects in the following, with a view to reforming those errors or defects:
      (i) the Government of the Commonwealth, a State or a Territory;
      (ii) the Constitution;
      (iii) legislation of the Commonwealth, a State, a Territory or another country;
Section 80.3

(iv) the administration of justice of or in the Commonwealth, a State, a Territory or another country; or

(c) urges in good faith another person to attempt to lawfully procure a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country; or

(d) points out in good faith any matters that are producing, or have a tendency to produce, feelings of ill-will or hostility between different groups, in order to bring about the removal of those matters; or

(e) does anything in good faith in connection with an industrial dispute or an industrial matter; or

(f) publishes in good faith a report or commentary about a matter of public interest.

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

(2) In considering a defence under subsection (1), the Court may have regard to any relevant matter, including whether the acts were done:

(a) for a purpose intended to be prejudicial to the safety or defence of the Commonwealth; or

(b) with the intention of assisting an enemy:
   (i) at war with the Commonwealth; and
   (ii) specified by Proclamation made for the purpose of paragraph 80.1(1)(e) to be an enemy at war with the Commonwealth; or

(c) with the intention of assisting another country, or an organisation, that is engaged in armed hostilities against the Australian Defence Force; or

(d) with the intention of assisting a proclaimed enemy of a proclaimed country (within the meaning of subsection 24AA(4) of the Crimes Act 1914); or

(e) with the intention of assisting persons specified in paragraphs 24AA(2)(a) and (b) of the Crimes Act 1914; or

(f) with the intention of causing violence or creating public disorder or a public disturbance.
80.4 Extended geographical jurisdiction for offences

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

80.5 Attorney-General’s consent required

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

(2) Despite subsection (1):

(a) a person may be arrested for an offence against this Division;

or

(b) a warrant for the arrest of a person for such an offence may be issued and executed;

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.

80.6 Division not intended to exclude State or Territory law

It is the intention of the Parliament that this Division is not to apply to the exclusion of a law of a State or a Territory to the extent that the law is capable of operating concurrently with this Division.
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:

- 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
(b) a reference to a sketch, document or article or to information is to be read as including a reference to a copy of, a part of or a copy of a part of a sketch, document or article or information.

(3) For the purposes of this Part, a place that is occupied by, or a thing that is under the control of, the Commonwealth is taken to belong to the Commonwealth.

(4) This Part applies to and in relation to a document or article regardless of who made it and what information it contains.
Division 91—Offences relating to espionage and similar activities

91.1 Espionage and similar activities

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

Penalty: Imprisonment for 25 years.

(2) A person commits an offence if:
   (a) the person communicates, or makes available:
      (i) information concerning the Commonwealth’s security or defence; or
      (ii) information concerning the security or defence of another country, being information that the person acquired (whether directly or indirectly) from the Commonwealth; and
   (b) the person does so:
      (i) without lawful authority; and
      (ii) intending to give an advantage to another country’s security or defence; and
   (c) the person’s act results in, or is likely to result in, the information being communicated or made available to another country or a foreign organisation, or to a person acting on behalf of such a country or organisation.
Section 91.1

Penalty: Imprisonment for 25 years.

(3) A person commits an offence if:
   (a) the person makes, obtains or copies a record (in any form) of:
       (i) information concerning the Commonwealth’s security or defence; or
       (ii) information concerning the security or defence of another country, being information that the person acquired (whether directly or indirectly) from the Commonwealth; and
   (b) the person does so:
       (i) intending that the record will, or may, be delivered to another country or a foreign organisation, or to a person acting on behalf of such a country or organisation; and
       (ii) intending to prejudice the Commonwealth’s security or defence.

Penalty: Imprisonment for 25 years.

(4) A person commits an offence if:
   (a) the person makes, obtains or copies a record (in any form) of:
       (i) information concerning the Commonwealth’s security or defence; or
       (ii) information concerning the security or defence of another country, being information that the person acquired (whether directly or indirectly) from the Commonwealth; and
   (b) the person does so:
       (i) without lawful authority; and
       (ii) intending that the record will, or may, be delivered to another country or a foreign organisation, or to a person acting on behalf of such a country or organisation; and
       (iii) intending to give an advantage to another country’s security or defence.

Penalty: Imprisonment for 25 years.

(5) For the purposes of subparagraphs (3)(b)(i) and (4)(b)(ii), the person concerned does not need to have a particular country, foreign organisation or person in mind at the time when the person makes, obtains or copies the record.
Section 91.2

(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).
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
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 93.2

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.
Division 94—Forfeiture

94.1 Forfeiture of articles etc.

A sketch, article, record or document which is made, obtained, recorded, retained, forged, possessed or otherwise dealt with in contravention of this Part is forfeited to the Commonwealth.
Part 5.3—Terrorism

Division 100—Preliminary

100.1 Definitions

(1) In this Part:

*AFP member* means:
(a) a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or
(b) a special member of the Australian Federal Police (within the meaning of that Act).

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

*confirmed control order* means an order made under section 104.16.

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

*continued preventative detention order* means an order made under section 105.12.

*control order* means an interim control order or a confirmed control order.

*corresponding State preventative detention law* means a law of a State or Territory that is, or particular provisions of a law of a State or Territory that are, declared by the regulations to correspond to Division 105 of this Act.

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

*frisk search* means:
(a) a search of a person conducted by quickly running the hands over the person’s outer garments; and
(b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

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

**identification material**, in relation to a person, means prints of the person’s hands, fingers, feet or toes, recordings of the person’s voice, samples of the person’s handwriting or photographs (including video recordings) of the person, but does not include tape recordings made for the purposes of section 23U or 23V of the Crimes Act 1914.

**initial preventative detention order** means an order made under section 105.8.

**interim control order** means an order made under section 104.4, 104.7 or 104.9.

**issuing authority**:  
(a) for initial preventative detention orders—means a senior AFP member; and  
(b) for continued preventative detention orders—means a person appointed under section 105.2.

**issuing court** means:
(a) the Federal Court of Australia; or  
(b) the Family Court of Australia; or  
(c) the Federal Magistrates Court.

**Judge** means a Judge of a court created by the Parliament.

**lawyer** means a person enrolled as a legal practitioner of a federal court or the Supreme Court of a State or Territory.
listed terrorist organisation means an organisation that is specified by the regulations for the purposes of paragraph (b) of the definition of terrorist organisation in section 102.1.

ordinary search means a search of a person or of articles in the possession of a person that may include:
(a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes or hat; and
(b) an examination of those items.

organisation means a body corporate or an unincorporated body, whether or not the body:
(a) is based outside Australia; or
(b) consists of persons who are not Australian citizens; or
(c) is part of a larger organisation.

police officer means:
(a) an AFP member; or
(b) a member (however described) of a police force of a State or Territory.

prescribed authority has the same meaning as in Division 3 of Part III of the Australian Security Intelligence Organisation Act 1979.

preventative detention order means an order under section 105.8 or 105.12.

prohibited contact order means an order made under section 105.15 or 105.16.

referring State has the meaning given by section 100.2.

seizable item means anything that:
(a) would present a danger to a person; or
(b) could be used to assist a person to escape from lawful custody; or
(c) could be used to contact another person or to operate a device remotely.

senior AFP member means:
(a) the Commissioner of the Australian Federal Police; or
(b) a Deputy Commissioner of the Australian Federal Police; or
(c) an AFP member of, or above, the rank of Superintendent.

**superior court** means:
(a) the High Court; or
(b) the Federal Court of Australia; or
(c) the Family Court of Australia or of a State; or
(d) the Supreme Court of a State or Territory; or
(e) the District Court (or equivalent) of a State or Territory.

**terrorist act** means an action or threat of action where:
(a) the action falls within subsection (2) and does not fall within subsection (3); and
(b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and
(c) the action is done or the threat is made with the intention of:
   (i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or
   (ii) intimidating the public or a section of the public.

**tracking device** means any electronic device capable of being used to determine or monitor the location of a person or an object or the status of an object.

(2) Action falls within this subsection if it:
(a) causes serious harm that is physical harm to a person; or
(b) causes serious damage to property; or
(c) causes a person’s death; or
(d) endangers a person’s life, other than the life of the person taking the action; or
(e) creates a serious risk to the health or safety of the public or a section of the public; or
(f) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to:
   (i) an information system; or
   (ii) a telecommunications system; or
   (iii) a financial system; or
Section 100.2

(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.
Section 100.3

(3) This subsection covers the matter of terrorist acts, and of actions relating to terrorist acts, to the extent of making laws with respect to that matter by making express amendment of this Part or Chapter 2.

(4) A State is a referring State even if a law of the State provides that the reference to the Commonwealth Parliament of either or both of the matters covered by subsections (2) and (3) is to terminate in particular circumstances.

(5) A State ceases to be a referring State if a reference by the State of either or both of the matters covered by subsections (2) and (3) terminate.

(6) In this section:

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

100.3 Constitutional basis for the operation of this Part

Operation in a referring State

(1) The operation of this Part in a referring State is based on:

(a) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)); and

(b) the legislative powers that the Commonwealth Parliament has in respect of matters to which this Part relates because those matters are referred to it by the Parliament of the referring State under paragraph 51(xxxvii) of the Constitution.

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

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...
Section 100.4

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.

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:
Section 100.4

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

100.5 **Application of Acts Interpretation Act 1901**

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

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

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;
Section 100.7

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:
(a) a terrorist act does not occur; or
(b) the training is not connected with preparation for, the engagement of a person in, or assistance in a specific terrorist act; or
(c) the training is connected with preparation for, the engagement of a person in, or assistance in more than one terrorist act.
Section 101.4

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

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

101.4 Possessing things connected with terrorist acts

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

Penalty: Imprisonment for 15 years.

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

Penalty: Imprisonment for 10 years.

(3) A person commits an offence under subsection (1) or (2) even if:
   (a) a terrorist act does not occur; or
   (b) the thing is not connected with preparation for, the engagement of a person in, or assistance in a specific terrorist act; or
   (c) the thing is connected with preparation for, the engagement of a person in, or assistance in more than one terrorist act.
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:
   (a) a terrorist act does not occur; or
   (b) the document was not intended to facilitate preparation for, the engagement of a person in, or assistance in a terrorist act.

Penalty: Imprisonment for 5 years.
Schedule The Criminal Code

Chapter 5 The security of the Commonwealth

Part 5.3 Terrorism

Division 101 Terrorism

Section 101.6

(b) the document is not connected with preparation for, the engagement of a person in, or assistance in a specific terrorist act; or

c) the document is connected with preparation for, the engagement of a person in, or assistance in more than one terrorist act.

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

(5) Subsections (1) and (2) do not apply if the collection or making of the document was not intended to facilitate preparation for, the engagement of a person in, or assistance in a terrorist act.

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

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

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

(1) A person commits an offence if the person does any act in preparation for, or planning, a terrorist act.

Penalty: Imprisonment for life.

(2) A person commits an offence under subsection (1) even if:

(a) a terrorist act does not occur; or

(b) the person’s act is not done in preparation for, or planning, a specific terrorist act; or

(c) the person’s act is done in preparation for, or planning, more than one terrorist act.

(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:

*advocate* has the meaning given by subsection (1A).

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

*close family member* of a person means:
- the person’s spouse, de facto spouse or same-sex partner; or
- a parent, step-parent or grandparent of the person; or
- a child, step-child or grandchild of the person; or
- a brother, sister, step-brother or step-sister of the person; or
- a guardian or carer of the person.

*member* of an organisation includes:
- a person who is an informal member of the organisation; and
- a person who has taken steps to become a member of the organisation; and

(c) in the case of an organisation that is a body corporate—a director or an officer of the body corporate.

*recruit* includes induce, incite and encourage.

*terrorist organisation* means:
- an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act occurs); or
- an organisation that is specified by the regulations for the purposes of this paragraph (see subsections (2), (3) and (4)).

Definition of advocates

(1A) In this Division, an organisation *advocates* the doing of a terrorist act if:
Section 102.1

(a) the organisation directly or indirectly counsels or urges the doing of a terrorist act; or
(b) the organisation directly or indirectly provides instruction on the doing of a terrorist act; or
(c) the organisation directly praises the doing of a terrorist act in circumstances where there is a risk that such praise might have the effect of leading a person (regardless of his or her age or any mental impairment (within the meaning of section 7.3) that the person might suffer) to engage in a terrorist act.

Terrorist organisation regulations

(2) Before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of terrorist organisation in this section, the Minister must be satisfied on reasonable grounds that the organisation:
(a) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur); or
(b) advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).

(2A) Before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of terrorist organisation in this section, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation.

(3) Regulations for the purposes of paragraph (b) of the definition of terrorist organisation in this section cease to have effect on the 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
(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).
Section 102.1

(4) If:

(a) an organisation is specified by regulations made for the purposes of paragraph (b) of the definition of terrorist organisation in this section; and

(b) the Minister ceases to be satisfied of either of the following (as the case requires):

(i) that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur);

(ii) that the organisation advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur);

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

(5) To avoid doubt, subsection (4) does not prevent the organisation from being subsequently specified by regulations made for the purposes of paragraph (b) of the definition of terrorist organisation in this section if the Minister becomes satisfied as mentioned in subsection (2).

(6) If, under subsection (3) or (4), a regulation ceases to have effect, section 15 of the Legislative Instruments Act 2003 applies as if the regulation had been repealed.

(17) If:

(a) an organisation (the listed organisation) is specified in regulations made for the purposes of paragraph (b) of the definition of terrorist organisation in this section; and

(b) an individual or an organisation (which may be the listed organisation) makes an application (the de-listing application) to the Minister for a declaration under subsection (4) in relation to the listed organisation; and

(c) the de-listing application is made on the grounds that there is no basis for the Minister to be satisfied that the listed organisation:

(i) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act
(whether or not a terrorist act has occurred or will occur); or
(ii) advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur); as the case requires;
the Minister must consider the de-listing application.

(18) Subsection (17) does not limit the matters that may be considered by the Minister for the purposes of subsection (4).

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;
(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:
Section 102.1A

(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:

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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:
Subdivision B—Offences

102.2 Directing the activities of a terrorist organisation

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

Penalty: Imprisonment for 25 years.

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

Penalty: Imprisonment for 15 years.

102.3 Membership of a terrorist organisation

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

Penalty: Imprisonment for 10 years.

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

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

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

Penalty: Imprisonment for 25 years.

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

Penalty: Imprisonment for 15 years.

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

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

Penalty: Imprisonment for 25 years.

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

Penalty: Imprisonment for 25 years.

(3) Subject to subsection (4), strict liability applies to paragraph (2)(b).
Section 102.6

(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, from or for a terrorist organisation

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

Penalty: Imprisonment for 25 years.

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

Penalty: Imprisonment for 15 years.

(3) Subsections (1) and (2) do not apply to the person’s receipt of funds from the organisation if the person proves that he or she received the funds solely for the purpose of the provision of:
   (a) legal representation for a person in proceedings relating to this Division; or
   (b) assistance to the organisation for it to comply with a law of the Commonwealth or a State or Territory.

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

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

Penalty: Imprisonment for 25 years.

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

Penalty: Imprisonment for 15 years.

102.8 Associating with terrorist organisations

(1) A person commits an offence if:
   (a) on 2 or more occasions:
      (i) the person intentionally associates with another person who is a member of, or a person who promotes or directs the activities of, an organisation; and
      (ii) the person knows that the organisation is a terrorist organisation; and
      (iii) the association provides support to the organisation; and
      (iv) the person intends that the support assist the organisation to expand or to continue to exist; and
      (v) the person knows that the other person is a member of, or a person who promotes or directs the activities of, the organisation; and
   (b) the organisation is a terrorist organisation because of paragraph (b) of the definition of terrorist organisation in

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Criminal Code Act 1995 139
Section 102.8

A person commits an offence if:

(1) the person has previously been convicted of an offence against subsection (1); and

(2) 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

(3) the person knows that the organisation is a terrorist organisation; and

(4) the association provides support to the organisation; and

(5) the person intends that the support assist the organisation to expand or to continue to exist; and

(6) the person knows that the other person is a member of, or a person who promotes or directs the activities of, the organisation; and

(7) the organisation is a terrorist organisation because of paragraph (b) of the definition of terrorist organisation in this Division (whether or not the organisation is a terrorist organisation because of paragraph (a) of that definition also).

Penalty: Imprisonment for 3 years.

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

(4) This section does not apply if:

(a) the association is with a close family member and relates only to a matter that could reasonably be regarded (taking into account the person’s cultural background) as a matter of family or domestic concern; or

(b) the association is in a place being used for public religious worship and takes place in the course of practising a religion; or

(c) the association is only for the purpose of providing aid of a humanitarian nature; or

(d) the association is only for the purpose of providing legal advice or legal representation in connection with:
(i) criminal proceedings or proceedings related to criminal proceedings (including possible criminal proceedings in the future); or

(ii) proceedings relating to whether the organisation in question is a terrorist organisation; or

(iii) a decision made or proposed to be made under Division 3 of Part III of the Australian Security Intelligence Organisation Act 1979, or proceedings relating to such a decision or proposed decision; or

(iv) a listing or proposed listing under section 15 of the Charter of the United Nations Act 1945 or an application or proposed application to revoke such a listing, or proceedings relating to such a listing or application or proposed listing or application; or

(v) proceedings conducted by a military commission of the United States of America established under a Military Order of 13 November 2001 made by the President of the United States of America and entitled “Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism”; or

(vi) proceedings for a review of a decision relating to a passport or other travel document or to a failure to issue such a passport or other travel document (including a passport or other travel document that was, or would have been, issued by or on behalf of the government of a foreign country).

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

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

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

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

Note: A defendant bears an evidential burden in relation to the matter in subsection (6). See subsection 13.3(3).
Section 102.9

(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:
   (a) a terrorist act does not occur; or
   (b) the funds will not be used to facilitate or engage in a specific terrorist act; or
   (c) the funds will be used to facilitate or engage in more than one terrorist act.

103.2 Financing a terrorist

(1) A person commits an offence if:
   (a) the person intentionally:
      (i) makes funds available to another person (whether directly or indirectly); or
      (ii) collects funds for, or on behalf of, another person (whether directly or indirectly); and
   (b) the first-mentioned person is reckless as to whether the other person will use the funds to facilitate or engage in a terrorist act.

Penalty: Imprisonment for life.

(2) A person commits an offence under subsection (1) even if:
   (a) a terrorist act does not occur; or
   (b) the funds will not be used to facilitate or engage in a specific terrorist act; or
   (c) the funds will be used to facilitate or engage in more than one terrorist act.
Section 103.3

103.3 Extended geographical jurisdiction for offences

Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this Division.
Division 104—Control orders

Subdivision A—Object of this Division

104.1 Object of this Division

The object of this Division is to allow obligations, prohibitions and restrictions to be imposed on a person by a control order for the purpose of protecting the public from a terrorist act.

Subdivision B—Making an interim control order

104.2 Attorney-General’s consent to request an interim control order

(1) A senior AFP member must not request an interim control order in relation to a person without the Attorney-General’s written consent.

Note: However, in urgent circumstances, a senior AFP member may request an interim control order without first obtaining the Attorney-General’s consent (see Subdivision C).

(2) A senior AFP member may only seek the Attorney-General’s written consent to request an interim control order in relation to a person if the member:

(a) considers on reasonable grounds that the order in the terms to be requested would substantially assist in preventing a terrorist act; or

(b) suspects on reasonable grounds that the person has provided training to, or received training from, a listed terrorist organisation.

(3) In seeking the Attorney-General’s consent, the member must give the Attorney-General a draft request that includes:

(a) a draft of the interim control order to be requested; and

(b) the following:

(i) a statement of the facts relating to why the order should be made;
Section 104.2

(ii) if the member is aware of any facts relating to why the order should not be made—a statement of those facts; and

(c) the following:
   (i) an explanation as to why each of the obligations, prohibitions and restrictions should be imposed on the person;
   (ii) if the member is aware of any facts relating to why any of those obligations, prohibitions or restrictions should not be imposed on the person—a statement of those facts; and

(d) the following:
   (i) the outcomes and particulars of all previous requests for interim control orders (including the outcomes of the hearings to confirm the orders) in relation to the person;
   (ii) the outcomes and particulars of all previous applications for variations of control orders made in relation to the person;
   (iii) the outcomes of all previous applications for revocations of control orders made in relation to the person;
   (iv) the outcomes and particulars of all previous applications for preventative detention orders in relation to the person;
   (v) information (if any) that the member has about any periods for which the person has been detained under an order made under a corresponding State preventative detention law; and

(e) information (if any) that the member has about the person’s age; and

(f) a summary of the grounds on which the order should be made.

Note 1: An interim control order cannot be requested in relation to a person who is under 16 years of age (see section 104.28).

Note 2: The member might commit an offence if the draft request is false or misleading (see sections 137.1 and 137.2).

(3A) To avoid doubt, paragraph (3)(f) does not require any information to be included in the summary if disclosure of that information is likely to prejudice national security (within the meaning of the
(4) The Attorney-General’s consent may be made subject to changes being made to the draft request (including the draft of the interim control order to be requested).

(5) To avoid doubt, a senior AFP member may seek the Attorney-General’s consent to request an interim control order in relation to a person, even if such a request has previously been made in relation to the person.

**104.3 Requesting the court to make an interim control order**

If the Attorney-General consents to the request under section 104.2, the senior AFP member may request the interim control order by giving an issuing court:

(a) a request:

(i) that is the same as the draft request, except for the changes (if any) required by the Attorney-General; and

(ii) the information in which is sworn or affirmed by the member; and

(b) a copy of the Attorney-General’s consent.

Note: The member might commit an offence if the request is false or misleading (see sections 137.1 and 137.2).

**104.4 Making an interim control order**

(1) The issuing court may make an order under this section in relation to the person, but only if:

(a) the senior AFP member has requested it in accordance with section 104.3; and

(b) the court has received and considered such further information (if any) as the court requires; and

(c) the court is satisfied on the balance of probabilities:

(i) that making the order would substantially assist in preventing a terrorist act; or

(ii) that the person has provided training to, or received training from, a listed terrorist organisation; and

(d) the court is satisfied on the balance of probabilities that each of the obligations, prohibitions and restrictions to be imposed
on the person by the order is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the public from a terrorist act.

(2) In determining whether each of the obligations, prohibitions and restrictions to be imposed on the person by the order is reasonably necessary, and reasonably appropriate and adapted, the court must take into account the impact of the obligation, prohibition or restriction on the person’s circumstances (including the person’s financial and personal circumstances).

(3) The court need not include in the order an obligation, prohibition or restriction that was sought by the senior AFP member if the court is not satisfied as mentioned in paragraph (1)(d) in respect of that obligation, prohibition or restriction.

104.5 Terms of an interim control order

(1) If the issuing court makes the interim control order, the order must:

(a) state that the court is satisfied of the matters mentioned in paragraphs 104.4(1)(c) and (d); and

(b) specify the name of the person to whom the order relates; and

(c) specify all of the obligations, prohibitions and restrictions mentioned in subsection (3) that are to be imposed on the person by the order; and

(d) state that the order does not begin to be in force until it is served personally on the person; and

(e) specify a day on which the person may attend the court for the court to:

(i) confirm (with or without variation) the interim control order; or

(ii) declare the interim control order to be void; or

(iii) revoke the interim control order; and

(f) specify the period during which the confirmed control order is to be in force, which must not end more than 12 months after the day on which the interim control order is made; and

(g) state that the person’s lawyer may attend a specified place in order to obtain a copy of the interim control order; and

(h) set out a summary of the grounds on which the order is made.
Note 1: An interim control order made in relation to a person must be served on the person at least 48 hours before the day specified as mentioned in paragraph (1)(e) (see section 104.12).

Note 2: A confirmed control order that is made in relation to a 16- to 18-year-old must not end more than 3 months after the day on which the interim control order is made (see section 104.28).

(1A) The day specified for the purposes of paragraph (1)(e) must be as soon as practicable, but at least 72 hours, after the order is made.

(2) Paragraph (1)(f) does not prevent the making of successive control orders in relation to the same person.

(2A) To avoid doubt, paragraph (1)(h) does not require any information to be included in the summary if disclosure of that information is likely to prejudice national security (within the meaning of the National Security Information (Criminal and Civil Proceedings) Act 2004).

Obligations, prohibitions and restrictions

(3) The obligations, prohibitions and restrictions that the court may impose on the person by the order are the following:

(a) a prohibition or restriction on the person being at specified areas or places;

(b) a prohibition or restriction on the person leaving Australia;

(c) a requirement that the person remain at specified premises between specified times each day, or on specified days;

(d) a requirement that the person wear a tracking device;

(e) a prohibition or restriction on the person communicating or associating with specified individuals;

(f) a prohibition or restriction on the person accessing or using specified forms of telecommunication or other technology (including the Internet);

(g) a prohibition or restriction on the person possessing or using specified articles or substances;

(h) a prohibition or restriction on the person carrying out specified activities (including in respect of his or her work or occupation);

(i) a requirement that the person report to specified persons at specified times and places;
Section 104.6

(j) a requirement that the person allow himself or herself to be photographed;
(k) a requirement that the person allow impressions of his or her fingerprints to be taken;
(l) a requirement that the person participate in specified counselling or education.

Note: Restrictions apply to the use of photographs or impressions of fingerprints taken as mentioned in paragraphs (3)(j) and (k) (see section 104.22).

Communicating and associating

(4) Subsection 102.8(4) applies to paragraph (3)(e) and the person’s communication or association in the same way as that subsection applies to section 102.8 and a person’s association.

(5) This section does not affect the person’s right to contact, communicate or associate with the person’s lawyer unless the person’s lawyer is a specified individual as mentioned in paragraph (3)(e). If the person’s lawyer is so specified, the person may contact, communicate or associate with any other lawyer who is not so specified.

Counselling and education

(6) A person is required to participate in specified counselling or education as mentioned in paragraph (3)(l) only if the person agrees, at the time of the counselling or education, to participate in the counselling or education.

Subdivision C—Making an urgent interim control order

104.6 Requesting an urgent interim control order by electronic means

(1) A senior AFP member may request, by telephone, fax, email or other electronic means, an issuing court to make an interim control order in relation to a person if:
   (a) the member considers it necessary to use such means because of urgent circumstances; and
   (b) the member either considers or suspects the matters mentioned in subsection 104.2(2) on reasonable grounds.
(2) The Attorney-General’s consent under section 104.2 is not required before the request is made.

Note: However, if the Attorney-General’s consent is not obtained before the member makes the request, the Attorney-General’s consent must be obtained within 4 hours of the member making the request (see section 104.10).

(3) The issuing court may require communication by voice to the extent that is practicable in the circumstances.

(4) The request must include the following:
   (a) all that is required under subsection 104.2(3) in respect of an ordinary request for an interim control order (including, if the Attorney-General’s consent has been obtained before making the request, the changes (if any) required by the Attorney-General);
   (b) an explanation as to why the making of the interim control order is urgent;
   (c) if the Attorney-General’s consent has been obtained before making the request—a copy of the Attorney-General’s consent.

Note: The member might commit an offence if the request is false or misleading (see sections 137.1 and 137.2).

(5) The information and the explanation included in the request must be sworn or affirmed by the member, but do not have to be sworn or affirmed before the request is made.

Note: Subsection 104.7(5) requires the information and the explanation to be sworn or affirmed within 24 hours.

104.7 Making an urgent interim control order by electronic means

(1) Before making an order in response to a request under section 104.6, the issuing court must:
   (a) consider the information and the explanation included in the request; and
   (b) receive and consider such further information (if any) as the court requires.

(2) If the issuing court is satisfied that an order should be made urgently, the court may complete the same form of order that would be made under sections 104.4 and 104.5.
Section 104.8

Procedure after urgent interim control order is made

(3) If the issuing court makes the order, the court must inform the senior AFP member, by telephone, fax, email or other electronic means, of:
   (a) the terms of the order; and
   (b) the day on which, and the time at which, it was completed.

(4) The member must then complete a form of order in terms substantially corresponding to those given by the issuing court, stating on the form:
   (a) the name of the court; and
   (b) the day on which, and the time at which, the order was completed.

(5) Within 24 hours of being informed under subsection (3), the member must give or transmit the following to the issuing court:
   (a) the form of order completed by the member;
   (b) if the information and the explanation included in the request were not already sworn or affirmed—that information and explanation duly sworn or affirmed;
   (c) if the Attorney-General’s consent was not obtained before making the request—a copy of the Attorney-General’s consent.

(6) The issuing court must attach to the documents provided under subsection (5) the form of order the court has completed.

104.8 Requesting an urgent interim control order in person

(1) A senior AFP member may request, in person, an issuing court to make an interim control order in relation to a person without first obtaining the Attorney-General’s consent under section 104.2 if:
   (a) the member considers it necessary to request the order without the consent because of urgent circumstances; and
   (b) the member either considers or suspects the matters mentioned in subsection 104.2(2) on reasonable grounds.

Note: The Attorney-General’s consent must be obtained within 4 hours of making the request (see section 104.10).

(2) The request must include the following:
(a) all that is required under subsection 104.2(3) in respect of an ordinary request for an interim control order (including information that is sworn or affirmed by the member);
(b) an explanation that is sworn or affirmed as to why the making of the interim control order without first obtaining the Attorney-General’s consent is urgent.

Note: The member might commit an offence if the request is false or misleading (see sections 137.1 and 137.2).

### 104.9 Making an urgent interim control order in person

(1) Before making an order in response to a request under section 104.8, the issuing court must:
   (a) consider the information and the explanation included in the request; and
   (b) receive and consider such further information (if any) as the court requires.

(2) If the issuing court is satisfied that an order should be made urgently, the court may make the same order that would be made under sections 104.4 and 104.5.

(3) Within 24 hours of the order being made under subsection (2), the member must:
   (a) give or transmit a copy of the order to the issuing court; and
   (b) either:
      (i) give or transmit a copy of the Attorney-General’s consent to request the order to the court; or
      (ii) notify the court in writing that the Attorney-General’s consent was not obtained.

Note: Section 104.10 deals with the Attorney-General’s consent.

### 104.10 Obtaining the Attorney-General’s consent within 4 hours

(1) If the Attorney-General’s consent to request an interim control order was not first sought before making a request under section 104.6 or 104.8, the senior AFP member who made the request must, in accordance with subsection 104.2(3), seek that consent within 4 hours of making the request.

(2) In any case, if the Attorney-General:
Section 104.11

(a) refuses his or her consent to request the order; or
(b) has not given his or her consent to request the order;
within 4 hours of the request being made, the order immediately
ceases to be in force.

Note: However, the senior AFP member can vary the request and seek the
Attorney-General’s consent to request a new interim control order in
relation to the person (see subsection 104.2(5)).

(3) If the order ceases to be in force under subsection (2), the senior
AFP member must, as soon as practicable:
(a) notify the court that the order has ceased to be in force; and
(b) if the order has been served on the person in relation to
whom it was made:
   (i) annotate the order to indicate that it has ceased to be in
force; and
   (ii) cause the annotated order to be served personally on the
person.

104.11 Court to assume that exercise of power not authorised by
urgent interim control order

If:
(a) it is material, in any proceedings, for a court to be satisfied
that an interim control order was duly made under
section 104.7; and
(b) the form of order completed by the relevant issuing court
is not produced in evidence;
the first-mentioned court is to assume, unless the contrary is
proved, that the order was not duly made.

Subdivision D—Confirming an interim control order

104.12 Service, explanation and notification of an interim control
order

Service and explanation of an interim control order

(1) As soon as practicable after an interim control order is made in
relation to a person, and at least 48 hours before the day specified
as mentioned in paragraph 104.5(1)(e), an AFP member:
(a) must serve the order personally on the person; and
Section 104.12A

(b) must inform the person of the following:
   (i) the effect of the order;
   (ii) the period for which the order (if confirmed) is in force;
   (iii) the effect of sections 104.12A, 104.13, 104.14, 104.18
        and 104.27 (and section 104.22 if appropriate); and

(c) must ensure that the person understands the information
    provided under paragraph (b) (taking into account the
    person’s age, language skills, mental capacity and any other
    relevant factor).

(3) Paragraphs (1)(b) and (c) do not apply if the actions of the person
    in relation to whom the interim control order has been made make
    it impracticable for the AFP member to comply with those
    paragraphs.

(4) A failure to comply with paragraph (1)(c) does not make the
    control order ineffective to any extent.

Queensland public interest monitor to be given copy of interim
control order

(5) If:
    (a) the person in relation to whom the interim control order is
        made is a resident of Queensland; or
    (b) the issuing court that made the interim control order did so in
        Queensland;

    an AFP member must give to the Queensland public interest
    monitor a copy of the order.

104.12A Election to confirm control order

(1) At least 48 hours before the day specified in an interim control
    order as mentioned in paragraph 104.5(1)(e), the senior AFP
    member who requested the order must:
    (a) elect whether to confirm the order on the specified day; and
    (b) give a written notification to the issuing court that made the
        order of the member’s election.

(2) If the senior AFP member elects to confirm the order, an AFP
    member must:
Section 104.12A

(a) serve personally on the person in relation to whom the order is made:
   (i) a copy of the notification; and
   (ii) a copy of the documents mentioned in paragraphs 104.2(3)(b) and (c); and
   (iii) any other details required to enable the person to understand and respond to the substance of the facts, matters and circumstances which will form the basis of the confirmation of the order; and
(b) if the person is a resident of Queensland, or the court made the order in Queensland—give the Queensland public interest monitor a copy of the documents mentioned in paragraph (a).

(3) To avoid doubt, subsection (2) does not require any information to be served or given if disclosure of that information is likely:
   (a) to prejudice national security (within the meaning of the National Security Information (Criminal and Civil Proceedings) Act 2004); or
   (b) to be protected by public interest immunity; or
   (c) to put at risk ongoing operations by law enforcement agencies or intelligence agencies; or
   (d) to put at risk the safety of the community, law enforcement officers or intelligence officers.

The fact that information of a kind mentioned in this subsection is not required to be disclosed does not imply that such information is required to be disclosed in other provisions of this Part that relate to the disclosure of information.

(4) If the senior AFP member elects not to confirm the order, and the order has already been served on the person, then:
   (a) the order immediately ceases to be in force; and
   (b) an AFP member must:
      (i) annotate the order to indicate that it has ceased to be in force; and
      (ii) cause the annotated order and a copy of the notification to be served personally on the person; and
      (iii) if the person is a resident of Queensland, or the court made the order in Queensland—give the Queensland public interest monitor a copy of the annotated order and the notification.
104.13 Lawyer may request a copy of an interim control order

(1) A lawyer of the person in relation to whom an interim control order is made may attend the place specified in the order as mentioned in paragraph 104.5(1)(g) in order to obtain a copy of the order.

(2) This section does not:
   (a) require more than one person to give the lawyer a copy of the order; or
   (b) entitle the lawyer to request, be given a copy of, or see, a document other than the order.

104.14 Confirming an interim control order

Who may adduce evidence or make submissions

(1) If an election has been made to confirm an interim control order, then, on the day specified as mentioned in paragraph 104.5(1)(e), the following persons may adduce evidence (including by calling witnesses or producing material), or make submissions, to the issuing court in relation to the confirmation of the order:
   (a) the senior AFP member who requested the interim control order;
   (b) one or more other AFP members;
   (c) the person in relation to whom the interim control order is made;
   (d) one or more representatives of the person;
   (e) if:
      (i) the person is a resident of Queensland; or
      (ii) the court made the interim control order in Queensland; the Queensland public interest monitor (unless the monitor is already a representative of the person).

(2) Subsection (1) does not otherwise limit the power of the court to control proceedings in relation to the confirmation of an interim control order.

(3) Before taking action under this section, the court must consider:
   (a) the original request for the interim control order; and
   (b) any evidence adduced, and any submissions made, under subsection (1) in respect of the order.
Section 104.14

**Failure of person or representative etc. to attend**

(4) The court may confirm the order without variation if:
   (a) none of the following persons attend the court on the specified day:
      (i) the person in relation to whom the order is made;
      (ii) a representative of the person;
      (iii) if the person is a resident of Queensland, or the court made the order in Queensland—the Queensland public interest monitor; and
   (b) the court is satisfied on the balance of probabilities that the order was properly served on the person in relation to whom the order is made.

**Attendance of person or representative etc.**

(5) The court may take the action mentioned in subsection (6) or (7) if any of the following persons attend the court on the specified day:
   (a) the person in relation to whom the order is made;
   (b) a representative of the person;
   (c) if the person is a resident of Queensland, or the court made the order in Queensland—the Queensland public interest monitor.

(6) The court may declare, in writing, the order to be void if the court is satisfied that, at the time of making the order, there were no grounds on which to make the order.

(7) Otherwise, the court may:
   (a) revoke the order if, at the time of confirming the order, the court is not satisfied as mentioned in paragraph 104.4(1)(c); or
   (b) confirm and vary the order by removing one or more obligations, prohibitions or restrictions if, at the time of confirming the order, the court is satisfied as mentioned in paragraph 104.4(1)(c) but is not satisfied as mentioned in paragraph 104.4(1)(d); or
   (c) confirm the order without variation if, at the time of confirming the order, the court is satisfied as mentioned in paragraphs 104.4(1)(c) and (d).
Section 104.15

Note: If the court confirms the interim control order, the court must make a new order under section 104.16.

104.15 When a declaration, or a revocation, variation or confirmation of a control order, is in force

(1) If the court declares the interim control order to be void under section 104.14, the order is taken never to have been in force.

(2) If the court revokes the interim control order under section 104.14, the order ceases to be in force when the court revokes the order.

(3) If the court confirms the interim control order (with or without variation) under section 104.14 then:
   (a) the interim control order ceases to be in force; and
   (b) the confirmed control order begins to be in force;
   when the court makes a corresponding order under section 104.16.

104.16 Terms of a confirmed control order

(1) If the issuing court confirms the interim control order under section 104.14, the court must make a corresponding order that:
   (a) states that the court is satisfied of the matters mentioned in paragraphs 104.4(1)(c) and (d); and
   (b) specifies the name of the person to whom the order relates;
   and
   (c) specifies all of the obligations, prohibitions and restrictions mentioned in subsection 104.5(3) that are to be imposed on the person by the order; and
   (d) specifies the period during which the order is to be in force, which must not end more than 12 months after the day on which the interim control order was made; and
   (e) states that the person’s lawyer may attend a specified place in order to obtain a copy of the confirmed control order.

Note: A confirmed control order that is made in relation to a 16- to 18-year-old must not end more than 3 months after the day on which the interim control order was made (see section 104.28).

(2) Paragraph (1)(d) does not prevent the making of successive control orders in relation to the same person.
Section 104.17

104.17 Service of a declaration, or a revocation, variation or confirmation of a control order

As soon as practicable after an interim control order is declared to be void, revoked or confirmed (with or without variation) under section 104.14, an AFP member must serve the declaration, the revocation or the confirmed control order personally on the person.

Subdivision E—Rights in respect of a control order

104.18 Application by the person for a revocation or variation of a control order

(1) A person in relation to whom a confirmed control order is made may apply to an issuing court for the court to revoke or vary the order under section 104.20.

(2) The person may make the application at any time after the order is served on the person.

(3) The person must give written notice of both the application and the grounds on which the revocation or variation is sought to the following persons:
   (a) the Commissioner of the Australian Federal Police;
   (b) if:
      (i) the person in relation to whom the order is made is a resident of Queensland; or
      (ii) the court will hear the application in Queensland;
           the Queensland public interest monitor.

(4) The following persons may adduce additional evidence (including by calling witnesses or producing material), or make additional submissions, to the court in relation to the application to revoke or vary the order:
   (a) the Commissioner;
   (b) one or more other AFP members;
   (c) the person in relation to whom the order is made;
   (d) one or more representatives of the person;
   (e) if paragraph (3)(b) applies—the Queensland public interest monitor (unless the monitor is a representative of the person).
(5) Subsection (4) does not otherwise limit the power of the court to control proceedings in relation to an application to revoke or vary a confirmed control order.

104.19 Application by the AFP Commissioner for a revocation or variation of a control order

(1) While a confirmed control order is in force, the Commissioner of the Australian Federal Police must cause an application to be made to an issuing court:

(a) to revoke the order, under section 104.20, if the Commissioner is satisfied that the grounds on which the order was confirmed have ceased to exist; and

(b) to vary the order, under that section, by removing one or more obligations, prohibitions or restrictions, if the Commissioner is satisfied that those obligations, prohibitions or restrictions should no longer be imposed on the person.

(2) The Commissioner must cause written notice of both the application and the grounds on which the revocation or variation is sought to be given to the following persons:

(a) the person in relation to whom the order is made;

(b) if:

(i) the person in relation to whom the order is made is a resident of Queensland; or

(ii) the court will hear the application in Queensland;

the Queensland public interest monitor.

(3) The following persons may adduce additional evidence (including by calling witnesses or producing material), or make additional submissions, to the court in relation to the application to revoke or vary the order:

(a) the Commissioner;

(b) one or more other AFP members;

(c) the person in relation to whom the order is made;

(d) one or more representatives of the person;

(e) if paragraph (2)(b) applies—the Queensland public interest monitor (unless the monitor is a representative of the person).
Section 104.20

(4) Subsection (3) does not otherwise limit the power of the court to control proceedings in relation to an application to revoke or vary a confirmed control order.

104.20 Revocation or variation of a control order

(1) If an application is made under section 104.18 or 104.19 in respect of a confirmed control order, the court may:
   (a) revoke the order if, at the time of considering the application, the court is not satisfied as mentioned in paragraph 104.4(1)(c); or
   (b) vary the order by removing one or more obligations, prohibitions or restrictions if, at the time of considering the application, the court is satisfied as mentioned in paragraph 104.4(1)(c) but is not satisfied as mentioned in paragraph 104.4(1)(d); or
   (c) dismiss the application if, at the time of considering the application, the court is satisfied as mentioned in paragraphs 104.4(1)(c) and (d).

(2) A revocation or variation begins to be in force when the court revokes or varies the order.

(3) An AFP member must serve the revocation or variation personally on the person as soon as practicable after a confirmed control order is revoked or varied.

104.21 Lawyer may request a copy of a control order

(1) If a control order is confirmed or varied under section 104.14, 104.20 or 104.24, a lawyer of the person in relation to whom the control order is made may attend the place specified in the order as mentioned in paragraph 104.16(1)(e) or 104.25(d) in order to obtain a copy of the order.

(2) This section does not:
   (a) require more than one person to give the lawyer a copy of the order; or
   (b) entitle the lawyer to request, be given a copy of, or see, a document other than the order.
104.22 Treatment of photographs and impressions of fingerprints

(1) A photograph, or an impression of fingerprints, taken as mentioned in paragraph 104.5(3)(j) or (k) must only be used for the purpose of ensuring compliance with the relevant control order.

