



# Crimes Legislation Amendment Act 1987

No. 120 of 1987

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# Crimes Legislation Amendment Act 1987

No. 120 of 1987

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**An Act to amend various Acts in relation to crime, the trial of certain offences, the confiscation of proceeds of crime, dealing with information obtained by intercepting telecommunications, the Fitzgerald inquiry, and the transfer of prisoners, and for related purposes**

[Assented to 16 December 1987]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

## PART I—PRELIMINARY

### Short title

1. This Act may be cited as the *Crimes Legislation Amendment Act 1987*.

### Commencement

2. (1) Sections 11, 14, 16, 17, 18, 47, 70, 71, 72, 73, 74 and 75 and paragraph 69 (b) shall come into operation on a day or days to be fixed by Proclamation.

(2) Parts II, VI, VII, VIII (other than section 47) and IX and Schedule 4 shall come into operation on the day on which this Act receives the Royal Assent.

(3) Sections 53, 54, 55 and 59 shall come into operation on the day on which this Act receives the Royal Assent.

(4) Sections 56, 57 and 58 shall come into operation immediately after the commencement of subsection 5(2) and section 8 of the *Telecommunications (Interception) Amendment Act 1987*.

(5) Sections 60 to 67, inclusive, shall come into operation immediately after the commencement of section 21 of the *Telecommunications (Interception) Amendment Act 1987*.

(6) The remaining provisions of this Act shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.

## **PART II—AMENDMENTS OF THE CHRISTMAS ISLAND ACT 1958**

### **Principal Act**

3. In this Part, “Principal Act” means the *Christmas Island Act 1958*.

### **Interpretation**

4. Section 4 of the Principal Act is amended by inserting the following definitions:

“ ‘constable’ means:

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

(b) an officer or special officer of the police force of the Territory;

‘prison’ includes a lock-up or other place of lawful detention;

‘Registrar’ means the Registrar, or the Deputy Registrar, of the Supreme Court;

‘Sheriff’ means the Sheriff, or the Deputy Sheriff, of the Territory;

‘State’ includes a Territory other than the Territory;”.

5. After section 11 of the Principal Act the following sections are inserted:

### **Minister may make arrangements with States**

“11AAA. The Minister may make arrangements with the government or an authority of a State for the purposes of the effective application of the provisions of this Act relating to sittings of the Supreme Court in that State in the exercise of its criminal jurisdiction.

**Supreme Court may sit in a State**

“11AA. (1) Subject to this section, the Supreme Court, in the exercise of its criminal jurisdiction, may sit in a State if to do so would not be contrary to the interests of justice.

“(2) The Supreme Court may, at any time after the presentation of an indictment for an offence against a law in force in the Territory and before the jury has returned its verdict, if it is satisfied that the interests of justice require it, order:

- (a) if the trial of the offence has not begun—that the trial be held in a State, and at a time and place, specified in the order; and
- (b) if the trial of the offence has begun—that the trial be discontinued, the jury be discharged and a new trial be held in a State, and at a time and place, specified in the order.

“(3) The Supreme Court may make an order under subsection (2) at a sittings of the Court in the Territory or in a State.

“(4) The Supreme Court may make an order under subsection (2) at a sittings of the Court in a State whether or not the accused is present but, if the accused is not present, the Court shall only make the order if:

- (a) the accused is represented; and
- (b) the Court is satisfied that the accused understands the effect of the order.

“(5) Where the Supreme Court makes an order under subsection (2), the Court may order that:

- (a) on the warrant of the Registrar, a magistrate of the Territory or such other person as the Supreme Court directs (being a person who holds an office in relation to the Court), the accused be removed to the place specified in the order, and held there, for the purposes of the trial of that person and for any related proceedings; and
- (b) on the summons of the Registrar, all persons required to attend to give evidence in the trial or proceedings attend at the place specified in the order.

“(6) When exercising its criminal jurisdiction in a State, the Supreme Court has, and may exercise, all the powers that it would have if it were exercising its criminal jurisdiction in the Territory.

“(7) A power exercised by the Supreme Court under subsection (6) shall be deemed to have been exercised by the Court at a sittings of the Court in the Territory.

“(8) Where the Supreme Court is sitting in a State for the purpose of a trial in that State, the Court may, if it is satisfied that the interests of justice require it, order that, for the purpose of viewing a place, or taking evidence from a person, in the Territory, or for a prescribed purpose:

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- (a) the trial be adjourned for such time as the Court considers reasonable and necessary, and be continued in the Territory for so long as is necessary for that purpose;
- (b) on the warrant of the Registrar, the accused be returned to the Territory for the purposes of the continuation of the trial and any related proceedings; and
- (c) the jurors empanelled for the trial go to the Territory and remain there for such time as the Court directs for the purpose of continuing to attend as jurors in the trial.

“(9) A person who appears as a witness in the Supreme Court in a trial, or in related proceedings, held wholly or partly in a State, shall be paid by the Commonwealth such fees and allowances as would be payable to the person if the person had appeared as a witness in a trial held in the Territory.

“(10) Where:

- (a) the Supreme Court, when exercising its criminal jurisdiction in a State, makes an order, issues a warrant or summons or gives a judgment;
- (b) a person fails to comply with that order, warrant, summons or judgment; and
- (c) that failure would have constituted an offence against a law in force in the Territory if it had occurred there;

the person is guilty of an offence against this Act punishable by a penalty that is the same as the penalty for the offence referred to in paragraph (c).”.

**Jurisdiction etc. of the Supreme Court**

6. Section 12 of the Principal Act is amended:

- (a) by omitting “The” and substituting “Except as provided in this Part, the”; and
- (b) by adding at the end the following subsection:

“(2) The trial on indictment of an offence against a law in force in the Territory shall be by judge and jury.”.

7. After section 12 of the Principal Act the following sections are inserted:

**Juries outside the Territory**

“12A. (1) Subject to this section and the regulations, the laws in force in a State relating to:

- (a) the qualification of jurors;
- (b) the preparation of jury lists and jury panels;
- (c) the summoning, attendance and empanelling of juries;
- (d) the number of jurors;



- (e) the right of challenge;
- (f) the discharge of juries;
- (g) the disagreement of jurors;
- (h) the remuneration of jurors; and
- (j) other matters concerning jurors (other than matters dealt with under section 12B) after they have been summoned, appointed or sworn;

that apply for the purposes of the trial of a criminal matter in the Supreme Court of that State sitting at a place in that State, extend and shall be applied, with such changes as are necessary, for the purposes of the trial of a criminal matter in the Supreme Court of the Territory when sitting at that place.

“(2) For the purposes of a trial in the Supreme Court held wholly or partly at a place in a State, the jury list that would be used for the purposes of a criminal trial in the Supreme Court of that State sitting in the same place shall be used as well for the purposes of the trial in the Supreme Court of the Territory.

“(3) The precept for a jury shall be issued by the Registrar, or such other person holding an office in relation to the Supreme Court as the Court directs, and the Sheriff or such other person as the Court directs shall prepare the jury panels and summon jurors.

“(4) The person who has custody of the jury list referred to in subsection (2) in the State where the Supreme Court is holding a trial shall:

- (a) give a copy of that list to the person directed by the Court to prepare a jury panel; and
- (b) indicate on that copy the names of the persons who, to his or her knowledge, would not, if summoned at the time the copy is given, be liable to serve as jurors under the law in force in that State.

“(5) The Commonwealth shall pay such reasonable fee as may be demanded for a copy of a list referred to in paragraph (4) (a).

“(6) Any remuneration required to be paid to a person who serves, or is summoned to serve, on a jury in a trial in the Supreme Court held wholly or partly in a State shall be paid by the Commonwealth.

“(7) Where a law applied by this Act for the purposes of a trial in the Supreme Court requires an act or thing to be done by a person specified in that law, the Court may, if it is necessary to do so for the purpose of the effective application of the law, order that a person who holds a specified office in relation to the Court do that act or thing, and the law shall be deemed to apply to that person accordingly.

“(8) The regulations may provide that such provisions of a law referred to in subsection (1) as are specified in the regulations do not apply or apply subject to such modifications as are specified in the regulations.

“(9) In this section, ‘jury list’ means the roll, list, or book on or in which the names of persons liable to serve as jurors appear.

**Offences in relation to jurors**

“12B. (1) A person who is served with a summons to attend as a juror in a trial in the Supreme Court held wholly or partly in a State shall not, without reasonable excuse:

- (a) fail to attend in accordance with the summons; or
- (b) having so attended, withdraw from the presence of the Court, without the permission of the Sheriff, before being discharged or excused by a judge of the Court or the Sheriff.

Penalty: \$200 or imprisonment for 1 month.

“(2) A person shall not personate, or attempt to personate, a person who is a juror for the purpose of sitting on a jury.

Penalty: \$1,000 or imprisonment for 6 months.

“(3) A person shall not:

- (a) corrupt, or attempt to corrupt, a juror;
- (b) except as provided by law, make or promise a payment to a juror, or confer or promise to confer any other benefit on a juror in relation to the person's service as a juror, other than a payment of the ordinary remuneration of the juror's employment; or
- (c) being a juror, accept such a payment or benefit.

Penalty: Imprisonment for 5 years.

“(4) In this section, 'juror' includes a person whose name is on a jury panel.”.

8. After section 18 of the Principal Act the following sections are inserted:

**Removal of accused to State to stand trial**

“18A. (1) Where the Supreme Court makes an order under paragraph 11AA (5) (a) in relation to an accused, the Registrar, a magistrate of the Territory or a person directed by the Court under that paragraph, may:

- (a) by warrant directed to all constables, require them to convey the accused in custody from the Territory to the prison specified in the warrant and to deliver the accused into the custody of the officer for the time being in charge of that prison; and
- (b) by warrant directed to that officer, require that officer to detain the accused in that prison pursuant to this section.

“(2) A warrant directed to all constables may be executed by any constable.

“(3) An accused delivered into custody at a prison in a State under a warrant under subsection (1) may, subject to any order of the Supreme Court, be detained in that prison or any other prison in that State for so long as the accused's detention is necessary for the execution of the order.

“(4) An accused may, while so in custody, be dealt with in the same manner, and is subject to the same laws, as if the warrant issued under subsection (1) had been issued under a law in force in the relevant State relating to holding persons in custody pending the trial of those persons.

“(5) The Commonwealth shall pay to the relevant State the reasonable expenses of maintaining an accused detained in a prison under a warrant under subsection (1).

**Accused to be conveyed to Court**

“18B. (1) Where an accused has been removed to a State under this Act, a judge of the Supreme Court may order that the accused be conveyed to the Court for the purposes of trial in that State, and any related proceedings.

“(2) Where a judge of the Supreme Court makes an order under subsection (1), the person who has the custody of the accused shall release the accused to a constable to enable the accused to be conveyed to the Court in accordance with that order.

**Return of accused to Territory**

“18C. (1) Where the Supreme Court makes an order under paragraph 11AA (8) (b), the Registrar may, by warrant directed to all constables, require them to convey the accused in custody from the State in which the Court made the order to the prison in the Territory specified in the warrant and to deliver the accused into the custody of the officer for the time being in charge of that prison.

“(2) A warrant referred to in subsection (1) may be executed by any constable.

**Person deemed to be prisoner under *Removal of Prisoners (Territories) Act 1923***

“18D. Where:

- (a) a person has been tried in relation to an indictable offence against a law in force in the Territory by the Supreme Court sitting in a State; and
- (b) the person is convicted of that offence and sentenced to imprisonment;

the person shall be deemed:

- (c) to be a prisoner within the meaning of the *Removal of Prisoners (Territories) Act 1923*; and
- (d) to have been removed to that State under that Act;

and the provisions of that Act apply (so far as they are capable of applying) in relation to the person accordingly.

**Person deemed to be criminal lunatic under *Removal of Prisoners (Territories) Act 1923***

“18E. Where a person who has been removed to a State under this Act:

- (a) is found to have been insane at the time of the commission of the offence;
- (b) is found or certified, or otherwise lawfully proved, to be unfit, on the ground of insanity, to be tried for the offence; or
- (c) is convicted of an offence and afterwards certified, or otherwise lawfully proved, to be insane;

the person shall be deemed:

- (d) to be a criminal lunatic within the meaning of the *Removal of Prisoners (Territories) Act 1923*; and
- (e) to have been removed to that State under that Act;

and sections 9 and 10A of that Act apply (so far as they are capable of applying) in relation to the person accordingly.

**Repatriation of person tried in a State**

“18F. Where:

- (a) a person has been removed to a State under this Act;
- (b) the trial of the person in the Supreme Court sitting in that State has concluded; and
- (c) the person is acquitted (other than on the ground of insanity) or is not, after the date on which the trial concludes, required to serve a sentence of imprisonment;

the Commonwealth shall, on application by the person to the Secretary, provide the person with means to enable the person to return to the Territory.”.

**Regulations**

- 9. Section 23 of the Principal Act is amended by omitting from paragraph (a) “or Territory other than the Territory”.

**PART III—AMENDMENTS OF THE CRIMES ACT 1914**

**Principal Act**

10. In this Part, “Principal Act” means the *Crimes Act 1914*<sup>2</sup>.

11. After section 4 of the Principal Act the following sections are inserted:

**Meaning of certain words**

“4A. In a law of the Commonwealth, unless the contrary intention appears:

‘committed for trial’, in relation to a person, means committed to prison with a view to the person being tried before a judge and jury, or admitted to bail upon a recognizance to appear and be so tried;

‘indictment’ includes an information and a presentment.

**Pecuniary penalties—natural persons and bodies corporate**

“4B. (1) A provision of a law of the Commonwealth relating to indictable offences or summary offences shall, unless the contrary intention appears, be deemed to refer to bodies corporate as well as to natural persons.

“(2) Where a natural person is convicted of an offence against a law of the Commonwealth punishable by imprisonment only, the court may, if the contrary intention does not appear and the court thinks a pecuniary penalty appropriate in all the circumstances of the case, impose, instead of a penalty of imprisonment, a pecuniary penalty not exceeding:

- (a) where the offence is punishable by imprisonment for a period not exceeding 6 months—\$1,000;
- (b) where the offence is punishable by imprisonment for a period exceeding 6 months but not exceeding 12 months—\$2,000;
- (c) where the offence is punishable by imprisonment for a period exceeding 12 months but not exceeding 2 years—\$5,000;
- (d) where the offence is punishable by imprisonment for a period exceeding 2 years but not exceeding 5 years—\$10,000; and
- (e) where the offence is punishable by imprisonment for a period exceeding 5 years—\$20,000.

“(3) Where a body corporate is convicted of an offence against a law of the Commonwealth, the court may, if the contrary intention does not appear and the court thinks fit, impose a pecuniary penalty not exceeding an amount equal to 5 times the amount of the maximum pecuniary penalty that could be imposed by the court on a natural person convicted of the same offence.

“(4) Where under a law of the Commonwealth any forfeiture, penalty or reparation is paid to a person aggrieved, it is payable to a body corporate where the body corporate is the person aggrieved.

**Offences under 2 or more laws**

“4C. (1) Where an act or omission constitutes an offence:

- (a) under 2 or more laws of the Commonwealth; or
- (b) both under a law of the Commonwealth and at common law;

the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those laws of the Commonwealth or at common law, but shall not be liable to be punished twice for the same act or omission.

“(2) Where an act or omission constitutes an offence under both:

- (a) a law of the Commonwealth and a law of a State; or
- (b) a law of the Commonwealth and a law of a Territory;

and the offender has been punished for that offence under the law of the State or the law of the Territory, as the case may be, the offender shall not be liable to be punished for the offence under the law of the Commonwealth.

“(3) Where an act or omission constitutes an offence against a law of a Territory, the validity of that law is not affected merely because the act or omission also constitutes an offence against a law of the Commonwealth.