(2) If:
   (a) a period of 12 months elapses after the control order ceases to be in force; and
   (b) proceedings in respect of the control order have not been brought, or have been brought and discontinued or completed, within that period;

   the photograph or the impression must be destroyed as soon as practicable after the end of that period.

(3) A person commits an offence if:
   (a) the person engages in conduct; and
   (b) the conduct contravenes subsection (1).

   Penalty: Imprisonment for 2 years.

Subdivision F—Adding obligations, prohibitions or restrictions to a control order

104.23 Application by the AFP Commissioner for addition of obligations, prohibitions or restrictions to a control order

(1) The Commissioner of the Australian Federal Police may cause an application to be made to an issuing court to vary, under section 104.24, a confirmed control order, by adding one or more obligations, prohibitions or restrictions mentioned in subsection 104.5(3) to the order, if the Commissioner considers on reasonable grounds that the varied control order in the terms to be sought would substantially assist in preventing a terrorist act.

(2) The Commissioner must cause the court to be given:
   (a) a copy of the additional obligations, prohibitions and restrictions to be imposed on the person by the order; and
   (b) the following:
Section 104.23

(i) an explanation as to why each of those obligations, prohibitions and restrictions should be imposed on the person; and

(ii) if the Commissioner is aware of any facts relating to why any of those obligations, prohibitions or restrictions should not be imposed on the person—a statement of those facts; and

(c) the outcomes and particulars of all previous applications under this section for variations of the order; and

(d) information (if any) that the Commissioner has about the person’s age.

Note 1: A control order cannot be made in relation to a person who is under 16 years of age (see section 104.28).

Note 2: An offence might be committed if the application is false or misleading (see sections 137.1 and 137.2).

(3) The Commissioner must cause:

(a) written notice of the application and the grounds on which the variation is sought; and

(b) a copy of the documents mentioned in paragraph (2)(b); and

(c) any other details required to enable the person in relation to whom the order is made to understand and respond to the substance of the facts, matters and circumstances which will form the basis of the variation of the order;

to be given to the following persons:

(d) the person in relation to whom the order is made;

(e) if the person is a resident of Queensland, or the court will hear the application in Queensland—the Queensland public interest monitor.

(3A) To avoid doubt, subsection (3) does not require any information to be given if disclosure of that information is likely:

(a) to prejudice national security (within the meaning of the National Security Information (Criminal and Civil Proceedings) Act 2004); or

(b) to be protected by public interest immunity; or

(c) to put at risk ongoing operations by law enforcement agencies or intelligence agencies; or

(d) to put at risk the safety of the community, law enforcement officers or intelligence officers.
Section 104.24

The fact that information of a kind mentioned in this subsection is not required to be disclosed does not imply that such information is required to be disclosed in other provisions of this Part that relate to the disclosure of information.

(4) The following persons may adduce additional evidence (including by calling witnesses or producing material), or make additional submissions, to the court in relation to the application to vary the order:
   (a) the Commissioner;
   (b) one or more other AFP members;
   (c) the person in relation to whom the order is made;
   (d) one or more representatives of the person;
   (e) if paragraph (3)(b) applies—the Queensland public interest monitor (unless the monitor is a representative of the person).

(5) Subsection (4) does not otherwise limit the power of the court to control proceedings in relation to an application to vary a confirmed control order.

104.24 Varying a control order

(1) If an application is made under section 104.23, the issuing court may vary the control order, but only if:
   (a) an application has been made in accordance with section 104.23; and
   (b) the court is satisfied on the balance of probabilities that each of the additional obligations, prohibitions and restrictions to be imposed on the person by the order is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the public from a terrorist act.

(2) In determining whether each of the additional obligations, prohibitions and restrictions to be imposed on the person by the order is reasonably necessary, and reasonably appropriate and adapted, the court must take into account the impact of the obligation, prohibition or restriction on the person’s circumstances (including the person’s financial and personal circumstances).

(3) The court need not include in the order an obligation, prohibition or restriction that was sought if the court is not satisfied as
Section 104.25

mentioned in paragraph (1)(b) in respect of that obligation, prohibition or restriction.

104.25 Terms of a varied control order

If the issuing court varies the control order under section 104.24, the following must be included in the order:

(a) a statement that the court is satisfied of the matter mentioned in paragraph 104.24(1)(b); and

(b) the additional obligations, prohibitions and restrictions that are to be imposed on the person by the varied order; and

(c) a statement that the variation of the order does not begin to be in force until the varied order is served personally on the person; and

(d) a statement that the person’s lawyer may attend a specified place in order to obtain a copy of the varied order.

104.26 Service and explanation of a varied control order

(1) As soon as practicable after a control order is varied under section 104.24, an AFP member:

(a) must serve the varied order personally on the person; and

(b) must inform the person that the order has been varied to impose additional obligations, prohibitions and restrictions; and

(c) must inform the person of the following:

(i) the effect of the additional obligations, prohibitions and restrictions;

(ii) the effect of sections 104.18, 104.21 and 104.27 (and section 104.22 if appropriate); and

(d) must ensure that the person understands the information provided under paragraph (c) (taking into account the person’s age, language skills, mental capacity and any other relevant factor).

(3) Paragraphs (1)(c) and (d) do not apply if the actions of the person in relation to whom the interim control order has been made make it impracticable for the AFP member to comply with those paragraphs.
(4) A failure to comply with paragraph (1)(d) does not make the control order ineffective to any extent.

Subdivision G—Contravening a control order

104.27 Offence for contravening a control order

A person commits an offence if:

(a) a control order is in force in relation to the person; and
(b) the person contravenes the order.

Penalty: Imprisonment for 5 years.

Subdivision H—Miscellaneous

104.28 Special rules for young people

Rule for persons under 16

(1) A control order cannot be requested, made or confirmed in relation to a person who is under 16 years of age.

Rule for persons who are at least 16 but under 18

(2) If an issuing court is satisfied that a person in relation to whom an interim control order is being made or confirmed is at least 16 but under 18, the period during which the confirmed control order is to be in force must not end more than 3 months after the day on which the interim control order is made by the court.

(3) Subsection (2) does not prevent the making of successive control orders in relation to the same person.

104.28A Interlocutory proceedings

(1) Proceedings in relation to a request under section 104.3, 104.6 or 104.8 to make an interim control order are taken to be interlocutory proceedings for all purposes (including for the purpose of section 75 of the Evidence Act 1995).

(2) The following proceedings are taken not to be interlocutory proceedings for any purpose (including for the purpose of section 75 of the Evidence Act 1995):
Section 104.29

(a) proceedings in relation to the confirmation under section 104.14 of an interim control order;
(b) proceedings in relation to an application under section 104.18, 104.19 or 104.23 to revoke or vary a confirmed control order.

104.29 Reporting requirements

(1) The Attorney-General must, as soon as practicable after each 30 June, cause to be prepared a report about the operation of this Division during the year ended on that 30 June.

(2) Without limiting subsection (1), a report relating to a year must include the following matters:
   (a) the number of interim control orders made under:
      (i) section 104.4; and
      (ii) section 104.7; and
      (iii) section 104.9;
   (aa) the number of interim control orders in respect of which an election was made under section 104.12A not to confirm the order;
   (b) the number of control orders confirmed under section 104.14;
   (c) the number of control orders declared to be void under section 104.14;
   (d) the number of control orders revoked under sections 104.14 and 104.20;
   (e) the number of control orders varied under sections 104.14, 104.20 and 104.24;
   (f) particulars of:
      (i) any complaints made or referred to the Commonwealth Ombudsman that related to control orders; and
      (ii) any information given under section 40SA of the Australian Federal Police Act 1979 that related to control orders and raised an AFP conduct or practices issue (within the meaning of that Act).

(3) The Attorney-General must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the report is completed.
104.30 Requirement to notify Attorney-General of declarations, revocations or variations

The Commissioner must cause:
   (a) the Attorney-General to be notified in writing if:
       (i) a control order is declared to be void under section 104.14; or
       (ii) a control order is revoked under section 104.14 or 104.20; or
       (iii) a control order is varied under section 104.14, 104.20 or 104.24; and
   (b) the Attorney-General to be given a copy of the varied order (if appropriate).

104.31 Queensland public interest monitor functions and powers not affected

This Division does not affect a function or power that the Queensland public interest monitor, or a Queensland deputy public interest monitor, has under a law of Queensland.

104.32 Sunset provision

(1) A control order that is in force at the end of 10 years after the day on which this Division commences ceases to be in force at that time.

(2) A control order cannot be requested, made or confirmed after the end of 10 years after the day on which this Division commences.
Division 105—Preventative detention orders

Subdivision A—Preliminary

105.1 Object

The object of this Division is to allow a person to be taken into custody and detained for a short period of time in order to:

(a) prevent an imminent terrorist act occurring; or
(b) preserve evidence of, or relating to, a recent terrorist act.

Note: Section 105.42 provides that, while a person is being detained under a preventative detention order, the person may only be questioned for very limited purposes.

105.2 Issuing authorities for continued preventative detention orders

(1) The Minister may, by writing, appoint as an issuing authority for continued preventative detention orders:

(a) a person who is a judge of a State or Territory Supreme Court; or
(b) a person who is a Judge; or
(c) a person who is a Federal Magistrate; or
(d) a person who:

(i) has served as a judge in one or more superior courts for a period of 5 years; and
(ii) no longer holds a commission as a judge of a superior court; or
(e) a person who:

(i) holds an appointment to the Administrative Appeals Tribunal as President or Deputy President; and
(ii) is enrolled as a legal practitioner of a federal court or of the Supreme Court of a State or Territory; and
(iii) has been enrolled for at least 5 years.

(2) The Minister must not appoint a person unless:

(a) the person has, by writing, consented to being appointed; and
(b) the consent is in force.
105.3 Police officer detaining person under a preventative detention order

If:

(a) a number of police officers are detaining, or involved in the detention of, a person under a preventative detention order at a particular time; and

(b) an obligation is expressed in this Division to be imposed on the police officer detaining the person;

the obligation is imposed at that time on:

(c) if those police officers include only one AFP member—that AFP member; or

(d) if those police officers include 2 or more AFP members—the most senior of those AFP members; or

(e) if those police officers do not include an AFP member—the most senior of those police officers.

Note: See also paragraph 105.27(2)(c).

Subdivision B—Preventative detention orders

105.4 Basis for applying for, and making, preventative detention orders

(1) An AFP member may apply for a preventative detention order in relation to a person only if the AFP member meets the requirements of subsection (4) or (6).

(2) An issuing authority may make a preventative detention order in relation to a person only if the issuing authority meets the requirements of subsection (4) or (6).

Note: For the definition of issuing authority, see subsection 100.1(1) and section 105.2.

(3) The person in relation to whom the preventative detention order is applied for, or made, is the subject for the purposes of this section.

(4) A person meets the requirements of this subsection if the person is satisfied that:

(a) there are reasonable grounds to suspect that the subject:

(i) will engage in a terrorist act; or
Section 105.5

(ii) possesses a thing that is connected with the preparation for, or the engagement of a person in, a terrorist act; or
(iii) has done an act in preparation for, or planning, a terrorist act; and
(b) making the order would substantially assist in preventing a terrorist act occurring; and
(c) detaining the subject for the period for which the person is to be detained under the order is reasonably necessary for the purpose referred to in paragraph (b).

(5) A terrorist act referred to in subsection (4):
(a) must be one that is imminent; and
(b) must be one that is expected to occur, in any event, at some time in the next 14 days.

(6) A person meets the requirements of this subsection if the person is satisfied that:
(a) a terrorist act has occurred within the last 28 days; and
(b) it is necessary to detain the subject to preserve evidence of, or relating to, the terrorist act; and
(c) detaining the subject for the period for which the person is to be detained under the order is reasonably necessary for the purpose referred to in paragraph (b).

(7) An issuing authority may refuse to make a preventative detention order unless the AFP member applying for the order gives the issuing authority any further information that the issuing authority requests concerning the grounds on which the order is sought.

105.5 No preventative detention order in relation to person under 16 years of age

(1) A preventative detention order cannot be applied for, or made, in relation to a person who is under 16 years of age.

Note: See also section 105.39 and subsections 105.43(4) to (9) and (11) for the special rules for people who are under 18 years of age.

(2) If:
(a) a person is being detained under a preventative detention order or a purported preventative detention order; and
(b) the police officer who is detaining the person is satisfied on reasonable grounds that the person is under 16 years of age; the police officer must:

(c) if the police officer is an AFP member—release the person, as soon as practicable, from detention under the order or purported order; or

(d) if the police officer is not an AFP member—inform a senior AFP member, as soon as practicable, of the police officer’s reasons for being satisfied that the person is under 16 years of age.

(3) If:

(a) a senior AFP member is informed by a police officer under paragraph (2)(d); and

(b) the senior AFP member is satisfied on reasonable grounds that the person being detained is under 16 years of age; the senior AFP member must arrange to have the person released, as soon as practicable, from detention under the order or purported order.

105.5A Special assistance for person with inadequate knowledge of English language or disability

If the police officer who is detaining a person under a preventative detention order has reasonable grounds to believe that the person is unable, because of inadequate knowledge of the English language or a disability, to communicate with reasonable fluency in that language:

(a) the police officer has an obligation under subsection 105.31(3) to arrange for the assistance of an interpreter in informing the person about:

(i) the effect of the order or any extension, or further extension, of the order; and

(ii) the person’s rights in relation to the order; and

(b) the police officer has an obligation under subsection 105.37(3A) to give the person reasonable assistance to:

(i) choose a lawyer to act for the person in relation to the order; and

(ii) contact the lawyer.
105.6 Restrictions on multiple preventative detention orders

Preventative detention orders under this Division

(1) If:

(a) an initial preventative detention order is made in relation to a person on the basis of assisting in preventing a terrorist act occurring within a particular period; and

(b) the person is taken into custody under the order;

another initial preventative detention order cannot be applied for, or made, in relation to the person on the basis of assisting in preventing the same terrorist act occurring within that period.

Note: It will be possible to apply for, and make, another initial preventative detention order in relation to the person on the basis of preserving evidence of, or relating to, the terrorist act if it occurs.

(2) If:

(a) an initial preventative detention order is made in relation to a person on the basis of assisting in preventing a terrorist act occurring within a particular period; and

(b) the person is taken into custody under the order;

another initial preventative detention order cannot be applied for, or made, in relation to the person on the basis of assisting in preventing a different terrorist act occurring within that period unless the application, or the order, is based on information that became available to be put before an issuing authority only after the initial preventative detention order referred to in paragraph (a) was made.

(3) If:

(a) an initial preventative detention order is made in relation to a person on the basis of preserving evidence of, or relating to, a terrorist act; and

(b) the person is taken into custody under the order;

another initial preventative detention order cannot be applied for, or made, in relation to the person on the basis of preserving evidence of, or relating to, the same terrorist act.

Detention orders under corresponding State preventative detention laws

(4) If:
(a) an order for a person’s detention is made under a corresponding State preventative detention law on the basis of assisting in preventing a terrorist act occurring within a particular period; and

(b) the person is taken into custody under that order;

an initial preventative detention order cannot be applied for, or made, under this Division in relation to the person on the basis of assisting in preventing the same terrorist act occurring within that period.

(5) If:

(a) an order for a person’s detention is made under a corresponding State preventative detention law on the basis of assisting in preventing a terrorist act occurring within a particular period; and

(b) the person is taken into custody under that order;

an initial preventative detention order cannot be applied for, or made, under this Division in relation to the person on the basis of assisting in preventing a different terrorist act occurring within that period unless the application, or the order, is based on information that became available to be put before an issuing authority only after the order referred to in paragraph (a) was made.

(6) If:

(a) an order for a person’s detention is made under a corresponding State preventative detention law on the basis of preserving evidence of, or relating to, a terrorist act; and

(b) the person is taken into custody under that order;

an initial preventative detention order cannot be applied for, or made, under this Division in relation to the person on the basis of preserving evidence of, or relating to, the same terrorist act.

105.7 Application for initial preventative detention order

(1) An AFP member may apply to an issuing authority for an initial preventative detention order in relation to a person.

Note 1: Senior AFP members are issuing authorities for initial preventative detention orders (see the definition of issuing authority in subsection 100.1(1)).

Note 2: For the definition of senior AFP member, see subsection 100.1(1).
Section 105.7

(2) The application must:

(a) be made in writing; and

(b) set out the facts and other grounds on which the AFP member considers that the order should be made; and

(c) specify the period for which the person is to be detained under the order and set out the facts and other grounds on which the AFP member considers that the person should be detained for that period; and

(d) set out the information (if any) that the applicant has about the person’s age; and

(e) set out the following:

(i) the outcomes and particulars of all previous applications for preventative detention orders in relation to the person;

(ii) the outcomes and particulars of all previous requests for interim control orders (including the outcomes of the hearings to confirm the orders) in relation to the person;

(iii) the outcomes and particulars of all previous applications for variations of control orders made in relation to the person;

(iv) the outcomes of all previous applications for revocations of control orders made in relation to the person; and

(f) set out the information (if any) that the applicant has about any periods for which the person has been detained under an order made under a corresponding State preventative detention law; and

(g) set out a summary of the grounds on which the AFP member considers that the order should be made.

Note: Sections 137.1 and 137.2 create offences for providing false or misleading information or documents.

(2A) To avoid doubt, paragraph (2)(g) does not require any information to be included in the summary if disclosure of that information is likely to prejudice national security (within the meaning of the National Security Information (Criminal and Civil Proceedings) Act 2004).
(3) If:

(a) an initial preventative detention order is made in relation to a person on the basis of assisting in preventing a terrorist act occurring within a particular period; and

(b) the person is taken into custody under the order; and

(c) an application is made for another initial preventative detention order in relation to the person on the basis of assisting in preventing a different terrorist act occurring within that period;

the application must also identify the information on which the application is based that became available to be put before an issuing authority only after the initial preventative detention order referred to in paragraph (a) was made.

Note: See subsection 105.6(2).

(4) If:

(a) an order for a person’s detention is made under a corresponding State preventative detention law on the basis of assisting in preventing a terrorist act occurring within a particular period; and

(b) the person is taken into custody under that order; and

(c) an application is made for an initial preventative detention order in relation to the person on the basis of assisting in preventing a different terrorist act occurring within that period;

the application must also identify the information on which the application is based that became available to be put before an issuing authority only after the order referred to in paragraph (a) was made.

Note: See subsection 105.6(5).

105.8 Senior AFP member may make initial preventative detention order

(1) On application by an AFP member, an issuing authority may make an initial preventative detention order under this section in relation to a person.

Note 1: Senior AFP members are issuing authorities for initial preventative detention orders (see the definition of issuing authority in subsection 100.1(1)).
Section 105.8

Note 2: For the definition of senior AFP member, see subsection 100.1(1).

(2) Subsection (1) has effect subject to sections 105.4, 105.5 and 105.6.

(3) An initial preventative detention order under this section is an order that the person specified in the order may be:
   (a) taken into custody; and
   (b) detained during the period that:
       (i) starts when the person is first taken into custody under the order; and
       (ii) ends a specified period of time after the person is first taken into custody under the order.

(4) The order must be in writing.

(5) The period of time specified in the order under subparagraph (3)(b)(ii) must not exceed 24 hours.

(6) An initial preventative detention order under this section must set out:
   (a) the name of the person in relation to whom it is made; and
   (b) the period during which the person may be detained under the order; and
   (c) the date on which, and the time at which, the order is made; and
   (d) the date and time after which the person may not be taken into custody under the order; and
   (e) a summary of the grounds on which the order is made.

Note: Paragraph (d)—see subsection 105.9(2).

(6A) To avoid doubt, paragraph (6)(e) does not require any information to be included in the summary if disclosure of that information is likely to prejudice national security (within the meaning of the National Security Information (Criminal and Civil Proceedings) Act 2004).

(7) If the person in relation to whom the order is made is:
   (a) under 18 years of age; or
   (b) incapable of managing his or her affairs;
the order may provide that the period each day for which the person is entitled to have contact with another person under
subsection 105.39(2) is the period of more than 2 hours that is specified in the order.

(8) The senior AFP member nominated under subsection 105.19(5) in relation to the initial preventative detention order must:
(a) notify the Commonwealth Ombudsman in writing of the making of the order; and
(b) give the Commonwealth Ombudsman a copy of the order; and
(c) if the person in relation to whom the order is made is taken into custody under the order—notify the Commonwealth Ombudsman in writing that the person has been taken into custody under the order.

105.9 Duration of initial preventative detention order

(1) An initial preventative detention order in relation to a person starts to have effect when it is made.
Note: The order comes into force when it is made and authorises the person to be taken into custody (see paragraph 105.8(3)(a)). The period for which the person may then be detained under the order only starts to run when the person is first taken into custody under the order (see subparagraph 105.8(3)(b)(i)).

(2) An initial preventative detention order in relation to a person ceases to have effect at the end of the period of 48 hours after the order is made if the person has not been taken into custody under the order within that period.

(3) If the person is taken into custody under the order within 48 hours after the order is made, the order ceases to have effect when whichever of the following first occurs:
(a) the end of:
(i) the period specified in the order as the period during which the person may be detained under the order; or
(ii) if that period is extended or further extended under section 105.10—that period as extended or further extended;
(b) the revocation of the order under section 105.17.
Note 1: The order does not cease to have effect merely because the person is released from detention under the order.
Section 105.10

Note 2: An AFP member may apply under section 105.11 for a continued preventative detention order in relation to the person to allow the person to continue to be detained for up to 48 hours after the person is first taken into custody under the initial preventative detention order.

105.10 Extension of initial preventative detention order

(1) If:

(a) an initial preventative detention order is made in relation to a person; and

(b) the order is in force in relation to the person;

an AFP member may apply to an issuing authority for initial preventative detention orders for an extension, or a further extension, of the period for which the order is to be in force in relation to the person.

(2) The application must:

(a) be made in writing; and

(b) set out the facts and other grounds on which the AFP member considers that the extension, or further extension, is reasonably necessary for the purpose for which the order was made; and

(c) set out the outcomes and particulars of all previous applications for extensions, or further extensions, of the order.

Note: Paragraph (b)—see subsections 105.4(4) and (6) for the purpose for which a preventative detention order may be made.

(3) The issuing authority may extend, or further extend, the period for which the order is to be in force in relation to the person if the issuing authority is satisfied that detaining the person under the order for the period as extended, or further extended, is reasonably necessary for the purpose for which the order was made.

(4) The extension, or further extension, must be made in writing.

(5) The period as extended, or further extended, must end no later than 24 hours after the person is first taken into custody under the order.

180 Criminal Code Act 1995
105.10A Notice of application for continued preventative detention order

An AFP member who proposes to apply for a continued preventative detention order in relation to a person under section 105.11 must, before applying for the order:

(a) notify the person of the proposed application; and

(b) inform the person that, when the proposed application is made, any material that the person gives the AFP member in relation to the proposed application will be put before the issuing authority for continued preventative detention orders to whom the application is made.

Note: The AFP member who applies for the order must put the material before the issuing authority—see subsection 105.11(5).

105.11 Application for continued preventative detention order

(1) If an initial preventative detention order is in force in relation to a person in relation to a terrorist act, an AFP member may apply to an issuing authority in relation to continued preventative detention orders for a continued preventative detention order in relation to the person in relation to the terrorist act.

Note: Certain judges, Federal Magistrates, AAT members and retired judges are issuing authorities for continued preventative detention orders (see the definition of issuing authority in subsection 100.1(1) and section 105.2).

(2) The application must:

(a) be made in writing; and

(b) set out the facts and other grounds on which the AFP member considers that the order should be made; and

(c) specify the period for which the person is to continue to be detained under the order and set out the facts and other grounds on which the AFP member considers that the person should continue to be detained for that period; and

(d) set out the information (if any) that the applicant has about the person’s age; and

(e) set out the following:

   (i) the outcomes and particulars of all previous applications for preventative detention orders in relation to the person;
(ii) the outcomes and particulars of all previous requests for interim control orders (including the outcomes of the hearings to confirm the orders) in relation to the person;

(iii) the outcomes and particulars of all previous applications for variations of control orders made in relation to the person;

(iv) the outcomes of all previous applications for revocations of control orders made in relation to the person; and

(f) set out the information (if any) that the applicant has about any periods for which the person has been detained under an order made under a corresponding State preventative detention law; and

(g) set out a summary of the grounds on which the AFP member considers that the order should be made.

Note: Sections 137.1 and 137.2 create offences for providing false or misleading information or documents.

(3) Subparagraph (2)(e)(i) does not require the application to set out details in relation to the application that was made for the initial preventative detention order in relation to which the continued preventative detention order is sought.

(3A) To avoid doubt, paragraph (2)(g) does not require any information to be included in the summary if disclosure of that information is likely to prejudice national security (within the meaning of the National Security Information (Criminal and Civil Proceedings) Act 2004).

(4) The information in the application must be sworn or affirmed by the AFP member.

(5) The AFP member applying for the continued preventative detention order in relation to the person must put before the issuing authority to whom the application is made any material in relation to the application that the person has given the AFP member.
105.12 Judge, Federal Magistrate, AAT member or retired judge may make continued preventative detention order

(1) On application by an AFP member, an issuing authority may make a continued preventative detention order under this section in relation to a person if:

(a) an initial preventative detention order is in force in relation to the person; and

(b) the person has been taken into custody under the order (whether or not the person is being detained under the order).

Note: Certain judges, Federal Magistrates, AAT members and retired judges are issuing authorities for continued preventative detention orders (see the definition of issuing authority in subsection 100.1(1) and section 105.2).

(2) Subsection (1) has effect subject to sections 105.4, 105.5 and 105.6. Section 105.4 requires the issuing authority to consider afresh the merits of making the order and to be satisfied, after taking into account relevant information (including any information that has become available since the initial preventative detention order was made), of the matters referred to in subsection 105.4(4) or (6) before making the order.

(3) A continued preventative detention order under this section is an order that the person specified in the order may be detained during a further period that:

(a) starts at the end of the period during which the person may be detained under the initial preventative detention order; and

(b) ends a specified period of time after the person is first taken into custody under the initial preventative detention order.

(4) The order must be in writing.

(5) The period of time specified under paragraph (3)(b) must not exceed 48 hours.

(6) A continued preventative detention order under this section must set out:

(a) the name of the person in relation to whom it is made; and

(b) the further period during which the person may be detained under the order; and
Section 105.13

(c) the date on which, and the time at which, the order is made; and
(d) a summary of the grounds on which the order is made.

(6A) To avoid doubt, paragraph (6)(d) does not require any information to be included in the summary if disclosure of that information is likely to prejudice national security (within the meaning of the National Security Information (Criminal and Civil Proceedings) Act 2004).

(7) If the person in relation to whom the order is made is:
   (a) under 18 years of age; or
   (b) incapable of managing his or her affairs;
the order may provide that the period each day for which the person is entitled to have contact with another person under subsection 105.39(2) is the period of more than 2 hours that is specified in the order.

(8) The senior AFP member nominated under subsection 105.19(5) in relation to the continued preventative detention order must:
   (a) notify the Commonwealth Ombudsman in writing of the making of the order; and
   (b) give the Commonwealth Ombudsman a copy of the order.

105.13 Duration of continued preventative detention order

(1) A continued preventative detention order in relation to a person starts to have effect when it is made.

   Note: The order comes into force when it is made. The period for which the person may be detained under the order, however, only starts to run when the period during which the person may be detained under the initial preventative detention order ends (see paragraph 105.12(3)(a)).

(2) A continued preventative detention order in relation to a person ceases to have effect when whichever of the following first occurs:
   (a) the end of:
      (i) the period specified in the order as the further period during which the person may be detained; or
      (ii) if that period is extended or further extended under section 105.14—that period as extended or further extended;
   (b) the revocation of the order under section 105.17.

Section 105.14

105.14 Extension of continued preventative detention order

(1) If:
   (a) an initial preventative detention order is made in relation to a person; and
   (b) a continued preventative detention order is made in relation to the person in relation to that initial preventative detention order; and
   (c) the continued preventative detention order is in force in relation to the person;

   an AFP member may apply to an issuing authority for continued preventative detention orders for an extension, or a further extension, of the period for which the continued preventative detention order is to be in force in relation to the person.

(2) The application must:
   (a) be made in writing; and
   (b) set out the facts and other grounds on which the AFP member considers that the extension, or further extension, is reasonably necessary for the purpose for which the order was made; and
   (c) set out the outcomes and particulars of all previous applications for extensions, or further extensions, of the continued preventative detention order.

Note: Paragraph (b)—see subsections 105.4(4) and (6) for the purpose for which a preventative detention order may be made.

(3) The information in the application must be sworn or affirmed by the AFP member.

(4) The issuing authority may extend, or further extend, the period for which the continued preventative detention order is to be in force in relation to the person if the issuing authority is satisfied that detaining the person under the order for the period as extended, or further extended, is reasonably necessary for the purpose for which the order was made.

(5) The extension, or further extension, must be made in writing.
Section 105.14A

(6) The period as extended, or further extended, must end no later than 48 hours after the person is first taken into custody under the initial preventative detention order.

105.14A Basis for applying for, and making, prohibited contact order

(1) An AFP member may apply for a prohibited contact order in relation to a person only if the AFP member meets the requirements of subsection (4).

(2) An issuing authority for initial preventative detention orders, or continued preventative detention orders, may make a prohibited contact order in relation to a person’s detention under a preventative detention order only if the issuing authority meets the requirements of subsection (4).

(3) The person in relation to whose detention the prohibited contact order is applied for, or made, is the subject for the purposes of this section.

(4) A person meets the requirements of this subsection if the person is satisfied that making the prohibited contact order is reasonably necessary:

(a) to avoid a risk to action being taken to prevent a terrorist act occurring; or

(b) to prevent serious harm to a person; or

(c) to preserve evidence of, or relating to, a terrorist act; or

(d) to prevent interference with the gathering of information about:

(i) a terrorist act; or

(ii) the preparation for, or the planning of, a terrorist act; or

(e) to avoid a risk to:

(i) the arrest of a person who is suspected of having committed an offence against this Part; or

(ii) the taking into custody of a person in relation to whom a preventative detention order is in force, or in relation to whom a preventative detention order is likely to be made; or

(iii) the service on a person of a control order.
Section 105.15

(5) An issuing authority may refuse to make a prohibited contact order unless the AFP member applying for the order gives the issuing authority any further information that the issuing authority requests concerning the grounds on which the order is sought.

105.15 Prohibited contact order (person in relation to whom preventative detention order is being sought)

(1) An AFP member who applies to an issuing authority for a preventative detention order in relation to a person (the subject) may also apply for a prohibited contact order under this section in relation to the subject’s detention under the preventative detention order.

(2) The application must set out:
   (a) the terms of the order sought; and
   (b) the facts and other grounds on which the AFP member considers that the order should be made.

(3) If a continued preventative detention order is being applied for, the information in the application for the prohibited contact order must be sworn or affirmed by the AFP member.

(4) If the issuing authority makes the preventative detention order, the issuing authority may make a prohibited contact order under this section that the subject is not, while being detained under the preventative detention order, to contact the person specified in the prohibited contact order.

Note: Section 105.14A sets out the basis on which the order may be made.

(5) The prohibited contact order must be in writing.

(6) The senior AFP member nominated under subsection 105.19(5) in relation to the preventative detention order must:
   (a) notify the Commonwealth Ombudsman in writing of the making of the prohibited contact order; and
   (b) give the Commonwealth Ombudsman a copy of the prohibited contact order.
Section 105.16

105.16 Prohibited contact order (person in relation to whom preventative detention order is already in force)

(1) If a preventative detention order is in force in relation to a person (the subject), an AFP member may apply to an issuing authority for preventative detention orders of that kind for a prohibited contact order under this section in relation to the subject’s detention under the preventative detention order.

(2) The application must set out:
   (a) the terms of the order sought; and
   (b) the facts and other grounds on which the AFP member considers that the order should be made.

(3) If the preventative detention order is a continued preventative detention order, the information in the application for the prohibited contact order must be sworn or affirmed by the AFP member.

(4) The issuing authority may make a prohibited contact order under this section that the subject is not, while being detained under the preventative detention order, to contact the person specified in the prohibited contact order.

   Note: Section 105.14A sets out the basis on which the order may be made.

(5) The prohibited contact order must be in writing.

(6) The senior AFP member nominated under subsection 105.19(5) in relation to the preventative detention order must:
   (a) notify the Commonwealth Ombudsman in writing of the making of the prohibited contact order; and
   (b) give the Commonwealth Ombudsman a copy of the prohibited contact order.

105.17 Revocation of preventative detention order or prohibited contact order

Preventative detention order

(1) If:
   (a) a preventative detention order is in force in relation to a person; and
Section 105.17

(b) the police officer who is detaining the person under the order is satisfied that the grounds on which the order was made have ceased to exist;

the police officer must:

(c) if the police officer is an AFP member—apply to an issuing authority for preventative detention orders of that kind for the revocation of the order; or

(d) if the police officer is not an AFP member—inform a senior AFP member of the police officer’s reasons for being satisfied that the grounds on which the order was made have ceased to exist.

(2) If:

(a) a senior AFP member is informed by a police officer under paragraph (1)(d); and

(b) the senior AFP member is satisfied that the grounds on which the preventative detention order was made have ceased to exist;

the senior AFP member must apply to an issuing authority for preventative detention orders of that kind for the revocation of the order.

(3) If:

(a) a preventative detention order is in force in relation to a person; and

(b) an issuing authority for preventative detention orders of that kind is satisfied, on application by an AFP member, that the grounds on which the order was made have ceased to exist;

the issuing authority must revoke the order.

Prohibited contact order

(4) If:

(a) a prohibited contact order is in force in relation to a person’s detention under a preventative detention order; and

(b) the police officer who is detaining the person under the preventative detention order is satisfied that the grounds on which the prohibited contact order was made have ceased to exist;

the police officer must:
Section 105.18

(c) if the police officer is an AFP member—apply to an issuing authority for preventative detention orders of that kind for the revocation of the prohibited contact order; or

(d) if the police officer is not an AFP member—inform a senior AFP member of the police officer’s reasons for being satisfied that the grounds on which the prohibited contact order was made have ceased to exist.

(5) If:

(a) a senior AFP member is informed by a police officer under paragraph (4)(d); and

(b) the senior AFP member is satisfied that the grounds on which the prohibited contact order was made in relation to the person’s detention under the preventative detention order have ceased to exist;

the senior AFP member must apply to an issuing authority for preventative detention orders of that kind for the revocation of the prohibited contact order.

(6) If:

(a) a prohibited contact order is in force in relation to a person’s detention under a preventative detention order; and

(b) an issuing authority for preventative detention orders of that kind is satisfied, on application by an AFP member, that the grounds on which the prohibited contact order was made have ceased to exist;

the issuing authority must revoke the prohibited contact order.

Detainee’s right to make representations about revocation of preventative detention order

(7) A person being detained under a preventative detention order may make representations to the senior AFP member nominated under subsection 105.19(5) in relation to the order with a view to having the order revoked.

105.18 Status of person making continued preventative detention order

(1) An issuing authority who makes:

(a) a continued preventative detention order; or
Section 105.19

(b) a prohibited contact order in relation to a person’s detention under a continued preventative detention order; has, in the performance of his or her duties under this Subdivision, the same protection and immunity as a Justice of the High Court.

(2) A function of:
   (a) making or revoking a continued preventative detention order; or
   (b) extending, or further extending, the period for which a continued preventative detention order is to be in force; or
   (c) making or revoking a prohibited contact order in relation to a person’s detention under a continued preventative detention order;

that is conferred on a judge, a Federal Magistrate or a member of the Administrative Appeals Tribunal is conferred on the judge, Federal Magistrate or member of the Administrative Appeals Tribunal in a personal capacity and not as a court or a member of a court.

Subdivision C—Carrying out preventative detention orders

105.19 Power to detain person under preventative detention order

   General powers given by preventative detention order

(1) While a preventative detention order is in force in relation to a person:
   (a) any police officer may take the person into custody; and
   (b) any police officer may detain the person.

(2) A police officer, in taking a person into custody under and in detaining a person under a preventative detention order, has the same powers and obligations as the police officer would have if the police officer were arresting the person, or detaining the person, for an offence.

(3) In subsection (2):

   offence means:
   (a) if the police officer is an AFP member—an offence against a law of the Commonwealth; or
Section 105.19

(b) if the police officer is not an AFP member—an offence against a law of the State or Territory of whose police force the police officer is a member.

(4) Subsection (2) does not apply to the extent to which particular powers, and the obligations associated with those powers, are provided for in this Subdivision or Subdivision D or E.

_Nominated senior AFP member_

(5) If a preventative detention order is made in relation to person, the Commissioner of the Australian Federal Police must nominate a senior AFP member (the _nominated senior AFP member_) to oversee the exercise of powers under, and the performance of obligations in relation to, the preventative detention order.

(6) The nominated senior AFP member must be someone who was not involved in the making of the application for the preventative detention order.

(7) The nominated senior AFP member must:

(a) oversee the exercise of powers under, and the performance of obligations in relation to, the preventative detention order; and

(b) without limiting paragraph (a), ensure that the provisions of section 105.17 (which deals with revocation of preventative detention orders and prohibited contact orders) are complied with in relation to the preventative detention order; and

(c) receive and consider any representations that are made under subsection (8).

(8) The following persons:

(a) the person being detained under the preventative detention order;

(b) a lawyer acting for that person in relation to the preventative detention order;

(c) a person with whom that person has contact under subsection 105.39(2);

are entitled to make representations to the nominated senior AFP member in relation to:
Section 105.20

(d) the exercise of powers under, and the performance of obligations in relation to, the preventative detention order; and

(e) without limiting paragraph (a), compliance with the provisions of section 105.17 (which deals with revocation of preventative detention orders and prohibited contact orders) in relation to the preventative detention order; and

(f) the person’s treatment in connection with the person’s detention under the preventative detention order.

(9) The Commissioner of the Australian Federal Police may, in writing, delegate to a senior AFP member the Commissioner’s powers under subsection (5).

105.20 Endorsement of order with date and time person taken into custody

As soon as practicable after a person is first taken into custody under an initial preventative detention order, the police officer who is detaining the person under the order must endorse on the order the date on which, and time at which, the person is first taken into custody under the order.

105.21 Requirement to provide name etc.

(1) If a police officer believes on reasonable grounds that a person whose name or address is, or whose name and address are, unknown to the police officer may be able to assist the police officer in executing a preventative detention order, the police officer may request the person to provide his or her name or address, or name and address, to the police officer.

(2) If a police officer:

(a) makes a request of a person under subsection (1); and

(b) informs the person of the reason for the request; and

(c) if the police officer is not in uniform—shows the person evidence that the police officer is a police officer; and

(d) complies with subsection (4) if the person makes a request under that subsection;

the person must not:

(e) refuse or fail to comply with the request; or
Section 105.22

(f) give a name or address that is false in a material particular.

Penalty: 20 penalty units.

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

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

(4) If a police officer who makes a request of a person under subsection (1) is requested by the person to provide to the person any of the following:

(a) his or her name;
(b) the address of his or her place of duty;
(c) his or her identification number if he or she has an identification number;
(d) his or her rank if he or she does not have an identification number;

the police officer must not:

(e) refuse or fail to comply with the request; or
(f) give a name, address, number or rank that is false in a material particular.

Penalty: 5 penalty units.

105.22 Power to enter premises

(1) Subject to subsection (2), if:

(a) a preventative detention order is in force in relation to a person; and
(b) a police officer believes on reasonable grounds that the person is on any premises;

the police officer may enter the premises, using such force as is necessary and reasonable in the circumstances and with such assistance from other police officers as is necessary, at any time of the day or night for the purpose of searching the premises for the person or taking the person into custody.

(2) A police officer must not enter a dwelling house under subsection (1) at any time during the period commencing at 9 pm on a day and ending at 6 am on the following day unless the police officer believes on reasonable grounds that:
Section 105.23

(a) it would not be practicable to take the person into custody, either at the dwelling house or elsewhere, at another time; or
(b) it is necessary to do so in order to prevent the concealment, loss or destruction of evidence of, or relating to, a terrorist act.

(3) In subsection (2):

*dwelling house* includes a conveyance, and a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night.

105.23 Power to conduct a frisk search

A police officer who takes a person into custody under a preventative detention order, or who is present when the person is taken into custody, may, if the police officer suspects on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying any seizable items:

(a) conduct a frisk search of the person at, or soon after, the time when the person is taken into custody; and

(b) seize any seizable items found as a result of the search.

105.24 Power to conduct an ordinary search

A police officer who takes a person into custody under a preventative detention order, or who is present when the person is taken into custody, may, if the police officer suspects on reasonable grounds that the person is carrying:

(a) evidence of, or relating to, a terrorist act; or

(b) a seizable item;

conduct an ordinary search of the person at, or soon after, the time when the person is taken into custody, and seize any such thing found as a result of the search.

105.25 Warrant under Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*

(1) This section applies if:

(a) a person is being detained under a preventative detention order; and
Section 105.26

(b) a warrant under Division 3 of Part III of the Australian Security Intelligence Organisation Act 1979 is in force in relation to the person; and

(c) a copy of the warrant is given to the police officer who is detaining the person under the preventative detention order.

(2) The police officer must take such steps as are necessary to ensure that the person may be dealt with in accordance with the warrant.

(3) Without limiting subsection (2), the police officer may, under section 105.26, release the person from detention under the preventative detention order so that the person may be dealt with in accordance with the warrant.

Note: If the police officer is not an AFP member, the police officer will need to obtain the approval of a senior AFP member before releasing the person from detention (see subsection 105.26(2)).

(4) To avoid doubt, the fact that the person is released from detention under the preventative detention order so that the person may be:

(a) questioned before a prescribed authority under the warrant; or

(b) detained under the warrant in connection with that questioning;

does not extend the period for which the preventative detention order remains in force in relation to the person.

Note: See paragraph 105.26(7)(a).

105.26 Release of person from preventative detention

(1) The police officer who is detaining a person under a preventative detention order may release the person from detention under the order.

Note: A person may be released, for example, so that the person may be arrested and otherwise dealt with under the provisions of Division 4 of Part IAA, and Part IC, of the Crimes Act 1914.

(2) If the police officer detaining the person under the order is not an AFP member:

(a) the police officer must not release the person from detention without the approval of a senior AFP member; and

(b) the senior AFP member must approve the person’s release if the person is being released so that the person may be dealt
The Criminal Code Schedule
The security of the Commonwealth Chapter 5
Terrorism Part 5.3
Preventative detention orders Division 105

Section 105.26

with in accordance with a warrant under Division 3 of Part III of the Australian Security Intelligence Organisation Act 1979.