### **Penalties**

“4D. (1) Except so far as the contrary intention appears, a penalty, whether pecuniary or otherwise, set out:

- (a) at the foot of any section of an Act; or
- (b) at the foot of any subsection of any section of an Act, but not at the foot of the section;

indicates that any contravention of the section or subsection, as the case may be, is an offence against the Act, punishable upon conviction by a penalty not exceeding the penalty so set out.

“(2) Subsection (1) applies to any instrument made under an Act (including rules, regulations or by-laws but not including a law of a Territory) as if the instrument were an Act and as if each such rule, regulation or by-law were a section of an Act.

### **Pecuniary penalties**

“4E. A pecuniary penalty for an offence against a law of the Commonwealth may, unless the contrary intention appears, be recovered in any court of summary jurisdiction.

### **Effect of alterations in penalties**

“4F. (1) Where a provision of a law of the Commonwealth increases the penalty or maximum penalty for an offence, the penalty or maximum penalty as increased applies only to offences committed after the commencement of that provision.

“(2) Where a provision of a law of the Commonwealth reduces the penalty or maximum penalty for an offence, the penalty or maximum penalty as reduced extends to offences committed before the commencement of that provision, but the reduction does not affect any penalty imposed before that commencement.

### **Indictable offences**

“4G. Offences against a law of the Commonwealth punishable by imprisonment for a period exceeding 12 months are indictable offences, unless the contrary intention appears.

### **Summary offences**

- “4H. Offences against a law of the Commonwealth, being offences which:
- (a) are punishable by imprisonment for a period not exceeding 12 months; or

(b) are not punishable by imprisonment;  
are summary offences, unless the contrary intention appears.

**Certain indictable offences may be dealt with summarily**

“4J. (1) Subject to subsection (2), an indictable offence (other than an offence referred to in subsection (4)) against a law of the Commonwealth, being an offence punishable by imprisonment for a period not exceeding 10 years, may, unless the contrary intention appears, be heard and determined, with the consent of the prosecutor and the defendant, by a court of summary jurisdiction.

“(2) Subsection (1) does not apply in relation to an indictable offence where, under a law of the Commonwealth other than this Act, that offence may be heard and determined by a court of summary jurisdiction.

“(3) Subject to subsection (6), where an offence is dealt with by a court of summary jurisdiction under subsection (1), the court may impose:

- (a) where the offence is punishable by imprisonment for a period not exceeding 5 years—a sentence of imprisonment for a period not exceeding 12 months or a fine not exceeding \$2,000, or both; or
- (b) where the offence is punishable by imprisonment for a period exceeding 5 years but not exceeding 10 years—a sentence of imprisonment for a period not exceeding 2 years or a fine not exceeding \$5,000, or both.

“(4) A court of summary jurisdiction may, if it thinks fit, upon the request of the prosecutor, hear and determine any proceeding in respect of an indictable offence against a law of the Commonwealth if the offence relates to property whose value does not exceed \$500.

“(5) Subject to subsection (6), where an offence is dealt with by a court of summary jurisdiction under subsection (4), the court may impose a sentence of imprisonment for a period not exceeding 12 months or a fine not exceeding \$2,000, or both.

“(6) A court of summary jurisdiction shall not impose under subsection (3) or (5):

- (a) a sentence of imprisonment for a period exceeding the maximum period that could have been imposed had the offence been tried on indictment;
- (b) a fine exceeding the maximum fine that could have been imposed had the offence been so tried; or
- (c) both a sentence of imprisonment and a fine if the offence is punishable on trial on indictment by a sentence of imprisonment or a fine, but not both.

“(7) This section does not apply in relation to an offence against section 24, 24AA, 24AB or 78 or subsection 79 (2) or (5).

**Continuing and multiple offences**

“4K. (1) Where, under a law of the Commonwealth, an act or thing is required to be done within a particular period or before a particular time, then, unless the contrary intention appears, the obligation to do that act or thing continues, notwithstanding that the period has expired or the time has passed, until the act or thing is done.

“(2) Where a refusal or failure to comply with a requirement referred to in subsection (1) is an offence against a law of the Commonwealth, a person is guilty of an offence in respect of each day during which the person refuses or fails to comply with that requirement, including the day of a conviction for any such offence or any later day.

“(3) Charges against the same person for any number of offences against the same provision of a law of the Commonwealth may be joined in the same information, complaint or summons if those charges are founded on the same facts, or form, or are part of, a series of offences of the same or a similar character.

“(4) If a person is convicted of 2 or more offences referred to in subsection (3), the court may impose one penalty in respect of both or all of those offences, but that penalty shall not exceed the sum of the maximum penalties that could be imposed if a separate penalty were imposed in respect of each offence.”

**Arrest without warrant for suspected offences**

12. Section 8A of the Principal Act is amended by omitting from paragraph (a) “or of a Territory other than the Australian Capital Territory”.

**Search warrant**

13. Section 10 of the Principal Act is amended:

- (a) by omitting from subsection (1) “any house, vessel, or place—” and substituting “or upon any premises, aircraft, vehicle, vessel or place:”;
- (b) by omitting from subsection (1) all the words from and including “he may grant” and substituting “or that any such thing may, within the next following 72 hours, be brought into or upon the premises, aircraft, vehicle, vessel or place, the Justice of the Peace may grant a search warrant authorising any constable named in the warrant, with such assistance, and by such force, as is necessary and reasonable, to enter at any time the premises, aircraft, vehicle, vessel or place named or described in the warrant, and to seize any such thing which he or she might find there.”; and
- (c) by inserting after subsection (1) the following subsection:

“(1A) A constable named in a warrant may, where it is necessary and reasonable to do so for the purposes of executing the warrant, break open such doors and receptacles as are in or upon the premises, aircraft, vehicle, vessel or place named or described in the



warrant and may do so with such assistance, and by such force, as is necessary and reasonable.”.

**Repeal of sections 11, 12, 12A and 16**

14. Sections 11, 12, 12A and 16 of the Principal Act are repealed.

**Destroying or damaging Commonwealth property**

15. Section 29 of the Principal Act is amended by omitting “2 years” and substituting “10 years”.

**Aiding prisoner to escape**

16. Section 46 of the Principal Act is amended:

- (a) by omitting from paragraph (a) “Commonwealth; or” and substituting “Commonwealth or of a Territory;”;
- (b) by inserting after paragraph (a) the following paragraphs:
  - “(aa) aids a person who has been lawfully arrested in respect of any offence against a law of the Commonwealth or of a Territory to escape, or to attempt to escape, from that arrest;
  - (ab) aids a person who is lawfully detained during the Governor-General’s pleasure in respect of any offence against the law of the Commonwealth or of a Territory to escape, or to attempt to escape, from that detention; or”;
- (c) by inserting in paragraph (b) “, lock-up or other place of lawful detention” after “prison”;
- (d) by omitting from paragraph (b) “Commonwealth,” and substituting “Commonwealth or of a Territory;”;
- (e) by omitting “Imprisonment for 2 years” and substituting “\$10,000 or imprisonment for 5 years, or both”.

17. Sections 47 and 48 of the Principal Act are repealed and the following sections are substituted:

**Escaping**

“47. A person who has been lawfully arrested, is in lawful custody, or is lawfully detained during the Governor-General’s pleasure, in respect of any offence against a law of the Commonwealth or of a Territory and who escapes from that arrest, custody or detention is guilty of an offence.

Penalty: \$10,000 or imprisonment for 5 years, or both.

**Rescuing a prisoner from custody etc.**

“47A. A person who:

- (a) rescues by force a person (other than a person referred to in paragraph (c) or (d)) from lawful custody in respect of any offence against a law of the Commonwealth or of a Territory with which the person has been charged;

- (b) rescues by force a person who has been lawfully arrested in respect of any offence against a law of the Commonwealth or of a Territory with which the person has not been charged;
- (c) rescues by force a prisoner who is in lawful custody in any prison, lock-up or other place of lawful detention in respect of any offence against a law of the Commonwealth or of a Territory from that prison, lock-up or place; or
- (d) rescues by force a person who is lawfully detained during the Governor-General's pleasure in respect of any offence against a law of the Commonwealth or of a Territory from that detention;

is guilty of an offence.