(3) The police officer who releases the person from detention under the preventative detention order must give the person a written statement that the person is being released from that detention. The statement must be signed by the police officer.

(4) Subsection (3) does not apply if the police officer releases the person from detention so that the person may be dealt with:

(a) in accordance with a warrant under Division 3 of Part III of the Australian Security Intelligence Organisation Act 1979; or

(b) under the provisions of Division 4 of Part IAA, and Part IC, of the Crimes Act 1914.

(5) To avoid doubt, a person may be taken to have been released from detention under a preventative detention order even if:

(a) the person is informed that he or she is being released from detention under the order; and

(b) the person is taken into custody on some other basis immediately after the person is informed that he or she is being released from detention under the order.

(6) To avoid doubt, a person is taken not to be detained under a preventative detention order during a period during which the person is released from detention under the order.

Note: During this period, the provisions of this Division that apply to a person who is being detained under a preventative detention order (for example, section 105.34 which deals with the people the person may contact) do not apply to the person.

(7) To avoid doubt:

(a) the release of the person under subsection (1) from detention under the preventative detention order does not extend the period for which the preventative detention order remains in force; and

(b) a person released under subsection (1) from detention under a preventative detention order may again be taken into custody and detained under the order at any time while the order remains in force in relation to the person.
Section 105.27

105.27 Arrangement for detainee to be held in State or Territory prison or remand centre

(1) A senior AFP member may arrange for a person (the subject) who is being detained under a preventative detention order to be detained under the order at a prison or remand centre of a State or Territory.

(2) If an arrangement is made under subsection (1):
   (a) the preventative detention order is taken to authorise the person in charge of the prison or remand centre to detain the subject at the prison or remand centre while the order is in force in relation to the subject; and
   (b) section 105.33 applies in relation to the subject’s detention under the order at the prison or remand centre as if:
      (i) the person in charge of that prison or remand centre; or
      (ii) any other person involved in the subject’s detention at that prison or remand centre;
      were a person exercising authority under the order or implementing or enforcing the order; and
   (c) the senior AFP member who makes the arrangement is taken, while the subject is detained at the prison or remand centre, to be the AFP member detaining the subject for the purposes of Subdivisions D and E of this Division.

(3) The arrangement under subsection (1) may include provision for the Commonwealth meeting the expenses of the subject’s detention at the prison or remand centre.

Subdivision D—Informing person detained about preventative detention order

105.28 Effect of initial preventative detention order to be explained to person detained

(1) As soon as practicable after a person is first taken into custody under an initial preventative detention order, the police officer who
is detaining the person under the order must inform the person of the matters covered by subsection (2).

Note 1: A contravention of this subsection may be an offence under section 105.45.

Note 2: A contravention of this subsection does not affect the lawfulness of the person’s detention under the order (see subsection 105.31(5)).

(2) The matters covered by this subsection are:

(a) the fact that the preventative detention order has been made in relation to the person; and

(b) the period during which the person may be detained under the order; and

(c) the restrictions that apply to the people the person may contact while the person is being detained under the order; and

(d) the fact that an application may be made under section 105.11 for an order that the person continue to be detained for a further period; and

(da) the person’s entitlement under subsection 105.17(7) to make representations to the senior AFP member nominated under subsection 105.19(5) in relation to the order with a view to having the order revoked; and

(e) any right the person has to make a complaint to the Commonwealth Ombudsman under the Ombudsman Act 1976 in relation to:
   (i) the application for, or the making of, the preventative detention order; or
   (ii) the treatment of the person by an AFP member in connection with the person’s detention under the order; and

(ea) any right the person has to give information under section 40SA of the Australian Federal Police Act 1979 in relation to:
   (i) the application for, or the making of, the preventative detention order; or
   (ii) the treatment of the person by an AFP member in connection with the person’s detention under the order; and

(f) any right the person has to complain to an officer or authority of a State or Territory in relation to the treatment of the
Section 105.29

person by a member of the police force of that State or Territory in connection with the person’s detention under the order; and

(g) the fact that the person may seek from a federal court a remedy relating to:
   (i) the order; or
   (ii) the treatment of the person in connection with the person’s detention under the order; and

(h) the person’s entitlement under section 105.37 to contact a lawyer; and

(i) the name and work telephone number of the senior AFP member who has been nominated under subsection 105.19(5) to oversee the exercise of powers under, and the performance of obligations in relation to, the order.

Note: Paragraph (g)—see section 105.51.

(2A) Without limiting paragraph (2)(c), the police officer detaining the person under the order must inform the person under that paragraph about the persons that he or she may contact under section 105.35 or 105.39.

(3) Paragraph (2)(c) does not require the police officer to inform the person being detained of:
   (a) the fact that a prohibited contact order has been made in relation to the person’s detention; or
   (b) the name of a person specified in a prohibited contact order that has been made in relation to the person’s detention.

105.29 Effect of continued preventative detention order to be explained to person detained

(1) As soon as practicable after a continued preventative detention order (the continued order) is made in relation to a person, the police officer who is detaining the person must inform the person of the matters covered by subsection (2).

Note 1: A contravention of this subsection may be an offence under section 105.45.

Note 2: A contravention of this subsection does not affect the lawfulness of the person’s detention under the order (see subsection 105.31(5)).
(2) The matters covered by this subsection are:
   (a) the fact that the continued order has been made in relation to the person; and
   (b) the further period during which the person may continue to be detained under the continued order; and
   (c) the restrictions that apply to the people the person may contact while the person is being detained under the continued order; and
   (ca) the person’s entitlement under subsection 105.17(7) to make representations to the senior AFP member nominated under subsection 105.19(5) in relation to the order with a view to having the order revoked; and
   (d) any right the person has to make a complaint to the Commonwealth Ombudsman under the Ombudsman Act 1976 in relation to:
      (i) the application for the continued order; or
      (ii) the treatment of the person by an AFP member in connection with the person’s detention under the continued order; and
   (da) any right the person has to give information under section 40SA of the Australian Federal Police Act 1979 in relation to:
      (i) the application for the continued order; or
      (ii) the treatment of the person by an AFP member in connection with the person’s detention under the continued order; and
   (e) any right the person has to complain to an officer or authority of a State or Territory about the treatment of the person by a member of the police force of that State or Territory in connection with the person’s detention under the continued order; and
   (f) the fact that the person may seek from a federal court a remedy relating to:
      (i) the continued order; or
      (ii) the treatment of the person in connection with the person’s detention under the continued order; and
   (g) the person’s entitlement under section 105.37 to contact a lawyer; and
Section 105.30

(h) the name and work telephone number of the senior AFP member who has been nominated under subsection 105.19(5) to oversee the exercise of powers under, and the performance of obligations in relation to, the continued order.

Note: Paragraph (f)—see section 105.51.

(2A) Without limiting paragraph (2)(c), the police officer detaining the person under the order must inform the person under that paragraph about the persons that he or she may contact under section 105.35 or 105.39.

(3) Paragraph (2)(c) does not require the police officer to inform the person being detained of:

(a) the fact that a prohibited contact order has been made in relation to the person’s detention; or
(b) the name of a person specified in a prohibited contact order that has been made in relation to the person’s detention.

105.30 Person being detained to be informed of extension of preventative detention order

If a preventative detention order is extended, or further extended, under section 105.10 or 105.14, the police officer detaining the person under the order must inform the person of the extension, or further extension, as soon as practicable after the extension, or further extension, is made.

Note 1: A contravention of this subsection may be an offence under section 105.45.

Note 2: A contravention of this subsection does not affect the lawfulness of the person’s detention under the order (see subsection 105.31(5)).

105.31 Compliance with obligations to inform

(1) Subsection 105.28(1) or 105.29(1) or section 105.30 does not apply if the actions of the person being detained under the preventative detention order make it impracticable for the police officer to comply with that subsection.

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

(2) The police officer detaining the person under the preventative detention order complies with subsection 105.28(1) or 105.29(1) if
The police officer informs the person in substance of the matters covered by subsection 105.28(2) or 105.29(2) (even if this is not done in language of a precise or technical nature).

(3) The police officer who is detaining the person under the preventative detention order must arrange for the assistance of an interpreter in complying with subsection 105.28(1) or 105.29(1) or section 105.30 if the police officer has reasonable grounds to believe that the person is unable, because of inadequate knowledge of the English language or a disability, to communicate with reasonable fluency in that language.

(4) Without limiting subsection (3), the assistance of the interpreter may be provided by telephone.

(5) The lawfulness of a person’s detention under a preventative detention order is not affected by a failure to comply with subsection 105.28(1) or 105.29(1), section 105.30 or subsection (3) of this section.

105.32 Copy of preventative detention order

(1) As soon as practicable after a person is first taken into custody under an initial preventative detention order, the police officer who is detaining the person under the order must give the person a copy of the order.

(3) Despite subsection 105.19(2), a police officer does not need to have a copy of the order with him or her, or to produce a copy of the order to the person being taken into custody, when the police officer takes the person into custody.

(4) As soon as practicable after a continued preventative detention order is made in relation to a person in relation to whom an initial preventative detention order is in force, the police officer who is detaining the person under the initial preventative detention order, or the continued preventative detention order, must give the person a copy of the continued preventative detention order.

(5) As soon as practicable after a preventative detention order is extended, or further extended, under section 105.10 or 105.14, the police officer who is detaining the person under the preventative...
Section 105.32

detention order must give the person a copy of the extension or further extension.

(6) A person who is being detained under a preventative detention order may request a police officer who is detaining the person to arrange for a copy of:
   (a) the order; or
   (c) any extension or further extension of the order under section 105.10 or 105.14;

to be given to a lawyer acting for the person in relation to the order.

Note 1: Section 105.37 deals with the person’s right to contact a lawyer and the obligation of the police officer detaining the person to give the person assistance to choose a lawyer.

Note 2: Section 105.40 prevents the person from contacting a lawyer who is specified in a prohibited contact order.

(7) The police officer must make arrangements for a copy of the order, or the extension or further extension, to be given to the lawyer as soon as practicable after the request is made.

(8) Without limiting subsection (7), the copy of the order, or the extension, may be faxed or emailed to the lawyer.

(9) To avoid doubt, subsection (7) does not entitle the lawyer to be given a copy of, or see, a document other than the order, or the extension or further extension.

(10) Nothing in this section requires a copy of a prohibited contact order to be given to a person.

(11) The police officer who gives:
   (a) the person being detained under an initial preventative detention order; or
   (b) a lawyer acting for the person;
a copy of the initial preventative detention order under this section must endorse on the copy the date on which, and time at which, the person was first taken into custody under the order.

(12) The lawfulness of a person’s detention under a preventative detention order is not affected by a failure to comply with subsection (1), (4), (5), (7) or (11).
Section 105.33

Subdivision E—Treatment of person detained

105.33 Humane treatment of person being detained

A person being taken into custody, or being detained, under a preventative detention order:

(a) must be treated with humanity and with respect for human dignity; and

(b) must not be subjected to cruel, inhuman or degrading treatment;

by anyone exercising authority under the order or implementing or enforcing the order.

Note: A contravention of this section may be an offence under section 105.45.

105.33A Detention of persons under 18

(1) Subject to subsection (2), the police officer detaining a person who is under 18 years of age under a preventative detention order must ensure that the person is not detained together with persons who are 18 years of age or older.

Note: A contravention of this subsection may be an offence under section 105.45.

(2) Subsection (1) does not apply if a senior AFP member approves the person being detained together with persons who are 18 years of age or older.

(3) The senior AFP member may give an approval under subsection (2) only if there are exceptional circumstances justifying the giving of the approval.

(4) An approval under subsection (2) must:

(a) be given in writing; and

(b) set out the exceptional circumstances that justify the giving of the approval.

105.34 Restriction on contact with other people

Except as provided by sections 105.35, 105.36, 105.37 and 105.39, while a person is being detained under a preventative detention order, the person:
Section 105.35

(a) is not entitled to contact another person; and
(b) may be prevented from contacting another person.

Note 1: This section will not apply to the person if the person is released from detention under the order (even though the order may still be in force in relation to the person).

Note 2: A person’s entitlement to contact other people under sections 105.35, 105.37 and 105.39 may be subject to a prohibited contact order made under section 105.15 or 105.16 (see section 105.40).

105.35 Contacting family members etc.

(1) The person being detained is entitled to contact:
   (a) one of his or her family members; and
   (b) if he or she:
      (i) lives with another person and that other person is not a family member of the person being detained; or
      (ii) lives with other people and those other people are not family members of the person being detained; that other person or one of those other people; and
   (c) if he or she is employed—his or her employer; and
   (d) if he or she employs people in a business—one of the people he or she employs in that business; and
   (e) if he or she engages in a business together with another person or other people—that other person or one of those other people; and
   (f) if the police officer detaining the person being detained agrees to the person contacting another person—that person; by telephone, fax or email but solely for the purposes of letting the person contacted know that the person being detained is safe but is not able to be contacted for the time being.

(2) To avoid doubt, the person being detained is not entitled, under subsection (1), to disclose:
   (a) the fact that a preventative detention order has been made in relation to the person; or
   (b) the fact that the person is being detained; or
   (c) the period for which the person is being detained.

(3) In this section:

   family member of a person means:
Section 105.36

(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.

105.36 Contacting Ombudsman etc.

(1) The person being detained is entitled to contact:
   (a) the Commonwealth Ombudsman in accordance with subsections 7(3) to (5) of the *Ombudsman Act 1976*; or
   (b) a person referred to in subsection 40SA(1) of the *Australian Federal Police Act 1979* in accordance with section 40SB of that Act.

Note 1: Subsections 7(3) to (5) of the *Ombudsman Act 1976* provide for the manner in which a person who is in custody may make a complaint to the Commonwealth Ombudsman under that Act.

Note 2: Section 40SB of the *Australian Federal Police Act 1979* provides for the manner in which a person who is in custody may give information under section 40SA of that Act.

(2) If the person being detained has the right, under a law of a State or Territory, to complain to an officer or authority of the State or Territory about the treatment of the person by a member of the police force of that State or Territory in connection with the person’s detention under the order, the person is entitled to contact that officer or authority to make a complaint in accordance with that law.

105.37 Contacting lawyer

(1) The person being detained is entitled to contact a lawyer but solely for the purpose of:
   (a) obtaining advice from the lawyer about the person’s legal rights in relation to:
      (i) the preventative detention order; or
      (ii) the treatment of the person in connection with the person’s detention under the order; or
   (b) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, proceedings in a federal court for a remedy relating to:
Section 105.37

(i) the preventative detention order; or
(ii) the treatment of the person in connection with the person’s detention under the order; or
(c) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, a complaint to the Commonwealth Ombudsman under the *Ombudsman Act 1976* in relation to:
   (i) the application for, or the making of, the preventative detention order; or
   (ii) the treatment of the person by an AFP member in connection with the person’s detention under the order; or
   (ca) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, the giving of information under section 40SA of the *Australian Federal Police Act 1979* in relation to:
      (i) the application for, or the making of, the preventative detention order; or
      (ii) the treatment of the person by an AFP member in connection with the person’s detention under the order; or
   (d) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, a complaint to an officer or authority of a State or Territory about the treatment of the person by a member of the police force of that State or Territory in connection with the person’s detention under the order; or
   (e) arranging for the lawyer to act for the person in relation to an appearance, or hearing, before a court that is to take place while the person is being detained under the order.

(2) The form of contact that the person being detained is entitled to have with a lawyer under subsection (1) includes:
   (a) being visited by the lawyer; and
   (b) communicating with the lawyer by telephone, fax or email.

(3) If:
   (a) the person being detained asks to be allowed to contact a particular lawyer under subsection (1); and
   (b) either:
(i) the person is not entitled to contact that lawyer because of section 105.40 (prohibited contact order); or
(ii) the person is not able to contact that lawyer;
the police officer who is detaining the person must give the person reasonable assistance to choose another lawyer for the person to contact under subsection (1).

(3A) If the police officer who is detaining a person under a preventative detention order has reasonable grounds to believe that:
(a) the person is unable, because of inadequate knowledge of the English language, or a disability, to communicate with reasonable fluency in that language; and
(b) the person may have difficulties in choosing or contacting a lawyer because of that inability;
the police officer must give the person reasonable assistance (including, if appropriate, by arranging for the assistance of an interpreter) to choose and contact a lawyer under subsection (1).

(4) In recommending lawyers to the person being detained as part of giving the person assistance under subsection (3) or (3A), the police officer who is detaining the person may give priority to lawyers who have been given a security clearance at an appropriate level by the Department.

(5) Despite subsection (4) but subject to section 105.40, the person being detained is entitled under this section to contact a lawyer who does not have a security clearance of the kind referred to in subsection (4).

105.38 Monitoring contact under section 105.35 or 105.37

(1) The contact the person being detained has with another person under section 105.35 or 105.37 may take place only if it is conducted in such a way that the contact, and the content and meaning of the communication that takes place during the contact, can be effectively monitored by a police officer exercising authority under the preventative detention order.

(2) The contact may take place in a language other than English only if the content and meaning of the communication that takes place during the contact can be effectively monitored with the assistance of an interpreter.
Section 105.39

(3) Without limiting subsection (2), the interpreter referred to in that subsection may be a police officer.

(4) If the person being detained indicates that he or she wishes the contact to take place in a language other than English, the police officer who is detaining the person must:
   (a) arrange for the services of an appropriate interpreter to be provided if it is reasonably practicable to do so during the period during which the person is being detained; and
   (b) if it is reasonably practicable to do so—arrange for those services to be provided as soon as practicable.

(5) Any communication between:
   (a) a person who is being detained under a preventative detention order; and
   (b) a lawyer;
   for a purpose referred to in paragraph 105.37(1)(a), (b), (c), (ca), (d) or (e) is not admissible in evidence against the person in any proceedings in a court.

105.39 Special contact rules for person under 18 or incapable of managing own affairs

(1) This section applies if the person being detained under a preventative detention order:
   (a) is under 18 years of age; or
   (b) is incapable of managing his or her affairs.

(2) The person is entitled, while being detained under the order, to have contact with:
   (a) a parent or guardian of the person; or
   (b) another person who:
       (i) is able to represent the person’s interests; and
       (ii) is, as far as practicable in the circumstances, acceptable to the person and to the police officer who is detaining the person; and
       (iii) is not an AFP member; and
       (iv) is not an AFP employee (within the meaning of the Australian Federal Police Act 1979); and

(v) is not a member (however described) of a police force of a State or Territory; and
(vi) is not an officer or employee of the Australian Security Intelligence Organisation.

(3) To avoid doubt:
(a) if the person being detained (the detainee) has 2 parents or 2 or more guardians, the detainee is entitled, subject to section 105.40, to have contact under subsection (2) with each of those parents or guardians; and
(b) the detainee is entitled to disclose the following to a person with whom the detainee has contact under subsection (2):
   (i) the fact that a preventative detention order has been made in relation to the detainee;
   (ii) the fact that the detainee is being detained;
   (iii) the period for which the detainee is being detained.

(4) The form of contact that the person being detained is entitled to have with another person under subsection (2) includes:
(a) being visited by that other person; and
(b) communicating with that other person by telephone, fax or email.

(5) The period for which the person being detained is entitled to have contact with another person each day under subsection (2) is:
(a) 2 hours; or
(b) such longer period as is specified in the preventative detention order.

Note: Paragraph (b)—see subsections 105.8(7) and 105.12(7).

(6) Despite subsection (5), the police officer who is detaining the person may permit the person to have contact with a person under subsection (2) for a period that is longer than the period provided for in subsection (5).

(7) The contact that the person being detained has with another person under subsection (2) must be conducted in such a way that the content and meaning of any communication that takes place during the contact can be effectively monitored by a police officer exercising authority under the preventative detention order.
Section 105.40

(8) If the communication that takes place during the contact takes place in a language other than English, the contact may continue only if the content and meaning of the communication in that language can be effectively monitored with the assistance of an interpreter.

(9) Without limiting subsection (8), the interpreter referred to in that subsection may be a police officer.

(10) If the person being detained indicates that he or she wishes the communication that takes place during the contact to take place in a language other than English, the police officer who is detaining the person must:

(a) arrange for the services of an appropriate interpreter to be provided if it is reasonably practicable to do so during the period during which the person is being detained; and

(b) if it is reasonably practicable to do so—arrange for those services to be provided as soon as practicable.

105.40 Entitlement to contact subject to prohibited contact order

Sections 105.35, 105.37 and 105.39 have effect subject to any prohibited contact order made in relation to the person’s detention.

105.41 Disclosure offences

Person being detained

(1) A person (the subject) commits an offence if:

(a) the subject is being detained under a preventative detention order; and

(b) the subject discloses to another person:

(i) the fact that a preventative detention order has been made in relation to the subject; or

(ii) the fact that the subject is being detained; or

(iii) the period for which the subject is being detained; and

(c) the disclosure occurs while the subject is being detained under the order; and

(d) the disclosure is not one that the subject is entitled to make under section 105.36, 105.37 or 105.39.
Penalty: Imprisonment for 5 years.

Lawyer

(2) A person (the lawyer) commits an offence if:
(a) a person being detained under a preventative detention order (the detainee) contacts the lawyer under section 105.37; and
(b) the lawyer discloses to another person:
   (i) the fact that a preventative detention order has been made in relation to the detainee; or
   (ii) the fact that the detainee is being detained; or
   (iii) the period for which the detainee is being detained; or
   (iv) any information that the detainee gives the lawyer in the course of the contact; and
(c) the disclosure occurs while the detainee is being detained under the order; and
(d) the disclosure is not made for the purposes of:
   (i) proceedings in a federal court for a remedy relating to the preventative detention order or the treatment of the detainee in connection with the detainee’s detention under the order; or
   (ii) a complaint to the Commonwealth Ombudsman under the Ombudsman Act 1976 in relation to the application for, or making of, the preventative detention order or the treatment of the detainee by an AFP member in connection with the detainee’s detention under the order; or
   (iii) the giving of information under section 40SA of the Australian Federal Police Act 1979 in relation to the application for, or making of, the preventative detention order or the treatment of the detainee by an AFP member in connection with the detainee’s detention under the order; or
   (iii) a complaint to an officer or authority of a State or Territory about the treatment of the detainee by a member of the police force of that State or Territory in connection with the detainee’s detention under the order; or
   (iv) making representations to the senior AFP member nominated under subsection 105.19(5) in relation to the
order, or another police officer involved in the
detainee’s detention, about the exercise of powers under
the order, the performance of obligations in relation to
the order or the treatment of the detainee in connection
with the detainee’s detention under the order.

Penalty: Imprisonment for 5 years.

**Person having special contact with detainee who is under 18 years of age or incapable of managing own affairs**

(3) A person (the parent/guardian) commits an offence if:

(a) a person being detained under a preventative detention order
    (the detainee) has contact with the parent/guardian under
    section 105.39; and

(b) the parent/guardian discloses to another person:
    (i) the fact that a preventative detention order has been
        made in relation to the detainee; or
    (ii) the fact that the detainee is being detained; or
    (iii) the period for which the detainee is being detained; or
    (iv) any information that the detainee gives the
        parent/guardian in the course of the contact; and

(c) the other person is not a person the detainee is entitled to
    have contact with under section 105.39; and

(d) the disclosure occurs while the detainee is being detained
    under the order; and

(e) the disclosure is not made for the purposes of:
    (i) a complaint to the Commonwealth Ombudsman under
        the Ombudsman Act 1976 in relation to the application
        for, or the making of, the preventative detention order or
        the treatment of the detainee by an AFP member in
        connection with the detainee’s detention under the
        order; or

    (ia) the giving of information under section 40SA of the
        Australian Federal Police Act 1979 in relation to the
        application for, or the making of, the preventative
        detention order or the treatment of the detainee by an
        AFP member in connection with the detainee’s
        detention under the order; or
Section 105.41

(ii) a complaint to an officer or authority of a State or Territory about the treatment of the detainee by a member of the police force of that State or Territory in connection with the detainee’s detention under the order; or

(iii) making representations to the senior AFP member nominated under subsection 105.19(5) in relation to the order, or another police officer involved in the detainee’s detention, about the exercise of powers under the order, the performance of obligations in relation to the order or the treatment of the detainee in connection with the detainee’s detention under the order.

Penalty: Imprisonment for 5 years.

(4) To avoid doubt, a person does not contravene subsection (3) merely by letting another person know that the detainee is safe but is not able to be contacted for the time being.

(4A) A person (the parent/guardian) commits an offence if:

(a) the parent/guardian is a parent or guardian of a person who is being detained under a preventative detention order (the detainee); and

(b) the detainee has contact with the parent/guardian under section 105.39; and

(c) while the detainee is being detained under the order, the parent/guardian discloses information of the kind referred to in paragraph (3)(b) to another parent or guardian of the detainee (the other parent/guardian); and

(d) when the disclosure is made, the detainee has not had contact with the other parent/guardian under section 105.39 while being detained under the order; and

(e) the parent/guardian does not, before making the disclosure, inform the senior AFP member nominated under subsection 105.19(5) in relation to the order that the parent/guardian is proposing to disclose information of that kind to the other parent/guardian.

Penalty: Imprisonment for 5 years.
Section 105.41

(4B) If:

(a) a person (the parent/guardian) is a parent or guardian of a person being detained under a preventative detention order (the detainee); and

(b) the parent/guardian informs the senior AFP member nominated under subsection 105.19(5) in relation to the order that the parent/guardian proposes to disclose information of the kind referred to in paragraph (3)(b) to another parent or guardian of the detainee (the other parent/guardian);

that senior AFP member may inform the parent/guardian that the detainee is not entitled to contact the other parent/guardian under section 105.39.

Note: The parent/guardian may commit an offence against subsection (2) if the other parent/guardian is a person the detainee is not entitled to have contact with under section 105.39 and the parent/guardian does disclose information of that kind to the other parent/guardian. This is because of the operation of paragraph (3)(c).

Interpreter assisting in monitoring contact with detainee

(5) A person (the interpreter) commits an offence if:

(a) the interpreter is an interpreter who assists in monitoring the contact that a person being detained under a preventative detention order (the detainee) has with someone while the detainee is being detained under the order; and

(b) the interpreter discloses to another person:

(i) the fact that a preventative detention order has been made in relation to the detainee; or

(ii) the fact that the detainee is being detained; or

(iii) the period for which the detainee is being detained; or

(iv) any information that interpreter obtains in the course of assisting in the monitoring of that contact; and

(c) the disclosure occurs while the detainee is being detained under the order.

Penalty: Imprisonment for 5 years.
Passing on improperly disclosed information

(6) A person (the disclosure recipient) commits an offence if:
   (a) a person (the earlier discloser) discloses to the disclosure recipient:
      (i) the fact that a preventative detention order has been made in relation to a person; or
      (ii) the fact that a person is being detained under a preventative detention order; or
      (iii) the period for which a person is being detained under a preventative detention order; or
      (iv) any information that a person who is being detained under a preventative detention order communicates to a person while the person is being detained under the order; and
   (b) the disclosure by the earlier discloser to the disclosure recipient contravenes:
      (i) subsection (1), (2), (3) or (5); or
      (ii) this subsection; and
   (c) the disclosure recipient discloses that information to another person; and
   (d) the disclosure by the disclosure recipient occurs while the person referred to in subparagraph (a)(i), (ii), (iii) or (iv) is being detained under the order.

Penalty: Imprisonment for 5 years.

Police officer or interpreter monitoring contact with lawyer

(7) A person (the monitor) commits an offence if:
   (a) the monitor is:
      (i) a police officer who monitors; or
      (ii) an interpreter who assists in monitoring;
      contact that a person being detained under a preventative detention order (the detainee) has with a lawyer under section 105.37 while the detainee is being detained under the order; and
   (b) information is communicated in the course of that contact; and
Section 105.42

(c) the information is communicated for one of the purposes referred to in subsection 105.37(1); and
(d) the monitor discloses that information to another person.

Penalty: Imprisonment for 5 years.

Note: See also subsection 105.38(5).

105.42 Questioning of person prohibited while person is detained

(1) A police officer must not question a person while the person is being detained under a preventative detention order except for the purposes of:
   (a) determining whether the person is the person specified in the order; or
   (b) ensuring the safety and well-being of the person being detained; or
   (c) allowing the police officer to comply with a requirement of this Division in relation to the person’s detention under the order.

Note 1: This subsection will not apply to the person if the person is released from detention under the order (even though the order may still be in force in relation to the person).

Note 2: A contravention of this subsection may be an offence under section 105.45.

(2) An officer or employee of the Australian Security Intelligence Organisation must not question a person while the person is being detained under a preventative detention order.

Note 1: This subsection will not apply to the person if the person is released from detention under the order (even though the order may still be in force in relation to the person).

Note 2: A contravention of this subsection may be an offence under section 105.45.

(3) An AFP member, or an officer or employee of the Australian Security Intelligence Organisation, must not question a person while the person is being detained under an order made under a corresponding State preventative detention law.

Note 1: This subsection will not apply to the person if the person is released from detention under the order (even though the order may still be in force in relation to the person).
Section 105.43

(4) If a police officer questions a person while the person is being detained under a preventative detention order, the police officer who is detaining the person must ensure that:

(a) a video recording is made of the questioning if it is practicable to do so; or

(b) an audio recording is made of the questioning if it is not practicable for a video recording to be made of the questioning.

Note: A contravention of this subsection may be an offence under section 105.45.

(5) Subsection (4) does not apply if:

(a) the questioning occurs to:

(i) ensure the safety and well being of the person being detained; or

(ii) determine whether the person is the person specified in the order; and

(b) complying with subsection (4) is not practicable because of the seriousness and urgency of the circumstances in which the questioning occurs.

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

(6) A recording made under subsection (4) must be kept for the period of 12 months after the recording is made.

105.43 Taking fingerprints, recordings, samples of handwriting or photographs

(1) A police officer must not take identification material from a person who is being detained under a preventative detention order except in accordance with this section.

Note: A contravention of this subsection may be an offence under section 105.45.

(2) A police officer who is of the rank of sergeant or higher may take identification material from the person, or cause identification material from the person to be taken, if:

(a) the person consents in writing; or
Schedule  The Criminal Code
Chapter 5 The security of the Commonwealth
Part 5.3 Terrorism
Division 105 Preventative detention orders

Section 105.43

(b) the police officer believes on reasonable grounds that it is necessary to do so for the purpose of confirming the person’s identity as the person specified in the order.

(3) A police officer may use such force as is necessary and reasonable in the circumstances to take identification material from a person under this section.

(4) Subject to this section, a police officer must not take identification material (other than hand prints, fingerprints, foot prints or toe prints) from the person if the person:
   (a) is under 18 years of age; or
   (b) is incapable of managing his or her affairs;
   unless a Federal Magistrate orders that the material be taken.

Note: A contravention of this subsection may be an offence under section 105.45.

(5) In deciding whether to make such an order, the Federal Magistrate must have regard to:
   (a) the age, or any disability, of the person; and
   (b) such other matters as the Federal Magistrate thinks fit.

(6) The taking of identification material from a person who:
   (a) is under 18 years of age; or
   (b) is incapable of managing his or her affairs;
   must be done in the presence of:
   (c) a parent or guardian of the person; or
   (d) if a parent or guardian of the person is not acceptable to the person—another appropriate person.

Note 1: For appropriate person, see subsection (11).

Note 2: A contravention of this subsection may be an offence under section 105.45.

(7) Despite this section, identification material may be taken from a person who is under 18 years of age and is capable of managing his or her affairs if:
   (a) subsections (8) and (9) are satisfied; or
   (b) subsection (8) or (9) is satisfied (but not both) and a Federal Magistrate orders that the material be taken.

In deciding whether to make such an order, the Federal Magistrate must have regard to the matters set out in subsection (5).
Section 105.44

(8) This subsection applies if the person agrees in writing to the taking of the material.

(9) This subsection applies if either:
   (a) a parent or guardian of the person; or
   (b) if a parent or guardian is not acceptable to the person—another appropriate person;
agrees in writing to the taking of the material.

Note: For appropriate person, see subsection (11).

(10) Despite this section, identification material may be taken from a person who:
   (a) is at least 18 years of age; and
   (b) is capable of managing his or her affairs;
if the person consents in writing.

(11) A reference in this section to an appropriate person in relation to a person (the subject) who is under 18 years of age, or incapable of managing his or her affairs, is a reference to a person who:
   (a) is capable of representing the subject’s interests; and
   (b) as far as is practicable in the circumstances, is acceptable to the subject and the police officer who is detaining the subject; and
   (c) is none of the following:
      (i) an AFP member;
      (ii) an AFP employee (within the meaning of the Australian Federal Police Act 1979);
      (iii) a member (however described) of a police force of a State or Territory;
      (iv) an officer or employee of the Australian Security Intelligence Organisation.

105.44 Use of identification material

(1) This section applies if identification material is taken under section 105.43 from a person being detained under a preventative detention order.

(2) The material may be used only for the purpose of determining whether the person is the person specified in the order.
Section 105.45

Note: A contravention of this subsection may be an offence under section 105.45.

(3) If:
   (a) a period of 12 months elapses after the identification material is taken; and
   (b) proceedings in respect of:
      (i) the preventative detention order; or
      (ii) the treatment of the person in connection with the person’s detention under the order;
      have not been brought, or have been brought and discontinued or completed, within that period;
      the material must be destroyed as soon as practicable after the end of that period.

105.45 Offences of contravening safeguards

A person commits an offence if:
   (a) the person engages in conduct; and
   (b) the conduct contravenes:
      (i) subsection 105.28(1); or
      (ii) subsection 105.29(1); or
      (iii) section 105.30; or
      (iv) section 105.33; or
      (iva) subsection 105.33A(1); or
      (v) subsection 105.42(1), (2), (3) or (4); or
      (vi) subsection 105.43(1), (4) or (6); or
      (vii) subsection 105.44(2).

Penalty: Imprisonment for 2 years.

Subdivision F—Miscellaneous

105.46 Nature of functions of Federal Magistrate

(1) A function of making an order conferred on a Federal Magistrate by section 105.43 is conferred on the Federal Magistrate in a personal capacity and not as a court or a member of a court.

(2) Without limiting the generality of subsection (1), an order made by a Federal Magistrate under section 105.43 has effect only by virtue
Section 105.47

of this Act and is not to be taken by implication to be made by a court.

(3) A Federal Magistrate performing a function of, or connected with, making an order under section 105.43 has the same protection and immunity as if he or she were performing that function as, or as a member of, the Federal Magistrates Court.

105.47 Annual report

(1) The Attorney-General must, as soon as practicable after each 30 June, cause to be prepared a report about the operation of this Division during the year ended on that 30 June.

(2) Without limiting subsection (1), a report relating to a year must include the following matters:
   (a) the number of initial preventative detention orders made under section 105.8 during the year;
   (b) the number of continued preventative detention orders made under section 105.12 during the year;
   (c) whether a person was taken into custody under each of those orders and, if so, how long the person was detained for;
   (d) particulars of:
      (i) any complaints made or referred to the Commonwealth Ombudsman during the year that related to the detention of a person under a preventative detention order; and
      (ii) any information given under section 40SA of the Australian Federal Police Act 1979 during the year that related to the detention of a person under a preventative detention order and raised an AFP conduct or practices issue (within the meaning of that Act);
   (e) the number of prohibited contact orders made under sections 105.15 and 105.16 during the year;
   (f) the number of preventative detention orders, and the number of prohibited contact orders, that a court has found not to have been validly made or that the Administrative Appeals Tribunal has declared to be void.

(3) The Attorney-General must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the report is completed.
105.48 Certain functions and powers not affected

This Division does not affect:
(a) a function or power of the Commonwealth Ombudsman under the Ombudsman Act 1976; or
(b) a function or power of a person under Part V of the Australian Federal Police Act 1979.

105.49 Queensland public interest monitor functions and powers not affected

This Division does not affect a function or power that the Queensland public interest monitor, or a Queensland deputy public interest monitor, has under a law of Queensland.

105.50 Law relating to legal professional privilege not affected

To avoid doubt, this Division does not affect the law relating to legal professional privilege.

105.51 Legal proceedings in relation to preventative detention orders

(1) Subject to subsections (2) and (4), proceedings may be brought in a court for a remedy in relation to:
(a) a preventative detention order; or
(b) the treatment of a person in connection with the person’s detention under a preventative detention order.

(2) A court of a State or Territory does not have jurisdiction in proceedings for a remedy if:
(a) the remedy relates to:
   (i) a preventative detention order; or
   (ii) the treatment of a person in connection with the person’s detention under a preventative detention order; and
(b) the proceedings are commenced while the order is in force.

(3) Subsection (2) has effect despite any other law of the Commonwealth (whether passed or made before or after the commencement of this section).
Section 105.51

(4) An application cannot be made under the *Administrative Decisions (Judicial Review) Act 1977* in relation to a decision made under this Division.

Note: See paragraph (dae) of Schedule 1 to the *Administrative Decisions (Judicial Review) Act 1977*.

(5) An application may be made to the Administrative Appeals Tribunal for review of:

(a) a decision by an issuing authority under section 105.8 or 105.12 to make a preventative detention order; or

(b) a decision by an issuing authority in relation to a preventative detention order to extend or further extend the period for which the order is in force in relation to a person.

The application cannot be made while the order is in force.

(6) The power of the Administrative Appeals Tribunal to review a decision referred to in subsection (5) may be exercised by the Tribunal only in the Security Appeals Division of the Tribunal.

(7) The Administrative Appeals Tribunal may:

(a) declare a decision referred to in subsection (5) in relation to a preventative detention order in relation to a person to be void if the Tribunal would have set the decision aside if an application for review of the decision had been able to be made to the Tribunal while the order was in force; and

(b) determine that the Commonwealth should compensate the person in relation to the person’s detention under the order if the Tribunal declares the decision to be void under paragraph (a).

(8) If the Administrative Appeals Tribunal makes a determination under paragraph (7)(b), the Commonwealth is liable to pay the compensation determined by the Tribunal.

(9) The provisions of the *Administrative Appeals Tribunal Act 1975* apply in relation to an application to the Administrative Appeals Tribunal for review of a decision referred to in subsection (5) with the modifications specified in the regulations made under this Act.
Section 105.52

105.52 Review by State and Territory courts

(1) This section applies if:

(a) a person is detained under a preventative detention order (the Commonwealth order) that is made on the basis of:

(i) assisting in preventing a terrorist act occurring within a period; or

(ii) preserving evidence of, or relating to, a terrorist act; and

(b) the person is detained under an order (the State order) that is made under a corresponding State preventative detention law on the basis of:

(i) assisting in preventing the same terrorist act, or a different terrorist act, occurring within that period; or

(ii) preserving evidence of, or relating to, the same terrorist act; and

(c) the person brings proceedings before a court of a State or Territory in relation to:

(i) the application for, or the making of, the State order; or

(ii) the person’s treatment in connection with the person’s detention under the State order.

(2) The court may:

(a) review the application for, or the making of, the Commonwealth order, or the person’s treatment in connection with the person’s detention under the Commonwealth order, on the same grounds as those on which the court may review the application for, or the making of, the State order, or the person’s treatment in connection with the person’s detention under the State order; and

(b) grant the same remedies in relation to the application for, or the making of, the Commonwealth order, or the person’s treatment in connection with the person’s detention under the Commonwealth order, as those the court can grant in relation to the application for, or the making of, the State order, or the person’s treatment in connection with the person’s detention under the State order.
Section 105.53

(3) If:

(a) the person applies to the court for:

(i) review of the application for, or the making of, the Commonwealth order or the person’s treatment in connection with the person’s detention under the Commonwealth order; or

(ii) a remedy in relation to the application for, or the making of, the Commonwealth order or the person’s treatment in connection with the person’s detention under the Commonwealth order; and

(b) the person applies to the court for an order under this subsection;

the court may order the Commissioner of the Australian Federal Police to give the court, and the parties to the proceedings, the information that was put before the person who issued the Commonwealth order when the application for the Commonwealth order was made.

(4) Subsection (3) does not require information to be given to the court, or the parties to the proceedings, if the disclosure of the information is likely to prejudice national security (within the meaning of the National Security Information (Criminal and Civil Proceedings) Act 2004).

(5) This section has effect:

(a) without limiting subsection 105.51(1); and

(b) subject to subsection 105.51(2).


105.53 Sunset provision

(1) A preventative detention order, or a prohibited contact order, that is in force at the end of 10 years after the day on which this Division commences ceases to be in force at that time.

(2) A preventative detention order, and a prohibited contact order, cannot be applied for, or made, after the end of 10 years after the day on which this Division commences.
106.1 Saving—regulations originally made for the purposes of paragraph (c) of the definition of terrorist organisation

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

(2) In this section, commencement means the commencement of this section.

106.2 Saving—regulations made for the purposes of paragraph (a) of the definition of terrorist organisation

(1) If:
(a) regulations were made before commencement for the purposes of paragraph (a) of the definition of terrorist organisation in subsection 102.1(1), as in force before commencement; and
(b) the regulations were in force immediately before commencement;
the regulations continue to have effect, after commencement, as if they had been made for the purposes of that paragraph, as in force after commencement.

(2) In this section, commencement means the commencement of this section.
106.3 Application provision

The amendments to this Code made by Schedule 1 to the
*Anti-Terrorism Act 2005* apply to offences committed:

(a) before the commencement of this section (but not before the
    commencement of the particular section of the Code being
    amended); and

(b) after the commencement of this section.
Part 5.4—Harming Australians

Division 115—Harming Australians

115.1 Murder of an Australian citizen or a resident of Australia

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

Penalty: Imprisonment for life.

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

115.2 Manslaughter of an Australian citizen or a resident of Australia

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

Penalty: Imprisonment for 25 years.

(2) Absolute liability applies to paragraphs (1)(b) and (c).
115.3 Intentionally causing serious harm to an Australian citizen or a resident of Australia

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

Penalty: Imprisonment for 20 years.

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

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

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

Penalty: Imprisonment for 15 years.

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

115.5 Saving of other laws

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

115.6 Bringing proceedings under this Division

(1) Proceedings for an offence under this Division must not be commenced without the Attorney-General’s written consent.
Section 115.7

(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.

115.7 Ministerial certificates relating to proceedings

(1) A Minister who administers one or more of the following Acts:
   (a) the Australian Citizenship Act 2007;
   (b) the Migration Act 1958;
   (c) the Australian Passports Act 2005;
may issue a certificate stating that a person is or was an Australian citizen or a resident of Australia at a particular time.

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

115.8 Geographical jurisdiction

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

115.9 Meaning of causes death or harm

In this Division, a person’s conduct causes death or harm if it substantially contributes to the death or harm.
Chapter 7—The proper administration of Government

Part 7.1—Preliminary

Division 130—Preliminary

130.1 Definitions

In this Chapter:

**duty:**

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

**gain** means:

(a) a gain in property, whether temporary or permanent; or
(b) a gain by way of the supply of services;

and includes keeping what one has.