Penalty: Imprisonment for 14 years.

**Person unlawfully at large**

“47B. A person who:

- (a) in accordance with a permission given under a law of a State or Territory, leaves a prison, lock-up or other place of lawful detention where the person is in custody, or is detained during the Governor-General's pleasure, in respect of any offence against a law of the Commonwealth or of a Territory; and
- (b) refuses or fails, without reasonable excuse, to return to that prison, lock-up or other place in accordance with that permission;

is guilty of an offence.

Penalty: \$10,000 or imprisonment for 5 years, or both.

**Permitting escape**

“47C. (1) A person who:

- (a) is an officer of a prison, lock-up or other place of lawful detention, a constable or a Commonwealth officer;
- (b) is charged for the time being with the custody or detention of another person (including a person detained during the Governor-General's pleasure) in respect of any offence against a law of the Commonwealth or of a Territory; and
- (c) wilfully or negligently permits the other person to escape from that custody or detention;

is guilty of an offence.

“(2) A constable or a Commonwealth officer, who wilfully or negligently permits a person who has been lawfully arrested in respect of any offence against a law of the Commonwealth or of a Territory to escape from that arrest, is guilty of an offence.

Penalty: \$10,000 or imprisonment for 5 years, or both.

**Harbouring etc. an escapee**

“48. A person who harbours, maintains or employs another person knowing the other person to have escaped from a place where the person is held in lawful custody or detention in respect of any offence against a law of the Commonwealth or of a Territory is guilty of an offence.

Penalty: \$10,000 or imprisonment for 5 years, or both.”.

**Other amendments**

18. The Principal Act is further amended as set out in Schedule 1.

**PART IV—AMENDMENTS OF THE CRIMES (FOREIGN INCURSIONS AND RECRUITMENT) ACT 1978**

**Principal Act**

19. In this Part, “Principal Act” means the *Crimes (Foreign Incursions and Recruitment) Act 1978*<sup>3</sup>.

**Long title**

20. The title of the Principal Act is amended by omitting “Countries” (wherever occurring) and substituting “States”.

**Interpretation**

21. Section 3 of the Principal Act is amended:

(a) by omitting the definitions of “foreign country” and “government” and substituting the following definitions:

“‘foreign State’ means a place outside Australia that is:

(a) an independent sovereign state; or

(b) an area of land (whether or not it is self-governing) that is not part of an independent sovereign state;

‘government’, in relation to a foreign State or a part of a foreign State, means the authority exercising effective governmental control in that foreign State or that part of that foreign State;” and

(b) by adding at the end the following subsection:

“(2) A reference in this Act to a part of a foreign State shall be read as a reference to a political subdivision of a foreign State.”.

**Incursions into foreign States for purpose of engaging in hostile activities**

22. Section 6 of the Principal Act is amended:

(a) by omitting subsection (1) and substituting the following subsection:

“(1) A person shall not:

(a) enter a foreign State with intent to engage in a hostile activity in that foreign State; or

(b) engage in a hostile activity in a foreign State.

Penalty: Imprisonment for 14 years.”;

- (b) by omitting paragraph (2) (b) and substituting the following paragraph:

“(b) the person was present in Australia at any time during the period of one year immediately preceding the doing of that act and, at any time when the person was so present, his or her presence was for a purpose connected with that act, or for purposes that included such a purpose.”;

- (c) by omitting from subsection (3) “against the government of a foreign country” and substituting “in a foreign State”; and

- (d) by inserting after paragraph (3) (a) the following paragraph:

“(aa) engaging in armed hostilities in the foreign State;”.

**Preparations for incursions into foreign States for purpose of engaging in hostile activities**

**23.** Section 7 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (f) “or” (last occurring);

- (b) by adding at the end of subsection (1) the following word and paragraph:

“; or (h) being the owner, charterer, lessee, operator, agent or master of a vessel or the owner, charterer, lessee, operator or pilot in charge of an aircraft, knowingly permit the vessel or aircraft to be used for the purpose of committing, or supporting or promoting the commission of, an offence against paragraph (a), (b), (c), (d), (e) or (f).”;

- (c) by inserting after subsection (1) the following subsections:

“(1A) A reference in subsection (1) to the commission of an offence against section 6 is a reference to the doing of an act that would constitute, or would but for subsection 6 (2) constitute, an offence against section 6.

“(1B) A person shall not be taken to have committed an offence against this section merely because of doing an act by way of, or for the purposes of, the provision of aid of a humanitarian nature.”; and

- (d) by omitting paragraph (2) (b) and substituting the following paragraph:

“(b) the person was present in Australia at any time during the period of one year immediately preceding the doing of that act and, at any time when the person was so present, his or her presence was for a purpose connected with that act, or for purposes that included such a purpose.”.

**Recruiting persons to serve in or with an armed force in a foreign State**

24. Section 9 of the Principal Act is amended:

- (a) by omitting from subsection (1) “Penalty: \$10,000 or imprisonment for 5 years.” and substituting:

“Penalty:

- (a) if the person is a natural person—\$20,000 or imprisonment for 7 years, or both; or  
(b) if the person is a body corporate—\$100,000.”;
- (b) by inserting in subsection (2) “or subject to specified conditions” after “in particular circumstances”; and
- (c) by inserting in subsection (2) “or where those conditions are complied with” after “in those circumstances”.

25. After section 10 of the Principal Act the following section is added:

**Certificates of Ministers**

“11. (1) In a proceeding against a person for an offence against this Act in relation to a foreign State, a certificate by a Minister, stating that a place or an area specified in the certificate is or is in, or on a specified day or during a specified period was or was in, an independent sovereign state is conclusive evidence of the matters stated in the certificate.

“(2) In a proceeding against a person for an offence against this Act, a certificate by a Minister stating that, if the person had done an act specified in the certificate, being an act alleged to constitute the offence, the person would not have been acting in the course of the person’s duty to the Commonwealth in relation to the defence of Australia is *prima facie* evidence of the matters stated in the certificate.

“(3) In a proceeding against a person for an offence against this Act in relation to the government of a foreign State or a part of a foreign State, a certificate by a Minister stating that an authority described in the certificate is, or on a specified day or during a specified period was, in effective governmental control in a specified foreign State, or in a specified part of a foreign State, is *prima facie* evidence of the matters stated in the certificate.

“(4) A reference in this section to an offence against this Act includes a reference to an offence against:

- (a) section 6, 7 or 7A of the *Crimes Act 1914*; or  
(b) subsection 86 (1) of that Act by virtue of paragraph (a) of that subsection;

that relates to this Act.”.

**Other amendments**

26. The Principal Act is further amended as set out in Schedule 2.

**PART V—AMENDMENTS OF THE CRIMES (INTERNATIONALLY PROTECTED PERSONS) ACT 1976**

**Principal Act**

27. In this Part, “Principal Act” means the *Crimes (Internationally Protected Persons) Act 1976*.

**Offences**

28. Section 8 of the Principal Act is amended:

(a) by omitting subsection (3) and substituting the following subsections:

“(3) A person who intentionally destroys or damages (otherwise than by means of fire or explosive):

- (a) any official premises, private accommodation or means of transport, of an internationally protected person; or
- (b) any other premises or property in or upon which an internationally protected person is present, or is likely to be present;

is guilty of an offence against this Act and is punishable upon conviction by imprisonment for a period not exceeding 10 years.

“(3A) A person who intentionally destroys or damages (otherwise than by means of fire or explosive):

- (a) any official premises, private accommodation or means of transport, of an internationally protected person; or
- (b) any other premises or property in or upon which an internationally protected person is present, or is likely to be present;

with intent to endanger the life of that internationally protected person by that destruction or damage is guilty of an offence against this Act and is punishable upon conviction by imprisonment for a period not exceeding 20 years.

“(3B) A person who intentionally destroys or damages by means of fire or explosive:

- (a) any official premises, private accommodation or means of transport, of an internationally protected person; or
- (b) any other premises or property in or upon which an internationally protected person is present, or is likely to be present;

is guilty of an offence against this Act and is punishable upon conviction by imprisonment for a period not exceeding 15 years.