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

**obtaining** includes:

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

**property** includes:

(a) real property; and
Section 130.2

(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 dishonest:
(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.
Section 131.1

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
(c) the parting is done for purposes of the person’s own and without the other’s authority;
Section 131.11

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.

(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
(b) at the time of committing theft, or immediately after
    committing theft, the person:
Section 132.3

(i) uses force on another person; or
(ii) threatens to use force then and there on another person;
with intent to commit theft or to escape from the scene.

Penalty: Imprisonment for 15 years.

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

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

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

132.3 Aggravated robbery

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

Penalty: Imprisonment for 20 years.

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

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

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

(3) In this section:

offensive weapon includes:
(a) an article made or adapted for use for causing injury to, or
incapacitating, a person; or
Section 132.4

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

132.4 Burglary

(1) A person is guilty of an offence if:
   (a) the person enters, or remains in, a building, as a trespasser, with intent to commit theft of a particular item of property in the building; and
   (b) the property belongs to a Commonwealth entity.

   Penalty: Imprisonment for 13 years.

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

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

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

   Penalty: Imprisonment for 13 years.

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

(4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the offence referred to in paragraph (3)(a) is punishable by imprisonment for life or for a term of 5 years or more.
(5) For the purposes of this Code, an offence against subsection (3) is also to be known as the offence of burglary.

(6) A person is guilty of an offence if:
(a) the person enters, or remains in, a building, as a trespasser, with intent to commit an offence in the building that involves causing harm to another person or damage to property; and
(aa) the offence referred to in paragraph (a) is an offence against a law of the Commonwealth, a State or a Territory; and
(b) the offence referred to in paragraph (a) is punishable by imprisonment for life or for a term of 5 years or more; and
(c) the building is owned or occupied by a Commonwealth entity.

Penalty: Imprisonment for 13 years.

(6A) In a prosecution for an offence against subsection (6), it is not necessary to prove that the defendant knew that the offence referred to in paragraph (6)(a) is an offence against a law of the Commonwealth, a State or a Territory.

(7) In a prosecution for an offence against subsection (6), it is not necessary to prove that the defendant knew that the offence referred to in paragraph (6)(a) is punishable by imprisonment for life or for a term of 5 years or more.

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

(9) For the purposes of this Code, an offence against subsection (6) is also to be known as the offence of burglary.

(10) For the purposes of this section, a person is taken not to be a trespasser:
(a) merely because the person is permitted to enter, or remain in, a building for a purpose that is not the person’s intended purpose; or
(b) if the person is permitted to enter, or remain in, a building as a result of fraud, misrepresentation or another person’s mistake.
(12) In this section:

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

132.5 Aggravated burglary

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

Penalty: Imprisonment for 17 years.

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

(3) In a prosecution for an offence against subsection (1) in relation to the offence of burglary created by subsection 132.4(1), it is not necessary to prove that the defendant knew that the property concerned belonged to a Commonwealth entity.

(4) In a prosecution for an offence against subsection (1) in relation to the offence of burglary created by subsection 132.4(3), it is not necessary to prove that:
(a) the defendant knew that the offence referred to in paragraph 132.4(3)(a) is an offence against a law of the Commonwealth; or
(b) the defendant knew that the offence referred to in paragraph 132.4(3)(a) is punishable by imprisonment for life or for a term of 5 years or more.

(5) In a prosecution for an offence against subsection (1) in relation to the offence of burglary created by subsection 132.4(6), it is not necessary to prove that:
(a) the defendant knew that the offence referred to in paragraph 132.4(6)(a) is an offence against a law of the Commonwealth, a State or a Territory; or
Section 132.6

(b) the defendant knew that the offence referred to in paragraph 132.4(6)(a) is punishable by imprisonment for life or for a term of 5 years or more; or
(c) the defendant knew that the building was owned or occupied by a Commonwealth entity.

(6) In this section:

*offensive weapon* includes:

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

132.6 Making off without payment

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

(a) the person, knowing that immediate payment for any goods or services supplied by another person is required or expected from him or her, dishonestly makes off:

(i) without having paid; and
(ii) with intent to avoid payment of the amount due; and
(b) the other person is a Commonwealth entity.

Penalty: Imprisonment for 2 years.

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

(3) For the purposes of this section, *immediate payment* includes payment at the time of collecting goods in respect of which a service has been provided.

132.7 Going equipped for theft or a property offence

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

Penalty: Imprisonment for 3 years.

(2) In a prosecution for an offence against subsection (1) in relation to:
Section 132.7

(a) theft; or
(b) robbery; or
(c) aggravated robbery; or
(d) the offence of burglary created by subsection 132.4(1); or
(e) the offence of aggravated burglary that relates to the offence of burglary created by subsection 132.4(1); or
(f) an offence against section 134.1;

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

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

it is not necessary to prove that:
(c) the defendant knew that the offence referred to in paragraph 132.4(3)(a) is an offence against a law of the Commonwealth; or
(d) the defendant knew that the offence referred to in paragraph 132.4(3)(a) is punishable by imprisonment for life or for a term of 5 years or more.

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

it is not necessary to prove that:
(c) the defendant knew that the offence referred to in paragraph 132.4(6)(a) is an offence against a law of the Commonwealth, a State or a Territory; or
(d) the defendant knew that the offence referred to in paragraph 132.4(6)(a) is punishable by imprisonment for life or for a term of 5 years or more; or
(e) the defendant knew that the building was owned or occupied by a Commonwealth entity.
(5) In this section:

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

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

132.8 Dishonest taking or retention of property

Taking

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

Penalty: Imprisonment for 2 years.

Retention

(2) A person is guilty of an offence if the person:
(a) on a particular occasion, takes one or more items of property belonging to a Commonwealth entity; and
(b) dishonestly retains any or all of those items; and
(c) does not have consent to the retention from the person who has authority to give consent; and
Section 132.9

(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.
The Criminal Code  
Schedule
The proper administration of Government  Chapter 7
Fraudulent conduct  Part 7.3
Obtaining property or a financial advantage by deception  Division 134

Section 134.2

*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.
Section 135.4

(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; or
      (iv) an application for accreditation under the wheat export accreditation scheme; 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.
Section 136.1

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 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; or

(iv) an application for accreditation under the wheat export accreditation scheme; and

(d) any of the following subparagraphs applies:

(i) the statement is made to a Commonwealth entity;

(ii) the statement is made to a person who is exercising powers or performing functions under, or in connection with, a law of the Commonwealth;

(iii) the statement is made in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 6 months.

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

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

Note: A defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3).
(6) Subsection (4) does not apply as a result of subparagraph (4)(b)(ii) if the statement did not omit any matter or thing without which the statement is misleading in a material particular.

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

Alternative verdicts

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

Geographical jurisdiction

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

Definitions

(9) In this section:

benefit includes any advantage and is not limited to property.

wheat export accreditation scheme has the same meaning as in the Wheat Export Marketing Act 2008.
Division 137—False or misleading information or documents

137.1 False or misleading information

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

Penalty: Imprisonment for 12 months.

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

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

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

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

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

(4) Subsection (1) does not apply as a result of subparagraph (1)(c)(i)
if, before the information was given by a person to the
Commonwealth entity, the Commonwealth entity did not take
reasonable steps to inform the person of the existence of the
offence against subsection (1).
Section 137.2

137.2 False or misleading documents

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

Penalty: Imprisonment for 12 months.

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

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

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

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3).
Section 137.3

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
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
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.
Section 141.1

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
       (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
       (ii) receives or obtains a benefit for himself, herself or another person; or
Section 142.2

(iii) agrees to receive or obtain a benefit for himself, herself or another person; and

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

Penalty: Imprisonment for 5 years.

Benefit in the nature of a reward

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

142.2 Abuse of public office

(1) A Commonwealth public official is guilty of an offence if:

(a) the official:

(i) exercises any influence that the official has in the official’s capacity as a Commonwealth public official; or

(ii) engages in any conduct in the exercise of the official’s duties as a Commonwealth public official; or

(iii) uses any information that the official has obtained in the official’s capacity as a Commonwealth public official; and

(b) the official does so with the intention of:

(i) dishonestly obtaining a benefit for himself or herself or for another person; or

(ii) dishonestly causing a detriment to another person.

Penalty: Imprisonment for 5 years.

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

(a) the person has ceased to be a Commonwealth public official in a particular capacity; and

(b) the person uses any information that the person obtained in that capacity as a Commonwealth public official; and

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

(i) dishonestly obtaining a benefit for himself or herself or for another person; or

(ii) dishonestly causing a detriment to another person.
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

(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:

(a) the document, or any part of the document:
Section 143.3

(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:
Section 143.3

(i) purports to have been made in the form in which it is made by a Commonwealth entity, or a Commonwealth public official, who did not make it in that form; or

(ii) purports to have been made in the form in which it is made on the authority of a Commonwealth entity, or a Commonwealth public official, who did not authorise its making in that form; or

(b) the document, or any part of the document:

(i) purports to have been made in the terms in which it is made by a Commonwealth entity, or a Commonwealth public official, who did not make it in those terms; or

(ii) purports to have been made in the terms in which it is made on the authority of a Commonwealth entity, or a Commonwealth public official, who did not authorise its making in those terms; or

(c) the document, or any part of the document:

(i) purports to have been altered in any respect by a Commonwealth entity, or a Commonwealth public official, who did not alter it in that respect; or

(ii) purports to have been altered in any respect on the authority of a Commonwealth entity, or a Commonwealth public official, who did not authorise its alteration in that respect; or

(d) the document, or any part of the document:

(i) purports to have been made or altered by a Commonwealth entity, or a Commonwealth public official, who did not exist; or

(ii) purports to have been made or altered on the authority of a Commonwealth entity, or a Commonwealth public official, who did not exist; or

(e) the document, or any part of the document, purports to have been made or altered by a Commonwealth entity, or a Commonwealth public official, on a date on which, at a time at which, at a place at which, or otherwise in circumstances in which, it was not made or altered.

(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).
Section 143.4

(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.
Section 144.1

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

Penalty: Imprisonment for 10 years.

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

(7) A person is guilty of an offence if:
   (a) the person makes a false document with the intention that the
       person or another will use it:
       (i) to dishonestly cause a computer, a machine or an
electronic device to respond to the document as if the
       document were genuine; and
       (ii) if it is so responded to, to dishonestly obtain a gain,
dishonestly cause a loss, or dishonestly influence the
       exercise of a public duty or function; and
   (b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.

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

(9) Section 15.4 (extended geographical jurisdiction—category D)
    applies to an offence against subsection (1), (3), (5) or (7).
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:
       (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
(b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.
Section 145.3

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

(7) A person is guilty of an offence if:
(a) the person knows that a document is a false document and has it in his or her possession with the intention that the person or another will use it:
   (i) to dishonestly cause a computer, a machine or an electronic device to respond to the document as if the document were genuine; and
   (ii) if it is so responded to, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and
(b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.

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

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

(1) A person is guilty of an offence if:
(a) the person knows that a device, material or other thing is designed or adapted for the making of a false document (whether or not the device, material or thing is designed or adapted for another purpose); and
(b) the person has the device, material or thing in his or her possession with the intention that the person or another person will use it to commit an offence against section 144.1.

Penalty: Imprisonment for 10 years.

(2) A person is guilty of an offence if:
(a) the person makes or adapts a device, material or other thing; and
(b) the person knows that the device, material or other thing is designed or adapted for the making of a false document.
Section 145.4

(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;

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

Penalty: Imprisonment for 2 years.

Note: See also section 10.5 (lawful authority).

145.4 Falsification of documents etc.

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

(a) the person dishonestly damages, destroys, alters, conceals or
falsifies a document; and

(b) the document is:

(i) kept, retained or issued for the purposes of a law of the
Commonwealth; or
Section 145.5

(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
Section 145.6

(iii) held by a Commonwealth entity or a person in the capacity of a Commonwealth public official; and

(d) the first-mentioned person does so with the intention of:
   (i) obtaining a gain; or
   (ii) causing a loss.

Penalty: Imprisonment for 7 years.

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

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

Penalty: Imprisonment for 7 years.

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

145.6 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to each offence against this Division.
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 146.1

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

Division 146—Preliminary

146.1 Definitions

In this Part:

Commonwealth law enforcement officer means a person who is:
(a) a member or special member of the Australian Federal Police; or
(aa) the Integrity Commissioner (within the meaning of the Law Enforcement Integrity Commissioner Act 2006); or
(ab) a staff member of ACLEI (within the meaning of the Law Enforcement Integrity Commissioner Act 2006); or
(b) a member of the Board of the Australian Crime Commission established under section 7B of the Australian Crime Commission Act 2002; or
(ba) an examiner (within the meaning of that Act); or
(c) a member of the staff of the ACC (within the meaning of that Act); or
(d) the Chief Executive Officer of Customs; or
(e) a person employed in Customs.

fear includes apprehension.

harm means:
(a) physical harm (whether temporary or permanent); or
(b) harm to a person’s mental health (whether temporary or permanent);
but does not include being subjected to a force or impact that is within the limits of what is reasonably acceptable as incidental to:
(c) social interaction; or
(d) life in the community.

harm to a person’s mental health includes significant psychological harm to the person, but does not include a reference to ordinary emotional reactions (for example, distress, grief, fear or anger).

physical harm includes:
(a) unconsciousness; and
(b) pain; and
(c) disfigurement; and
(d) infection with a disease; and
(e) any physical contact with a person that the person might reasonably object to in the circumstances (whether or not the person was aware of it at the time).

serious harm means any harm (including the cumulative effect of more than one harm) that:
(a) endangers, or is likely to endanger, a person’s life; or
(b) is, or is likely to be, significant and longstanding.

146.2 Causing harm

For the purposes of this Part, a person’s conduct is taken to cause harm if it substantially contributes to harm.
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.

(1B) If:
   (a) a person is charged with an offence against subsection (1); and

The proper administration of Government

Chapter 7

Criminal Code

Part 7.8

Section 147.2

Causing harm to, and impersonation and obstruction of, Commonwealth public officials

Division 147

Causing harm to Commonwealth public officials

(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:
Section 147.2

(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.

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:
Section 147.2

(i) intends the second person to fear that the threat will be carried out; or
(ii) is reckless as to causing the second person to fear that the threat will be carried out; and

(d) the first person makes the threat because of:
   (i) the official’s status as a public official; or
   (ii) any conduct engaged in by the official in the official’s capacity as a public official; and

(e) the official is a Commonwealth public official; and

(f) if subparagraph (d)(i) applies—the status mentioned in that subparagraph was status as a Commonwealth public official; and

(g) if subparagraph (d)(ii) applies—the conduct mentioned in that subparagraph was engaged in by the official in the official’s capacity as a Commonwealth public official.

Penalty: Imprisonment for 2 years

(2A) Absolute liability applies to the paragraphs (2)(e), (f) and (g) elements of the offence.

Threatening to cause serious harm to a former Governor-General, former Minister or former Parliamentary Secretary

(3) A person (the first person) is guilty of an offence if:
   (a) the first person makes to another person (the second person) a threat to cause serious harm to the second person or to a third person; and
   (b) the second person or the third person is a former Governor-General, a former Minister or a former Parliamentary Secretary; and
   (c) the first person:
      (i) intends the second person to fear that the threat will be carried out; or
      (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
   (d) the first person makes the threat because of:
Section 147.3

(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.
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
Section 148.2

(ii) causing a loss; or
(iii) influencing the exercise of a public duty or function;
and
(c) if subparagraph (a)(i) applies—the first-mentioned person also does so with intent to deceive.

Penalty: Imprisonment for 5 years.

(3A) For the purposes of subparagraph (3)(a)(ii), it is immaterial whether that capacity as a Commonwealth public official exists or is fictitious.

(4) The definition of duty in section 130.1 does not apply to this section.

(5) To avoid doubt, for the purposes of this section:
(a) impersonation does not include conduct engaged in solely for satirical purposes; and
(b) false representation does not include conduct engaged in solely for satirical purposes.

148.2 Impersonation of an official by another official

(1) A Commonwealth public official is guilty of an offence if:
(a) on a particular occasion, the official impersonates another person in that other person’s capacity as a Commonwealth public official; and
(b) the first-mentioned official does so knowing it to be in circumstances when the other official is likely to be on duty; and
(c) the first-mentioned official does so with intent to deceive.

Penalty: Imprisonment for 2 years.

(2) A Commonwealth public official is guilty of an offence if:
(a) the official falsely represents himself or herself to be a Commonwealth public official in a particular capacity; and
(b) the official does so in the course of doing an act, or attending a place, in the assumed capacity of such an official.

Penalty: Imprisonment for 2 years.
(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
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.
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.
Division 268  Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

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
Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court Division 268

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
depprivation of resources indispensable for survival, such as
depprivation 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
Schedule  The Criminal Code
Chapter 8  Offences against humanity and related offences

Division 268  Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

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

268.11 Crime against humanity—deportation or forcible transfer of population

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

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

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

(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish the lawfulness of the presence of the person or persons in the area; and
Schedule  The Criminal Code  
Chapter 8  Offences against humanity and related offences  

Division 268  Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court  

Section 268.12  

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

Penalty: Imprisonment for 17 years.  

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

(3) In subsection (1):  

forcibly displaces one or more persons includes displaces one or more persons:  

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

(b) by taking advantage of a coercive environment.  

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

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

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

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

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

Penalty: Imprisonment for 17 years.  

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

268.13  Crime against humanity—torture  

A person (the perpetrator) commits an offence if:  

(a) the perpetrator inflicts severe physical or mental pain or suffering upon one or more persons who are in the custody or under the control of the perpetrator; and
The Criminal Code Schedule
Offences against humanity and related offences Chapter 8

Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court Division 268

Section 268.14

(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;

Criminal Code Act 1995 311
Schedule  The Criminal Code  
Chapter 8  Offences against humanity and related offences  

Division 268  Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court  

Section 268.15  

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

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

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

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

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

(4) In this section:  

**sexually penetrate** means:  

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

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

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

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

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

268.15  Crime against humanity—sexual slavery  

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

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

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

(c) the perpetrator’s conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.
Penalty: Imprisonment for 25 years.

(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

   (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.

### 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, ethnic, 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.
The Criminal Code  Schedule
Offences against humanity and related offences  Chapter 8
Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court  Division 268

Section 268.18

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.

(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;
Schedule  The Criminal Code  
Chapter 8  Offences against humanity and related offences  

Division 268  Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court  

Section 268.19  

without the consent of the person or persons, including by being reckless as to whether there is consent; and  
(b) the perpetrator’s conduct is of a gravity comparable to the offences referred to in sections 268.14 to 268.18; and  
(c) the perpetrator’s conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.  

Penalty:  Imprisonment for 25 years.  

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

(3) In subsection (1):  

consent means free and voluntary agreement.  
The following are examples of circumstances in which a person does not consent to an act:  

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

threat of force or coercion includes:  

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

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

268.20 Crime against humanity—persecution

(1) A person (the perpetrator) commits an offence if:
   (a) the perpetrator severely deprives one or more persons of any of the rights referred to in paragraph (b); and
   (b) the rights are those guaranteed in articles 6, 7, 8 and 9, paragraph 2 of article 14, article 18, paragraph 2 of article 20, paragraph 2 of article 23 and article 27 of the Covenant; and
   (c) the perpetrator targets the person or persons by reason of the identity of a group or collectivity or targets the group or collectivity as such; and
   (d) the grounds on which the targeting is based are political, racial, national, ethnic, cultural, religious, gender or other grounds that are recognised in paragraph 1 of article 2 of the Covenant; and
   (e) the perpetrator’s conduct is committed in connection with another act that is:
         (i) a proscribed inhumane act; or
         (ii) genocide; or
         (iii) a war crime; and
   (f) the perpetrator’s conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 17 years.

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

The Criminal Code

Chapter 8

Offences against humanity and related offences

Division 268  Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.21

268.21  Crime against humanity—enforced disappearance of persons

1. A person (the perpetrator) commits an offence if:
   (a) the perpetrator arrests, detains or abducts one or more persons; and
   (b) the arrest, detention or abduction is carried out by, or with the authorisation, support or acquiescence of, the government of a country or a political organisation; and
   (c) the perpetrator intends to remove the person or persons from the protection of the law for a prolonged period of time; and
   (d) the perpetrator’s conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population; and
   (e) after the arrest, detention or abduction, the government or organisation refuses to acknowledge the deprivation of freedom of, or to give information on the fate or whereabouts of, the person or persons.

Penalty:  Imprisonment for 17 years.

2. A person (the perpetrator) commits an offence if:
   (a) one or more persons have been arrested, detained or abducted; and
   (b) the arrest, detention or abduction was carried out by, or with the authorisation, support or acquiescence of, the government of a country or a political organisation; and
   (c) the perpetrator refuses to acknowledge the deprivation of freedom, or to give information on the fate or whereabouts, of the person or persons; and
   (d) the refusal occurs with the authorisation, support or acquiescence of the government of the country or the political organisation; and
   (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
The Criminal Code  
Schedule  
Offences against humanity and related offences  
Chapter 8  
Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court  
Division 268

Section 268.22

(g) the arrest, detention or abduction occurred, and the refusal occurs, as part of a widespread or systematic attack directed against a civilian population; and
(h) the perpetrator knows that the refusal is part of, or intends the refusal to be part of, such an attack.

Penalty: Imprisonment for 17 years.

268.22 Crime against humanity—apartheid

A person (the perpetrator) commits an offence if:
(a) the perpetrator commits against one or more persons an act that is a proscribed inhumane act (as defined by the Dictionary) or an act that is of a nature and gravity similar to any such proscribed inhumane act; and
(b) the perpetrator’s conduct is committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups; and
(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish the character of the act; and
(d) the perpetrator intends to maintain the regime by the conduct; and
(e) the perpetrator’s conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 17 years.

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.
Schedule  The Criminal Code
Chapter 8 Offences against humanity and related offences

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.24

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).

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

320    Criminal Code Act 1995
Section 268.26

(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.

(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
Section 268.28  

(e) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and

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

Penalty: Imprisonment for 25 years.

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

268.28  War crime—wilfully causing great suffering

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

(a) the perpetrator causes great physical or mental pain or suffering to, or serious injury to body or health of, one or more persons; and

(b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and

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

Penalty: Imprisonment for 25 years.

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

268.29  War crime—destruction and appropriation of property

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

(a) the perpetrator destroys or appropriates property; and

(b) the destruction or appropriation is not justified by military necessity; and

(c) the destruction or appropriation is extensive and carried out unlawfully and wantonly; and

(d) the property is protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and
Section 268.30

268.30 War crime—compelling service in hostile forces

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

(a) the perpetrator coerces one or more persons, by act or threat:
   (i) to take part in military operations against that person’s or those persons’ own country or forces; or
   (ii) otherwise to serve in the forces of an adverse power; and

(b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and

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

Penalty: Imprisonment for 10 years.

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

268.31 War crime—denying a fair trial

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

(a) the perpetrator deprives one or more persons of a fair and regular trial by denying to the person any of the judicial guarantees referred to in paragraph (b); and

(b) the judicial guarantees are those defined in articles 84, 99 and 105 of the Third Geneva Convention and articles 66 and 71 of the Fourth Geneva Convention; and
Schedule  The Criminal Code
Chapter 8  Offences against humanity and related offences

Division 268  Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.32

(c) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and
(d) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and
(e) the perpetrator’s conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 10 years.

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

268.32 War crime—unlawful deportation or transfer

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

Penalty: Imprisonment for 17 years.

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

268.33 War crime—unlawful confinement

(1) A person (the perpetrator) commits an offence if:
(a) the perpetrator unlawfully confines or continues to confine one or more persons to a certain location; and
Section 268.34

(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).

268.34 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).
Section 268.35

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

268.35 War crime—attacking civilians

A person (the perpetrator) commits an offence if:
(a) the perpetrator directs an attack; and
(b) the object of the attack is a civilian population as such or individual civilians not taking direct part in hostilities; and
(c) the perpetrator’s conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.36 War crime—attacking civilian objects

A person (the perpetrator) commits an offence if:
(a) the perpetrator directs an attack; and
(b) the object of the attack is not a military objective; and
(c) the perpetrator’s conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

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

(1) A person (the perpetrator) commits an offence if:
(a) the perpetrator directs an attack; and
(b) the object of the attack is personnel involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations; and
(c) the personnel are entitled to the protection given to civilians under the Geneva Conventions or Protocol I to the Geneva Conventions; and
(d) the perpetrator’s conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.
Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court  Division 268

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

   Penalty: Imprisonment for 20 years.

(3) Strict liability applies to paragraphs (1)(c) and (2)(c).
Schedule  The Criminal Code
Chapter 8  Offences against humanity and related offences

Division 268  Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.39

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

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

268.39 War crime—attacking undefended places

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

Penalty: Imprisonment for life.

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

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

Penalty: Imprisonment for life.

(2) A person (the perpetrator) commits an offence if:
(a) the perpetrator injures one or more persons; and
(b) the person or persons are hors de combat; and
(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are hors de combat; and

328  Criminal Code Act 1995
Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court Division 268

Section 268.41

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

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

268.41 War crime—improper use of a flag of truce

A person (the perpetrator) commits an offence if:

(a) the perpetrator uses a flag of truce; and
(b) the perpetrator uses the flag in order to feign an intention to negotiate when there is no such intention on the part of the perpetrator; and
(c) the perpetrator knows of, or is reckless as to, the illegal nature of such use of the flag; and
(d) the perpetrator’s conduct results in death or serious personal injury; and
(e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

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.
Schedule  The Criminal Code  
Chapter 8  Offences against humanity and related offences

Division 268  Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.43

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

A person (the perpetrator) commits an offence if:

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

(b) the perpetrator uses the flag, insignia or uniform without the authority of the United Nations; and

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

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

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

Penalty: Imprisonment for life.

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

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

(a) the perpetrator uses an emblem; and

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

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

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

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

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

Penalty: Imprisonment for life.

(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 268.45

(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.
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:
Offences against humanity and related offences  

Chapter 8

Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court  Division 268

Section 268.49

(a) the perpetrator subjects one or more persons to a medical or scientific experiment; and
(b) the experiment causes the death of the person or persons; and
(c) the perpetrator’s conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
(d) the person or persons are in the power of an adverse party; and
(e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the perpetrator) commits an offence if:
(a) the perpetrator subjects one or more persons to a medical or scientific experiment; and
(b) the experiment seriously endangers the physical or mental health, or the integrity, of the person or persons; and
(c) the perpetrator’s conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
(d) the person or persons are in the power of an adverse party; and
(e) the conduct takes place in the context of, and is associated with, an international armed conflict.

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

268.49 War crime—treacherously killing or injuring

(1) A person (the perpetrator) commits an offence if:
(a) the perpetrator invites the confidence or belief of one or more persons that the perpetrator is entitled to protection, or that the person or persons are obliged to accord protection to the perpetrator; and
(b) the perpetrator kills the person or persons; and
Schedule  The Criminal Code

Chapter 8  Offences against humanity and related offences

Division 268  Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.50

(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
(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.

268.53 War crime—compelling participation in military operations

(1) A person (the perpetrator) commits an offence if:
Schedule  The Criminal Code
Chapter 8  Offences against humanity and related offences

Division 268  Genocide, crimes against humanity, war crimes and crimes against the
administration of the justice of the International Criminal Court

Section 268.54

(a) the perpetrator coerces one or more persons by act or threat
to take part in military operations against that person’s or
those persons’ own country or forces; and
(b) the person or persons are nationals of an adverse party; and
(c) the perpetrator’s conduct takes place in the context of, and is
associated with, an international armed conflict.

Penalty: Imprisonment for 10 years.

(2) It is not a defence to a prosecution for an offence against
subsection (1) that the person or persons were in the service of the
perpetrator at a time before the beginning of the international
armed conflict.

268.54 War crime—pillaging

A person (the perpetrator) commits an offence if:
(a) the perpetrator appropriates certain property; and
(b) the perpetrator intends to deprive the owner of the property
and to appropriate it for private or personal use; and
(c) the appropriation is without the consent of the owner; and
(d) the perpetrator’s conduct takes place in the context of, and is
associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

268.55 War crime—employing poison or poisoned weapons

A person (the perpetrator) commits an offence if:
(a) the perpetrator employs a substance or employs a weapon
that releases a substance as a result of its employment; and
(b) the substance is such that it causes death or serious damage
to health in the ordinary course of events through its toxic
properties; and
(c) the perpetrator’s conduct takes place in the context of, and is
associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

268.56 War crime—employing prohibited gases, liquids, materials or devices

A person (the perpetrator) commits an offence if:
(a) the perpetrator employs a gas or other analogous substance or device; and
(b) the gas, substance or device is such that it causes death or serious damage to health in the ordinary course of events through its asphyxiating or toxic properties; and
(c) the perpetrator’s conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

268.57 War crime—employing prohibited bullets

(1) A person (the perpetrator) commits an offence if:
(a) the perpetrator employs certain bullets; and
(b) the bullets are such that their use violates the Hague Declaration because they expand or flatten easily in the human body; and
(c) the perpetrator knows that, or is reckless as to whether, the nature of the bullets is such that their employment will uselessly aggravate suffering or the wounding effect; and
(d) the perpetrator’s conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

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

268.58 War crime—outrages upon personal dignity

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

Penalty: Imprisonment for 17 years.
Schedule  The Criminal Code

Chapter 8  Offences against humanity and related offences

Division 268  Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.59

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

Penalty: Imprisonment for 17 years.

268.59  War crime—rape

(1) A person (the perpetrator) commits an offence if:
   (a) the perpetrator sexually penetrates another person without the consent of that person; and
   (b) the perpetrator knows about, or is reckless as to, the lack of consent; and
   (c) the perpetrator’s conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) A person (the perpetrator) commits an offence if:
   (a) the perpetrator causes another person to sexually penetrate the perpetrator without the consent of the other person; and
   (b) the perpetrator knows about, or is reckless as to, the lack of consent; and
   (c) the perpetrator’s conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(3) In this section:

consent means free and voluntary agreement.

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

   (a) the person submits to the act because of force or the fear of force to the person or to someone else;
   (b) the person submits to the act because the person is unlawfully detained;
Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court  

**Chapter 8**

**Division 268**

**Section 268.60**

(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

(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

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

Penalty: Imprisonment for 25 years.
Schedule  The Criminal Code
Chapter 8  Offences against humanity and related offences

Division 268  Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.63

(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;

(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
Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court \textbf{Division 268}

\textbf{Section 268.64}

(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):

\textit{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.

\textit{threat of force or coercion} includes:

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

(b) taking advantage of a coercive environment.

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

(1) A person (the perpetrator) commits an offence if:
   (a) the perpetrator uses the presence of one or more civilians, prisoners of war, military, medical or religious personnel or persons who are hors de combat; and
   (b) the perpetrator intends the perpetrator’s conduct to render a military objective immune from attack or to shield, favour or impede military operations; and
   (c) the perpetrator’s conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty:
   (a) if the conduct results in the death of any of the persons referred to in paragraph (a)—imprisonment for life; or
   (b) otherwise—imprisonment for 17 years.

(2) In this section:
   religious personnel includes non-confessional, non-combatant military personnel carrying out a similar function to religious personnel.

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

(1) A person (the perpetrator) commits an offence if:
   (a) the perpetrator attacks one or more persons; and
   (b) the person or persons are using, in conformity with the Geneva Conventions or the Protocols to the Geneva Conventions, any of the distinctive emblems of the Geneva Conventions; and
   (c) the perpetrator intends the persons so using such an emblem to be the object of the attack; and
   (d) the perpetrator’s conduct takes place in the context of, and is associated with, an international armed conflict.

      Penalty: Imprisonment for life.
Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court

Section 268.67

(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).

268.68 War crime—using, conscripting or enlisting children

National armed forces

(1) A person (the perpetrator) commits an offence if:
Schedule  The Criminal Code
Chapter 8  Offences against humanity and related offences

Division 268  Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.68

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

Penalty: Imprisonment for 17 years.

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

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

Penalty: Imprisonment for 15 years.

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

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

Penalty: Imprisonment for 10 years.

Other armed forces and groups

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

(a) the perpetrator uses one or more persons to participate actively in hostilities other than as members of the national armed forces; and
(b) the person or persons are under the age of 18 years; and
(c) the perpetrator’s conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

(5) A person (the perpetrator) commits an offence if:
Section 268.69

(a) the perpetrator conscripts one or more persons into an armed force or group other than the national armed forces; and
(b) the person or persons are under the age of 18 years; and
(c) the perpetrator’s conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

(6) A person (the perpetrator) commits an offence if:
(a) the perpetrator enlists one or more persons into an armed force or group other than the national armed forces; and
(b) the person or persons are under the age of 18 years; and
(c) the perpetrator’s conduct takes place in the context of, and is associated with, an international armed conflict.

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

Subdivision F—War crimes that are serious violations of article 3 common to the Geneva Conventions and are committed in the course of an armed conflict that is not an international armed conflict

268.69 Definition of religious personnel

In this Subdivision:

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

268.70 War crime—murder

(1) A person (the perpetrator) commits an offence if:
(a) the perpetrator causes the death of one or more persons; and
(b) the person or persons are not taking an active part in the hostilities; and
(c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and
(d) the perpetrator’s conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

(2) To avoid doubt, a reference in subsection (1) to a person or persons who are not taking an active part in the hostilities includes a reference to:
   (a) a person or persons who are hors de combat; or
   (b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

### 268.71 War crime—mutilation

(1) A person (the *perpetrator*) commits an offence if:
   (a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling or removing organs or appendages of, the person or persons; and
   (b) the perpetrator’s conduct causes the death of the person or persons; and
   (c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
   (d) the person or persons are not taking an active part in the hostilities; and
   (e) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and
   (f) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the *perpetrator*) commits an offence if:
   (a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling
Genocide, crimes against humanity, war crimes and crimes against the administration of
the justice of the International Criminal Court Division 268

Section 268.72

<table>
<thead>
<tr>
<th>Paragraph</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>A person (the perpetrator) commits an offence if:</td>
</tr>
<tr>
<td>(a)</td>
<td>the perpetrator inflicts severe physical or mental pain or suffering upon one or more persons; and</td>
</tr>
<tr>
<td>(b)</td>
<td>the person or persons are not taking an active part in the hostilities; and</td>
</tr>
<tr>
<td>(c)</td>
<td>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</td>
</tr>
<tr>
<td>(d)</td>
<td>the perpetrator’s conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.</td>
</tr>
</tbody>
</table>

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.
Schedule  The Criminal Code

Chapter 8  Offences against humanity and related offences

Division 268  Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.73

(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
   (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:

Section 268.74

(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
(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
Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.75

(ii) were civilians, medical personnel or religious personnel who were not taking an active part in the hostilities; as the case may be.

268.75 War crime—taking hostages

(1) A person (the perpetrator) commits an offence if:
   (a) the perpetrator seizes, detains or otherwise holds hostage one or more persons; and
   (b) the perpetrator threatens to kill, injure or continue to detain the person or persons; and
   (c) the perpetrator intends to compel the government of a country, an international organisation or a person or group of persons to act or refrain from acting as an explicit or implicit condition for either the safety or the release of the person or persons; and
   (d) the person or persons are not taking an active part in the hostilities; and
   (e) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and
   (f) the perpetrator’s conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.

(2) To avoid doubt, a reference in subsection (1) to a person or persons who are not taking an active part in the hostilities includes a reference to:
   (a) a person or persons who are hors de combat; or
   (b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

268.76 War crime—sentencing or execution without due process

(1) A person (the perpetrator) commits an offence if:
   (a) the perpetrator passes a sentence on one or more persons; and
   (b) the person or persons are not taking an active part in the hostilities; and
The Criminal Code Schedule

Offences against humanity and related offences Chapter 8

Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court Division 268

Section 268.76

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

(d) either of the following applies:

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

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

(e) if the court did not afford other judicial guarantees—those guarantees are guarantees set out in articles 14, 15 and 16 of the Covenant; and

(f) the perpetrator knows of:

(i) if subparagraph (d)(i) applies—the absence of a previous judgment; or

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

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

Penalty: Imprisonment for 10 years.

(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:
Schedule The Criminal Code

Chapter 8 Offences against humanity and related offences

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.77

(i) if subparagraph (d)(i) applies—the absence of a previous judgment; or
(ii) if subparagraph (d)(ii) applies—the failure to afford the relevant guarantees and the fact that they are indispensable to a fair trial; and
(g) the perpetrator’s conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

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

(4) To avoid doubt, a reference in subsection (1) or (2) to a person or persons who are not taking an active part in the hostilities includes a reference to:
(a) a person or persons who are hors de combat; or
(b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

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:
Offences against humanity and related offences  

Chapter 8

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 persons; and
(b) the person or persons are using, in conformity with the Geneva Conventions or the Protocols to the Geneva Conventions, any of the distinctive emblems of the Geneva Conventions; and
(c) the perpetrator intends the persons so using such an emblem to be the object of the attack; and
(d) the perpetrator’s conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

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

(a) the perpetrator attacks one or more buildings, medical units or transports or other objects; and
(b) the buildings, units or transports or other objects are using, in conformity with the Geneva Conventions or the Protocols to the Geneva Conventions, any of the distinctive emblems of the Geneva Conventions; and
(c) the perpetrator intends the buildings, units or transports or other objects so using such an emblem to be the object of the attack; and
(d) the perpetrator’s conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 20 years.

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

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
Schedule  The Criminal Code
Chapter 8  Offences against humanity and related offences

Division 268  Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.80

(c) the personnel are entitled to the protection given to civilians under the Geneva Conventions or Protocol II to the Geneva Conventions; and
(d) the perpetrator’s conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

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

(a) the perpetrator directs an attack; and
(b) the object of the attack is installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations; and
(c) the installations, material, units or vehicles are entitled to the protection given to civilian objects under the Geneva Conventions and Protocol II to the Geneva Conventions; and
(d) the perpetrator’s conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 20 years.

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

268.80  War crime—attacking protected objects

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
(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.
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.

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).

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.

In this section, the genitalia or other parts of the body of a person include surgically constructed genitalia or other parts of the body of the person.
268.83 War crime—sexual slavery

(1) A person (the perpetrator) commits an offence if:
   (a) the perpetrator causes another person to enter into or remain in sexual slavery; and
   (b) the perpetrator intends to cause, or is reckless as to causing, that sexual slavery; and
   (c) the perpetrator’s conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) For the purposes of this section, sexual slavery is the condition of a person who provides sexual services and who, because of the use of force or threats:
   (a) is not free to cease providing sexual services; or
   (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
Schedule  The Criminal Code
Chapter 8  Offences against humanity and related offences

Division 268  Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.84

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

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

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

consent means free and voluntary agreement.

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

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

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

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

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

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

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

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

threat of force or coercion includes:

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

(b) taking advantage of a coercive environment.

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

(1) A person (the perpetrator) commits an offence if:
   (a) the perpetrator unlawfully confines one or more women forcibly made pregnant; and
   (b) the perpetrator intends to affect the ethnic composition of any population or to destroy, wholly or partly, a national, ethnical, racial or religious group as such; and
   (c) the perpetrator’s conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

(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.
Schedule  The Criminal Code
Chapter 8 Offences against humanity and related offences

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.87

(2) In subsection (1):

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

268.87 War crime—sexual violence

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

(a) the perpetrator does either of the following:

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

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

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

(b) the perpetrator’s conduct is of a gravity comparable to the offences referred to in sections 268.82 to 268.87; and

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

Penalty: Imprisonment for 25 years.

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

(3) In subsection (1):

consent means free and voluntary agreement.

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

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

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

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

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

(e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);
Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court  Division 268

Section 268.88

(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

National armed forces

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

(a) the perpetrator uses one or more persons to participate actively in hostilities as members of the national armed forces; and

(b) the person or persons are under the age of 15 years; and

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

Penalty: Imprisonment for 17 years.

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

(a) the perpetrator conscripts one or more persons into the national armed forces; and

(b) the person or persons are under the age of 15 years; and

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

Penalty: Imprisonment for 15 years.
Section 268.88

(3) A person (the *perpetrator*) commits an offence if:
   (a) the perpetrator enlists one or more persons into the national armed forces; and
   (b) the person or persons are under the age of 15 years; and
   (d) the perpetrator’s conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 10 years.

*Other armed forces and groups*

(4) A person (the *perpetrator*) commits an offence if:
   (a) the perpetrator uses one or more persons to participate actively in hostilities other than as members of the national armed forces; and
   (b) the person or persons are under the age of 18 years; and
   (c) the perpetrator’s conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.

(5) A person (the *perpetrator*) commits an offence if:
   (a) the perpetrator conscripts one or more persons into an armed force or group other than the national armed forces; and
   (b) the person or persons are under the age of 18 years; and
   (c) the perpetrator’s conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 15 years.

(6) A person (the *perpetrator*) commits an offence if:
   (a) the perpetrator enlists one or more persons into an armed force or group other than the national armed forces; and
   (b) the person or persons are under the age of 18 years; and
   (c) the perpetrator’s conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.
Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court  Division 268

Section 268.89

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

268.89 War crime—displacing civilians

A person (the perpetraotr) 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 perpetraotr) 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 perpetraotr) 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
Section 268.91

(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 \textit{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 \textit{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
Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court  Division 268

Section 268.93

(d) the person or persons are in the power of another party to the conflict; and
(e) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the perpetrator) commits an offence if:
   (a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling or removing organs or appendages of, the person or persons; and
   (b) the perpetrator’s conduct seriously endangers the physical or mental health, or the integrity, of the person or persons; and
   (c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
   (d) the person or persons are in the power of another party to the conflict; and
   (e) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

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

268.93 War crime—medical or scientific experiments

(1) A person (the perpetrator) commits an offence if:
   (a) the perpetrator subjects one or more persons to a medical or scientific experiment; and
   (b) the experiment causes the death of the person or persons; and
   (c) the perpetrator’s conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
   (d) the person or persons are in the power of another party to the conflict; and
Section 268.94

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

Penalty: Imprisonment for life.