“(3C) A person who intentionally destroys or damages by means of fire or explosive:

- (a) any official premises, private accommodation or means of transport, of an internationally protected person; or

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(b) any other premises or property in or upon which an internationally protected person is present, or is likely to be present;

with intent to endanger the life of that internationally protected person by that destruction or damage is guilty of an offence against this Act and is punishable upon conviction by imprisonment for a period not exceeding 25 years.”;

(b) by omitting from subsection (4) “or (3)” and substituting “, (3), (3A), (3B) or (3C)”;

(c) by inserting in subsection (5) “, (3A), (3B), (3C)” after “(3)”;

(d) by omitting from paragraph (7) (b) “and”; and

(e) by adding at the end of subsection (7) the following paragraphs:

“(d) a person who destroys or damages any official premises, private accommodation or means of transport or any other premises or property shall be taken to have done so intentionally if the person acted:

(i) with intent to destroy or damage those premises or that property; or

(ii) in the knowledge or belief that the actions were likely to result in the destruction of, or damage to, those premises or that property; and

(e) a person who destroys or damages any official premises, private accommodation or means of transport or any other premises or property shall be taken to have intended to endanger the life of another person by that destruction or damage if the first-mentioned person acted:

(i) with intent to endanger the life of that other person; or

(ii) in the knowledge or belief that the actions were likely to endanger the life of that other person.”.

**Other amendments**

29. The Principal Act is further amended as set out in Schedule 3.

**PART VI—AMENDMENT OF THE INCOME TAX ASSESSMENT ACT 1936**

**Principal Act**

30. In this Part, “Principal Act” means the *Income Tax Assessment Act 1936*.

31. After section 16 of the Principal Act the following section is inserted in Part II:

**Provisions relating to the Fitzgerald inquiry**

“16A. (1) In this section:

‘inquiry’ means the inquiry being made by Gerald Edward Fitzgerald Q.C. under the Order in Council that was made under *The Commissions of Inquiry Act of 1950* of the State of Queensland and published in the Queensland Government Gazette, on 26 May 1987, at pages 758A and 758B, being that Order in Council as amended by:

- (a) the Order in Council made under that Act and published in the Queensland Government Gazette, on 24 June 1987, at pages 1841A and 1841B; and
- (b) any other instrument, whether made before or after the commencement of this section;

‘proceeds of crime proceedings’ means proceedings under the *Proceeds of Crime Act 1987* or a law of the State of Queensland relating to the restraint of dealing with, or the confiscation of, proceeds of crime, being:

- (a) if the proceedings relate to a tax-related offence—proceedings commenced before or after a conviction for that offence; and
- (b) if the proceedings relate to any other offence—proceedings commenced after a conviction for that offence;

‘State Attorney-General’ means the Attorney-General of the State of Queensland;

‘State Commissioner’ means Gerald Edward Fitzgerald Q.C., in his capacity as the person making the inquiry;

‘State Police Commissioner’ means the Commissioner of the Police Force of the State of Queensland or a person for the time being performing the duties of that Commissioner.

“(2) In this section, ‘Director of Public Prosecutions’, ‘officer’, ‘Special Prosecutor’ and ‘tax-related offence’ have the same respective meanings as in section 16.

“(3) Nothing in section 16 shall be deemed to prohibit the Commissioner of Taxation, a Second Commissioner or a Deputy Commissioner, or any person authorised by the Commissioner, a Second Commissioner or a Deputy Commissioner, from communicating any information to the State Commissioner for the purposes of the inquiry.

“(4) Subject to subsections (8) and (9), where information respecting the affairs of a person is communicated to the State Commissioner, the State Commissioner may:

- (a) in a manner that does not identify, and is not reasonably capable of being used to identify, the person to whom the information relates:



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- (i) communicate the information to the Governor of the State of Queensland in a report by the State Commissioner; or
- (ii) divulge the information in the course of a proceeding conducted by the State Commissioner, other than a proceeding conducted in private;
- (b) divulge the information in the course of a proceeding conducted in private by the State Commissioner;
- (c) communicate the information to the Attorney-General if the State Commissioner is of the opinion that the information indicates that a person may have committed an offence against an Act punishable by imprisonment for life or for a period exceeding 6 months;
- (d) communicate the information to the State Attorney-General if the State Commissioner is of the opinion that the information indicates that a person may have committed an offence against a law of the State of Queensland punishable by imprisonment for life or for a period exceeding 6 months;
- (e) communicate the information to the Director of Public Prosecutions or a Special Prosecutor if the State Commissioner is of the opinion that the information relates, or may relate, to an investigation of a tax-related offence or to proceeds of crime proceedings, being proceedings under the *Proceeds of Crime Act 1987*; and
- (f) communicate the information to the Director of Prosecutions of the State of Queensland if the State Commissioner is of the opinion that the information relates, or may relate, to proceeds of crime proceedings, being proceedings under a law of the State of Queensland relating to the restraint of dealing with, or the confiscation of, proceeds of crime.

“(5) Where information respecting the affairs of a person is communicated to the State Commissioner under this section, the State Commissioner may divulge or communicate the information to a person or employee under the control of the State Commissioner for the purposes of, or in connection with, the inquiry but shall not, except under subsection (4), otherwise divulge or communicate the information.

“(6) Where the State Commissioner ceases to be the State Commissioner, he shall not in any circumstances make a record of, or divulge or communicate, any information respecting the affairs of a person that was communicated to the State Commissioner under this section.

“(7) A person to whom information has been communicated under subsection (5) or this subsection shall not:

- (a) while he or she is a person or employee under the control of the State Commissioner—divulge or communicate the information except to the State Commissioner, or another person or employee under the control of the State Commissioner, for the purposes of, or in connection with, the inquiry; or

- (b) after he or she ceases to be such a person or employee—in any circumstances make a record of, or divulge or communicate, the information.

“(8) Where information respecting the affairs of a person is communicated to the State Commissioner under this section, nothing in this section prevents the communication of the information to:

- (a) if the person to whose affairs the information relates is not a company—that person;
- (b) if the person to whose affairs the information relates is a company:
  - (i) any person who is, or has been, a director or officer of the company; or
  - (ii) any person who is, or has been, directly involved in, or responsible for, the preparation of information given to the Commissioner of Taxation on behalf of the company; or
- (c) the person who gave the information to the Commissioner of Taxation.

“(9) Where the communication of information to a person is permitted under subsection (8), nothing in this section prevents the communication of the information to a barrister or solicitor appearing before the State Commissioner for the purpose of representing the person.

“(10) Where information is communicated to a person under subsection (8) or (9) or paragraph (4) (b), being information that was not given to the Commissioner of Taxation by the person and does not relate to the affairs of the person, the person shall not in any circumstances make a record of, or divulge or communicate, the information.

“(11) Where information is communicated to the Attorney-General under this section:

- (a) the Attorney-General may communicate the information to the Commissioner of Police;
- (b) the Attorney-General shall not otherwise divulge or communicate the information except to a person or employee under the control of the Attorney-General for the purpose of, or in connection with, the performance by the Attorney-General of the function under paragraph (a);
- (c) a person who has ceased to be the Attorney-General shall not in any circumstances make a record of, or divulge or communicate, the information; and
- (d) a person to whom information has been communicated under paragraph (b) or this paragraph shall not:
  - (i) while he or she is a person or employee under the control of the Attorney-General—divulge or communicate the information except to the Attorney-General, or another person or employee under the control of the Attorney-General, for the purposes of, or in connection with, the

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performance by the Attorney-General of the function under paragraph (a); or

- (ii) after he or she ceases to be such a person or employee—in any circumstances make a record of, or divulge or communicate, the information.