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

(a) the perpetrator subjects one or more persons to a medical or scientific experiment; and
(b) the experiment seriously endangers the physical or mental health, or the integrity, of the person or persons; and
(c) the perpetrator’s conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
(d) the person or persons are in the power of another party to the conflict; and
(e) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

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

268.94 War crime—destroying or seizing an adversary’s property

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

(a) the perpetrator destroys or seizes certain property; and
(b) the property is property of an adversary; and
(c) the property is protected from the destruction or seizure under article 14 of Protocol II to the Geneva Conventions; and
(d) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the property is so protected; and
(e) the destruction or seizure is not justified by military necessity; and
(f) the perpetrator’s conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.
Penalty: Imprisonment for 15 years

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

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

268.95 War crime—medical procedure

A person (the perpetrator) commits an offence if:
(a) the perpetrator subjects one or more persons to a medical procedure; and
(b) the procedure seriously endangers the physical or mental health, or the integrity, of the person or persons; and
(c) the perpetrator’s conduct is not justified by the state of health of the person or persons; and
(d) the perpetrator knows that, or is reckless as to whether, the conduct is consistent with generally accepted medical standards that would be applied under similar medical circumstances to persons who are of the same nationality as the perpetrator and are in no way deprived of liberty; and
(e) the person or persons are in the power of, or are interned, detained or otherwise deprived of liberty by, the country of the perpetrator as a result of an international armed conflict; and
(f) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

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

(1) A person (the perpetrator) commits an offence if:
(a) the perpetrator removes from one or more persons blood, tissue or organs for transplantation; and
(b) in the case of the removal of blood—the removal:
   (i) is not for transfusion; or
Schedule The Criminal Code
Chapter 8 Offences against humanity and related offences

Division 268 Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Section 268.97

(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:

(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
The Criminal Code  Schedule

Offences against humanity and related offences  Chapter 8

Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court  Division 268

Section 268.98

(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
(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).
Section 268.100

**268.100 War crime—apartheid**

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

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

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

(c) the perpetrator’s conduct is committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups; and

(d) the perpetrator intends to maintain the regime by the conduct; and

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

Penalty: Imprisonment for 17 years.

**268.101 War crime—attacking protected objects**

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

(a) the perpetrator directs an attack; and

(b) the object of the attack is any one or more of the following that are not used in support of the military effort and are not located in the immediate proximity of military objectives:
   (i) clearly recognised historic monuments;
   (ii) works of art;
   (iii) places of worship; and

(c) the monuments, works of art and places of worship constitute the cultural or spiritual heritage of peoples and have been given special protection by special arrangement (for example, within the framework of a competent international organisation); and

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

Penalty: Imprisonment for 20 years.
Subdivision J—Crimes against the administration of the justice of the International Criminal Court

268.102 Perjury

(1) A person commits the offence of perjury if:
   (a) the person makes a sworn statement in or for the purposes of a proceeding before the International Criminal Court; and
   (b) the statement is false.

Penalty: Imprisonment for 10 years.

(2) A person who is an interpreter commits the offence of perjury if:
   (a) the person, by a sworn statement, gives an interpretation of a statement or other thing in or for the purposes of a proceeding before the International Criminal Court; and
   (b) the interpretation is false or misleading.

Penalty: Imprisonment for 10 years.

268.103 Falsifying evidence

(1) A person commits an offence if the person makes false evidence with the intention of:
   (a) influencing a decision on the institution of a proceeding before the International Criminal Court; or
   (b) influencing the outcome of such a proceeding.

Penalty: Imprisonment for 7 years.

(2) A person commits an offence if the person:
   (a) uses evidence that is false evidence and that the person believes is false evidence; and
   (b) is reckless as to whether or not the use of the evidence could:
      (i) influence a decision on the institution of a proceeding before the International Criminal Court; or
      (ii) influence the outcome of such a proceeding.

Penalty: Imprisonment for 7 years.
Section 268.104

(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.

**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.
Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court  Division 268

Section 268.107

(2) A person commits an offence if the person asks for, or receives or agrees to receive, a benefit for himself, herself or another person with the intention that he, she or another person will:
   (a) not attend as a witness at a proceeding before the International Criminal Court; or
   (b) give false evidence at such a proceeding; or
   (c) withhold true evidence at such a proceeding.

Penalty: Imprisonment for 5 years.

(3) A person commits an offence if the person provides, or offers or promises to provide, a benefit to another person with the intention that the other person or a third person will:
   (a) not attend as an interpreter at a proceeding before the International Criminal Court; or
   (b) give a false or misleading interpretation as an interpreter at such a proceeding.

Penalty: Imprisonment for 5 years.

268.107 Threatening witnesses or interpreters

(1) A person commits an offence if the person causes or threatens to cause any detriment to another person with the intention that the other person or a third person will:
   (a) not attend as a witness at a proceeding before the International Criminal Court; or
   (b) give false evidence at such a proceeding; or
   (c) withhold true evidence at such a proceeding.

Penalty: Imprisonment for 7 years.

(2) A person commits an offence if the person causes or threatens to cause any detriment to another person with the intention that the other person or a third person will:
   (a) not attend as an interpreter at a proceeding before the International Criminal Court; or
   (b) give a false or misleading interpretation as an interpreter in such a proceeding.

Penalty: Imprisonment for 7 years.
268.108 Preventing witnesses or interpreters

(1) A person commits an offence if the person, by his or her conduct, intentionally prevents another person from attending as a witness or interpreter at a proceeding before the International Criminal Court.

Penalty: Imprisonment for 5 years.

(2) This section does not apply to conduct that constitutes an offence against section 268.105, 268.106, 268.107, 268.109 or 268.110.

268.109 Preventing production of things in evidence

A person commits an offence if the person, by his or her conduct, intentionally prevents another person from producing in evidence at a proceeding before the International Criminal Court a thing that is legally required to be produced.

Penalty: Imprisonment for 5 years.

268.110 Reprisals against witnesses

(1) A person commits an offence if the person causes or threatens to cause any detriment to another person who was a witness in a proceeding before the International Criminal Court:

(a) because of anything done by the other person in or for the purposes of the proceeding; and

(b) in the belief that the other person was a witness who had done that thing.

Penalty: Imprisonment for 5 years.

(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).
Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court  

**Division 268**

### Section 268.111

(3) In this section:

*witness* includes:

(a) a person who attends at a proceeding before the International Criminal Court as a witness but is not called as a witness; or

(b) an interpreter.

#### 268.111 Reprisals against officials of the International Criminal Court

(1) A person commits an offence if the person causes or threatens to cause any detriment to another person who is an official of the International Criminal Court:

(a) because of anything done by the other person; and

(b) in the belief that the other person was an official of that Court who had done that thing for the purposes of a proceeding before that Court.

Penalty: Imprisonment for 5 years.

(2) A person commits an offence if the person causes or threatens to cause any detriment to another person who is an official of the International Criminal Court:

(a) because of anything done by a third person who is an official of that Court; and

(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.
Section 268.113

(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.

(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 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.
Section 268.116

**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:
   - the war crime was committed by a person pursuant to an order of a Government or of a superior, whether military or civilian;
   - the person was under a legal obligation to obey the order;
   - the person did not know that the order was unlawful;
   - the order was not manifestly unlawful.

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

**268.117 Geographical jurisdiction**

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

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

**268.118 Double jeopardy**

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

(1) A person must not:

(a) intentionally contravene an order that the International Criminal Court makes while sitting in Australia; or

(b) otherwise intentionally hinder the International Criminal Court in performing its functions while sitting in Australia.

Penalty: Imprisonment for 2 years.

(2) In this section:

Australia includes all the external Territories.

268.120 Saving of other laws

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

268.121 Bringing proceedings under this Division

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

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

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

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

(1) Subject to any jurisdiction of the High Court under the Constitution, a decision by the Attorney-General to give, or to refuse to give, a consent under section 268.121:

(a) is final; and

(b) must not be challenged, appealed against, reviewed, quashed or called in question; and
Section 268.123

(c) is not subject to prohibition, mandamus, injunction, declaration or certiorari.

(2) The reference in subsection (1) to a decision includes a reference to the following:

(a) a decision to vary, suspend, cancel or revoke a consent that has been given;

(b) a decision to impose a condition or restriction in connection with the giving of, or a refusal to give, a consent or to remove a condition or restriction so imposed;

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

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

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

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

268.123 Legal representation

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

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

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

(a) Article 2 of the Geneva Convention concerned (which relates to the circumstances in which the Convention applies); or
Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court Division 268

Section 268.124

(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
(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:

*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

Section 15.2 (extended geographical jurisdiction—category B) applies to an offence against section 270.6 or 270.7.
Section 270.6

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 20 years; or
   (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 20 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:
   (a) the fact that the engagement will involve the provision of sexual services; or
Section 270.7

(aa) the nature of sexual services to be provided (for example, whether those services will require the person to have unprotected sex); or
(b) the extent to which the person will be free to leave the place or area where the person provides sexual services; or
(c) the extent to which the person will be free to cease providing sexual services; or
(d) the extent to which the person will be free to leave his or her place of residence; or
(da) if there is or will be a debt owed or claimed to be owed by the person in connection with the engagement—the quantum, or the existence, of the debt owed or claimed to be owed; or
(e) the fact that the engagement will involve exploitation, debt bondage or the confiscation of the person’s travel or identity documents;

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.

(1A) In determining, for the purposes of any proceedings for an offence against subsection (1), whether a person has been deceived about any matter referred to in a paragraph of that subsection, a court, or if the trial is before a jury, the jury, may have regard to any of the following matters:
(a) the economic relationship between the person and the alleged offender;
(b) the terms of any written or oral contract or agreement between the person and the alleged offender;
(c) the personal circumstances of the person, including but not limited to:
   (i) whether the person is entitled to be in Australia under the Migration Act 1958; and
   (ii) the person’s ability to speak, write and understand English or the language in which the deception or inducement occurred; and
   (iii) the extent of the person’s social and physical dependence on the alleged offender.
(1B) Subsection (1A) does not:
(a) prevent the leading of any other evidence in proceedings for an offence against subsection (1); or
(b) limit the manner in which evidence may be adduced or the admissibility of evidence.

(2) In this section:

*deceive* has the same meaning as in Division 271.

*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.

### 270.12 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.

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388 *Criminal Code Act 1995*
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.
Division 271—Trafficking in persons and debt bondage

Subdivision A—Definitions

271.1 Definitions

In this Division:

confiscate, in relation to a person’s travel or identity document, means to take possession of the document, whether permanently or otherwise, to the exclusion of the person, or to destroy the document.

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

deceive means mislead as to fact (including the intention of any person) or as to law, by words or other conduct.

threat means:
(a) a threat of force; or
(b) a threat to cause a person’s removal from Australia; or
(c) a threat of any other detrimental action;
unless there are reasonable grounds for the threat of that action.

Subdivision B—Offences relating to trafficking in persons

271.2 Offence of trafficking in persons

(1) A person (the first person) commits an offence of trafficking in persons if:
(a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and
(b) the first person uses force or threats; and
(c) that use of force or threats results in the first person obtaining the other person’s compliance in respect of that entry or proposed entry or in respect of that receipt.

Penalty: Imprisonment for 12 years.
(1A) A person (the \textit{first person}) commits an offence of trafficking in persons if:

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

(b) the first person uses force or threats; and

(c) that use of force or threats results in the first person obtaining the other person’s compliance in respect of that exit or proposed exit.

Penalty: Imprisonment for 12 years.

(1B) A person (the \textit{first person}) commits an offence of trafficking in persons if:

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

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

Penalty: Imprisonment for 12 years.

(1C) A person (the \textit{first person}) commits an offence of trafficking in persons if:

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

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

Penalty: Imprisonment for 12 years.

(2) A person (the \textit{first person}) commits an offence of trafficking in persons if:

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

(b) the first person deceives the other person about the fact that the other person’s entry or proposed entry, the other person’s receipt or any arrangements for the other person’s stay in Australia, will involve the provision by the other person of sexual services or will involve the other person’s exploitation.
Schedule  The Criminal Code
Chapter 8  Offences against humanity and related offences

Division 271  Trafficking in persons and debt bondage

Section 271.2

or debt bondage or the confiscation of the other person’s travel or identity documents.

Penalty: Imprisonment for 12 years.

(2A) A person (the first person) commits an offence of trafficking in persons if:
(a) the first person organises or facilitates the exit or proposed exit of another person from Australia; and
(b) the first person deceives the other person about the fact that the other person’s exit or proposed exit is for purposes that involve the provision by the other person of sexual services outside Australia or will involve the other person’s exploitation or debt bondage or the confiscation of the other person’s travel or identity documents.

Penalty: Imprisonment for 12 years.

(2B) A person (the first person) commits an offence of trafficking in persons if:
(a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and
(b) there is an arrangement for the other person to provide sexual services in Australia; and
(c) the first person deceives the other person about any of the following:
   (i) the nature of the sexual services to be provided;
   (ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;
   (iii) the extent to which the other person will be free to cease providing sexual services;
   (iv) the extent to which the other person will be free to leave his or her place of residence;
   (v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services—the quantum, or the existence, of the debt owed or claimed to be owed.

Penalty: Imprisonment for 12 years.
(2C) A person (the **first person**) commits an offence of trafficking in persons if:

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

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

(c) the first person deceives the other person about any of the following:

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

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

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

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

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

Penalty: Imprisonment for 12 years.

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

### 271.3 Aggravated offence of trafficking in persons

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

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

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

(ii) if the offence of trafficking in persons is an offence against subsection 271.2(1A), (1C), (2A) or (2C)—after exit from Australia;
Section 271.4

(b) the first person, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;
(c) the first person, in committing the offence:
   (i) engages in conduct that gives rise to a danger of death or serious harm to the victim; and
   (ii) is reckless as to that danger.

Penalty: Imprisonment for 20 years.

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

271.4 Offence of trafficking in children

(1) A person (the \textit{first person}) commits an offence of trafficking in children if:
   (a) the first person organises or facilitates the entry or proposed entry into Australia, or the receipt in Australia, of another person; and
   (b) the other person is under the age of 18; and
   (c) in organising or facilitating that entry or proposed entry, or that receipt, the first person:
      (i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that entry or receipt; or
      (ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that entry or receipt.

Penalty: Imprisonment for 25 years.

(2) A person (the \textit{first person}) commits an offence of trafficking in children if:
   (a) the first person organises or facilitates the exit or proposed exit from Australia of another person; and
   (b) the other person is under the age of 18; and
Section 271.5

(c) in organising or facilitating that exit or proposed exit, the first person:
   (i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that exit; or
   (ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that exit.

Penalty: Imprisonment for 25 years.

(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.

271.5 Offence of domestic trafficking in persons

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

Penalty: Imprisonment for 12 years.

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

Penalty: Imprisonment for 12 years.
Section 271.5

(2A) A person (the first person) commits an offence of domestic trafficking in persons if:
   (a) the first person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and
   (b) the first person deceives the other person about the fact that the transportation, or any arrangements the first person has made for the other person following the transportation, will involve the provision by the other person of sexual services or will involve the other person’s exploitation or debt bondage or the confiscation of the other person’s travel or identity documents.

Penalty: Imprisonment for 12 years.

(2B) A person (the first person) commits an offence of domestic trafficking in persons if:
   (a) the first person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and
   (b) there is an arrangement for the other person to provide sexual services; and
   (c) the first person deceives the other person about any of the following:
      (i) the nature of the sexual services to be provided;
      (ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;
      (iii) the extent to which the other person will be free to cease providing sexual services;
      (iv) the extent to which the other person will be free to leave his or her place of residence;
      (v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services—the quantum, or the existence, of the debt owed or claimed to be owed.

Penalty: Imprisonment for 12 years.

(3) Absolute liability applies to paragraph (1)(c).
271.6 Aggravated offence of domestic trafficking in persons

(1) A person (the first person) commits an aggravated offence of domestic trafficking in persons if the first person commits the offence of domestic trafficking in persons in relation to another person (the victim) and any of the following applies:
   (a) the first person commits the offence intending that the victim will be exploited, either by the first person or by another, after arrival at the place to which the person has been transported;
   (b) the first person, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;
   (c) the first person, in committing the offence:
       (i) engages in conduct that gives rise to a danger of death or serious harm to the victim; and
       (ii) is reckless as to that danger.

Penalty: Imprisonment for 20 years.

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

271.7 Offence of domestic trafficking in children

(1) A person commits an offence of domestic trafficking in children if:
   (a) the first-mentioned person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and
   (b) the other person is under the age of 18; and
   (c) in organising or facilitating that transportation, the first-mentioned person:
       (i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place; or
       (ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited,
**Schedule**  The Criminal Code  
**Chapter 8**  Offences against humanity and related offences  

**Division 271**  Trafficking in persons and debt bondage  

**Section 271.8**  

either by the first-mentioned person or another, during or following the transportation to that other place.  

Penalty:  Imprisonment for 25 years.  

(2) 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.  

**Subdivision C—Offences relating to debt bondage**  

**271.8 Offence of debt bondage**  

(1) A person commits an offence of debt bondage if:  

(a) the person engages in conduct that causes another person to enter into debt bondage; and  

(b) the person intends to cause the other person to enter into debt bondage.  

Penalty:  Imprisonment for 12 months.  

(2) In determining, for the purposes of any proceedings for an offence against subsection (1), whether a person (the first person) has caused another person (the second person) to enter into debt bondage, a court, or if the trial is before a jury, the jury, may have regard to any of the following matters:  

(a) the economic relationship between the first person and the second person;  

(b) the terms of any written or oral contract or agreement between the second person and another person (whether or not the first person);  

(c) the personal circumstances of the second person, including but not limited to:  

(i) whether the second person is entitled to be in Australia under the *Migration Act 1958*; and  

(ii) the second person’s ability to speak, write and understand English or the language in which the deception or inducement occurred; and  

(iii) the extent of the second person’s social and physical dependence on the first person.  

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398  **Criminal Code Act 1995**
(3) Subsection (2) does not:
   (a) prevent the leading of any other evidence in proceedings for an offence against subsection (1); or
   (b) limit the manner in which evidence may be adduced or the admissibility of evidence.

271.9 Offence of aggravated debt bondage

(1) A person commits an offence of aggravated debt bondage if the person commits an offence of debt bondage in relation to another person (the victim) and the victim is under 18.

Penalty: Imprisonment for 2 years.

(2) In order to prove an offence of aggravated debt bondage, the prosecution must prove that the defendant intended to commit, or was reckless as to committing, the offence against a person under that age.

(3) If, on a trial for an offence against this section, the court, or if the trial is before a jury, the jury, is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 271.8, it may find the defendant not guilty of the aggravated offence but guilty of an offence against that section.

Subdivision D—General provisions relating to offences under this Division

271.10 Jurisdictional requirement for offences other than offences related to domestic trafficking in persons

Section 15.2 (extended geographical jurisdiction—category B) applies to an offence against section 271.2, 271.3, 271.4, 271.8 or 271.9.

271.11 Jurisdictional requirement for offences related to domestic trafficking in persons

A person commits an offence against section 271.5, 271.6 or 271.7 only if one or more of the following paragraphs applies:
Schedule The Criminal Code

Chapter 8 Offences against humanity and related offences

Division 271 Trafficking in persons and debt bondage

Section 271.12

(a) the conduct constituting the offence occurs to any extent outside Australia;
(b) the conduct constituting the offence involves transportation across State borders, either for reward or in connection with a commercial arrangement;
(c) the conduct constituting the offence occurs within a Territory or involves transportation to or from a Territory;
(d) the conduct constituting the offence is engaged in by, or on behalf of, a constitutional corporation, or in circumstances where the victims of the trafficking conduct were intended to be employed by a constitutional corporation;
(e) some of the conduct constituting the offence is engaged in by communication using a postal, telegraphic or telephonic service within the meaning of paragraph 51(v) of the Constitution;
(f) the victim of the conduct constituting the offence is an alien for the purposes of paragraph 51(xix) of the Constitution.

271.12 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.

271.13 Double jeopardy

If a person has been convicted or acquitted in a country outside Australia of an offence against the law of that country in respect of any conduct, the person cannot be convicted of an offence against this Division in respect of that conduct.
Chapter 9—Dangers to the community

Part 9.1—Serious drug offences

Division 300—Preliminary

300.1 Purpose

(1) The purpose of this Part is to create offences relating to drug trafficking and to give effect to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on 20 December 1988.

Note: The text of the Convention is set out in Australian Treaty Series 1993 No. 4. In 2005 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible on the Internet through that Department’s world-wide web site.

(2) Subsection (1) does not limit the legislative powers of the Parliament in relation to this Part.

300.2 Definitions

In this Part:

aggravated offence has the meaning given by section 310.4.

border controlled drug means a substance, other than a growing plant:

(a) listed or described as a border controlled drug in section 314.4; or

(b) prescribed by regulations under paragraph 301.3(1)(a); or

(c) specified in a determination under paragraph 301.8(1)(a).

border controlled plant means a growing plant:

(a) listed or described as a border controlled plant in section 314.5; or

(b) prescribed by regulations under paragraph 301.3(1)(b); or

(c) specified in a determination under paragraph 301.8(1)(b).

border controlled precursor means a substance (including a growing plant):
Schedule  The Criminal Code
Chapter 9  Dangers to the community
Part 9.1  Serious drug offences
Division 300  Preliminary

Section 300.2

(a) listed or described as a border controlled precursor in section 314.6; or
(b) prescribed by regulations under subsection 301.4(1); or
(c) specified in a determination under subsection 301.9(1).

child means an individual who is under 18 years of age.

commercial quantity, in relation to a controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor means a quantity not less than the quantity specified as a commercial quantity of the drug, plant or precursor in:
(a) Division 314; or
(b) regulations under section 301.5; or
(c) a determination under section 301.10.

conceal a thing includes conceal or disguise:
(a) the nature, source or location of the thing; or
(b) any movement of the thing; or
(c) the rights of any person with respect to the thing; or
(d) the identity of any owner of the thing.

controlled drug means a substance, other than a growing plant:
(a) listed or described as a controlled drug in section 314.1; or
(b) prescribed by regulations under paragraph 301.1(1)(a); or
(c) specified in a determination under paragraph 301.6(1)(a).

controlled plant means a growing plant:
(a) listed or described as a controlled plant in section 314.2; or
(b) prescribed by regulations under paragraph 301.1(1)(b); or
(c) specified in a determination under paragraph 301.6(1)(b).

controlled precursor means a substance (including a growing plant):
(a) listed or described as a controlled precursor in section 314.3; or
(b) prescribed by regulations under subsection 301.2(1); or
(c) specified in a determination under subsection 301.7(1).

cultivate has the meaning given by subsection 303.1(1).
Section 300.2

*cultivates a plant* has the meaning given by subsection 303.1(2).

*cultivates a plant for a commercial purpose* has the meaning given by section 303.3.

*export* includes take from Australia.

*import* includes bring into Australia.

*manufacture* has the meaning given by subsection 305.1(1).

*manufactures a substance* has the meaning given by subsection 305.1(2).

*manufactures a substance for a commercial purpose* has the meaning given by section 305.2.

*marketable quantity*, in relation to a controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor means a quantity not less than the quantity specified as a marketable quantity of the drug, plant or precursor in:

(a) Division 314; or

(b) regulations under section 301.5; or

(c) a determination under section 301.10.

*possession* of a thing includes the following:

(a) receiving or obtaining possession of the thing;

(b) having control over the disposition of the thing (whether or not the thing is in the custody of the person);

(c) having joint possession of the thing.

*pre-traffics* has the meaning given by section 306.1.

*procures an individual to pre-traffic* has the meaning given by section 309.9.

*procures an individual to traffic* has the meaning given by section 309.6.

*product* of a plant has the meaning given by section 303.2.

*requisite fraction* has the meaning given by subsection 312.2(3).
Section 300.3

*sell* includes the following:
- (a) barter or exchange;
- (b) agree to sell.

*supply* includes the following:
- (a) supply, whether or not by way of sale;
- (b) agree to supply.

*taking*, in relation to a substance or plant, means taking the substance or plant, or a product of the plant, into the body.

*trafficable quantity*, in relation to a controlled drug or controlled plant, means a quantity not less than the quantity specified as a trafficable quantity of the drug or plant in:
- (a) Division 314; or
- (b) regulations under section 301.5; or
- (c) a determination under section 301.10.

*traffics* has the meaning given by section 302.1.

*transport* includes deliver.

300.3 Geographical jurisdiction

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

300.4 Concurrent operation intended

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

(2) Without limiting subsection (1), this Part is not intended to exclude or limit the concurrent operation of a law of a State or Territory that makes:
- (a) an act or omission that is an offence against a provision of this Part; or
- (b) a similar act or omission; an offence against the law of the State or Territory.

(3) Subsection (2) applies even if the law of the State or Territory does any one or more of the following:
Section 300.5

(a) provides for a penalty for the offence that differs from the penalty provided for in this Part;

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

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

300.5 Particular identity of drugs, plants and precursors

If, in a prosecution for an offence against this Part, it is necessary for the prosecution to prove that a person knew, or was reckless as to whether, a substance or plant was a controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor, it is not necessary for the prosecution to prove that the person knew, or was reckless as to, the particular identity of the controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor.
Section 301.1

Division 301—Listing additional drugs, plants and precursors

Subdivision A—Interim regulations

301.1 Interim regulations—controlled drugs and controlled plants

(1) The regulations may prescribe:
   (a) a substance, other than a growing plant, as a controlled drug;
   or
   (b) a growing plant as a controlled plant;
   if the conditions set out in subsection (2) are met.

(2) The conditions are as follows:
   (a) the Minister must be satisfied that taking the substance or plant concerned:
      (i) would create a substantial risk of death or serious harm;
      or
      (ii) would have a physical or mental effect substantially similar to that caused by taking a substance or plant already listed or described in section 314.1 or 314.2;
   (b) the Minister must be satisfied that there is a substantial risk that the substance or plant will be taken without appropriate medical supervision.

(3) However, the regulations must not prescribe a particular substance or plant under this section for a period that exceeds, or for periods that in total exceed, 12 months.

301.2 Interim regulations—controlled precursors

(1) The regulations may prescribe a substance (including a growing plant) as a controlled precursor if the condition set out in subsection (2) is met.

(2) The condition is that the Minister must be satisfied that there is a substantial risk that the substance concerned will be used to unlawfully manufacture a controlled drug.
(3) However, the regulations must not prescribe a particular substance under this section for a period that exceeds, or for periods that in total exceed, 12 months.

**301.3 Interim regulations—border controlled drugs and border controlled plants**

(1) The regulations may prescribe:
   
   (a) a substance, other than a growing plant, as a border controlled drug; or
   
   (b) a growing plant as a border controlled plant;

   if the conditions set out in subsection (2) are met.

(2) The conditions are as follows:

   (a) the Minister must be satisfied that taking the substance or plant concerned:
       
       (i) would create a substantial risk of death or serious harm;
       
       or
       
       (ii) would have a physical or mental effect substantially similar to that caused by taking a substance or plant already listed or described in section 314.4 or 314.5;

   (b) the Minister must be satisfied that there is a substantial risk that the substance or plant will be taken without appropriate medical supervision.

(3) However, the regulations must not prescribe a particular substance or plant under this section for a period that exceeds, or for periods that in total exceed, 12 months.

**301.4 Interim regulations—border controlled precursors**

(1) The regulations may prescribe a substance (including a growing plant) as a border controlled precursor if the condition set out in subsection (2) is met.

(2) The condition is that the Minister must be satisfied that there is a substantial risk that the substance concerned will be used to unlawfully manufacture a controlled drug.

(3) However, the regulations must not prescribe a particular substance under this section for a period that exceeds, or for periods that in total exceed, 12 months.
Section 301.5

301.5 Interim regulations—commercial, marketable and trafficable quantities

(1) The regulations may prescribe:
   (a) a quantity of a controlled drug or controlled plant as a commercial, marketable or trafficable quantity of the drug or plant; or
   (b) a quantity of a controlled precursor as a commercial or marketable quantity of the precursor.

(2) However, the regulations must not prescribe:
   (a) a commercial quantity of a particular controlled drug, controlled plant or controlled precursor; or
   (b) a marketable quantity of a particular controlled drug, controlled plant or controlled precursor; or
   (c) a trafficable quantity of a particular controlled drug or controlled plant;
   for a period that exceeds, or for periods that in total exceed, 12 months.

(3) If:
   (a) there is no commercial, marketable or trafficable quantity specified in section 314.1 for a substance listed or described as a controlled drug in that section; or
   (b) there is no commercial, marketable or trafficable quantity specified in section 314.2 for a substance listed or described as a controlled plant in that section; or
   (c) there is no commercial or marketable quantity specified in section 314.3 for a substance listed or described as a controlled precursor in that section;
   regulations under subsection (1) may prescribe such a quantity of the drug, plant or precursor.

(4) The regulations may prescribe a quantity of a border controlled drug, border controlled plant or border controlled precursor as a commercial or marketable quantity of the drug, plant or precursor.

(5) However, the regulations must not prescribe:
   (a) a commercial quantity of a particular border controlled drug, border controlled plant or border controlled precursor; or
Section 301.6

(b) a marketable quantity of a particular border controlled drug, border controlled plant or border controlled precursor;
for a period that exceeds, or for periods that in total exceed, 12 months.

(6) If:

(a) there is no commercial or marketable quantity specified in section 314.4 for a substance listed or described as a border controlled drug in that section; or

(b) there is no commercial or marketable quantity specified in section 314.5 for a substance listed or described as a border controlled plant in that section; or

(c) there is no commercial or marketable quantity specified in section 314.6 for a substance listed or described as a border controlled precursor in that section;

regulations under subsection (4) may prescribe such a quantity of the drug, plant or precursor.

Subdivision B—Emergency determinations

301.6 Emergency determinations—controlled drugs and controlled plants

(1) The Minister may, by legislative instrument, determine that:

(a) a substance, other than a growing plant, is a controlled drug;
or

(b) a growing plant is a controlled plant.

(2) The Minister must not make a determination under subsection (1) unless he or she is satisfied:

(a) that taking the substance or plant concerned:

(i) would create a substantial risk of death or serious harm;
or

(ii) would have a physical or mental effect substantially similar to that caused by taking a substance or plant already listed or described in section 314.1 or 314.2; and

(b) that there is an imminent and substantial risk that the substance or plant will be:

(i) taken without appropriate medical supervision; or
Section 301.7

(ii) imported and made available for taking without appropriate medical supervision.

Note: Sections 301.11 and 301.12 set out general rules for emergency determinations.

301.7 Emergency determinations—controlled precursors

(1) The Minister may, by legislative instrument, determine that a substance (including a growing plant) is a controlled precursor.

(2) The Minister must not make a determination under subsection (1) unless he or she is satisfied that there is an imminent and substantial risk that the substance will be:

   (a) used to unlawfully manufacture a controlled drug; or
   (b) imported and made available to be used in unlawfully manufacturing a controlled drug.

Note: Sections 301.11 and 301.12 set out general rules for emergency determinations.

301.8 Emergency determinations—border controlled drugs and border controlled plants

(1) The Minister may, by legislative instrument, determine that:

   (a) a substance, other than a growing plant, is a border controlled drug; or
   (b) a growing plant is a border controlled plant.

(2) The Minister must not make a determination under subsection (1) unless he or she is satisfied:

   (a) that taking the substance or plant concerned:

      (i) would create a substantial risk of death or serious harm; or

      (ii) would have a physical or mental effect substantially similar to that caused by taking a substance or plant already listed or described in section 314.4 or 314.5; and

   (b) that there is an imminent and substantial risk that the substance or plant will be:

      (i) taken without appropriate medical supervision; or

      (ii) imported and made available for taking without appropriate medical supervision.
301.9 Emergency determinations—border controlled precursors

(1) The Minister may, by legislative instrument, determine that a substance (including a growing plant) is a border controlled precursor.

(2) The Minister must not make a determination under subsection (1) unless he or she is satisfied that there is an imminent and substantial risk that the substance will be:
   (a) used to unlawfully manufacture a controlled drug; or
   (b) imported and made available to be used in unlawfully manufacturing a controlled drug.

Note: Sections 301.11 and 301.12 set out general rules for emergency determinations.

301.10 Emergency determinations—commercial, marketable and trafficable quantities

(1) The Minister may, by legislative instrument, determine that:
   (a) a quantity of a controlled drug or controlled plant is a commercial, marketable or trafficable quantity of the drug or plant; or
   (b) a quantity of a controlled precursor is a commercial or marketable quantity of the precursor.

(2) If:
   (a) there is no commercial, marketable or trafficable quantity specified in section 314.1 for a substance listed or described as a controlled drug in that section; or
   (b) there is no commercial, marketable or trafficable quantity specified in section 314.2 for a substance listed or described as a controlled plant in that section; or
   (c) there is no commercial or marketable quantity specified in section 314.3 for a substance listed or described as a controlled precursor in that section;
   the Minister may, under subsection (1), determine such a quantity of the drug, plant or precursor.
Schedule  The Criminal Code
Chapter 9  Dangers to the community
Part 9.1  Serious drug offences
Division 301  Listing additional drugs, plants and precursors

Section 301.11

(3) The Minister may, by legislative instrument, determine that a quantity of a border controlled drug, border controlled plant or border controlled precursor is a commercial or marketable quantity of the drug, plant or precursor.

(4) If:
   (a) there is no commercial or marketable quantity specified in section 314.4 for a substance listed or described as a border controlled drug in that section; or
   (b) there is no commercial or marketable quantity specified in section 314.5 for a substance listed or described as a border controlled plant in that section; or
   (c) there is no commercial or marketable quantity specified in section 314.6 for a substance listed or described as a border controlled precursor in that section;

the Minister may, under subsection (3), determine such a quantity of the drug, plant or precursor.

Note: Sections 301.11 and 301.12 set out general rules for emergency determinations.

301.11 General rules—period of effect, publication etc.

(1) A determination under this Subdivision has effect:
   (a) from the time it is registered (within the meaning of the Legislative Instruments Act 2003); and
   (b) for the period of 28 days from that registration or such shorter period as is specified in the determination.

(2) However, despite paragraph (1)(b), if:
   (a) the Minister has made a determination under this Subdivision; and
   (b) exceptional circumstances have prevented the making of regulations to the same effect;

the Minister may, by legislative instrument, extend the period during which the determination is in force by no more than 28 days.

(3) The Minister must not make more than one determination under sections 301.6 to 301.9 in relation to a particular substance or plant.

Section 301.12

(4) If the Minister makes a determination under this Subdivision, the Minister must, on or before the day on which the determination is registered:
   (a) make a public announcement of the determination; and
   (b) cause a copy of the announcement to be published:
       (i) on the Internet; and
       (ii) in a newspaper circulating in each State, the Australian Capital Territory and the Northern Territory.

(5) An announcement made under subsection (4) is not a legislative instrument.

301.12 General rule—inhconsistency with regulations

Despite subsections 301.11(1) and (2), a determination made under this Subdivision has no effect to the extent that it is inconsistent with a regulation made under Subdivision A.
Division 302—Trafficking controlled drugs

302.1 Meaning of traffics

(1) For the purposes of this Part, a person traffics in a substance if:
   (a) the person sells the substance; or
   (b) the person prepares the substance for supply with the intention of selling any of it or believing that another person intends to sell any of it; or
   (c) the person transports the substance with the intention of selling any of it or believing that another person intends to sell any of it; or
   (d) the person guards or conceals the substance with the intention of selling any of it or assisting another person to sell any of it; or
   (e) the person possesses the substance with the intention of selling any of it.

(2) For the purposes of paragraph (1)(b), preparing a substance for supply includes packaging the substance or separating the substance into discrete units.

302.2 Trafficking commercial quantities of controlled drugs

(1) A person commits an offence if:
   (a) the person traffics in a substance; and
   (b) the substance is a controlled drug; and
   (c) the quantity trafficked is a commercial quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

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

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

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

302.3 Trafficking marketable quantities of controlled drugs

(1) A person commits an offence if:
(a) the person traffics in a substance; and
(b) the substance is a controlled drug; and
(c) the quantity trafficked is a marketable quantity.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

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

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

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

302.4 Trafficking controlled drugs

(1) A person commits an offence if:
   (a) the person traffics in a substance; and
   (b) the substance is a controlled drug.

Penalty: Imprisonment for 10 years or 2,000 penalty units, or both.

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

302.5 Presumption where trafficable quantities are involved

(1) For the purposes of proving an offence against this Division, if a person has:
   (a) prepared a trafficable quantity of a substance for supply; or
   (b) transported a trafficable quantity of a substance; or
   (c) guarded or concealed a trafficable quantity of a substance; or
   (d) possessed a trafficable quantity of a substance;
the person is taken to have had the necessary intention or belief concerning the sale of the substance to have been trafficking in the substance.

(2) Subsection (1) does not apply if the person proves that he or she had neither that intention nor belief.

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

Note 2: This section does not apply where quantities are combined for the purposes of section 311.2 (see subsection 311.2(3)).
Section 302.6

302.6 Purchase of controlled drugs is not an ancillary offence

A person does not commit:

(a) an offence against this Division because of the operation of section 11.2; or

(b) an offence against section 11.4 or 11.5 that relates to an offence against this Division;

merely because the person purchases, or intends to purchase, a controlled drug from another person.

Note: A defendant bears an evidential burden in relation to the matters in this section (see subsection 13.3(3)).
Division 303—Commercial cultivation of controlled plants

303.1 Meanings of cultivate and cultivates a plant

(1) For the purposes of this Part, cultivate includes the following:
   (a) plant a seed, seedling or cutting;
   (b) transplant a plant;
   (c) nurture, tend or grow a plant;
   (d) guard or conceal a plant (including against interference or
discovery by humans or natural predators);
   (e) harvest a plant, pick any part of a plant or separate any resin
or other substance from a plant.

(2) For the purposes of this Part, a person cultivates a plant if the person:
   (a) engages in its cultivation; or
   (b) exercises control or direction over its cultivation; or
   (c) provides finance for its cultivation.

303.2 Meaning of product of a plant

For the purposes of this Part, the product of a plant includes the following:
   (a) a seed of the plant;
   (b) a part of the plant (whether alive or dead);
   (c) a substance separated from the plant.

303.3 Meaning of cultivates a plant for a commercial purpose

For the purposes of this Part, a person cultivates a plant for a commercial purpose if the person cultivates the plant:
   (a) with the intention of selling any of it or its products; or
   (b) believing that another person intends to sell any of it or its products.
Section 303.4

303.4 Cultivating commercial quantities of controlled plants

(1) A person commits an offence if:
   (a) the person cultivates a plant for a commercial purpose; and
   (b) the plant is a controlled plant; and
   (c) the quantity cultivated is a commercial quantity.

   Penalty: Imprisonment for life or 7,500 penalty units, or both.

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

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

   Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

303.5 Cultivating marketable quantities of controlled plants

(1) A person commits an offence if:
   (a) the person cultivates a plant for a commercial purpose; and
   (b) the plant is a controlled plant; and
   (c) the quantity cultivated is a marketable quantity.

   Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

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

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

   Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

303.6 Cultivating controlled plants

(1) A person commits an offence if:
   (a) the person cultivates a plant for a commercial purpose; and
   (b) the plant is a controlled plant.

   Penalty: Imprisonment for 10 years or 2,000 penalty units, or both.

(2) The fault element for paragraph (1)(b) is recklessness.
Section 303.7

303.7 Presumption where trafficable quantities are involved

(1) For the purposes of proving an offence against this Division, if a person has cultivated a trafficable quantity of a plant, the person is taken to have had the necessary intention or belief concerning the sale of the plant to have been cultivating the plant for a commercial purpose.

(2) Subsection (1) does not apply if the person proves that he or she had neither that intention nor belief.

Note: A defendant bears a legal burden in relation to the matters in subsection (2) (see section 13.4).
Division 304—Selling controlled plants

304.1 Selling commercial quantities of controlled plants

(1) A person commits an offence if:
   (a) the person sells a plant; and
   (b) the plant is a controlled plant; and
   (c) the quantity sold is a commercial quantity.

   Penalty: Imprisonment for life or 7,500 penalty units, or both.

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

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

   Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

304.2 Selling marketable quantities of controlled plants

(1) A person commits an offence if:
   (a) the person sells a plant; and
   (b) the plant is a controlled plant; and
   (c) the quantity sold is a marketable quantity.

   Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

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

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

   Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

304.3 Selling controlled plants

(1) A person commits an offence if:
   (a) the person sells a plant; and
   (b) the plant is a controlled plant.

   Penalty: Imprisonment for 10 years or 2,000 penalty units, or both.
(2) The fault element for paragraph (1)(b) is recklessness.
Division 305—Commercial manufacture of controlled drugs

305.1 Meanings of manufacture and manufactures a substance

(1) For the purposes of this Part, manufacture means any process by which a substance is produced (other than the cultivation of a plant), and includes the following:
   (a) the process of extracting or refining a substance;
   (b) the process of transforming a substance into a different substance.

(2) For the purposes of this Part, a person manufactures a substance if the person:
   (a) engages in its manufacture; or
   (b) exercises control or direction over its manufacture; or
   (c) provides finance for its manufacture.

305.2 Meaning of manufactures a substance for a commercial purpose

For the purposes of this Part, a person manufactures a substance for a commercial purpose if the person manufactures the substance:
   (a) with the intention of selling any of it; or
   (b) believing that another person intends to sell any of it.

305.3 Manufacturing commercial quantities of controlled drugs

(1) A person commits an offence if:
   (a) the person manufactures a substance for a commercial purpose; and
   (b) the substance is a controlled drug; and
   (c) the quantity manufactured is a commercial quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

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

(3) Absolute liability applies to paragraph (1)(c).
305.4 Manufacturing marketable quantities of controlled drugs

(1) A person commits an offence if:
   (a) the person manufactures a substance for a commercial purpose; and
   (b) the substance is a controlled drug; and
   (c) the quantity manufactured is a marketable quantity.

Penalty:
   (a) in the case of an aggravated offence—imprisonment for 28 years or 5,600 penalty units, or both; or
   (b) in any other case—imprisonment for 25 years or 5,000 penalty units, or both.

Note: The additional elements for an aggravated offence against this section are set out in subsection 310.4(2).

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

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

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

305.5 Manufacturing controlled drugs

(1) A person commits an offence if:
   (a) the person manufactures a substance for a commercial purpose; and
   (b) the substance is a controlled drug.

Penalty:
   (a) in the case of an aggravated offence—imprisonment for 12 years or 2,400 penalty units, or both; or
   (b) in any other case—imprisonment for 10 years or 2,000 penalty units, or both.

Note: The additional elements for an aggravated offence against this section are set out in subsection 310.4(2).

(2) The fault element for paragraph (1)(b) is recklessness.
Section 305.6

305.6 Presumption where trafficable quantities are involved

(1) For the purposes of proving an offence against this Division, if a person has manufactured a trafficable quantity of a substance, the person is taken to have had the necessary intention or belief concerning the sale of the substance to have been manufacturing the substance for a commercial purpose.

(2) Subsection (1) does not apply if the person proves that he or she had neither that intention nor belief.