“(12) Where information is communicated to the State Attorney-General under this section:

- (a) the State Attorney-General may communicate the information to the State Police Commissioner;
- (b) the State Attorney-General shall not otherwise divulge or communicate the information except to a person or employee under the control of the State Attorney-General for the purpose of, or in connection with, the performance by the State Attorney-General of the function under paragraph (a);
- (c) a person who has ceased to be the State Attorney-General shall not in any circumstances make a record of, or divulge or communicate, the information; and
- (d) a person to whom information has been communicated under paragraph (b) or this paragraph shall not:
  - (i) while he or she is a person or employee under the control of the State Attorney-General—divulge or communicate the information except to the State Attorney-General, or another person or employee under the control of the State Attorney-General, for the purposes of, or in connection with, the performance by the State Attorney-General of the function under paragraph (a); or
  - (ii) after he or she ceases to be such a person or employee—in any circumstances make a record of, or divulge or communicate, the information.

“(13) Where information is communicated to the Commissioner of Police or the State Police Commissioner under this section:

- (a) that Commissioner shall not divulge or communicate the information except to a person or employee under the control of that Commissioner for the purposes of, or in connection with, the performance by that person or employee of the duties of his or her office or employment;
- (b) a person who has ceased to be the Commissioner of Police or the State Police Commissioner, as the case may be, shall not in any circumstances make a record of, or divulge or communicate, the information; and
- (c) a person to whom information has been communicated by a Commissioner under paragraph (a) or this paragraph shall not:
  - (i) while he or she is a person or employee under the control of that Commissioner—divulge or communicate the information except to that Commissioner, or another person

- or employee under the control of that Commissioner, for the purposes of, or in connection with, the performance by that Commissioner of the duties of his or her office, or the performance by that person or employee of the duties of his or her office or employment, as the case may be; or
- (ii) after he or she ceases to be such a person or employee— in any circumstances make a record of, or divulge or communicate, the information.

“(14) Where information is communicated to the Director of Public Prosecutions or the Director of Prosecutions of the State of Queensland under this section:

- (a) that Director shall not divulge or communicate the information except to a person or employee under the control of that Director for the purposes of, or in connection with, the performance by that person or employee of the duties of his or her office or employment;
- (b) a person who is no longer the Director of Public Prosecutions or the Director of Prosecutions of the State of Queensland, as the case may be, shall not in any circumstances make a record of, or divulge or communicate, the information; and
- (c) a person to whom information has been communicated by a Director under paragraph (a) or this paragraph shall not:
- (i) while he or she is a person or employee under the control of that Director—divulge or communicate the information except to that Director, or to another person or employee under the control of that Director, for the purposes of, or in connection with, the performance by that Director of the duties of his or her office, or the performance by that person or employee of the duties of his or her office or employment, as the case may be; or
- (ii) after he or she ceases to be such a person or employee— in any circumstances make a record of, or divulge or communicate, the information.

“(15) Where information is communicated to a Special Prosecutor under this section:

- (a) the Special Prosecutor shall not divulge or communicate the information except to a person or employee under his or her control for the purposes of, or in connection with, the performance by that person or employee of the duties of his or her office or employment;
- (b) a person who is no longer a Special Prosecutor shall not, in any circumstances, make a record of, or divulge or communicate, the information; and
- (c) a person to whom information has been communicated under paragraph (a) or this paragraph shall not:

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- (i) while he or she is a person or employee under the control of the Special Prosecutor—divulge or communicate the information except to the Special Prosecutor, or to another person or employee under the control of the Special Prosecutor, for the purposes of, or in connection with, the performance by the Special Prosecutor of the duties of his or her office, or the performance by that other person or employee of the duties of his or her office or employment, as the case may be; or
- (ii) when he or she is no longer such a person or employee—in any circumstances, make a record of, or divulge or communicate, the information.

“(16) In this section:

- (a) a reference to a person under the control of the State Commissioner includes a reference to:
  - (i) a barrister or solicitor appointed by the State Attorney-General to assist the State Commissioner;
  - (ii) a person assisting a barrister or solicitor so appointed; and
  - (iii) a member of the police force of the State of Queensland assigned to the inquiry to carry out an investigation on behalf of, or under the control of, the State Commissioner;
- (b) a reference to a person under the control of the Attorney-General includes a reference to:
  - (i) an officer of, or a person employed in, the Attorney-General’s Department;
  - (ii) a person holding office, or employed, under an Act administered by the Attorney-General; and
  - (iii) a person under the control of a person referred to in subparagraph (ii); and
- (c) a reference to a person under the control of the State Attorney-General includes a reference to:
  - (i) an officer of, or a person employed in, the Department of Justice of the State of Queensland;
  - (ii) a person holding office, or employed, under a law of that State administered by the State Attorney-General; and
  - (iii) a person under the control of a person referred to in subparagraph (ii).

“(17) A person to whom information has been communicated under this section shall not be required to divulge or communicate that information to any court.

“(18) Where information is communicated to a person under paragraph (4) (e) or (f) or subsection (14) or (15), nothing in subsection (14) or (15) prevents:

- (a) the communication of the information to another person for the purposes of, or in connection with, the prosecution of a person for a tax-related offence or proceeds of crime proceedings against a person; or
- (b) if the information is admissible in the prosecution of a person for a tax-related offence, or in proceeds of crime proceedings against a person, the communication of the information to a court in proceedings before that court against the last-mentioned person for that offence or in those proceeds of crime proceedings, as the case may be.

“(19) A person to whom information has been communicated under paragraph (18) (a) shall not make a record of, or divulge or communicate, the information except for the purposes of, or in connection with, the prosecution of a person for a tax-related offence or proceeds of crime proceedings against a person.

Penalty: \$5,000 or imprisonment for 12 months, or both.”.

## **PART VII—AMENDMENT OF THE TAXATION ADMINISTRATION ACT 1953**

### **Principal Act**

**32.** In this Part, “Principal Act” means the *Taxation Administration Act 1953*<sup>6</sup>.

### **Provision of taxation information to National Crime Authority**

**33.** Section 3D of the Principal Act is amended:

- (a) by omitting subsection (2) and substituting the following subsection:

“(2) Where:

- (a) information has, whether before or after the commencement of this section, been communicated to a Royal Commission under paragraph 16 (4) (k) of the *Income Tax Assessment Act 1936*; or

- (b) information has been communicated to the State Commissioner under section 16A of that Act;

and the Royal Commission or the State Commissioner, as the case may be, is of the opinion that the information is or may be relevant to a tax-related investigation, the Royal Commission or State Commissioner may communicate the information to the Authority in spite of subsection 16 (4A) or section 16A of that Act, as the case may be.”;

- (b) by inserting in subsection (3) “or section 16A” after “subsection 16 (4A)”;
- (c) by inserting in subsection (22) the following definitions:

“‘inquiry’ means the inquiry being made by Gerald Edward Fitzgerald Q.C. under the Order in Council that was made

under *The Commissions of Inquiry Act of 1950* of the State of Queensland and published in the Queensland Government Gazette, on 26 May 1987, at pages 758A and 758B, being that Order in Council as amended by:

- (a) the Order in Council made under that Act and published in the Queensland Government Gazette, on 24 June 1987, at pages 1841A and 1841B; and
- (b) any other instrument, whether made before or after the commencement of this section;

'State Commissioner' means Gerald Edward Fitzgerald Q.C., in his capacity as the person making the inquiry;".

## **PART VIII—AMENDMENTS OF THE PROCEEDS OF CRIME ACT 1987**

### **Principal Act**

34. In this Part, "Principal Act" means the *Proceeds of Crime Act 1987*.

### **Interpretation**

35. Section 4 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

"(3) A reference in this Act to a benefit derived by a person includes a reference to:

- (a) a benefit derived, directly or indirectly, by the person; and
- (b) a benefit derived, directly or indirectly, by another person at the request or direction of the first person."

### **Forfeiture of all restrained property if person convicted of serious offence**

36. Section 30 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (c) "is not made by virtue of subparagraph 44 (7) (a) (ii) and"; and
- (b) by inserting after subsection (8) the following subsection:

"(8A) Where a court makes a restraining order in reliance on a person's conviction of a serious offence, a person may apply to the court for a declaration that property that was subject to the restraining order has been forfeited to the Commonwealth under subsection (1) and the court, if satisfied that the property has been forfeited to the Commonwealth under that subsection, shall make a declaration accordingly."