Note: A defendant bears a legal burden in relation to the matters in subsection (2) (see section 13.4).
Division 306—Pre-trafficking controlled precursors

306.1 Meaning of pre-traffics

For the purposes of this Part, a person pre-traffics in a substance if the person:

(a) sells the substance believing that the person to whom it is sold, or another person, intends to use any of the substance to manufacture a controlled drug; or

(b) manufactures the substance:
   (i) with the intention of using any of it to manufacture a controlled drug; and
   (ii) with the intention of selling any of the drug so manufactured, or believing that another person intends to sell any of the drug so manufactured; or

(c) manufactures the substance:
   (i) with the intention of selling any of it to another person; and
   (ii) believing that the other person intends to use any of the substance to manufacture a controlled drug; or

(d) possesses the substance:
   (i) with the intention of using any of it to manufacture a controlled drug; and
   (ii) with the intention of selling any of the drug so manufactured, or believing that another person intends to sell any of the drug so manufactured.

306.2 Pre-trafficking commercial quantities of controlled precursors

(1) A person commits an offence if:
   (a) the person pre-traffics in a substance; and
   (b) the substance is a controlled precursor; and
   (c) the quantity pre-trafficked is a commercial quantity.

Penalty:
   (a) in the case of an aggravated offence—imprisonment for 28 years or 5,600 penalty units, or both; or
Section 306.3

(b) in any other case—imprisonment for 25 years or 5,000 penalty units, or both.

Note: The additional elements for an aggravated offence against this section are set out in subsection 310.4(3).

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

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

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

306.3 Pre-trafficking marketable quantities of controlled precursors

(1) A person commits an offence if:

(a) the person pre-traffics in a substance; and
(b) the substance is a controlled precursor; and
(c) the quantity pre-trafficked is a marketable quantity.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 17 years or 3,400 penalty units, or both; or
(b) in any other case—imprisonment for 15 years or 3,000 penalty units, or both.

Note: The additional elements for an aggravated offence against this section are set out in subsection 310.4(3).

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

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

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(c).

306.4 Pre-trafficking controlled precursors

(1) A person commits an offence if:

(a) the person pre-traffics in a substance; and
(b) the substance is a controlled precursor.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 9 years or 1,800 penalty units, or both; or
Section 306.5

(b) in any other case—imprisonment for 7 years or 1,400 penalty units, or both.

Note: The additional elements for an aggravated offence against this section are set out in subsection 310.4(3).

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

306.5 Presumption for pre-trafficking controlled precursors—sale

(1) For the purposes of proving an offence against subsection 306.4(1), if:

(a) a person has sold a substance; and
(b) a law of the Commonwealth or of a State or Territory required the sale to be authorised (however described); and
(c) the sale was not so authorised;

the person is taken to have sold the substance believing that the person to whom it was sold, or another person, intended to use some or all of the substance to manufacture a controlled drug.

(2) Subsection (1) does not apply if the person proves that he or she did not have that belief.

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

306.6 Presumptions for pre-trafficking controlled precursors—manufacture for drug manufacture

(1) For the purposes of proving an offence against subsection 306.4(1), if:

(a) a person has manufactured a substance; and
(b) a law of the Commonwealth or of a State or Territory required the manufacture to be authorised (however described); and
(c) the manufacture was not so authorised;

the person is taken to have manufactured the substance with the intention of using some or all of it to manufacture a controlled drug.

(2) Subsection (1) does not apply if the person proves that he or she did not have that intention.
Section 306.7

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

(3) For the purposes of proving an offence against subsection 306.4(1), if a person has manufactured a marketable quantity of a substance with the intention of using some or all of it to manufacture a controlled drug, the person is taken to have done so with the intention of selling some or all of the drug so manufactured, or believing that another person intended to sell some or all of the drug so manufactured.

(4) Subsection (3) does not apply if the person proves that he or she had neither that intention nor belief.

Note: A defendant bears a legal burden in relation to the matters in subsection (4) (see section 13.4).

306.7 Presumptions for pre-trafficking controlled precursors— manufacture for sale

(1) For the purposes of proving an offence against subsection 306.4(1), if a person has manufactured a marketable quantity of a substance, the person is taken to have done so with the intention of selling some or all of it to another person.

(2) Subsection (1) does not apply if the person proves that he or she did not have that intention.

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

(3) For the purposes of proving an offence against subsection 306.4(1), if:

(a) a person has manufactured a substance with the intention of selling some or all of it to another person; and

(b) a law of the Commonwealth or of a State or Territory required the manufacture to be authorised (however described); and

(c) the manufacture was not so authorised;

the person is taken to have manufactured the substance believing that the other person intended to use some or all of the substance to manufacture a controlled drug.

(4) Subsection (3) does not apply if the person proves that he or she did not have that belief.
306.8 Presumptions for pre-trafficking controlled precursors—possession

(1) For the purposes of proving an offence against subsection 306.4(1), if:
   (a) a person possessed a substance; and
   (b) a law of the Commonwealth or of a State or Territory required the possession to be authorised (however described); and
   (c) the possession was not so authorised;
the person is taken to have possessed the substance with the intention of using some or all of it to manufacture a controlled drug.

(2) Subsection (1) does not apply if the person proves that he or she did not have that intention.

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

(3) For the purposes of proving an offence against subsection 306.4(1), if a person possessed a marketable quantity of a substance with the intention of using some or all of it to manufacture a controlled drug, the person is taken to have done so with the intention of selling some or all of the drug so manufactured, or believing that another person intended to sell some or all of the drug so manufactured.

(4) Subsection (3) does not apply if the person proves that he or she had neither that intention nor belief.

Note: A defendant bears a legal burden in relation to the matters in subsection (4) (see section 13.4).
Section 307.1

Division 307—Import-export offences

Subdivision A—Importing and exporting border controlled drugs or border controlled plants

307.1 Importing and exporting commercial quantities of border controlled drugs or border controlled plants

(1) A person commits an offence if:
   (a) the person imports or exports a substance; and
   (b) the substance is a border controlled drug or border controlled plant; and
   (c) the quantity imported or exported is a commercial quantity.

   Penalty: Imprisonment for life or 7,500 penalty units, or both.

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

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

307.2 Importing and exporting marketable quantities of border controlled drugs or border controlled plants

(1) A person commits an offence if:
   (a) the person imports or exports a substance; and
   (b) the substance is a border controlled drug or border controlled plant; and
   (c) the quantity imported or exported is a marketable quantity.

   Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

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

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

(4) Subsection (1) does not apply if the person proves that he or she neither intended, nor believed that another person intended, to sell any of the border controlled drug or any of the border controlled plant or its products.
307.3 Importing and exporting border controlled drugs or border controlled plants

(1) A person commits an offence if:
   (a) the person imports or exports a substance; and
   (b) the substance is a border controlled drug or border controlled plant.

   Penalty: Imprisonment for 10 years or 2,000 penalty units, or both.

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

(3) Subsection (1) does not apply if the person proves that he or she neither intended, nor believed that another person intended, to sell any of the border controlled drug or any of the border controlled plant or its products.

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

307.4 Importing and exporting border controlled drugs or border controlled plants—no defence relating to lack of commercial intent

(1) A person commits an offence if:
   (a) the person imports or exports a substance; and
   (b) the substance is a border controlled drug or border controlled plant.

   Penalty: Imprisonment for 2 years, or 400 penalty units, or both.

(2) The fault element for paragraph (1)(b) is recklessness.
Section 307.5

Subdivision B—Possessing unlawfully imported border controlled drugs or border controlled plants

307.5 Possessing commercial quantities of unlawfully imported border controlled drugs or border controlled plants

(1) A person commits an offence if:
   (a) the person possesses a substance; and
   (b) the substance was unlawfully imported; and
   (c) the substance is a border controlled drug or border controlled plant; and
   (d) the quantity possessed is a commercial quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

(4) Subsection (1) does not apply if the person proves that he or she did not know that the border controlled drug or border controlled plant was unlawfully imported.

Note: A defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4).

307.6 Possessing marketable quantities of unlawfully imported border controlled drugs or border controlled plants

(1) A person commits an offence if:
   (a) the person possesses a substance; and
   (b) the substance was unlawfully imported; and
   (c) the substance is a border controlled drug or border controlled plant; and
   (d) the quantity possessed is a marketable quantity.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.
(4) Subsection (1) does not apply if the person proves that he or she neither intended, nor believed that another person intended, to sell any of the border controlled drug or any of the border controlled plant or its products.

(5) Subsection (1) does not apply if the person proves that he or she did not know that the border controlled drug or border controlled plant was unlawfully imported.

Note: A defendant bears a legal burden in relation to the matters in subsections (4) and (5) (see section 13.4).

307.7 Possessing unlawfully imported border controlled drugs or border controlled plants

(1) A person commits an offence if:
   (a) the person possesses a substance; and
   (b) the substance was unlawfully imported; and
   (c) the substance is a border controlled drug or border controlled plant.

Penalty: Imprisonment for 2 years or 400 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

(4) Subsection (1) does not apply if the person proves that he or she did not know that the border controlled drug or border controlled plant was unlawfully imported.

Note: A defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4).

Subdivision C—Possessing border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported

307.8 Possessing commercial quantities of border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported

(1) A person commits an offence if:
   (a) the person possesses a substance; and
Section 307.9

(b) the substance is reasonably suspected of having been unlawfully imported; and
(c) the substance is a border controlled drug or border controlled plant; and
(d) the quantity possessed is a commercial quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

(4) Subsection (1) does not apply if the person proves that the border controlled drug or border controlled plant was not unlawfully imported.

Note: A defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4).

307.9 Possessing marketable quantities of border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported

(1) A person commits an offence if:
(a) the person possesses a substance; and
(b) the substance is reasonably suspected of having been unlawfully imported; and
(c) the substance is a border controlled drug or border controlled plant; and
(d) the quantity possessed is a marketable quantity.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

(4) Subsection (1) does not apply if the person proves that he or she neither intended, nor believed that another person intended, to sell any of the border controlled drug or any of the border controlled plant or its products.
(5) Subsection (1) does not apply if the person proves that the border controlled drug or border controlled plant was not unlawfully imported.

Note: A defendant bears a legal burden in relation to the matters in subsections (4) and (5) (see section 13.4).

### 307.10 Possessing border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported

(1) A person commits an offence if:
   (a) the person possesses a substance; and
   (b) the substance is reasonably suspected of having been unlawfully imported; and
   (c) the substance is a border controlled drug or border controlled plant.

Penalty: Imprisonment for 2 years or 400 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

(4) Subsection (1) does not apply if the person proves that the border controlled drug or border controlled plant was not unlawfully imported.

Note: A defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4).

### Subdivision D—Importing and exporting border controlled precursors

### 307.11 Importing and exporting commercial quantities of border controlled precursors

(1) A person commits an offence if:
   (a) the person imports or exports a substance; and
   (b) either or both of the following apply:
      (i) the person intends to use any of the substance to manufacture a controlled drug;
Schedule  The Criminal Code
Chapter 9  Dangers to the community
Part 9.1  Serious drug offences
Division 307  Import-export offences

Section 307.12

(ii) the person believes that another person intends to use any of the substance to manufacture a controlled drug;
and
(c) the substance is a border controlled precursor; and
(d) the quantity imported or exported is a commercial quantity.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

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

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

307.12 Importing and exporting marketable quantities of border controlled precursors

(1) A person commits an offence if:
   (a) the person imports or exports a substance; and
   (b) either or both of the following apply:
       (i) the person intends to use any of the substance to manufacture a controlled drug;
       (ii) the person believes that another person intends to use any of the substance to manufacture a controlled drug;
       and
       (c) the substance is a border controlled precursor; and
       (d) the quantity imported or exported is a marketable quantity.

Penalty: Imprisonment for 15 years or 3,000 penalty units, or both.

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

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

(4) Subsection (1) does not apply if:
   (a) in relation to conduct covered by subparagraph (1)(b)(i)—the person proves that he or she neither intended, nor believed that another person intended, to sell any of the controlled drug so manufactured; or
   (b) in relation to conduct covered by subparagraph (1)(b)(ii)—the person proves that, although he or she believed that the other person intended to use the substance to manufacture a
307.13 Importing and exporting border controlled precursors

(1) A person commits an offence if:
   (a) the person imports or exports a substance; and
   (b) either or both of the following apply:
       (i) the person intends to use any of the substance to manufacture a controlled drug;
       (ii) the person believes that another person intends to use any of the substance to manufacture a controlled drug; and
   (c) the substance is a border controlled precursor.

Penalty: Imprisonment for 7 years or 1,400 penalty units, or both.

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

(3) Subsection (1) does not apply if:
   (a) in relation to conduct covered by subparagraph (1)(b)(i)—the person proves that he or she neither intended, nor believed that another person intended, to sell any of the controlled drug so manufactured; or
   (b) in relation to conduct covered by subparagraph (1)(b)(ii)—the person proves that, although he or she believed that the other person intended to use the substance to manufacture a controlled drug, he or she did not intend to sell any of the substance to the other person.

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

307.14 Presumptions for importing and exporting border controlled precursors

(1) For the purposes of proving an offence against this Subdivision, if:
   (a) a person has imported or exported a substance; and
   (b) a law of the Commonwealth required the import or export to be authorised (however described); and
Section 307.14

(c) the import or export was not so authorised;  
the person is taken to have imported or exported the substance with  
the intention of using some or all of the substance to manufacture a  
controlled drug.

(2) Subsection (1) does not apply if the person proves that he or she  
did not have that intention.  
Note: A defendant bears a legal burden in relation to the matter in  
subsection (2) (see section 13.4).

(3) For the purposes of proving an offence against this Subdivision, if:  
(a) a person has imported or exported a substance; and  
(b) a law of the Commonwealth required the import or export to  
be authorised (however described); and  
(c) the import or export was not so authorised;  
the person is taken to have imported or exported the substance  
believing that another person intends to use some or all of the  
substance to manufacture a controlled drug.

(4) Subsection (3) does not apply if the person proves that he or she  
did not have that belief.  
Note: A defendant bears a legal burden in relation to the matter in  
subsection (4) (see section 13.4).
Division 308—Possession offences

308.1 Possessing controlled drugs

(1) A person commits an offence if:
   (a) the person possesses a substance; and
   (b) the substance is a controlled drug.

   Penalty: Imprisonment for 2 years or 400 penalty units, or both.

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

(3) If:
   (a) a person is charged with, or convicted of, an offence against subsection (1); and
   (b) the offence is alleged to have been, or was, committed in a State or Territory;

   the person may be tried, punished or otherwise dealt with as if the offence were an offence against the law of the State or Territory that involved the possession or use of a controlled drug (however described).

   Note: Subsection (3) allows for drug users to be diverted from the criminal justice system to receive the same education, treatment and support that is available in relation to drug offences under State and Territory laws.

(4) However, a person punished under subsection (3) must not be:
   (a) sentenced to a period of imprisonment that exceeds the period set out in subsection (1); or
   (b) fined an amount that exceeds the amount set out in subsection (1).

(5) Subsection (3) does not limit:
   (a) Part 1B of the Crimes Act 1914; or
   (b) section 68 or 79 of the Judiciary Act 1903; or
   (c) any other law that provides for a law of a State or Territory to apply in relation to the exercise of federal jurisdiction.
Section 308.2

308.2 Possessing controlled precursors

(1) A person commits an offence if:
   (a) the person possesses a substance; and
   (b) the person intends to use any of the substance to manufacture
       a controlled drug; and
   (c) the substance is a controlled precursor.

Penalty: Imprisonment for 2 years or 400 penalty units, or both.

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

(3) For the purposes of proving an offence against subsection (1), if:
   (a) a person possessed a substance; and
   (b) a law of the Commonwealth or of a State or Territory
       required the possession to be authorised (however described); and
   (c) the possession was not so authorised;

       the person is taken to have possessed the substance with the
       intention of using some or all of the substance to manufacture a
       controlled drug.

(4) Subsection (3) does not apply if the person proves that he or she
       did not have that intention.

Note: A defendant bears a legal burden in relation to the matter in
       subsection (4) (see section 13.4).

308.3 Possessing plant material, equipment or instructions for
commercial cultivation of controlled plants

A person commits an offence if:
   (a) the person possesses a plant, a product of a plant, any
       equipment or any document containing instructions for
       growing a plant; and
   (b) the person intends to use the plant, product, equipment or
       document to cultivate a controlled plant; and
   (c) the person intends to sell, or believes that another person
       intends to sell, any of the plant so cultivated or any of its
       products.

Penalty: Imprisonment for 7 years or 1,400 penalty units, or both.
308.4 Possessing substance, equipment or instructions for commercial manufacture of controlled drugs

(1) A person commits an offence if:
   (a) the person possesses any substance (other than a controlled precursor), any equipment or any document containing instructions for manufacturing a controlled drug; and
   (b) the person intends to use the substance, equipment or document to manufacture a controlled drug; and
   (c) the person intends to sell, or believes that another person intends to sell, any of the drug so manufactured.

Penalty: Imprisonment for 7 years or 1,400 penalty units, or both.

(2) For the purposes of proving an offence against subsection (1), if:
   (a) a person possessed a tablet press; and
   (b) a law of the Commonwealth or of a State or Territory required the possession to be authorised (however described); and
   (c) the possession was not so authorised;
the person is taken to have possessed the tablet press with the intention of using it to manufacture a controlled drug.

(3) Subsection (2) does not apply if the person proves that he or she did not have that intention.

Note: A defendant bears a legal burden in relation to the matter in subsection (3) (see section 13.4).
Division 309—Drug offences involving children

309.1 Children not criminally responsible for offences against this Division

A child is not criminally responsible for an offence against this Division.

Note: For the purposes of this Part, a child is an individual under 18 years of age (see section 300.2).

309.2 Supplying controlled drugs to children

(1) A person commits an offence if:
   (a) the person supplies a substance to an individual; and
   (b) the individual is a child; and
   (c) the substance is a controlled drug.

   Penalty: Imprisonment for 15 years or 3,000 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

309.3 Supplying marketable quantities of controlled drugs to children for trafficking

(1) A person commits an offence if:
   (a) the person supplies a substance to an individual; and
   (b) the individual is a child; and
   (c) the substance is a controlled drug; and
   (d) the quantity supplied is a marketable quantity; and
   (e) the person supplies the controlled drug believing that the child intends to sell any of it.

   Penalty: Imprisonment for life or 7,500 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.
309.4 Supplying controlled drugs to children for trafficking

(1) A person commits an offence if:
   (a) the person supplies a substance to an individual; and
   (b) the individual is a child; and
   (c) the substance is a controlled drug; and
   (d) the person supplies the controlled drug believing that the child intends to sell any of it.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

309.5 Presumption where trafficable quantities are involved

(1) For the purposes of proving an offence against section 309.3 or 309.4, if a person has supplied a trafficable quantity of a substance to a child, the person is taken to have done so believing that the child intended to sell some or all of it.

(2) Subsection (1) does not apply if the person proves that he or she did not have that belief.

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

309.6 Meaning of procures an individual to traffic

(1) For the purposes of this Part, a person procures an individual to traffic in a substance if:
   (a) the person procures the individual to sell the substance; or
   (b) the person, with the intention of selling any of the substance or believing that another person intends to sell any of the substance, procures the individual to prepare the substance for supply or to transport the substance; or
Section 309.7

(c) the person, with the intention of selling any of the substance or assisting another person to sell any of the substance, procures the individual to guard or conceal the substance.

(2) For the purposes of paragraph (1)(b), preparing a substance for supply includes packaging the substance or separating the substance into discrete units.

309.7 Procuring children for trafficking marketable quantities of controlled drugs

(1) A person commits an offence if:
   (a) the person procures an individual to traffic in a quantity of a substance; and
   (b) the individual is a child; and
   (c) the substance is a controlled drug; and
   (d) the quantity is a marketable quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

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

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(d).

309.8 Procuring children for trafficking controlled drugs

(1) A person commits an offence if:
   (a) the person procures an individual to traffic in a substance; and
   (b) the individual is a child; and
   (c) the substance is a controlled drug.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.
309.9 Meaning of procures an individual to pre-traffic

For the purposes of this Part, a person procures an individual to pre-traffic in a substance if the person procures the individual to sell the substance believing that the person to whom the substance is sold intends to use any of the substance to manufacture a controlled drug.

309.10 Procuring children for pre-trafficking marketable quantities of controlled precursors

(1) A person commits an offence if:
   (a) the person procures an individual to pre-traffic in a quantity of a substance; and
   (b) the individual is a child; and
   (c) the substance is a controlled precursor; and
   (d) the quantity is a marketable quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

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

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(d).

309.11 Procuring children for pre-trafficking controlled precursors

(1) A person commits an offence if:
   (a) the person procures an individual to pre-traffic in a substance; and
   (b) the individual is a child; and
   (c) the substance is a controlled precursor.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.
Section 309.12

309.12 Procuring children for importing or exporting marketable quantities of border controlled drugs or border controlled plants

(1) A person commits an offence if:
   (a) the person procures an individual to import or export a substance; and
   (b) the individual is a child; and
   (c) the substance is a border controlled drug or border controlled plant; and
   (d) the quantity imported or exported is a marketable quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

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

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(d).

(5) Subsection (1) does not apply if the person proves that he or she neither intended, nor believed that another person intended, to sell any of the border controlled drug or any of the border controlled plant or its products.

Note 1: A defendant bears a legal burden in relation to the matters in subsection (5) (see section 13.4).

Note 2: A person who does not commit an offence against this section because he or she proves the matters in subsection (5) may, however, have committed an offence against section 309.2 (supplying controlled drugs to children).

309.13 Procuring children for importing or exporting border controlled drugs or border controlled plants

(1) A person commits an offence if:
   (a) the person procures an individual to import or export a substance; and
   (b) the individual is a child; and
   (c) the substance is a border controlled drug or border controlled plant.
Section 309.14

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

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

(3) The fault element for paragraph (1)(c) is recklessness.

(4) Subsection (1) does not apply if the person proves that he or she neither intended, nor believed that another person intended, to sell any of the border controlled drug or any of the border controlled plant or its products.

Note 1: A defendant bears a legal burden in relation to the matters in subsection (4) (see section 13.4).

Note 2: A person who does not commit an offence against this section because he or she proves the matters in subsection (4) may, however, have committed an offence against section 309.2 (supplying controlled drugs to children).

309.14 Procuring children for importing or exporting marketable quantities of border controlled precursors

(1) A person commits an offence if:
   (a) the person procures an individual to import or export a substance; and
   (b) either or both of the following apply:
      (i) the person intends to use any of the substance to manufacture a controlled drug;
      (ii) the person believes that another person intends to use any of the substance to manufacture a controlled drug;
   and
   (c) the individual is a child; and
   (d) the substance is a border controlled precursor; and
   (e) the quantity imported or exported is a marketable quantity.

Penalty: Imprisonment for life or 7,500 penalty units, or both.

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

(3) The fault element for paragraph (1)(d) is recklessness.

(4) Absolute liability applies to paragraph (1)(e).

Note: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(e).
Section 309.15

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

(a) in relation to conduct covered by subparagraph (1)(b)(i)—the person proves that he or she neither intended, nor believed that another person intended, to sell any of the controlled drug so manufactured; or

(b) in relation to conduct covered by subparagraph (1)(b)(ii)—the person proves that, although he or she believed that the other person intended to use the substance to manufacture a controlled drug, he or she did not intend to sell any of the substance to the other person.

Note: A defendant bears a legal burden in relation to the matters in subsection (5) (see section 13.4).

309.15 Procuring children for importing or exporting border controlled precursors

(1) A person commits an offence if:

(a) the person procures an individual to import or export a substance; and

(b) either or both of the following apply:

(i) the person intends to use any of the substance to manufacture a controlled drug;

(ii) the person believes that another person intends to use any of the substance to manufacture a controlled drug; and

(c) the individual is a child; and

(d) the substance is a border controlled precursor.

Penalty: Imprisonment for 25 years or 5,000 penalty units, or both.

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

(3) The fault element for paragraph (1)(d) is recklessness.

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

(a) in relation to conduct covered by subparagraph (1)(b)(i)—the person proves that he or she neither intended, nor believed that another person intended, to sell any of the controlled drug so manufactured; or

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448 Criminal Code Act 1995
(b) in relation to conduct covered by subparagraph (1)(b)(ii)—
the person proves that, although he or she believed that the
other person intended to use the substance to manufacture a
controlled drug, he or she did not intend to sell any of the
substance to the other person.

Note: A defendant bears a legal burden in relation to the matters in
subsection (4) (see section 13.4).
División 310—Peligros y peligros para los menores de 14 años desde ofensas graves por narcóticos

310.1 Niños no responsables penalmente por ofensas contra esta División

Un niño no está penalmente responsable de una ofensa contra esta División.

Nota: Para los fines de esta Parte, un niño es una persona inferior a 18 años de edad (vea la sección 300.2).

310.2 Peligro por exposición a la fabricación ilegal

(1) Una persona comete una ofensa si:
   (a) la persona se involucra en un acto; y
   (b) el acto da lugar a un peligro de serio daño para una persona; y
   (c) la persona tiene menos de 14 años; y
   (d) el peligro existe porque la persona se expone a la fabricación de un narcótico o un precursor controlado; y
   (e) la fabricación es una ofensa contra esta Parte, o sería una ofensa contra esta Parte si la fabricación fuese para un fin comercial (vea la sección 305.2).

Pena: Prisión por 9 años o 1,800 unidades penitenciarias, o ambas.

Nota: Una persona puede cometer una ofensa contra el inciso (1) sin estar involucrada en la fabricación ilegal de narcóticos o precursors controlados. La persona solo necesita exponer a un niño a la amenaza de serio daño por tal fabricación.

(2) La responsabilidad esstricta aplica a los incisos (1)(c) y (e).

(3) Para los fines de la sección (1), si una persona expone a otra persona al peligro de contraer una enfermedad que puede dar lugar a un peligro de serio daño para esa persona, la conducta se considera como dar lugar a un peligro de serio daño para la otra persona.

(4) Para los fines de la sección (1), la conducta de una persona da lugar a un peligro de serio daño si la conducta es ordinariamente capaz de
(5) For the purposes of subsection (1), a person’s conduct may give rise to a danger of serious harm whatever the statistical or arithmetical calculation of the degree of risk of serious harm involved.

(6) In a prosecution for an offence against subsection (1), it is not necessary to prove:
   (a) that a person was actually placed in danger of serious harm by the conduct concerned; or
   (b) that a particular person committed the offence mentioned in paragraph (1)(e).

(7) If, in a prosecution for an offence against subsection (1), the conduct of the defendant for the purposes of paragraph (1)(a) is alleged to be an omission, the fault element for that omission is recklessness.

### 310.3 Harm from exposure to unlawful manufacturing

(1) A person commits an offence if:
   (a) the person engages in conduct; and
   (b) the conduct causes harm to an individual; and
   (c) the individual is under 14 years of age; and
   (d) the harm is caused because the individual is exposed to the manufacture of a controlled drug or a controlled precursor; and
   (e) the manufacture is an offence against this Part, or would be an offence against this Part if the manufacture were for a commercial purpose (see section 305.2).

Penalty: Imprisonment for 9 years or 1,800 penalty units, or both.

Note: A person can commit an offence against this section without being involved in the unlawful manufacture of controlled drugs or controlled precursors. The person need only cause harm to a child under 14 by exposing the child to such manufacture.

(2) Strict liability applies to paragraphs (1)(c) and (e).
Section 310.4

(3) In a prosecution for an offence against subsection (1), it is not necessary to prove that a particular person committed the offence mentioned in paragraph (1)(e).

(4) If, in a prosecution for an offence against subsection (1), the conduct of the defendant for the purposes of paragraph (1)(a) is alleged to be an omission, the fault element for that omission is recklessness.

310.4 Aggravated offences—manufacturing controlled drugs and controlled precursors

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

(2) For the purposes of this Part, an offence against section 305.4 or 305.5 is an aggravated offence if:
   (a) the commission of the offence exposes an individual to the manufacture of a controlled drug; and
   (b) the individual is under 14 years of age.

(3) For the purposes of this Part, an offence against section 306.2, 306.3 or 306.4 is an aggravated offence if:
   (a) the commission of the offence exposes an individual to:
       (i) a controlled precursor intended to be used for the manufacture of a controlled drug; or
       (ii) the manufacture of a controlled precursor; and
   (b) the individual is under 14 years of age.

(4) The fault element for paragraphs (2)(a) and (3)(a) is recklessness.

(5) Strict liability applies to paragraphs (2)(b) and (3)(b).

(6) Subsections (2) and (3) do not apply if the commission of the offence does not give rise to a danger of harm to the individual.

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

(7) For the purposes of this section, if the commission of an offence exposes a person to the risk of catching a disease that may give rise to a danger of harm to the person, the commission of the offence is taken to give rise to a danger of harm to the person.
(8) For the purposes of this section, the commission of an offence gives rise to a danger of harm if the commission of the offence is ordinarily capable of creating a real, and not merely a theoretical, danger of harm.

(9) For the purposes of this section, the commission of an offence may give rise to a danger of harm whatever the statistical or arithmetical calculation of the degree of risk of harm involved.
Division 311—Combining quantities of drugs, plants or precursors

Subdivision A—Combining different parcels on the same occasion

311.1 Combining different parcels on the same occasion

(1) If, on the same occasion, a person:
   (a) traffics in different parcels of controlled drugs (Division 302); or
   (b) cultivates different parcels of controlled plants (Division 303); or
   (c) sells different parcels of controlled plants (Division 304); or
   (d) manufactures different parcels of controlled drugs (Division 305); or
   (e) pre-traffics in different parcels of controlled precursors (Division 306); or
   (f) imports or exports different parcels of border controlled drugs or border controlled plants (Subdivision A of Division 307); or
   (g) possesses different parcels of unlawfully imported border controlled drugs or border controlled plants (Subdivision B of Division 307); or
   (h) possesses different parcels of border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported (Subdivision C of Division 307); or
   (i) imports or exports different parcels of border controlled precursors (Subdivision D of Division 307); or
   (j) supplies different parcels of controlled drugs to a child for trafficking (sections 309.3 and 309.4); or
   (k) procures a child to traffic in different parcels of controlled drugs (sections 309.7 and 309.8); or
   (l) procures a child to pre-traffic in different parcels of controlled precursors (sections 309.10 and 309.11); or
(m) procures a child to import or export different parcels of border controlled drugs or border controlled plants (sections 309.12 and 309.13); or

(n) procures a child to import or export different parcels of border controlled precursors (sections 309.14 and 309.15); the person may be charged with a single offence against this Part in respect of all or any of the different parcels of drugs, plants or precursors.

(2) The quantity of the drugs, plants or precursors for the purposes of the offence is the sum of the quantities of the drugs, plants or precursors in the different parcels.

Note: See section 312.2 for working out quantities where different kinds of controlled or border controlled drugs, plants or precursors are involved.

(3) If the prosecution intends to rely on this Subdivision, particulars of each parcel of drugs, plants or precursors must be set out in the charge.

(4) This Subdivision does not prevent a person being charged with separate offences in respect of different parcels of drugs, plants or precursors.

Subdivision B—Combining parcels from organised commercial activities

311.2 Business of trafficking controlled drugs

(1) In proceedings for an offence against:
   (a) section 302.2 (trafficking commercial quantities of controlled drugs); or
   (b) section 302.3 (trafficking marketable quantities of controlled drugs);
the prosecution may prove the element of the offence relating to the quantity of controlled drug by proving:
   (c) that the defendant was engaged in an organised commercial activity that involved repeated trafficking in controlled drugs; and
Section 311.3

(d) that the relevant quantity of a controlled drug, or of a combination of controlled drugs, was trafficked in the course of that activity.

Note 1: See section 312.2 for working out quantities where different kinds of controlled drugs are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(d).

(2) For the purposes of subsection (1) it is not necessary for the prosecution to specify or prove:

(a) the exact date of each occasion of trafficking; or
(b) the exact quantity trafficked on each occasion.

(3) Section 302.5 (presumption where trafficable quantities are involved) does not apply to an offence prosecuted in accordance with subsection (1).

311.3 Business of pre-trafficking by selling controlled precursors

(1) In proceedings for an offence against:

(a) section 306.2 (pre-trafficking commercial quantities of controlled precursors); or
(b) section 306.3 (pre-trafficking marketable quantities of controlled precursors);

where the alleged conduct of the defendant involves pre-trafficking by selling controlled precursors, the prosecution may prove the element of the offence relating to the quantity of controlled precursor by proving:

(c) that the defendant was engaged in an organised commercial activity that involved repeated pre-trafficking by selling controlled precursors; and

(d) that the relevant quantity of a controlled precursor, or of a combination of controlled precursors, was pre-trafficked by sale in the course of that activity.

Note 1: See section 312.2 for working out quantities where different kinds of controlled precursors are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(d).
Section 311.4

(2) For the purposes of subsection (1) it is not necessary for the prosecution to specify or prove:
   (a) the exact date of each occasion of pre-trafficking; or
   (b) the exact quantity pre-trafficked on each occasion.

311.4 Business of importing or exporting border controlled drugs or border controlled plants

(1) In proceedings for an offence against:
   (a) section 307.1 (importing and exporting commercial quantities of border controlled drugs or border controlled plants); or
   (b) section 307.2 (importing and exporting marketable quantities of border controlled drugs or border controlled plants);
   the prosecution may prove the element of the offence relating to the quantity of border controlled drug or border controlled plant by proving:
   (c) that the defendant was engaged in an organised commercial activity that involved repeated importing or exporting of border controlled drugs or border controlled plants, or both; and
   (d) that the relevant quantity of a border controlled drug or border controlled plant or both, or of a combination of border controlled drugs or border controlled plants or both, was imported or exported in the course of that activity.

Note: See section 312.2 for working out quantities where different kinds of border controlled drugs or border controlled plants are involved.

(2) For the purposes of subsection (1) it is not necessary for the prosecution to specify or prove:
   (a) the exact date of each occasion of import or export; or
   (b) the exact quantity imported or exported on each occasion.

311.5 Business of importing or exporting border controlled precursors

(1) In proceedings for an offence against:
   (a) section 307.11 (importing and exporting commercial quantities of border controlled precursors); or
Section 311.6

(b) section 307.12 (importing and exporting marketable quantities of border controlled precursors);

the prosecution may prove the element of the offence relating to the quantity of border controlled precursor by proving:

(c) that the defendant was engaged in an organised commercial activity that involved repeated importing or exporting of border controlled precursors; and

(d) that the relevant quantity of a border controlled precursor, or of a combination of border controlled precursors, was imported or exported in the course of that activity.

Note: See section 312.2 for working out quantities where different kinds of border controlled precursors are involved.

(2) For the purposes of subsection (1) it is not necessary for the prosecution to specify or prove:

(a) the exact date of each occasion of import or export; or

(b) the exact quantity imported or exported on each occasion.

311.6 Business of supplying controlled drugs to children

(1) In proceedings for an offence against section 309.3 (supplying marketable quantities of controlled drugs to children for trafficking), the prosecution may prove the element of the offence relating to the quantity of controlled drug by proving:

(a) that the defendant was engaged in an organised commercial activity that involved repeated supplying of drugs to children for trafficking; and

(b) that the relevant quantity of a controlled drug, or of a combination of controlled drugs, was supplied to children in the course of that activity.

Note 1: See section 312.2 for working out quantities where different kinds of controlled drugs are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (1)(b).

(2) For the purposes of subsection (1) it is not necessary for the prosecution to specify or prove:

(a) the exact date of each occasion of supply; or

(b) the exact quantity supplied on each occasion.
Section 311.7

(3) Section 309.5 (presumption where trafficable quantities are involved) does not apply to an offence prosecuted in accordance with subsection (1).

311.7 General rules—combining parcels from organised commercial activities

(1) If, in proceedings for an offence, the prosecution intends to rely on section 311.2, 311.3, 311.4, 311.5 or 311.6:
   
   (a) the fact that it intends to do so must be set out in the charge; and
   
   (b) a description of the conduct alleged for the purposes of that section must be set out in the charge or provided to the accused within a reasonable time before the proceedings.

(2) If:
   
   (a) an occasion of trafficking, pre-trafficking, importing or supplying is alleged in proceedings against a person for an offence prosecuted in accordance with section 311.2, 311.3, 311.4, 311.5 or 311.6; and
   
   (b) the person is convicted or acquitted of the offence;

that occasion must not be alleged in proceedings against the person for another offence against this Part.

(3) If:
   
   (a) an occasion of trafficking, pre-trafficking, importing or supplying is alleged in proceedings against a person for an offence against this Part; and
   
   (b) the person is convicted or acquitted of the offence;

that occasion must not be alleged in proceedings against the person for an offence prosecuted in accordance with section 311.2, 311.3, 311.4, 311.5 or 311.6.

(4) Subject to subsections (2) and (3), this Subdivision does not prevent a person being charged with separate offences in respect of conduct on different occasions.
Section 311.8

Subdivision C—Combining parcels from multiple offences

311.8 Multiple offences—trafficking controlled drugs

The prosecution may prove an offence against Division 302 (trafficking controlled drugs) by proving:

(a) that the defendant committed offences against that Division on different occasions; and

(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

(c) that the relevant quantity (in sum) of a controlled drug, or of a combination of controlled drugs, was trafficked during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled drugs are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.9 Multiple offences—cultivating controlled plants

The prosecution may prove an offence against Division 303 (commercial cultivation of controlled plants) by proving:

(a) that the defendant committed offences against that Division on different occasions; and

(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

(c) that the relevant quantity (in sum) of a controlled plant, or of a combination of controlled plants, was cultivated during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled plants are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.10 Multiple offences—selling controlled plants

The prosecution may prove an offence against Division 304 (selling controlled plants) by proving:

(a) that the defendant committed offences against that Division on different occasions; and
Section 311.11

(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

c) that the relevant quantity (in sum) of a controlled plant, or of a combination of controlled plants, was sold during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled plants are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.11 Multiple offences—manufacturing controlled drugs

The prosecution may prove an offence against Division 305 (commercial manufacture of controlled drugs) by proving:

(a) that the defendant committed offences against that Division on different occasions; and

(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

(c) that the relevant quantity (in sum) of a controlled drug, or of a combination of controlled drugs, was manufactured during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled drugs are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.12 Multiple offences—pre-trafficking controlled precursors

The prosecution may prove an offence against Division 306 (pre-trafficking controlled precursors) by proving:

(a) that the defendant committed offences against that Division on different occasions; and

(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

(c) that the relevant quantity (in sum) of a controlled precursor, or of a combination of controlled precursors, was pre-trafficked during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled precursors are involved.
Section 311.13

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.13 Multiple offences—importing or exporting border controlled drugs or border controlled plants

The prosecution may prove an offence against Subdivision A of Division 307 (importing and exporting border controlled drugs or border controlled plants) by proving:

(a) that the defendant committed offences against that Subdivision on different occasions; and

(b) that each of those offences was committed within a period of not more than 30 days from another of those offences; and

(c) that the relevant quantity (in sum) of a border controlled drug or border controlled plant or both, or of a combination of border controlled drugs or border controlled plants or both, was imported or exported during the commission of those offences.

Note: See section 312.2 for working out quantities where different kinds of border controlled drugs or border controlled plants are involved.

311.14 Multiple offences—possessing unlawfully imported border controlled drugs or border controlled plants

The prosecution may prove an offence against Subdivision B of Division 307 (possessing unlawfully imported border controlled drugs or border controlled plants) by proving:

(a) that the defendant committed offences against that Subdivision on different occasions; and

(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

(c) that the relevant quantity (in sum) of a border controlled drug or border controlled plant or both, or of a combination of border controlled drugs or border controlled plants or both, was possessed by the defendant during the commission of those offences.

Note: See section 312.2 for working out quantities where different kinds of border controlled drugs or border controlled plants are involved.
311.15 Multiple offences—possessing border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported

The prosecution may prove an offence against Subdivision C of Division 307 (possessing border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported) by proving:

(a) that the defendant committed offences against that Subdivision on different occasions; and
(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and
(c) that the relevant quantity (in sum) of a border controlled drug or border controlled plant or both, or of a combination of border controlled drugs or border controlled plants or both, was possessed by the defendant during the commission of those offences.

Note: See section 312.2 for working out quantities where different kinds of border controlled drugs or border controlled plants are involved.

311.16 Multiple offences—importing or exporting border controlled precursors

The prosecution may prove an offence against Subdivision D of Division 307 (importing and exporting border controlled precursors) by proving:

(a) that the defendant committed offences against that Subdivision on different occasions; and
(b) that each of those offences was committed within a period of not more than 30 days from another of those offences; and
(c) that the relevant quantity (in sum) of a border controlled precursor, or of a combination of border controlled precursors, was imported or exported during the commission of those offences.

Note: See section 312.2 for working out quantities where different kinds of border controlled precursors are involved.
311.17 Multiple offences—supplying controlled drugs to children for trafficking

The prosecution may prove an offence against section 309.3 (supplying marketable quantities of controlled drugs to children for trafficking) by proving:

(a) that the defendant committed offences against section 309.4 (supplying controlled drugs to children for trafficking) on different occasions; and

(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

(c) that the relevant quantity (in sum) of a controlled drug, or of a combination of controlled drugs, was supplied during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled drugs are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.18 Multiple offences—procuring children for trafficking controlled drugs

The prosecution may prove an offence against section 309.7 (procuring children for trafficking marketable quantities of controlled drugs) by proving:

(a) that the defendant committed offences against section 309.8 (procuring children for trafficking controlled drugs) on different occasions; and

(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and

(c) that the relevant quantity (in sum) of a controlled drug, or of a combination of controlled drugs, was trafficked during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled drugs are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).
311.19 Multiple offences—procuring children for pre-trafficking controlled precursors

The prosecution may prove an offence against section 309.10 (procuring children for pre-trafficking marketable quantities of controlled precursors) by proving:

(a) that the defendant committed offences against section 309.11 (procuring children for pre-trafficking controlled precursors) on different occasions; and
(b) that each of those offences was committed within a period of not more than 7 days from another of those offences; and
(c) that the relevant quantity (in sum) of a controlled precursor, or of a combination of controlled precursors, was pre-trafficked during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of controlled precursors are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.20 Multiple offences—procuring children for importing or exporting border controlled drugs or border controlled plants

The prosecution may prove an offence against section 309.12 (procuring children for importing or exporting marketable quantities of border controlled drugs or border controlled plants) by proving:

(a) that the defendant committed offences against section 309.13 (procuring children for importing or exporting border controlled drugs or border controlled plants) on different occasions; and
(b) that each of those offences was committed within a period of not more than 30 days from another of those offences; and
(c) that the relevant quantity (in sum) of a border controlled drug or border controlled plant or both, or of a combination of border controlled drugs or border controlled plants or both, was imported or exported during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of border controlled drugs or border controlled plants are involved.
311.21 Multiple offences—procuring children for importing or exporting border controlled precursors

The prosecution may prove an offence against section 309.14 (procuring children for importing or exporting marketable quantities of border controlled precursors) by proving:

(a) that the defendant committed offences against section 309.15 (procuring children for importing or exporting border controlled precursors) on different occasions; and

(b) that each of those offences was committed within a period of not more than 30 days from another of those offences; and

(c) that the relevant quantity (in sum) of a border controlled precursor, or of a combination of border controlled precursors, was imported or exported during the commission of those offences.