### **Recovery of property to which section 30 applies**

37. Section 31 of the Principal Act is amended:

- (a) by omitting from subparagraph (6) (a) (i) "and";
- (b) by inserting after subparagraph (6) (a) (i) the following subparagraph:

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- “(ia) the applicant’s interest in the property is not subject to the effective control of the defendant; and”;
- (c) by omitting subparagraph (6) (b) (i) and substituting the following subparagraph:
- “(i) the property was not used in, or in connection with, any unlawful activity and was not derived or realised, directly or indirectly, by any person from any unlawful activity;”;
- (d) by inserting after subsection (7) the following subsections:
- “(7A) A person who makes an application under subsection (1) in respect of property shall give notice to the DPP and the Minister, as prescribed, of the making of the application.
- “(7B) The DPP shall be a party to any proceedings upon an application under subsection (1) and the Minister may intervene in any such proceedings.”; and
- (e) by inserting in subsection (8) the following definition:
- “‘defendant’, in relation to property forfeited to the Commonwealth under section 30, means the person by virtue of whose conviction the property is forfeited;”.

**Search warrants in relation to tainted property**

**38.** Section 36 of the Principal Act is amended:

- (a) by inserting in subsection (1) “, or may be within the next following 72 hours,” after “there is”; and
- (b) by inserting in subsection (3) “, or may be within the next following 72 hours,” after “there is”.

**Searches in emergencies**

**39.** Section 38 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following subsections:

“(1) Where a police officer suspects, on reasonable grounds, that particular property is tainted property, the police officer may:

- (a) search a person for the property and, if the property is found in the course of the search, seize the property; or
- (b) enter upon land, or upon or into premises, and search for the property and, if the property is found in the course of the search, seize the property.

“(2) A police officer shall not exercise a power under subsection (1) unless:

- (a) the police officer believes, on reasonable grounds, that it is necessary to exercise the power in order to prevent the concealment, loss or destruction of the property; and
- (b) the circumstances are so serious and urgent that they require the immediate exercise of the power without the authority of an order of a court or of a warrant issued under this Act.



“(2A) Subsection (1) does not apply in respect of particular property unless an information has been laid in respect of the offence that the police officer believes, on reasonable grounds, to be the offence by reason of the commission of which the property is tainted property.

“(2B) If, in the course of searching, in accordance with subsection (1), for tainted property in relation to a particular indictable offence, a police officer finds:

- (a) property that the police officer believes, on reasonable grounds, to be tainted property in relation to another indictable offence; or
- (b) any thing that the police officer believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence;

and the police officer believes, on reasonable grounds, that it is necessary to seize that property or thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or the other offence, the police officer may seize that property or thing.”.

#### **Return of seized property**

**40.** Section 40 of the Principal Act is amended by omitting paragraph (4) (b) and substituting the following paragraph:

“(b) either of the following conditions is satisfied:

- (i) before the property was seized, a person had been convicted of a relevant offence or an information had been laid in respect of a relevant offence;
- (ii) before the property was seized, an information had not been laid in respect of a relevant offence, but an information was laid in respect of a relevant offence within 48 hours after the time when the property was seized; and”.

#### **Restraining orders**

**41.** Section 43 of the Principal Act is amended:

- (a) by omitting from paragraph (6) (b) “and”; and
- (b) by omitting paragraph (6) (c) and substituting the following paragraphs:

“(c) if the property consists, wholly or partly, of securities or investments—realising or otherwise dealing with the securities or investments; and

(d) if the property consists, wholly or partly, of a business:

- (i) employing, or terminating the employment of, persons in the business; and
- (ii) doing any other thing that is necessary or convenient for carrying on the business on a sound commercial basis.”.

**Grounds for making restraining order**

**42.** Section 44 of the Principal Act is amended:

- (a) by inserting in subsection (7) “and the offence concerned is an ordinary indictable offence” after “the defendant” (first occurring); and
- (b) by inserting after subsection (7) the following subsection:

“(7A) Where the application seeks a restraining order against specified property of a person other than the defendant and the offence concerned is a serious offence, the court shall not make a restraining order against the property unless:

- (a) the application is supported by an affidavit of a police officer stating that:
  - (i) the officer believes that the property is tainted property in relation to the offence; or
  - (ii) the officer believes that the property is subject to the effective control of the defendant; and
- (b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.”.

**Notice of application for restraining order**

**43.** Section 45 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

“(2) If the DPP requests the court to do so, the court shall consider the application without notice having been given in accordance with subsection (1) but, subject to subsection (3), a restraining order made by virtue of this subsection shall cease to have effect at the end of such period (not exceeding 14 days) as is specified by the court in the restraining order.”.

**Court may make further orders**

**44.** Section 48 of the Principal Act is amended:

- (a) by omitting paragraph (1) (c) and substituting the following paragraph:

“(c) an order for the examination on oath of:

- (i) a person (in this section called the ‘owner’) whose property is subject to the restraining order; or
- (ii) another person;

before the court or the registrar of the court concerning the affairs of the owner, including the nature and location of any property of the owner;”;

- (b) by omitting paragraph (3) (d) and substituting the following paragraph:

“(d) where the applicant is not the defendant and the offence is an ordinary indictable offence:

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- (i) if the restraining order was made against the property by virtue of subparagraph 44 (7) (a) (ii)—the court is satisfied that the interest is not tainted property and that:
  - (A) a pecuniary penalty order cannot be made against the defendant; or
  - (B) the applicant's interest in the property is not subject to the effective control of the defendant; or
- (ii) in any other case—the court is satisfied that the interest is not tainted property.”;
- (c) by omitting subparagraphs (1) (e) (ii) and (iii) and substituting the following subparagraphs:
  - “(ii) an order determining any question relating to the property to which the restraining order relates, including any question relating to:
    - (A) the liabilities of the owner; or
    - (B) the exercise of the powers, or the performance of the duties, of the Official Trustee;with respect to the property to which the restraining order relates;
  - (iii) an order directing:
    - (A) the owner; or
    - (B) if the owner is a body corporate—a director of the body corporate specified by the court;to furnish to the Official Trustee, within a period specified in the order, a statement verified by the oath of the person making the statement, setting out such particulars of the property, or dealings with the property, of the owner as the court thinks proper.”;
- (d) by omitting from paragraph (2) (b) “respondent” and substituting “owner”;
- (e) by omitting from paragraph (3) (f) “44 (7) (a) (ii)” and substituting “subsection 44 (7A)”;
- (f) by omitting from paragraph (3) (f) “or” (last occurring);
- (g) by inserting after paragraph (3) (f) the following paragraph:
  - “(fa) where the applicant is not the defendant and the restraining order was made by virtue of subsection 44 (7A)—the court is satisfied that:
    - (i) the applicant was not, in any way, involved in the commission of the offence;
    - (ii) the property is not tainted property in relation to the offence; and

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- (iii) the applicant's interest in the property is not subject to the effective control of the defendant; or";
- (h) by omitting subparagraph (4) (e) (i) and substituting the following subparagraph:
  - "(i) the property was not used in, or in connection with, any unlawful activity and was not derived, directly or indirectly, by any person from any unlawful activity;"; and
- (j) by inserting in subsection (5) "forfeiture or" after "liable to".

**45.** Section 67 of the Principal Act is repealed and the following section is substituted:

**Variation of production orders**

"67. Where a Judge of a Supreme Court makes a production order requiring a person to produce a document to a police officer, the person may apply to the Judge or another Judge of that Court for a variation of the order and if the Judge hearing the application is satisfied that the document is essential to the business activities of the person, he or she may vary the production order so that it requires the person to make the document available to a police officer for inspection."

**Search warrant for location etc. of property**

**46.** Section 71 of the Principal Act is amended:

- (a) by inserting in paragraph (1) (a) ", or may be within the next following 72 hours," after "there is";
- (b) by inserting in paragraph (1) (a) "in a State or Territory" after "premises,";
- (c) by inserting in subparagraph (1) (b) (ii) ", or may be within the next following 72 hours," after "there is";
- (d) by inserting in subparagraph (1) (b) (ii) "in a State or Territory" after "premises,"; and
- (e) by omitting from subparagraph (1) (c) (ii) "in which the document is believed to be located" and substituting "referred to in paragraph (a) or (b)".