Note 1: See section 312.2 for working out quantities where different kinds of border controlled precursors are involved.

Note 2: Section 313.4 provides a partial defence in relation to the matter in paragraph (c).

311.22 General rules—combining parcels from multiple offences

(1) If the prosecution intends to rely on a section of this Subdivision, the particulars of the offences alleged to have been committed on the different occasions must be set out in the charge.

(2) The same parcel of controlled drugs, controlled plants, controlled precursors, border controlled drugs, border controlled plants or border controlled precursors must not be counted more than once for the purposes of this Subdivision.

Example: A person is in possession of a quantity of a controlled drug for sale on one day (the first occasion) and sells that particular quantity the next day (the second occasion). Only the quantity trafficked on one of those occasions may be counted.

(3) This Subdivision does not prevent a person being charged with separate offences in respect of conduct on different occasions.
Division 312—Working out quantities of drugs, plants or precursors

312.1 Working out quantities of drugs and precursors in mixtures

(1) If an alleged offence against this Part involves a quantity of a controlled drug in a mixture of substances, the prosecution may prove the quantity of the controlled drug involved:
   (a) by proving that the mixture contains that quantity of the pure form of the controlled drug; or
   (b) if such a quantity is specified in Division 314 for the controlled drug in a mixture—by proving that quantity of the mixture.

(2) If an alleged offence against this Part involves a quantity of a controlled precursor in a mixture of substances, the prosecution may prove the quantity of the controlled precursor involved by proving that the mixture contains that quantity of the pure form of the controlled precursor.

(3) If an alleged offence against this Part involves a quantity of a border controlled drug in a mixture of substances, the prosecution may prove the quantity of the border controlled drug involved:
   (a) by proving that the mixture contains that quantity of the pure form of the border controlled drug; or
   (b) if such a quantity is specified in Division 314 for the border controlled drug in a mixture—by proving that quantity of the mixture.

(4) If an alleged offence against this Part involves a quantity of a border controlled precursor in a mixture of substances, the prosecution may prove the quantity of the border controlled precursor involved by proving that the mixture contains that quantity of the pure form of the border controlled precursor.

312.2 Working out quantities where different kinds of drugs, plants or precursors are involved

(1) This section applies if a person is charged with a single offence against this Part that involves:
Section 312.2

(a) trafficking in more than one kind of controlled drug; or
(b) cultivating more than one kind of controlled plant; or
(c) selling more than one kind of controlled plant; or
(d) manufacturing more than one kind of controlled drug; or
(e) pre-trafficking in more than one kind of controlled precursor; or
(f) importing or exporting more than one kind of border controlled drug or border controlled plant; or
(g) possessing more than one kind of unlawfully imported border controlled drug or border controlled plant; or
(h) possessing more than one kind of border controlled drug or border controlled plant reasonably suspected of having been unlawfully imported; or
(i) importing or exporting more than one kind of border controlled precursor; or
(j) supplying more than one kind of controlled drug to a child for trafficking; or
(k) procuring a child to traffic in more than one kind of controlled drug; or
(l) procuring a child to pre-trafficking in more than one kind of controlled precursor; or
(m) procuring a child to import or export more than one kind of border controlled drug or border controlled plant; or
(n) procuring a child to import or export more than one kind of border controlled precursor.

(2) The following apply for the purposes of working out the quantity of controlled drugs, controlled plants, controlled precursors, border controlled drugs, border controlled plants or border controlled precursors involved in the offence:

(a) the quantity of the drugs or plants is a trafficable quantity if the sum of the requisite fractions of the trafficable quantity of each of those drugs or plants is equal to or greater than one;
(b) the quantity of drugs, plants or precursors is a marketable quantity if the sum of the requisite fractions of the marketable quantity of each of those drugs, plants or precursors is equal to or greater than one;
(c) the quantity of drugs, plants or precursors is a commercial quantity if the sum of the requisite fractions of the
(3) For the purposes of this Part, *requisite fraction* means:

(a) in relation to a trafficable quantity of a controlled drug or controlled plant, the actual quantity of the drug or plant divided by the smallest trafficable quantity of the drug or plant; or

(b) in relation to a marketable quantity of a controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor, the actual quantity of the drug, plant or precursor divided by the smallest marketable quantity of the drug, plant or precursor; or

(c) in relation to a commercial quantity of a controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor, the actual quantity of the drug, plant or precursor divided by the smallest commercial quantity of the drug, plant or precursor.

(4) If this section applies in relation to a controlled drug in a mixture of substances, the requisite fraction of a trafficable, marketable or commercial quantity of the controlled drug may be calculated:

(a) on the basis of the quantity of the controlled drug in pure form; or

(b) if such a quantity is specified in Division 314 for the controlled drug in a mixture—on the basis of the quantity of the mixture.

(5) If this section applies in relation to a border controlled drug in a mixture of substances, the requisite fraction of a marketable or commercial quantity of the border controlled drug may be calculated:

(a) on the basis of the quantity of the border controlled drug in pure form; or

(b) if such a quantity is specified in Division 314 for the border controlled drug in a mixture—on the basis of the quantity of the mixture.
Division 313—Defences and alternative verdicts

313.1 Defence—conduct justified or excused by or under a law of a State or Territory

This Part, other than Division 307, does not apply in relation to conduct if:

(a) a person engages in the conduct in a State or Territory; and
(b) the conduct is justified or excused by or under a law of that State or Territory.

Note 1: A defendant bears an evidential burden in relation to the matters in this section (see subsection 13.3(3)).

Note 2: A person is not criminally responsible for an offence against this Part if the person’s conduct is justified or excused by or under another Commonwealth law (see section 10.5). In 2005, Commonwealth laws that authorised importation, possession or use of controlled drugs, controlled plants, controlled precursors, border controlled drugs, border controlled plants or border controlled precursors included the Customs Act 1901, the Narcotic Drugs Act 1967 and the Crimes Act 1914.

313.2 Defence—reasonable belief that conduct is justified or excused by or under a law

A person is not criminally responsible for an offence against this Part if:

(a) at the time of the conduct constituting the offence, the person was under a mistaken but reasonable belief that the conduct was justified or excused by or under a law of the Commonwealth or of a State or Territory; and
(b) had the conduct been so justified or excused—the conduct would not have constituted the offence.

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

313.3 Alternative verdict—offence not proved

If:

(a) in a prosecution for an offence against this Part, the trier of fact:
Section 313.4

(i) is not satisfied that the defendant is guilty of the alleged offence; but
(ii) is satisfied, beyond reasonable doubt, that the defendant is guilty of another offence against this Part; and
(b) the maximum penalty for the other offence is not greater than the maximum penalty for the alleged offence;
the trier of fact may find the defendant not guilty of the alleged offence but guilty of the other offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

313.4 Alternative verdict—mistake as to quantity of drug, plant or precursor

(1) This section applies if:
(a) an offence against this Part (other than Division 307) is prosecuted; and
(b) the offence involves a commercial quantity or a marketable quantity of a controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor; and
(c) the trier of fact would, apart from this section, have found the defendant guilty of the offence.

(2) If:
(a) the defendant proves that, at the time of the alleged offence, he or she was under a mistaken belief about the quantity of the drug, plant or precursor; and
(b) if the mistaken belief had been correct, the defendant would have been guilty of another offence against this Part; and
(c) the maximum penalty for the other offence is less than the maximum penalty for the alleged offence;
the trier of fact may find the defendant:
(d) not guilty of the alleged offence; but
(e) guilty of the other offence.

Note: A defendant bears a legal burden in relation to the matter in paragraph (2)(a) (see section 13.4).
Section 313.5

313.5 Alternative verdict—mistake as to identity of drug, plant or precursor

(1) This section applies if:
   (a) an offence against this Part (other than Division 307) is prosecuted; and
   (b) the offence involves a controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor; and
   (c) the trier of fact would, apart from this section, have found the defendant guilty of the offence.

(2) If:
   (a) the defendant proves that, at the time of the alleged offence, he or she was under a mistaken belief about the identity of the drug, plant or precursor; and
   (b) if the mistaken belief had been correct, the defendant would have been guilty of another offence against this Part; and
   (c) the maximum penalty for the other offence is less than the maximum penalty for the alleged offence;

   the trier of fact may find the defendant:
   (d) not guilty of the alleged offence; but
   (e) guilty of the other offence.

Note: A defendant bears a legal burden in relation to the matter in paragraph (2)(a) (see section 13.4).
## Division 314—Drugs, plants, precursors and quantities

### 314.1 Controlled drugs

(1) The following table lists controlled drugs and sets out quantities:

<table>
<thead>
<tr>
<th>Controlled drug</th>
<th>Trafficable quantity (grams)</th>
<th>Marketable quantity (grams)</th>
<th>Commercial quantity (kilograms)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amphetamine</td>
<td>2.0</td>
<td>250.0</td>
<td>0.75</td>
</tr>
<tr>
<td>Cannabis (in any form, including flowering or fruiting tops, leaves, seeds or stalks, but not including Cannabis resin or Cannabis fibre)</td>
<td>250.0</td>
<td>25,000.0</td>
<td>125.0</td>
</tr>
<tr>
<td>Cannabis resin</td>
<td>20.0</td>
<td>25,000.0</td>
<td>125.0</td>
</tr>
<tr>
<td>Cocaine</td>
<td>2.0</td>
<td>250.0</td>
<td>2.0</td>
</tr>
<tr>
<td>Gammabutyrolactone (GBL)</td>
<td>0.5</td>
<td>250.0</td>
<td>1.0</td>
</tr>
<tr>
<td>4-Hydroxybutanoic acid (GHB)</td>
<td>0.5</td>
<td>250.0</td>
<td>1.0</td>
</tr>
<tr>
<td>Heroin (diacetylmorphine)</td>
<td>2.0</td>
<td>250.0</td>
<td>1.5</td>
</tr>
<tr>
<td>Lysergide (LSD)</td>
<td>0.002</td>
<td>0.05</td>
<td>0.002</td>
</tr>
<tr>
<td>Methamphetamine</td>
<td>2.0</td>
<td>250.0</td>
<td>0.75</td>
</tr>
<tr>
<td>3,4-Methylenedioxyamphetamine (MDA)</td>
<td>0.5</td>
<td>100.0</td>
<td>0.75</td>
</tr>
<tr>
<td>3,4-Methylenedioxyethamphetamine (MDMA)</td>
<td>0.5</td>
<td>100.0</td>
<td>0.5</td>
</tr>
<tr>
<td>Opium</td>
<td>20.0</td>
<td>10,000.0</td>
<td>20.0</td>
</tr>
<tr>
<td>Psilocine</td>
<td>2.0</td>
<td>1,000.0</td>
<td>2.0</td>
</tr>
<tr>
<td>Psilocybine</td>
<td>2.0</td>
<td>1,000.0</td>
<td>2.0</td>
</tr>
<tr>
<td>Tetrahydrocannabinol (THC)</td>
<td>2.0</td>
<td>1,000.0</td>
<td>5.0</td>
</tr>
</tbody>
</table>
Section 314.1

(2) A substance is a controlled drug if the substance (the drug analogue) is, in relation to a controlled drug listed in subsection (1) (or a stereoisomer, a structural isomer (with the same constituent groups) or an alkaloid of such a controlled drug):
   (a) a stereoisomer; or
   (b) a structural isomer having the same constituent groups; or
   (c) an alkaloid; or
   (d) a structural modification obtained by the addition of one or more of the following groups:
      (i) alkoxy, cyclic diether, acyl, acyloxy, mono-amino or dialkylamino groups with up to 6 carbon atoms in any alkyl residue;
      (ii) alkyl, alkenyl or alkynyl groups with up to 6 carbon atoms in the group, where the group is attached to oxygen (for example, an ester or an ether group), nitrogen, sulphur or carbon;
      (iii) halogen, hydroxy, nitro or amino groups; or
   (e) a structural modification obtained in one or more of the following ways:
      (i) by the replacement of up to 2 carbocyclic or heterocyclic ring structures with different carbocyclic or heterocyclic ring structures;
      (ii) by the addition of hydrogen atoms to one or more unsaturated bonds;
      (iii) by the replacement of one or more of the groups specified in paragraph (d) with another such group or groups;
      (iv) by the conversion of a carboxyl or an ester group into an amide group; or
   (f) otherwise a homologue, analogue, chemical derivative or substance substantially similar in chemical structure;
however obtained, except where the drug analogue is separately listed in subsection (1).

(3) The trafficable quantity for a drug analogue described in subsection (2) is:
   (a) unless paragraph (b) applies—the trafficable quantity set out in the table in subsection (1) for the controlled drug to which the drug analogue relates (whether directly or indirectly); or

(b) if the drug analogue relates to more than one controlled drug listed in the table in subsection (1)—the smallest trafficable quantity set out in the table in subsection (1) for any of those controlled drugs.

(4) The marketable quantity for a drug analogue described in subsection (2) is:

(a) unless paragraph (b) applies—the marketable quantity set out in the table in subsection (1) for the controlled drug to which the drug analogue relates (whether directly or indirectly); or

(b) if the drug analogue relates to more than one controlled drug listed in the table in subsection (1)—the smallest marketable quantity set out in the table in subsection (1) for any of those controlled drugs.

(5) The commercial quantity for a drug analogue described in subsection (2) is:

(a) unless paragraph (b) applies—the commercial quantity set out in the table in subsection (1) for the controlled drug to which the drug analogue relates (whether directly or indirectly); or

(b) if the drug analogue relates to more than one controlled drug listed in the table in subsection (1)—the smallest commercial quantity set out in the table in subsection (1) for any of those controlled drugs.

314.2 Controlled plants

The following table lists controlled plants and sets out quantities:

<table>
<thead>
<tr>
<th>Controlled plants and quantities</th>
<th>Trafficable quantity</th>
<th>Marketable quantity</th>
<th>Commercial quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Controlled plant</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cannabis</td>
<td>250 g or 10 plants</td>
<td>25 kg or 100 plants</td>
<td>250 kg or 1,000 plants</td>
</tr>
</tbody>
</table>
Section 314.3

314.3 Controlled precursors

(1) The following table lists controlled precursors and sets out quantities:

<table>
<thead>
<tr>
<th>Controlled precursor</th>
<th>Marketable quantity (grams)</th>
<th>Commercial quantity (kilograms)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Ephedrine</td>
<td>400.0</td>
<td>1.2</td>
</tr>
<tr>
<td>2 Ergometrine</td>
<td>0.15</td>
<td>0.006</td>
</tr>
<tr>
<td>3 Ergotamine</td>
<td>0.25</td>
<td>0.01</td>
</tr>
<tr>
<td>4 Isosafrole</td>
<td>290.0</td>
<td>1.45</td>
</tr>
<tr>
<td>5 Lysergic acid</td>
<td>0.075</td>
<td>0.003</td>
</tr>
<tr>
<td>6 3,4-Methylenedioxyphenylacetic acid</td>
<td>300.0</td>
<td>1.5</td>
</tr>
<tr>
<td>7 3,4-Methylenedioxyphenyl-2-propanone</td>
<td>150.0</td>
<td>0.75</td>
</tr>
<tr>
<td>8 Phenylacetic acid</td>
<td>1,350.0</td>
<td>4.05</td>
</tr>
<tr>
<td>9 Phenyl-2-propanone</td>
<td>675.0</td>
<td>2.03</td>
</tr>
<tr>
<td>10 Piperonal</td>
<td>320.0</td>
<td>1.6</td>
</tr>
<tr>
<td>11 Pseudoephedrine</td>
<td>400.0</td>
<td>1.2</td>
</tr>
<tr>
<td>12 Safrole</td>
<td>570.0</td>
<td>2.85</td>
</tr>
</tbody>
</table>

(2) A substance is a controlled precursor if the substance is a salt or ester of a precursor listed in the table in subsection (1).

314.4 Border controlled drugs

(1) The following table lists border controlled drugs and sets out quantities:

<table>
<thead>
<tr>
<th>Border controlled drugs</th>
<th>Marketable quantity (grams)</th>
<th>Commercial quantity (kilograms)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Acetorphine</td>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>2 Acetyl-alpha-methylfentanyl</td>
<td>0.005</td>
<td>0.005</td>
</tr>
<tr>
<td>3 Acetylcodine</td>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>Border controlled drugs</td>
<td>Marketable quantity (grams)</td>
<td>Commercial quantity (kilograms)</td>
</tr>
<tr>
<td>-------------------------</td>
<td>-----------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>4 Acetyldihydrocodeine</td>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>5 Acetylmethadol</td>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>6 Allylprodine</td>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>7 Alphacetylmethadol</td>
<td>10.0</td>
<td>10.0</td>
</tr>
<tr>
<td>8 Alphameprodine</td>
<td>0.2</td>
<td>0.2</td>
</tr>
<tr>
<td>9 Alphamethadol</td>
<td>0.2</td>
<td>0.2</td>
</tr>
<tr>
<td>10 alpha-Methylfentanyl</td>
<td>0.005</td>
<td>0.005</td>
</tr>
<tr>
<td>11 alpha-Methylthiofentanyl</td>
<td>0.005</td>
<td>0.005</td>
</tr>
<tr>
<td>12 Alphaprodine</td>
<td>25.0</td>
<td>25.0</td>
</tr>
<tr>
<td>13 Amphetamine</td>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>14 3-(2-Aminopropyl)indole (alpha-methyltryptamine (AMT))</td>
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<td>2.0</td>
</tr>
<tr>
<td>15 Amphetamine</td>
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<td>0.75</td>
</tr>
<tr>
<td>16 Anileridine</td>
<td>25.0</td>
<td>25.0</td>
</tr>
<tr>
<td>17 Barbiturates</td>
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<td>5.0</td>
</tr>
<tr>
<td>18 Benzedrinedine</td>
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<td>10.0</td>
</tr>
<tr>
<td>19 Benzoylcyconine</td>
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<tr>
<td>20 Benzylmorphine</td>
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</tr>
<tr>
<td>21 Betacetylmethadol</td>
<td>5.0</td>
<td>5.0</td>
</tr>
<tr>
<td>22 beta-Hydroxyfentanyl</td>
<td>0.005</td>
<td>0.005</td>
</tr>
<tr>
<td>23 beta-Hydroxy-3-methylfentanyl</td>
<td>0.005</td>
<td>0.005</td>
</tr>
<tr>
<td>24 Betameprodine</td>
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</tr>
<tr>
<td>25 Betamethadol</td>
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</tr>
<tr>
<td>26 Betaprodine</td>
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<td>5.0</td>
</tr>
<tr>
<td>27 Bezitramide</td>
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</tr>
<tr>
<td>28 4-Bromo-2,5-dimethoxyamphetamine</td>
<td>0.5</td>
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</tr>
<tr>
<td>29 Bufotenine</td>
<td>2.0</td>
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</tr>
<tr>
<td>30 Cannabinoids (other than a Cannabinoid of a kind that can be obtained from a plant that is not a Cannabis plant)</td>
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</tbody>
</table>
## Chapter 9  Dangers to the community
### Part 9.1  Serious drug offences
#### Division 314  Drugs, plants, precursors and quantities

**Section 314.4**

<table>
<thead>
<tr>
<th>Border controlled drugs</th>
<th>Marketable quantity (grams)</th>
<th>Commercial quantity (kilograms)</th>
</tr>
</thead>
<tbody>
<tr>
<td>31 Cannabis (in any form, including flowering or fruiting tops, leaves, seeds or stalks, but not including Cannabis resin or Cannabis fibre)</td>
<td>25,000.0</td>
<td>100.0</td>
</tr>
<tr>
<td>32 Cannabis resin</td>
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</tr>
<tr>
<td>33 Chlorphentermine</td>
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</tr>
<tr>
<td>34 Clonitazene</td>
<td>5.0</td>
<td>5.0</td>
</tr>
<tr>
<td>35 Cocaine</td>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>36 Codeine</td>
<td>10.0</td>
<td>10.0</td>
</tr>
<tr>
<td>37 Codeine-N-oxide</td>
<td>10.0</td>
<td>10.0</td>
</tr>
<tr>
<td>38 codeine</td>
<td>10.0</td>
<td>10.0</td>
</tr>
<tr>
<td>39 Desomorphine</td>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>40 Dexamphetamine</td>
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</tr>
<tr>
<td>41 Dextromoramide</td>
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<td>2.0</td>
</tr>
<tr>
<td>42 2,5-Dimethoxy-4-n-propylthiophenethylamine (2C-T-7)</td>
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</tr>
<tr>
<td>44 2,5-Dimethoxy-4-iodophenethylamine (2C-I)</td>
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<td>0.5</td>
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<tr>
<td>45 Diampropomide</td>
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<td>5.0</td>
</tr>
<tr>
<td>46 Diethylpropiomide</td>
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<td>5.0</td>
</tr>
<tr>
<td>47 Diethylthiambutene</td>
<td>5.0</td>
<td>5.0</td>
</tr>
<tr>
<td>48 N,N-Diethyltryptamine</td>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>49 Difenoxin</td>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>50 Dihydrocodeine</td>
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<td>10.0</td>
</tr>
<tr>
<td>51 Dihydromorphone</td>
<td>10.0</td>
<td>10.0</td>
</tr>
<tr>
<td>52 Dimenoxadol</td>
<td>10.0</td>
<td>10.0</td>
</tr>
<tr>
<td>53 Dimephtanol</td>
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<td>10.0</td>
</tr>
<tr>
<td>54 2,5-Dimethoxy-4-methylamphetamine</td>
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<td>0.75</td>
</tr>
<tr>
<td>55 1-Dimethylamino-1,2-diphenylethane</td>
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<td>5.0</td>
</tr>
<tr>
<td>56 Dimethylthiambutene</td>
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<td>20.0</td>
</tr>
<tr>
<td>57 N,N-Dimethyltryptamine</td>
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</tr>
</tbody>
</table>

*478  Criminal Code Act 1995*
The Criminal Code  
Schedule  
Dangers to the community  
Chapter 9  
Serious drug offences  
Part 9.1  
Drugs, plants, precursors and quantities  
Division 314

Section 314.4

<table>
<thead>
<tr>
<th>Border controlled drugs</th>
<th>Marketable quantity (grams)</th>
<th>Commercial quantity (kilograms)</th>
</tr>
</thead>
<tbody>
<tr>
<td>58 Dioxaphetyl butyrate</td>
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<td>2.0</td>
</tr>
<tr>
<td>59 Diphenoxylate</td>
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</tr>
<tr>
<td>60 Dipipanone</td>
<td>10.0</td>
<td>10.0</td>
</tr>
<tr>
<td>61 Drotebanol</td>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>62 Ecgonine</td>
<td>10.0</td>
<td>10.0</td>
</tr>
<tr>
<td>63 Ethchlorvynol</td>
<td>50.0</td>
<td>50.0</td>
</tr>
<tr>
<td>64 Ethinamate</td>
<td>50.0</td>
<td>50.0</td>
</tr>
<tr>
<td>65 Ethylmethylthiambutene</td>
<td>10.0</td>
<td>10.0</td>
</tr>
<tr>
<td>66 Ethylmorphine</td>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>67 Etonitazene</td>
<td>5.0</td>
<td>5.0</td>
</tr>
<tr>
<td>68 Etorphine</td>
<td>5.0</td>
<td>5.0</td>
</tr>
<tr>
<td>69 Etoxeridine</td>
<td>5.0</td>
<td>5.0</td>
</tr>
<tr>
<td>70 Fentanyl</td>
<td>0.005</td>
<td>0.005</td>
</tr>
<tr>
<td>71 Furethidine</td>
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<td>1.0</td>
</tr>
<tr>
<td>72 Gammabutyrolactone (GBL)</td>
<td>2.0</td>
<td>1.0</td>
</tr>
<tr>
<td>73 Glutethimide</td>
<td>50.0</td>
<td>50.0</td>
</tr>
<tr>
<td>74 Harmaline</td>
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</tr>
<tr>
<td>75 Harmine</td>
<td>2.0</td>
<td>5.0</td>
</tr>
<tr>
<td>76 Heroin (diacetyl morphine)</td>
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<td>1.5</td>
</tr>
<tr>
<td>77 Hydrocodone</td>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>78 Hydromorphinol</td>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>79 Hydromorphone</td>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>80 Hydroxyamphetamine</td>
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</tr>
<tr>
<td>81 4-Hydroxybutanoic acid (GHB)</td>
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</tr>
<tr>
<td>82 Hydroxypropethidine</td>
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<td>5.0</td>
</tr>
<tr>
<td>83 Isomethadone</td>
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<td>2.0</td>
</tr>
<tr>
<td>84 Ketobemidone</td>
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<tr>
<td>85 Levophenacylmorphan</td>
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</tr>
<tr>
<td>86 Levomethorphan, but not including dextromethorphan</td>
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</tr>
<tr>
<td>87 Levorphanol, but not including dextrorphan</td>
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<td>1.0</td>
</tr>
</tbody>
</table>
Schedule  
The Criminal Code  
Chapter 9  
Dangers to the community  
Part 9.1  
Serious drug offences  
Division 314  
Drugs, plants, precursors and quantities  

Section 314.4

### Border controlled drugs and quantities

<table>
<thead>
<tr>
<th>Border controlled drugs</th>
<th>Marketable quantity (grams)</th>
<th>Commercial quantity (kilograms)</th>
</tr>
</thead>
<tbody>
<tr>
<td>88 Lysergamide</td>
<td>0.1</td>
<td>0.01</td>
</tr>
<tr>
<td>89 Lysergide (LSD)</td>
<td>0.002</td>
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</tr>
<tr>
<td>90 Meprobamate</td>
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<td>50.0</td>
</tr>
<tr>
<td>91 Mescaline</td>
<td>7.5</td>
<td>7.5</td>
</tr>
<tr>
<td>92 Metazocine</td>
<td>7.0</td>
<td>7.0</td>
</tr>
<tr>
<td>93 Methadone</td>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>94 Methaqualone</td>
<td>50.0</td>
<td>5.0</td>
</tr>
<tr>
<td>95 Methcathinone</td>
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<td></td>
</tr>
<tr>
<td>96 Methorphan, but not including dextromethorphan</td>
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<td>2.0</td>
</tr>
<tr>
<td>97 5-Methoxy-alpha-methyltryptamine (5-MeO-AMT)</td>
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<td>2.0</td>
</tr>
<tr>
<td>98 5-Methoxy-N,N-diisopropyltryptamine (5-MeO-DiPT)</td>
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<tr>
<td>99 Methamphetamine</td>
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</tr>
<tr>
<td>100 3,4-Methylenedioxyamphetamine (MDA)</td>
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</tr>
<tr>
<td>101 3,4-Methylenedioxyamphetamine (MDMA)</td>
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<tr>
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<tr>
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<tr>
<td>104 3-Methylfentanyl</td>
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</tr>
<tr>
<td>105 Methylphenidate</td>
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</tr>
<tr>
<td>106 1-Methyl-4-phenyl-4-propionoxypiperidine (MPPP)</td>
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<tr>
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<tr>
<td>112 Morphan, but not including dextrorphan</td>
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<tr>
<td>113 Morpheridine</td>
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<tr>
<td>114 Morphine</td>
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<td>1.5</td>
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</table>

480  
Criminal Code Act 1995
<table>
<thead>
<tr>
<th>Border controlled drugs and quantities</th>
<th>Border controlled drugs</th>
<th>Marketable quantity (grams)</th>
<th>Commercial quantity (kilograms)</th>
</tr>
</thead>
<tbody>
<tr>
<td>115 Morphine-N-oxide</td>
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</tr>
<tr>
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<td>140 Phentermine</td>
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<tr>
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</tr>
<tr>
<td>142 Pholcodine</td>
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<tr>
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<tr>
<td>144 Pipradrol</td>
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</table>
Section 314.4

Border controlled drugs and quantities

<table>
<thead>
<tr>
<th>Border controlled drugs</th>
<th>Marketable quantity (grams)</th>
<th>Commercial quantity (kilograms)</th>
</tr>
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<tbody>
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<td>145 Piritramide</td>
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<td>146 Proheptazine</td>
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<tr>
<td>147 Properidine</td>
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</tr>
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<td>0.1</td>
</tr>
<tr>
<td>150 Psilocybine</td>
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<td>0.1</td>
</tr>
<tr>
<td>151 Tetrahydrocannabinols</td>
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</tr>
<tr>
<td>152 Thebacon</td>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>153 Thebaine</td>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>154 Thiofentanyl</td>
<td>0.005</td>
<td>0.005</td>
</tr>
<tr>
<td>155 Trimeperidine</td>
<td>10.0</td>
<td>10.0</td>
</tr>
</tbody>
</table>

(2) A substance is also a border controlled drug if the substance (the \textit{drug analogue}) is, in relation to a border controlled drug listed in subsection (1) (or a stereoisomer, a structural isomer (with the same constituent groups) or an alkaloid of such a border controlled drug):

(a) a stereoisomer; or
(b) a structural isomer having the same constituent groups; or
(c) an alkaloid; or
(d) a structural modification obtained by the addition of one or more of the following groups:

(i) alkoxy, cyclic diether, acyl, acyloxy, mono-amino or dialkylamino groups with up to 6 carbon atoms in any alkyl residue;

(ii) alkyl, alkenyl or alkynyl groups with up to 6 carbon atoms in the group, where the group is attached to oxygen (for example, an ester or an ether group), nitrogen, sulphur or carbon;

(iii) halogen, hydroxy, nitro or amino groups; or

(e) a structural modification obtained in one or more of the following ways:
Section 314.4

(i) by the replacement of up to 2 carbocyclic or heterocyclic ring structures with different carbocyclic or heterocyclic ring structures;
(ii) by the addition of hydrogen atoms to one or more unsaturated bonds;
(iii) by the replacement of one or more of the groups specified in paragraph (d) with another such group or groups;
(iv) by the conversion of a carboxyl or an ester group into an amide group; or
(f) otherwise a homologue, analogue, chemical derivative or substance substantially similar in chemical structure; however obtained, except where the drug analogue is separately listed in subsection (1).

(3) The marketable quantity for a drug analogue described in subsection (2) is:
   (a) unless paragraph (b) applies—the marketable quantity specified in the table in subsection (1) for the border controlled drug to which the drug analogue relates (whether directly or indirectly); or
   (b) if the drug analogue relates to more than one border controlled drug listed in the table in subsection (1)—the smallest marketable quantity specified in the table in subsection (1) for any of those border controlled drugs.

(4) The commercial quantity for a drug analogue described in subsection (2) is:
   (a) unless paragraph (b) applies—the commercial quantity specified in the table in subsection (1) for the border controlled drug to which the drug analogue relates (whether directly or indirectly); or
   (b) if the drug analogue relates to more than one border controlled drug listed in the table in subsection (1)—the smallest commercial quantity specified in the table in subsection (1) for any of those border controlled drugs.
Section 314.5

314.5 Border controlled plants

The following table lists border controlled plants and sets out quantities:

<table>
<thead>
<tr>
<th>Border controlled plants and quantities</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Border controlled plants</strong></td>
<td><strong>Marketable quantity</strong></td>
<td><strong>Commercial quantity</strong></td>
</tr>
<tr>
<td>1 Any plant of the genus Cannabis</td>
<td>25 kg or 100 plants</td>
<td>250 kg or 1,000 plants</td>
</tr>
<tr>
<td>2 Any plant of the genus Erythroxylon (also known as Erythroxylum) from which cocaine can be extracted either directly or by chemical transformation</td>
<td>80 kg</td>
<td></td>
</tr>
<tr>
<td>3 Any plant of the genus Lophophora</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Any plant of the species Papaver bracteatum</td>
<td>10 kg</td>
<td></td>
</tr>
<tr>
<td>5 Any plant of the species Papaver somniferum</td>
<td>10 kg</td>
<td></td>
</tr>
<tr>
<td>6 Any plant of the species Piptagenia peregrine</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7 Any plant of the species Psilocybe</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

314.6 Border controlled precursors

(1) The following table lists border controlled precursors and sets out quantities:

<table>
<thead>
<tr>
<th>Border controlled precursors and quantities</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Border controlled precursors</strong></td>
<td><strong>Marketable quantity</strong> (grams)</td>
<td><strong>Commercial quantity</strong> (kilograms)</td>
</tr>
<tr>
<td>1 N-Acetylanthranilic acid</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 Any plant of the species Ephedra</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 Ephedrine</td>
<td>3.2</td>
<td>1.2</td>
</tr>
<tr>
<td>4 Ergometrine</td>
<td>0.006</td>
<td>0.006</td>
</tr>
<tr>
<td>5 Ergotamine</td>
<td>0.01</td>
<td>0.01</td>
</tr>
<tr>
<td>6 Isosafrole</td>
<td>1.45</td>
<td>1.45</td>
</tr>
<tr>
<td>7 Lysergic acid</td>
<td>0.003</td>
<td>0.003</td>
</tr>
</tbody>
</table>

484 Criminal Code Act 1995
Border controlled precursors and quantities

<table>
<thead>
<tr>
<th>Border controlled precursors</th>
<th>Marketable quantity (grams)</th>
<th>Commercial quantity (kilograms)</th>
</tr>
</thead>
<tbody>
<tr>
<td>8 3,4-Methylenedioxyphenyl-2-propanone</td>
<td>0.75</td>
<td>0.75</td>
</tr>
<tr>
<td>9 Phenylacetic acid</td>
<td>10.8</td>
<td>4.05</td>
</tr>
<tr>
<td>10 Phenylpropanolamine</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11 Phenyl-2-propanone</td>
<td>5.4</td>
<td>2.03</td>
</tr>
<tr>
<td>12 Piperonal</td>
<td>1.6</td>
<td>1.6</td>
</tr>
<tr>
<td>13 Pseudoephedrine</td>
<td>3.2</td>
<td>1.2</td>
</tr>
<tr>
<td>14 Safrole</td>
<td>2.85</td>
<td>2.85</td>
</tr>
</tbody>
</table>

(2) A substance is a border controlled precursor if the substance is a salt or ester of a precursor listed in the table in subsection (1).

(3) A substance is a border controlled precursor if the substance is a chemical or compound, other than a chemical or compound that is listed in a table in this Division, that, in the manufacture by a chemical process of a chemical or compound referred to in the table in subsection (1), is an immediate precursor of that chemical or compound.
Part 9.4—Dangerous weapons

Division 360—Cross-border firearms trafficking

360.1 Disposal and acquisition of a firearm

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

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

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

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

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

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

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

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

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

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

(a) in the course of trade or commerce among the States, between Territories or between a Territory and a State, the person engages in conduct that constitutes an offence against a firearm law; and

(b) the primary element of the offence is:

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

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

Penalty: Imprisonment for 10 years or a fine of 2,500 penalty units, or both.
(2) Absolute liability applies to the paragraph (1)(a) element of the offence.

(3) In this section:

firearm means a firearm within the meaning of the firearm law concerned.

firearm law means a law of a State or Territory which is prescribed by the regulations for the purposes of this Division.

360.3 Taking or sending a firearm across borders

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

(a) in the course of trade or commerce among the States, between Territories or between a Territory and a State, the person takes or sends a firearm from one State or Territory to another State or Territory; and

(b) the person does so intending that the firearm will be disposed of in the other State or Territory (whether by the person or another); and

(c) the person knows that, or is reckless as to whether:

(i) the disposal of the firearm; or

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

would happen in circumstances that would constitute an offence against the firearm law of that other State or Territory.

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

(2) In this section:

firearm means a firearm within the meaning of the firearm law mentioned in paragraph (1)(c).

firearm law means a law of a State or Territory which is prescribed by the regulations for the purposes of this Division.
Section 360.4

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.
Part 9.6—Contamination of goods

380.1 Definitions

(1) In this Part:

*constitutional trade and commerce* means trade and commerce:
(a) with other countries; or
(b) among the States; or
(c) between a State and a Territory; or
(d) between 2 Territories.

*contaminate* goods includes:
(a) interfere with the goods; or
(b) make it appear that the goods have been contaminated or interfered with.

*goods* includes any substance:
(a) whether or not for human consumption; and
(b) whether natural or manufactured; and
(c) whether or not incorporated or mixed with other goods.

(2) A reference in this Part to economic loss caused through public awareness of the contamination of goods includes a reference to economic loss caused through:
(a) members of the public not purchasing or using those goods or similar things; or
(b) steps taken to avoid public alarm or anxiety or to avoid harm to members of the public.

380.2 Contaminating goods

*Offence based on implied nationhood power*

(1) A person is guilty of an offence if:
(a) the person contaminates goods; and
(b) the person does so with intent:
   (i) to cause public alarm or anxiety in Australia; or
Section 380.2

(ii) to cause widespread, or nationally significant, economic loss in Australia through public awareness of the contamination, or possible contamination, of the goods; or

(iii) to cause harm to, or create a risk of harm to, public health in Australia.

Penalty: Imprisonment for 10 years.

*Offences based on other constitutional powers*

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

(a) the person contaminates goods; and

(b) the person does so with intent to cause:

(i) public alarm or anxiety; or

(ii) economic loss through public awareness of the contamination, or possible contamination, of the goods; and

(c) any of the following subparagraphs applies:

(i) the loss is a loss to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);

(ii) the loss is a loss to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(iii) the goods belong to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);

(iv) the goods belong to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(v) the person is a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);

(vi) the person is a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution;
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:
   (a) the person makes a threat that goods will be contaminated;
   and
Section 380.3

(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;

(x) the person makes the threat outside Australia and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
Section 380.4  

(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  
   (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
Section 380.4

(ii) economic loss through public awareness of the contamination, or possible contamination, of the goods; and

(d) any of the following subparagraphs applies:

(i) the loss is a loss to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);

(ii) the loss is a loss to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(iii) the goods belong to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);

(iv) the goods belong to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(v) the person is a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);

(vi) the person is a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;

(vii) the loss takes the form of detriment to constitutional trade and commerce;

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

(ix) the person makes the statement in Australia using a postal or other like service or an electronic communication;

(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;
Section 380.5

(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.

Australian Capital Territory indictable offence means an offence against a law of the Australian Capital Territory that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

banking transaction includes:

(a) any transaction made at an ADI; and
(b) any transaction involving a money order.

Commonwealth indictable offence means an offence against a law of the Commonwealth, or a law of a Territory (other than the Australian Capital Territory and the Northern Territory), that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

deals with money or other property has the meaning given by section 400.2.

export money or other property, from Australia, includes transfer money or other property from Australia by an electronic communication.
Section 400.1

foreign indictable offence means an offence against a law of a foreign country constituted by conduct that, if it had occurred in Australia, would have constituted an offence against:

(a) a law of the Commonwealth; or
(b) a law of a State or Territory connected with the offence;

that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

Note: See subsection (3) for when a law of a State or Territory is connected with the offence.

import money or other property, into Australia, includes transfer money or other property to Australia by an electronic communication.

instrument of crime: money or other property is an instrument of crime if it is used in the commission of, or used to facilitate the commission of, an offence that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

Northern Territory indictable offence means an offence against a law of the Northern Territory that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

proceeds of crime means any money or other property that is 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.

State indictable offence means an offence against a law of a State that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

(2) To avoid doubt, a reference in this Division to money or other property includes a reference to financial instruments, cards and
other objects that represent money or can be exchanged for money, whether or not they have intrinsic value.

(3) For the purposes of the definition of foreign indictable offence in subsection (1), a State or Territory is connected with the offence if:

(a) a dealing in money or property takes place in the State or Territory; and

(b) the money or property would be proceeds of crime, or could become an instrument of crime, in relation to the offence if the offence were a foreign indictable offence.

400.2 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:

(i) a Commonwealth indictable offence; or

(ii) a foreign indictable offence; or

(iii) a State indictable offence; or

(iv) an Australian Capital Territory indictable offence; or

(v) a Northern Territory 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
The Criminal Code  Schedule
National infrastructure  Chapter 10
Money laundering  Part 10.2
Money laundering  Division 400

Section 400.3

(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(v) 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) Subparagraph (1)(b)(iii), in its application to a particular offence against this Division, has effect only to the extent to which it is a law with respect to external affairs (within the meaning of paragraph 51(xxix) of the Constitution).

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.
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 12 years, or 720 penalty units, or both.

(3) A person is guilty of an offence if:
(a) the person deals with money or other property; and
(b) either:
   (i) the money or property is proceeds of crime; or
   (ii) there is a risk that the money or property will become an instrument of crime; and
(c) the person is negligent as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
(d) at the time of the dealing, the value of the money and other property is $1,000,000 or more.

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

(4) Absolute liability applies to paragraphs (1)(c), (2)(d) and (3)(d).

Note: 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.
Section 400.5

(2) A person is guilty of an offence if:
   (a) the person deals with money or other property; and
   (b) either:
       (i) the money or property is proceeds of crime; or
       (ii) there is a risk that the money or property will become an instrument of crime; and
   (c) the person is reckless as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
   (d) at the time of the dealing, the value of the money and other property is $100,000 or more.

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

(3) A person is guilty of an offence if:
   (a) the person deals with money or other property; and
   (b) either:
       (i) the money or property is proceeds of crime; or
       (ii) there is a risk that the money or property will become an instrument of crime; and
   (c) the person is negligent as to the fact that the money or property is proceeds of crime or the fact that there is a risk 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
   (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).
Section 400.6

400.6 Dealing in proceeds of crime etc.—money or property worth $10,000 or more

(1) A person is guilty of an offence if:
   (a) the person deals with money or other property; and
   (b) either:
      (i) the money or property is, and the person believes it to be, proceeds of crime; or
      (ii) the person intends that the money or property will become an instrument of crime; and
   (c) at the time of the dealing, the value of the money and other property is $10,000 or more.

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
       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.

Penalty: Imprisonment for 12 months, or 60 penalty units, or both.
Section 400.9

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:
   (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 any of the following:
    (i) the money or property is proceeds of crime in relation to
        a Commonwealth indictable offence or a foreign
        indictable offence;
    (ia) the money or property is proceeds of crime in relation to
        a State indictable offence;
    (ib) the money or property is proceeds of crime in relation to
        an Australian Capital Territory indictable offence or a
        Northern Territory 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

(aa) the conduct involves a number of transactions that are structured or arranged to avoid the reporting requirements of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* that would otherwise apply to the transactions; or

(b) the conduct involves using one or more accounts held with ADIs in false names; or

(ba) the conduct amounts to an offence against section 139, 140 or 141 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; or

(c) the value of the money and property involved in the conduct is, in the opinion of the trier of fact, grossly out of proportion to the defendant’s income and expenditure; or

(d) the conduct involves a significant cash transaction within the meaning of the *Financial Transaction Reports Act 1988*, and the defendant:
   (i) has contravened his or her obligations under that Act relating to reporting the transaction; or
   (ii) has given false or misleading information in purported compliance with those obligations; or

(da) the conduct involves a threshold transaction (within the meaning of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*) and the defendant:
   (i) has contravened the defendant’s obligations under that Act relating to reporting the transaction; or
   (ii) has given false or misleading information in purported compliance with those obligations; or

(e) the defendant:
   (i) has stated that the conduct was engaged in on behalf of or at the request of another person; and
   (ii) has not provided information enabling the other person to be identified and located.
Section 400.10

(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).

(6) Subparagraph (1)(b)(ia), in its application to an offence against subsection (1), has effect only to the extent to which it is a law with respect to external affairs (within the meaning of paragraph 51(xxix) of the Constitution).

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;
   (e) whether an offence is a State indictable offence;
   (f) whether an offence is an Australian Capital Territory indictable offence;
   (g) whether an offence is a Northern Territory indictable offence.

400.12 Combining several contraventions in a single charge

(1) A single charge of an offence against a provision of this Division may be about 2 or more instances of the defendant engaging in conduct (at the same time or different times) that constitutes an offence against a provision of this Division.
Section 400.13

(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
(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
   (ii) collected or received by Australia Post for carriage by post; or
Section 470.1

(b) a material record issued by Australia Post as a record of an unwritten communication:
   (i) carried by post; or
   (ii) collected or received by Australia Post for carriage by post.

*postal or similar service* means:

(a) a postal service (within the meaning of paragraph 51(v) of the Constitution); or
(b) a courier service, to the extent to which the service is a postal or other like service (within the meaning of paragraph 51(v) of the Constitution); or
(c) a packet or parcel carrying service, to the extent to which the service is a postal or other like service (within the meaning of paragraph 51(v) of the Constitution); or
(d) any other service that is a postal or other like service (within the meaning of paragraph 51(v) of the Constitution); or
(e) a courier service that is provided by a constitutional corporation; or
(f) a packet or parcel carrying service that is provided by a constitutional corporation; or
(g) a courier service that is provided in the course of, or in relation to, trade or commerce:
   (i) between Australia and a place outside Australia; or
   (ii) among the States; or
   (iii) between a State and a Territory or between 2 Territories; or
(h) a packet or parcel carrying service that is provided in the course of, or in relation to, trade or commerce:
   (i) between Australia and a place outside Australia; or
   (ii) among the States; or
   (iii) between a State and a Territory or between 2 Territories.

*property* has the same meaning as in Chapter 7.

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

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*Criminal Code Act 1995* 513
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
    own to dispose of regardless of another’s rights if, and only if, the
Section 471.2

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

471.2 Receiving stolen mail-receptacles, articles or postal messages

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

Penalty: Imprisonment for 10 years.

Stolen property

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

(a) it is original stolen property (as defined by subsection (3)); or

(b) it is tainted property (as defined by subsection (5)).

This subsection has effect subject to subsection (4).

Original stolen property

(3) For the purposes of this section, *original stolen property* is property, or a part of property, that:

(a) was appropriated in the course of an offence against section 471.1 (whether or not the property, or the part of the property, is in the state it was in when it was so appropriated); and

(b) is in the possession or custody of the person who so appropriated the property.

(4) For the purposes of this section, property ceases to be original stolen property:

(a) after the property is restored:

(i) to the person from whom it was appropriated; or

(ii) to other lawful possession or custody; or

(b) after:

(i) the person from whom the property was appropriated ceases to have any right to restitution in respect of the property; or

(ii) a person claiming through the person from whom the property was appropriated ceases to have any right to restitution in respect of the property.
Tainted property

(5) For the purposes of this section, tainted property is property that:

(a) is (in whole or in part) the proceeds of sale of, or property exchanged for, original stolen property; and

(b) is in the possession or custody of the person who so appropriated the original stolen property.

Alternative verdicts

(6) If, in a prosecution for an offence against section 471.1, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against this section, the trier of fact may find the defendant not guilty of the offence against section 471.1 but guilty of the offence against this section, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

(7) If, in a prosecution for an offence against this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against section 471.1, the trier of fact may find the defendant not guilty of the offence against this section but guilty of the offence against section 471.1, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Receiving stolen property before commencement

(8) For the purposes of this section:

(a) it is to be assumed that section 471.1 had been in force at all times before the commencement of this section; and

(b) property that was appropriated at a time before the commencement of this section does not become stolen property unless the property was appropriated in circumstances that (apart from paragraph (a)) amounted to an offence against a law of the Commonwealth in force at that time.
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.

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.
Section 471.8

Penalty: Imprisonment for 5 years.

(2) A person is guilty of an offence if:
   (a) the person intentionally opens a mail-receptacle; and
   (b) the person is not authorised by Australia Post to open the mail-receptacle; and
   (c) the person does so knowing that he or she is not authorised by Australia Post to open the mail-receptacle.

Penalty: Imprisonment for 2 years.

471.8 Dishonestly obtaining delivery of articles

A person is guilty of an offence if the person dishonestly obtains delivery of, or receipt of, an article in the course of post that is not directed to the person.

Penalty: Imprisonment for 5 years.

471.9 Geographical jurisdiction

Section 15.3 (extended geographical jurisdiction—category C) applies to an offence against section 471.1, 471.2, 471.3, 471.4, 471.5, 471.6, 471.7 or 471.8.

471.10 Hoaxes—explosives and dangerous substances

(1) A person is guilty of an offence if:
   (a) the person causes an article to be carried by a postal or similar service; and
   (b) the person does so with the intention of inducing a false belief that:
       (i) the article consists of, encloses or contains an explosive or a dangerous or harmful substance or thing; or
       (ii) an explosive, or a dangerous or harmful substance or thing, has been or will be left in any place.

Penalty: Imprisonment for 10 years.

(2) To avoid doubt, the definition of *carry by post* in section 470.1 does not apply to this section.
471.11 Using a postal or similar service to make a threat

**Threat to kill**

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

(a) the first person uses a postal or similar service to make to another person (the *second person*) a threat to kill the second person or a third person; and

(b) the first person intends the second person to fear that the threat will be carried out.

Penalty: Imprisonment for 10 years.

**Threat to cause serious harm**

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

(a) the first person uses a postal or similar service to make to another person (the *second person*) a threat to cause serious harm to the second person or a third person; and

(b) the first person intends the second person to fear that the threat will be carried out.

Penalty: Imprisonment for 7 years.

**Actual fear not necessary**

(3) In a prosecution for an offence against this section, it is not necessary to prove that the person receiving the threat actually feared that the threat would be carried out.

**Definitions**

(4) In this section:

*fear* includes apprehension.

*threat to cause serious harm to a person* includes a threat to substantially contribute to serious harm to the person.
Section 471.12

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.

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 VlIA 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;
in a way that reasonable persons would regard as being, in all the circumstances, offensive; or
Section 473.1

(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.

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.
Section 473.1

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.
Terms used in this definition that are defined in the Telecommunications (Interception and Access) Act 1979 have the same meaning in this definition as they have in that Act.

Internet content host has the same meaning as in Schedule 5 to the Broadcasting Services Act 1992.

Internet service provider has the same meaning as in Schedule 5 to the Broadcasting Services Act 1992.
**law enforcement officer** means any of the following:

(a) the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*);

(b) a member, or employee, of the police force of a State or Territory;

(c) a member of the staff of the Australian Crime Commission (within the meaning of the *Australian Crime Commission Act 2002*);

(d) a member of a police force, or other law enforcement agency, of a foreign country;

(e) the Director of Public Prosecutions or a person performing a similar function under a law of a State or Territory;

(f) a member of the staff of the Office of the Director of Public Prosecutions (within the meaning of the *Director of Public Prosecutions Act 1983*) or of a similar body established under a law of a State or Territory;

(g) a member of the New South Wales Crime Commission or a member of the staff of that Commission;

(h) an officer of the Independent Commission Against Corruption of New South Wales, being a person who is an officer as defined by the *Independent Commission Against Corruption Act 1988* of New South Wales;

(i) the Commissioner of the Police Integrity Commission of New South Wales, an Assistant Commissioner of that Commission or a member of the staff of that Commission;

(j) an officer of the Corruption and Crime Commission of Western Australia within the meaning of the *Corruption and Crime Commission Act 2003* of Western Australia;

(k) an authorised commission officer of the Crime and Misconduct Commission of Queensland within the meaning of the *Crime and Misconduct Act 2001* of Queensland.

**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.
Section 473.1

*mobile telecommunications account* means an account with a carriage service provider for the supply of a public mobile telecommunications service to an end-user.

*mobile telecommunications device* means an item of customer equipment (within the meaning of the *Telecommunications Act 1997*) that is used, or is capable of being used, in connection with a public mobile telecommunications service.

*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.

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.
Section 473.2

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).
Section 474.1

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.
Section 474.3

Subdivision B—Interference with telecommunications

474.3 Person acting for a carrier or carriage service provider

(1) For the purposes of this Subdivision, a person who does any thing for or on behalf of a carrier, or on behalf of persons at least one of whom is a carrier, is, in respect of:
   (a) the doing by that person of that thing; or
   (b) any rental, fee or charge payable for or in relation to the doing by that person of that thing; or
   (c) the operation by that person of a facility in connection with the doing of that thing; or
   (d) a facility belonging to that person; or
   (e) the operation by that person of a satellite; taken to be a carrier.

(2) For the purposes of this Subdivision, a person who does any thing for or on behalf of a carriage service provider, or on behalf of persons at least one of whom is a carriage service provider, is, in respect of:
   (a) the doing by that person of that thing; or
   (b) any rental, fee or charge payable for or in relation to the doing by that person of that thing; or
   (c) the operation by that person of a facility in connection with the doing of that thing; or
   (d) a facility belonging to that person; or
   (e) the operation by that person of a satellite; taken to be a carriage service provider.

474.4 Interception devices

(1) A person is guilty of an offence if:
   (a) the person:
      (i) manufactures; or
      (ii) advertises, displays or offers for sale; or
      (iii) sells; or
      (iv) possesses;
      an apparatus or device (whether in an assembled or unassembled form); and

534 Criminal Code Act 1995
Section 474.5

(b) the apparatus or device is an interception device.

Penalty: Imprisonment for 5 years.

(2) A person is not criminally responsible for an offence against subsection (1) if the person possesses the interception device in the course of the person’s duties relating to the interception of communications that does not constitute a contravention of subsection 7(1) of the Telecommunications (Interception and Access) Act 1979.

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

(3) A person is not criminally responsible for an offence against subsection (1) if the applicable conduct mentioned in subparagraphs (1)(a)(i) to (iv) is in circumstances specified in regulations made for the purposes of this subsection.

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

474.5 Wrongful delivery of communications

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

(a) a communication is in the course of telecommunications carriage; and

(b) the person causes the communication to be received by a person or carriage service other than the person or service to whom it is directed.

Penalty: Imprisonment for 1 year.

(2) A person is not criminally responsible for an offence against subsection (1) if the person engages in the conduct referred to in paragraph (1)(b) with the consent or authorisation of the person to whom, or the person operating the carriage service to which, the communication is directed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).
Section 474.6

474.6 Interference with facilities

(1) A person is guilty of an offence if the person tampers with, or interferes with, a facility owned or operated by:
   (a) a carrier; or
   (b) a carriage service provider; or
   (c) a nominated carrier.

Penalty: Imprisonment for 1 year.

(2) For the purposes of an offence against subsection (1), absolute liability applies to the physical element of circumstance of the offence, that the facility is owned or operated by a carrier, a carriage service provider or a nominated carrier.

(3) A person is guilty of an offence if:
   (a) the person tampers with, or interferes with, a facility owned or operated by:
      (i) a carrier; or
      (ii) a carriage service provider; or
      (iii) a nominated carrier; and
   (b) this conduct results in hindering the normal operation of a carriage service supplied by a carriage service provider.

Penalty: Imprisonment for 2 years.

(4) For the purposes of an offence against subsection (3), absolute liability applies to the following physical elements of circumstance of the offence:
   (a) that the facility is owned or operated by a carrier, a carriage service provider or a nominated carrier;
   (b) that the carriage service is supplied by a carriage service provider.

(5) A person is guilty of an offence if:
   (a) the person uses or operates any apparatus or device (whether or not it is comprised in, connected to or used in connection with a telecommunications network); and
   (b) this conduct results in hindering the normal operation of a carriage service supplied by a carriage service provider.

Penalty: Imprisonment for 2 years.
(6) For the purposes of an offence against subsection (5), absolute liability applies to the physical element of circumstance of the offence, that the carriage service is supplied by a carriage service provider.

(7) A person is not criminally responsible for an offence against subsection (5) if:
   (a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in good faith in the course of his or her duties; and
   (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

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

Note 2: See also subsection 475.1(2) for the interaction between this defence and the Radiocommunications Act 1992.

(8) For the purposes of this section, a facility is taken to be owned or operated by a nominated carrier if the Telecommunications Act 1997 applies, under section 81A of that Act, as if that facility were owned or operated by the nominated carrier.

474.7 Modification etc. of a telecommunications device identifier

(1) A person is guilty of an offence if the person:
   (a) modifies a telecommunications device identifier; or
   (b) interferes with the operation of a telecommunications device identifier.

Penalty: Imprisonment for 2 years.

(2) A person is not criminally responsible for an offence against subsection (1) if the person is:
   (a) the manufacturer of the mobile telecommunications device in which the telecommunications device identifier is installed; or
   (b) an employee or agent of the manufacturer who is acting on behalf of the manufacturer; or
   (c) acting with the consent of the manufacturer.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).
Section 474.8

(3) A person is not criminally responsible for an offence against subsection (1) if:
   (a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
   (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

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

Note 2: This subsection merely creates a defence to an offence against subsection (1) and does not operate to authorise any conduct that requires a warrant under some other law.

474.8 Possession or control of data or a device with intent to modify a telecommunications device identifier

(1) A person is guilty of an offence if:
   (a) the person has possession or control of any thing or data; and
   (b) the person has that possession or control with the intention that the thing or data be used:
      (i) by the person; or
      (ii) by another person;
      in committing an offence against subsection 474.7(1) (modification of a telecommunications device identifier).

Penalty: Imprisonment for 2 years.

(2) A person may be found guilty of an offence against subsection (1) even if committing the offence against subsection 474.7(1) (modification of a telecommunications device identifier) is impossible.

(3) It is not an offence to attempt to commit an offence against subsection (1).

(4) A person is not criminally responsible for an offence against subsection (1) if the person is:
   (a) the manufacturer of the mobile telecommunications device in which the telecommunications device identifier is installed; or
(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).
Section 474.10

(4) A person is not criminally responsible for an offence against subsection (1) if the person is:
   (a) the manufacturer of the mobile telecommunications device in which the telecommunications device identifier is installed; or
   (b) an employee or agent of the manufacturer who is acting on behalf of the manufacturer; or
   (c) acting with the consent of the manufacturer.

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

(5) A person is not criminally responsible for an offence against subsection (1) if:
   (a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
   (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

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

Note 2: This subsection merely creates a defence to an offence against subsection (1) and does not operate to authorise any conduct that requires a warrant under some other law.

474.10 Copying subscription-specific secure data

Copying subscription-specific secure data from an existing account identifier

(1) A person is guilty of an offence if the person:
   (a) copies the subscription-specific secure data from an account identifier; and
   (b) does so with the intention that the data will be copied (whether by the person or by someone else) onto something that:
      (i) is an account identifier; or
      (ii) will, once the data is copied onto it, be capable of operating as an account identifier.

Penalty: Imprisonment for 2 years.
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
   (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).
Section 474.12

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
   (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

544 Criminal Code Act 1995
Section 474.14

(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).
Section 474.15

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:

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
(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
Section 474.19

(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);
(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 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).
Section 474.21

(2) For the purposes of subsection (1), conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in:
   (a) enforcing a law of the Commonwealth, a State or a Territory; or
   (b) monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or a Territory; or
   (c) the administration of justice; or
   (d) conducting scientific, medical or educational research that has been approved by the Minister in writing for the purposes of this section.

(3) A person is not criminally responsible for an offence against section 474.19 (using a carriage service for child pornography material) or 474.20 (possessing etc. child pornography material for use through a carriage service) if:
   (a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
   (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

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

(4) A person is not criminally responsible for an offence against section 474.19 (using a carriage service for child pornography material) or 474.20 (possessing etc. child pornography material for use through a carriage service) if the person engages in the conduct in good faith for the sole purpose of:
   (a) assisting the Australian Communications and Media Authority to detect:
       (i) prohibited content (within the meaning of Schedule 7 to the Broadcasting Services Act 1992); or
       (ii) potential prohibited content (within the meaning of that Schedule);
   in the performance of the Authority’s functions under Schedule 5 or Schedule 7 to that Act; or
   (b) manufacturing or developing, or updating, content filtering technology (including software) in accordance with:
Section 474.22

(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
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
Section 474.24

(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 Communications and Media
 Authority to detect:

(i) prohibited content (within the meaning of Schedule 7 to
 the Broadcasting Services Act 1992); or
(ii) potential prohibited content (within the meaning of that
 Schedule);

in the performance of the Authority’s functions under
Schedule 5 or Schedule 7 to that Act; or

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

(i) a recognised alternative access-prevention arrangement
 (within the meaning of clause 40 of Schedule 5 to the
 Broadcasting Services Act 1992); or
(ii) a designated alternative access-prevention arrangement
 (within the meaning of clause 60 of that Schedule).

Note: A defendant bears an evidential burden in relation to the matter in this
subsection, see subsection 13.3(3).
Section 474.25

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.

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.
Section 474.27

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
Section 474.27

(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

(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 or 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.
Section 474.28

(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.

Impossible 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.

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

558 Criminal Code Act 1995
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.

474.29A Using a carriage service for suicide related material

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

(a) the person:

(i) uses a carriage service to access material; or

(ii) uses a carriage service to cause material to be transmitted to the person; or

(iii) uses a carriage service to transmit material; or

(iv) uses a carriage service to make material available; or

(v) uses a carriage service to publish or otherwise distribute material; and

(b) the material directly or indirectly counsels or incites committing or attempting to commit suicide; and
Section 474.29A

(c) the person:
   (i) intends to use the material to counsel or incite committing or attempting to commit suicide; or
   (ii) intends that the material be used by another person to counsel or incite committing or attempting to commit suicide.

Penalty: 1,000 penalty units.

(2) A person is guilty of an offence if:
   (a) the person:
      (i) uses a carriage service to access material; or
      (ii) uses a carriage service to cause material to be transmitted to the person; or
      (iii) uses a carriage service to transmit material; or
      (iv) uses a carriage service to make material available; or
      (v) uses a carriage service to publish or otherwise distribute material; and
   (b) the material directly or indirectly:
      (i) promotes a particular method of committing suicide; or
      (ii) provides instruction on a particular method of committing suicide; and
   (c) the person:
      (i) intends to use the material to promote that method of committing suicide or provide instruction on that method of committing suicide; or
      (ii) intends that the material be used by another person to promote that method of committing suicide or provide instruction on that method of committing suicide; or
      (iii) intends the material to be used by another person to commit suicide.

Penalty: 1,000 penalty units.

(3) To avoid doubt, a person is not guilty of an offence against subsection (1) merely because the person uses a carriage service to:
   (a) engage in public discussion or debate about euthanasia or suicide; or
   (b) advocate reform of the law relating to euthanasia or suicide;
if the person does not:
(c) intend to use the material concerned to counsel or incite committing or attempting to commit suicide; or
(d) intend that the material concerned be used by another person to counsel or incite committing or attempting to commit suicide.

(4) To avoid doubt, a person is not guilty of an offence against subsection (2) merely because the person uses a carriage service to:
(a) engage in public discussion or debate about euthanasia or suicide; or
(b) advocate reform of the law relating to euthanasia or suicide;
if the person does not:
(c) intend to use the material concerned to promote a method of committing suicide or provide instruction on a method of committing suicide; or
(d) intend that the material concerned be used by another person to promote a method of committing suicide or provide instruction on a method of committing suicide; or
(e) intend the material concerned to be used by another person to commit suicide.

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

(1) A person is guilty of an offence if:
(a) the person:
(i) has possession or control of material; or
(ii) produces, supplies or obtains material; and
(b) the material directly or indirectly:
(i) counsels or incites committing or attempting to commit suicide; or
(ii) promotes a particular method of committing suicide; or
(iii) provides instruction on a particular method of committing suicide; and
(c) the person has that possession or control, or engages in that production, supply or obtaining, with the intention that the material be used:
(i) by that person; or
Section 474.30

(ii) by another person;
in committing an offence against section 474.29A (using a
 carriage service for suicide related material).

Penalty: 1,000 penalty units.

(2) A person may be found guilty of an offence against subsection (1)
even if committing the offence against section 474.29A (using a
carriage service for suicide related material) is impossible.

(3) It is not an offence to attempt to commit an offence against
subsection (1).

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
(b) modification of data held in a computer; or
(c) the impairment of electronic communication to or from a computer;

is limited to such access, modification or impairment caused, whether directly or indirectly, by the execution of a function of a computer.

476.2 Meaning of unauthorised access, modification or impairment

(1) In this Part:
(a) access to data held in a computer; or
(b) modification of data held in a computer; or
(c) the impairment of electronic communication to or from a computer; or
(d) the impairment of the reliability, security or operation of any data held on a computer disk, credit card or other device used to store data by electronic means;

by a person is unauthorised if the person is not entitled to cause that access, modification or impairment.

(2) Any such access, modification or impairment caused by the person is not unauthorised merely because he or she has an ulterior purpose for causing it.

(3) For the purposes of an offence under this Part, a person causes any such unauthorised access, modification or impairment if the person’s conduct substantially contributes to it.

(4) For the purposes of subsection (1), if:
(a) a person causes any access, modification or impairment of a kind mentioned in that subsection; and
(b) the person does so:
   (i) under a warrant issued under the law of the Commonwealth, a State or a Territory; or
   (ii) under an emergency authorisation given to the person under Part 3 of the Surveillance Devices Act 2004 or under a law of a State or Territory that makes provision to similar effect; or
   (iii) under a tracking device authorisation given to the person under section 39 of that Act;

the person is entitled to cause that access, modification or impairment.
476.3 Geographical jurisdiction

Section 15.1 (extended geographical jurisdiction—Category A) applies to offences under this Part.

476.4 Saving of other laws

(1) This Part is not intended to exclude or limit the operation of any other law of the Commonwealth, a State or a Territory.

(2) Subsection (1) has effect subject to section 476.5.

476.5 Liability for certain acts

(1) A staff member or agent of ASIS, DIGO or DSD (the agency) is not subject to any civil or criminal liability for any computer-related act done outside Australia if the act is done in the proper performance of a function of the agency.

(2) A person is not subject to any civil or criminal liability for any act done inside Australia if:
   (a) the act is preparatory to, in support of, or otherwise directly connected with, overseas activities of the agency concerned; and
   (b) the act:
      (i) taken together with a computer-related act, event, circumstance or result that took place, or was intended to take place, outside Australia, could amount to an offence; but
      (ii) in the absence of that computer-related act, event, circumstance or result, would not amount to an offence; and
   (c) the act is done in the proper performance of a function of the agency.

(2A) Subsection (2) is not intended to permit any act in relation to premises, persons, computers, things, or carriage services in Australia, being:
   (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

566 Criminal Code Act 1995
under Part 2-2 of the *Telecommunications (Interception and Access) Act 1979*; or

(b) an act to obtain information that ASIO could not obtain other than in accordance with Division 3 of Part 4-1 of the *Telecommunications (Interception and Access) Act 1979*.

(2B) The Inspector-General of Intelligence and Security may give a certificate in writing certifying any fact relevant to the question of whether an act was done in the proper performance of a function of an agency.

(2C) In any proceedings, a certificate given under subsection (2B) is prima facie evidence of the facts certified.

(3) In this section:

*ASIS* means the Australian Secret Intelligence Service.

*civil or criminal liability* means any civil or criminal liability (whether under this Part, under another law or otherwise).

*computer-related act, event, circumstance or result* means an act, event, circumstance or result involving:

(a) the reliability, security or operation of a computer; or

(b) access to, or modification of, data held in a computer or on a data storage device; or

(c) electronic communication to or from a computer; or

(d) the reliability, security or operation of any data held in or on a computer, computer disk, credit card, or other data storage device; or

(e) possession or control of data held in a computer or on a data storage device; or

(f) producing, supplying or obtaining data held in a computer or on a data storage device.

*DIGO* means that part of the Department of Defence known as the Defence Imagery and Geospatial Organisation.

*DSD* means that part of the Department of Defence known as the Defence Signals Directorate.
Section 476.5

staff member means:

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

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

(c) in relation to DIGO—the Director of DIGO or a member of the staff of DIGO (whether an employee of DIGO, a consultant or contractor to DIGO, or a person who is made available by another Commonwealth or State authority or other person to perform services for DIGO).
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
      (ii) any unauthorised modification of data held in a computer; or
Section 477.2

(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.

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
Section 477.2

(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).
Section 477.3

**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
   (c) the person knows that the impairment is unauthorised; and
Section 478.3

(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.
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:
   (ii) the *Australian Capital Territory (Self-Government) Act 1988*; or
   (iii) the *Corporations Act 2001*; or
   (iv) the *Norfolk Island Act 1979*; or
   (v) the *Northern Territory (Self-Government) Act 1978*; or

(aa) a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or

(ab) an organisation registered, or an association recognised, under the *Fair Work (Registered Organisations) Act 2009*; or

(b) a body specified in the regulations.

**Commonwealth contract** means a contract, to which a Commonwealth entity is a party, under which services are to be, or were to be, provided to a Commonwealth entity.

**Commonwealth entity** means:

(a) the Commonwealth; or

(b) a Commonwealth authority.

**Commonwealth judicial officer** means:

(a) a Justice of the High Court; or

(b) a judge or justice of a court created by the Parliament (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 (other than an official of a registered industrial organisation) who holds or performs the duties of an office established by or under a law of the Commonwealth, other than:

   (i) the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or

   (ii) the *Australian Capital Territory (Self-Government) Act 1988*; or

   (iii) the *Corporations Act 2001*; or

   (iv) the *Norfolk Island Act 1979*; or
Schedule

The Criminal Code

Dictionary

(v) the Northern Territory (Self-Government) Act 1978; or
(o) an officer or employee of a Commonwealth authority; or
(p) an individual who is a contracted service provider for a Commonwealth contract; or
(q) an individual who is an officer or employee of a contracted service provider for a Commonwealth contract and who provides services for the purposes (whether direct or indirect) of the Commonwealth contract; or
(r) an individual (other than an official of a registered industrial organisation) who exercises powers, or performs functions, conferred on the person by or under a law of the Commonwealth, other than:
(i) the Corporations (Aboriginal and Torres Strait Islander) Act 2006; or
(ii) the Australian Capital Territory (Self-Government) Act 1988; or
(iii) the Corporations Act 2001; or
(iv) the Norfolk Island Act 1979; or
(v) the Northern Territory (Self-Government) Act 1978; or
(vii) a provision specified in the regulations; or
(s) an individual who exercises powers, or performs functions, conferred on the person under a law in force in the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands (whether the law is a law of the Commonwealth or a law of the Territory concerned); or
(t) the Registrar, or a Deputy Registrar, of Aboriginal and Torres Strait Islander Corporations.

communication includes any communication:

(a) whether between persons and persons, things and things or persons and things; and

(b) whether the communication is:
(i) in the form of text; or
(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).

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

contracted service provider, for a Commonwealth contract, means:

(a) a person who is a party to the Commonwealth contract and who is responsible for the provision of services to a Commonwealth entity under the Commonwealth contract; or
(b) a subcontractor for the Commonwealth contract.

Covenant means the International Covenant on Civil and Political Rights, a copy of the English text of which is set out in Schedule 2 to the Australian Human Rights Commission Act 1986.

crime against humanity means an offence under Subdivision C of Division 268.

crime against the administration of the justice of the International Criminal Court means an offence under Subdivision J of Division 268.

data includes:

(a) information in any form; or
(b) any program (or part of a program).

data held in a computer includes:

(a) data held in any removable data storage device for the time being held in a computer; or
(b) data held in a data storage device on a computer network of which the computer forms a part.

data storage device means a thing (for example, a disk or file server) containing, or designed to contain, data for use by a computer.

death means:

(a) the irreversible cessation of all function of a person’s brain (including the brain stem); or
(b) the irreversible cessation of circulation of blood in a person’s body.

debt bondage means the status or condition that arises from a pledge by a person:
(a) of his or her personal services; or
(b) of the personal services of another person under his or her control;

as security for a debt owed, or claimed to be owed, (including any debt incurred, or claimed to be incurred, after the pledge is given), by that person if:

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

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).
exploitation, of one person (the victim) by another person (the exploiter), occurs if:
(a) the exploiter’s conduct causes the victim to enter into slavery, forced labour or sexual servitude; or
(b) the exploiter’s conduct causes an organ of the victim to be removed and:
   (i) the removal is contrary to the law of the State or Territory where it is carried out; or
   (ii) neither the victim nor the victim’s legal guardian consented to the removal and it does not meet a medical or therapeutic need of the victim.

First Geneva Convention means the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted at Geneva on 12 August 1949, a copy of the English text of which (not including the annexes) is set out in Schedule 1 to the Geneva Conventions Act 1957.

forced labour is defined in section 73.2.

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.


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** is 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.

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

**intention** has the meaning given in section 5.2.

**international armed conflict** includes a military occupation.

**International Criminal Court** means the International Criminal Court established under the ICC Statute.

**interpreter** includes a person who interprets signs or other things made or done by a person who cannot speak adequately for the purpose of giving evidence in a proceeding before the International Criminal Court.
knowledge has the meaning given in section 5.3.

law means a law of the Commonwealth, and includes this Code.

legal burden is defined in subsection 13.1(3).

negligence has the meaning given in section 5.5.

offence means an offence against a law of the Commonwealth.

official of a registered industrial organisation means a person who holds an office (within the meaning of the Fair Work Act 2009) in an organisation registered, or an association recognised, under the Fair Work (Registered Organisations) Act 2009.

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.

personal service means any labour or service, including a sexual service, provided by a person.

physical harm includes unconsciousness, pain, disfigurement, infection with a disease and any physical contact with a person that the person might reasonably object to in the circumstances (whether or not the person was aware of it at the time).

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.

_robery_ 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 service** means the commercial use or display of the body of the person providing the service for the sexual gratification of others.

**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.

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

*war crime* means an offence under Subdivision D, E, F, G or H of Division 268.
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.

The Criminal Code Act 1995 was amended by the Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1) (SLI 2006 No. 50). The amendments are incorporated in this compilation.

For application, saving or transitional provisions made by the Corporations (Repeals, Consequentials and Transitionals) Act 2001, see Act No. 55, 2001.

For application, saving or transitional provisions made by the Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005, see Act No. 45, 2005.

For all other relevant information pertaining to application, saving or transitional provisions see Table A.

Table of Acts

<table>
<thead>
<tr>
<th>Act</th>
<th>Number and year</th>
<th>Date of Assent</th>
<th>Date of commencement</th>
<th>Application, saving or transitional provisions</th>
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### Table of Acts

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<th>Date of commencement</th>
<th>Application, saving or transitional provisions</th>
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<tr>
<td>Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001</td>
<td>24, 2001</td>
<td>6 Apr 2001</td>
<td>S. 4(1) and (2): (a) Schedule 1 (item 3): 4 May 2001 (a)</td>
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<td><strong>Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002</strong></td>
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<td>Schedules 1, 2 and 3 (items 1–22, 24–26): 16 Jan 2003 Schedule 3 (item 23): 1 Jan 2003 (see s. 2(1) and Gazette 2002, No. GN44) Remainder: Royal Assent</td>
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# Table of Acts

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<td>Criminal Code Amendment (Hizballah) Act 2003</td>
<td>44, 2003</td>
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<td>127, 2004</td>
<td>31 Aug 2004</td>
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<td>Sch. 1 (item 30) and Sch. 4 (items 2, 8)</td>
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<td>Australian Passports (Transitional and Consequentials) Act 2005</td>
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<td>18 Feb 2005</td>
<td>Ss. 4–11 and Schedule 1: 1 July 2005 (see s. 2(1)) Remainder: Royal Assent</td>
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<td>Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005</td>
<td>45, 2005</td>
<td>1 Apr 2005</td>
<td>Schedule 3 (items 1, 2) and Schedule 4: 1 July 2005 (see s. 2(1))</td>
<td>Sch. 4 [see Note 1]</td>
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### Table of Acts

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<td><strong>Statute Law Revision Act 2005</strong></td>
<td>100, 2005</td>
<td>6 July 2005</td>
<td>Schedule 1 (item 12): (i)</td>
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<td><strong>Law Enforcement (AFP Professional Standards and Related Measures) Act 2006</strong></td>
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<td>Schedule 3 (items 36–45): 30 Dec 2006 (see s. 2(1))</td>
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<td><strong>Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006</strong></td>
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<td>30 June 2006</td>
<td>Schedule 1 (item 32): 30 Dec 2006 (see s. 2(1))</td>
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**Table of Acts**

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<tr>
<td>Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006</td>
<td>125, 2006</td>
<td>4 Nov 2006</td>
<td>Schedules 1–3: 1 July 2007 (see s. 2(1)) Remainder: Royal Assent</td>
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<td>Australian Citizenship (Transitional and Consequentials) Act 2007</td>
<td>21, 2007</td>
<td>15 Mar 2007</td>
<td>Schedules 1–3: 1 July 2007 (see s. 2(1) and F2007L01653) Remainder: Royal Assent</td>
<td>Sch. 3 (items 14, 19)</td>
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<td>Wheat Export Marketing (Repeal and Consequential Amendments) Act 2008</td>
<td>66, 2008</td>
<td>30 June 2008</td>
<td>Schedule 2 (items 1–5): 1 July 2008 (see s. 2(1))</td>
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<td>Defence Legislation (Miscellaneous Amendments) Act 2009</td>
<td>18, 2009</td>
<td>26 Mar 2009</td>
<td>Schedule 1 (items 1, 2): [see Note 2]</td>
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<tr>
<td>Disability Discrimination and Other Human Rights Legislation Amendment Act 2009</td>
<td>70, 2009</td>
<td>8 July 2009</td>
<td>Schedule 3 (item 18): 5 Aug 2009</td>
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</tbody>
</table>
Notes to the Criminal Code Act 1995

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.


(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.

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Schedule 1</td>
<td>2 pm (by legal time in the Australian Capital Territory) on 16 October 2001</td>
<td>16 October 2001</td>
</tr>
</tbody>
</table>

(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.

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. Schedule 1, items 4 and 5</td>
<td>Immediately after the start of the day after this Act receives the Royal Assent</td>
<td>6 July 2002</td>
</tr>
</tbody>
</table>

(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.

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
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<tbody>
<tr>
<td>4. Schedule 1, item 3</td>
<td>Immediately after the start of the day after this Act receives the Royal Assent</td>
<td>6 July 2002</td>
</tr>
</tbody>
</table>
### Notes to the *Criminal Code Act 1995*

#### Act Notes

(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.

<table>
<thead>
<tr>
<th>Provision(s)</th>
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<th>Date/Details</th>
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<tr>
<td>32. Schedule 3, items 53 to 55</td>
<td>Immediately before the commencement of items 38, 39 and 40 of Schedule 3 to the <em>Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002</em></td>
<td>12 May 2003</td>
</tr>
</tbody>
</table>

(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.

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Schedule 1</td>
<td>On 29 May 2003, immediately after the commencement of Schedule 1 to the <em>Criminal Code Amendment (Terrorism) Act 2003</em></td>
<td>29 May 2003</td>
</tr>
</tbody>
</table>

(h) Subsection 2(1) (items 2 and 3) of the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences on the day or at the time specified in column 2 of the table.

<table>
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<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
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<tr>
<td>2. Sections 4 and 5</td>
<td>Immediately after the commencement of sections 3 to 62 of the <em>Legislative Instruments Act 2003</em></td>
<td>1 January 2005</td>
</tr>
<tr>
<td>3. Schedule 1</td>
<td>Immediately after the commencement of sections 3 to 62 of the <em>Legislative Instruments Act 2003</em></td>
<td>1 January 2005</td>
</tr>
</tbody>
</table>

(i) Subsection 2(1) (item 8) of the *Statute Law Revision Act 2005* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
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<td>8. Schedule 1, item 12</td>
<td>Immediately after the commencement of item 1 of Schedule 1 to the <em>Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002</em></td>
<td>1 January 2003</td>
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</table>

(j) Subsection 2(1) (item 11) of the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.
<table>
<thead>
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<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
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<td>11. Schedule 5, items 1 to 30</td>
<td>Immediately after the commencement of Part 2-4 of the <em>Fair Work Act 2009</em>.</td>
<td>1 July 2009 (see F2009L02563)</td>
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</tbody>
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### Table of Amendments

<table>
<thead>
<tr>
<th>Provision affected</th>
<th>How affected</th>
</tr>
</thead>
<tbody>
<tr>
<td>S. 2 .......................</td>
<td>am. No. 12, 1998</td>
</tr>
<tr>
<td>S. 3AA ...................</td>
<td>ad. No. 24, 2001</td>
</tr>
<tr>
<td>S. 3A .....................</td>
<td>rep. No. 12, 1995</td>
</tr>
<tr>
<td>S. 3B .....................</td>
<td>ad. No. 43, 1999</td>
</tr>
<tr>
<td>S. 4 .......................</td>
<td>am. No. 137, 2000</td>
</tr>
<tr>
<td>S. 5 .......................</td>
<td>ad. No. 137, 2000</td>
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### 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
Table of Amendments

<table>
<thead>
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<td>ad. No. 137, 2000</td>
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<tr>
<td>Division 14</td>
<td></td>
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<tr>
<td>S. 14.1</td>
<td>ad. No. 137, 2000</td>
</tr>
<tr>
<td>Division 15</td>
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<tr>
<td>S. 15.1</td>
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<td>ad. No. 137, 2000</td>
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## Table of Amendments

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*Notes to the Criminal Code Act 1995*
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<td>ad. No. 127, 2004</td>
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### Table of Amendments

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<td>S. 474.29B.........</td>
<td>ad. No. 92, 2005</td>
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**Division 475**

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Note 2

Defence Legislation (Miscellaneous Amendments) Act 2009 (No. 18, 2009)

The following amendments commence on Proclamation or one month after the day on which Protocol III to the Geneva Conventions enters into force for Australia, see subsection 2(1) (item 2):

Schedule 1

1 Dictionary in the Criminal Code

   Insert:

   Protocol III to the Geneva Conventions means the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), done at Geneva on 8 December 2005, a copy of the English text of which is set out in Schedule 6 to the Geneva Conventions Act 1957.

2 Dictionary in the Criminal Code (definition of Protocols to the Geneva Conventions)


As at 5 August 2009 the amendments are not incorporated in this compilation.
Table A

Application, saving or transitional provisions


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.
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;
   (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.

(6) The committee must, within six months of commencing the review, give the Attorney-General and the Parliamentary Joint...
Table A

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.
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.

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.
Notes to the *Criminal Code Act 1995*

Table A


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*;

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.*
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.
Table A

(2) Subitem (1) does not limit the operation of section 8 of the Acts Interpretation Act 1901.


Anti-Terrorism Act 2005 (No. 127, 2005)

4 Review of anti-terrorism laws

(1) The Council of Australian Governments agreed on 27 September 2005 that the Council would, after 5 years, review the operation of the amendments made by Schedule 1.

(2) If a copy of the report in relation to the review is given to the Attorney-General, the Attorney-General must cause a copy of the report to be laid before each House of Parliament within 15 sitting days after the Attorney-General receives the copy of the report.

Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Act 2005 (No. 129, 2005)

Schedule 1

75 Application of amendments to conduct before and after commencement

(1) In this item:

earlier conduct means conduct engaged in before the commencement of this Schedule.

engage in conduct has the same meaning as in the Criminal Code.

later conduct means conduct engaged in after the commencement of this Schedule.

new law means Part 9.1 of the Criminal Code as in force from time to time.

old law means:

(a) the provisions of Division 2 of Part XIII of the Customs Act 1901 as in force from time to time before the commencement of this Schedule to the extent to which those provisions related to narcotic substances; and

(b) any law related to those provisions.
Table A

(2) The amendments made by this Schedule do not apply in relation to earlier conduct.

(3) Despite the amendments made by this Schedule, the old law continues to apply in relation to later conduct if:
   (a) the later conduct is related to earlier conduct; and
   (b) because of that relationship, the later conduct would have constituted a physical element (or a part of a physical element) of an offence against the old law, had the old law remained in force.

(4) If later conduct is alleged against a person in a prosecution for an offence against the old law, that conduct must not be alleged against the person in a prosecution for:
   (a) an offence against the new law; or
   (b) an offence related to an offence against the new law.

76 Transitional regulations

(1) The regulations may make provision for matters of a transitional nature (including any saving or application provisions) arising from the amendments or repeals made by this Schedule.

(2) The Governor-General may make regulations for the purposes of subitem (1).

Anti-Terrorism Act (No. 2) 2005 (No. 144, 2005)

4 Review of anti-terrorism laws

(1) The Council of Australian Governments agreed on 27 September 2005 that the Council would, after 5 years, review the operation of:
   (a) the amendments made by Schedules 1, 3, 4 and 5; and
   (b) certain State laws.

(2) If a copy of the report in relation to the review is given to the Attorney-General, the Attorney-General must cause a copy of the report to be laid before each House of Parliament within 15 sitting days after the Attorney-General receives the copy of the report.
Notes to the  *Criminal Code Act 1995*

*Australian Citizenship (Transitionals and Consequentials) Act 2007*  
(No. 21, 2007)

**Schedule 3**

**14  Definition**

In this Part:

*commencement day* means the day on which sections 2A to 54 of the *Australian Citizenship Act 2007* commence.

**19  Transitional—*Criminal Code Act 1995***

(1) A certificate in force under subsection 72.8(2) of the *Criminal Code* immediately before the commencement day has effect on and after that day as if it were a certificate issued under that subsection on that day.

(2) A certificate in force under subsection 115.7(1) of the Criminal Code (in relation to paragraph 115.7(1)(a) of the Criminal Code) immediately before the commencement day has effect on and after that day as if it were a certificate issued under that subsection on that day.

*Telecommunications (Interception and Access) Amendment Act 2007*  
(No. 177, 2007)

**Schedule 1**

**68  Transitional regulations**

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Schedule.