**Repeal of sections 79 and 80**

**47.** Sections 79 and 80 of the Principal Act are repealed.

**Duration of registration**

**48.** Section 88 of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:

- "(a) the court in which it is registered receives notice that it has ceased to be in force in the State in which it was made; or".

**49.** After section 102 of the Principal Act the following section is inserted:

**Indemnification of Official Trustee**

“102A. (1) The Commonwealth is, by force of this subsection, liable to indemnify the Official Trustee against any personal liability (including any personal liability as to costs) incurred by it for any act done, or omitted to be done, by it in the exercise, or purported exercise, of its powers and duties under this Act.

“(2) Nothing in subsection (1) affects:

- (a) any right that the Official Trustee has, apart from that subsection, to be indemnified in respect of any personal liability referred to in that subsection; or
- (b) any other indemnity given to the Official Trustee in respect of any such personal liability.

“(3) Where the Commonwealth makes a payment in accordance with the indemnity referred to in subsection (1), the Commonwealth has the same right of reimbursement in respect of the payment (including reimbursement under another indemnity given to the Official Trustee) as the Official Trustee would have if the Official Trustee had made the payment.”.

**Other amendments**

50. The Principal Act is further amended as set out in Schedule 4.

**PART IX—AMENDMENT OF THE ROYAL COMMISSIONS ACT  
1902**

**Principal Act**

51. In this Part, “Principal Act” means the *Royal Commissions Act 1902*<sup>8</sup>.

52. After section 7C of the Principal Act the following section is inserted:

**Certain evidence before a State Commission inadmissible in  
Commonwealth proceedings**

“7D. (1) In this section:

‘Commissioner’ means Gerald Edward Fitzgerald Q.C., in his capacity as the person making the inquiry;

‘Commonwealth proceedings’ means proceedings in a court of the Commonwealth, of a State or of a Territory, whether instituted before or after the commencement of this section, being:

- (a) criminal proceedings under a law of the Commonwealth or of a Territory (other than the Northern Territory); or
- (b) civil proceedings instituted by, or on behalf of, the Commonwealth;

‘inquiry’ means the inquiry being made by Gerald Edward Fitzgerald Q.C. under the Order in Council that was made under *The*

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*Commissions of Inquiry Act of 1950* of the State of Queensland and published in the Queensland Government Gazette, on 26 May 1987, at pages 758A and 758B, being that Order in Council as amended by:

- (a) the Order in Council made under that Act and published in the Queensland Government Gazette, on 24 June 1987, at pages 1841A and 1841B; and
- (b) any other instrument, whether made before or after the commencement of this section;

'State law' means subsection 14 (2) of *The Commissions of Inquiry Act of 1950* of the State of Queensland.

"(2) Where the State law would not render a statement or disclosure made by a witness in answer to a question put to the witness by or before the Commissioner inadmissible against the witness in Commonwealth proceedings, the statement or disclosure is, by force of this section, inadmissible against the witness in any such proceedings."

**PART X—AMENDMENT OF THE TELECOMMUNICATIONS  
(INTERCEPTION) AMENDMENT ACT 1987**

**Principal Act**

53. In this Part, "Principal Act" means the *Telecommunications (Interception) Amendment Act 1987*<sup>9</sup>.

**Commencement**

54. Section 2 of the Principal Act is amended by inserting after subsection (1) the following subsection:

"(1A) Section 5 (other than paragraph 5 (1) (b)) and sections 6 and 8 shall come into operation on the day on which the *Crimes Legislation Amendment Act 1987* receives the Royal Assent."

**PART XI—AMENDMENTS OF THE TELECOMMUNICATIONS  
(INTERCEPTION) ACT 1979**

**Principal Act**

55. In this Part, "Principal Act" means the *Telecommunications (Interception) Act 1979*<sup>10</sup>.

**Interpretation**

56. Section 5 of the Principal Act is amended by omitting "Part" from paragraphs (a) and (b) of the definition of "agency" in subsection (1) and substituting "Parts IIA and".

**Judges**

57. Section 6D of the Principal Act is amended by inserting in subsection (1) " , unless the contrary intention appears" after "Act".

**Lawfully obtained information**

58. Section 6E of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

“(2) A reference in this Act to lawfully obtained information that was originally obtained by an agency, or by an eligible authority of a State, is a reference to:

- (a) in any case—information obtained, whether before or after the commencement of this section, by intercepting a communication under a warrant issued to the agency or authority; or
- (b) in the case of the Australian Federal Police:
  - (i) information communicated in accordance with section 65A; or
  - (ii) information obtained, whether before or after the commencement of this section, by virtue of a warrant issued under Part IV.”.

59. After Part II of the Principal Act the following Part is inserted:

**“PART IIA—COMMUNICATING CERTAIN INFORMATION TO  
THE FITZGERALD INQUIRY**

**Interpretation**

“8A. In this Part, unless the contrary intention appears:

‘Commissioner’ means Gerald Edward Fitzgerald Q.C., in his capacity as the person making the inquiry;

‘eligible information’ means information:

- (a) obtained by an eligible interception of a communication passing over a telecommunications system; and
- (b) relating to one or more of the following matters:
  - (i) the fact that the communication passed over that system;
  - (ii) the day on which, and the time at which, the communication passed over that system;
  - (iii) the duration of the communication;
  - (iv) the identity of a telecommunications service from which the communication was made;
  - (v) the identity of a telecommunications service to which the communication was made or directed;

but does not include information obtained by intercepting a conversation, or part of a conversation, being a conversation or part constituting all or part of the communication;

‘eligible interception’ means an interception:

- (a) otherwise than in contravention of subsection 7(1) and whether before or after the commencement of this Part; or

(b) in contravention of subsection 7(1) and before the commencement of this Part;

of a communication passing over a telecommunications system;

'inquiry' means the inquiry being made by Gerald Edward Fitzgerald Q.C. under the Order in Council that was made under *The Commissions of Inquiry Act of 1950* of the State of Queensland and published in the Queensland Government Gazette, on 26 May 1987, at pages 758A and 758B, being that Order in Council as amended by:

- (a) the Order in Council made under that Act and published in the Queensland Government Gazette, on 24 June 1987, at pages 1841A and 1841B; and
- (b) any other instrument, whether made before or after the commencement of this Part.

### **Communicating information to the Commissioner**

"8B. A person may, for a purpose connected with the inquiry, or for 2 or more such purposes, and for no other purpose, communicate eligible information to, or give eligible information in evidence before, the Commissioner.

### **Further dealing by the Commissioner for purposes of the inquiry**

"8C. (1) The Commissioner may, for a purpose connected with the inquiry, or for 2 or more such purposes, and for no other purpose, communicate to a person, make use of, or make a record of, eligible information.

"(2) Without limiting the generality of subsection (1), the Commissioner may include eligible information in any report about the inquiry and, if he does so, subsection 7(4) does not apply in relation to the contents of the report or of any part of it.

### **Commissioner may communicate certain information to law enforcement agencies**

"8D. The Commissioner may, personally, or by a person authorised by him, communicate eligible information that was communicated to, or given in evidence before, the Commissioner under section 8B:

- (a) if the information relates, or appears to relate, to the commission of a relevant offence in relation to an agency:
  - (i) if the agency is the Australian Federal Police or the Police Force of a State—to a member of the Australian Federal Police or an officer of that Police Force, as the case may be; or
  - (ii) in any other case—to the chief officer of the agency;
- (b) if the information relates, or appears to relate, to:
  - (i) the subject matter of a proceeding under a law of the Commonwealth for the confiscation or forfeiture of property,



or for the imposition of a pecuniary penalty, in connection with the commission of a prescribed offence;

- (ii) an act or omission by a member of the Australian Federal Police that may give rise to a proceeding against that member, or to which a proceeding against that member relates, being a police disciplinary proceeding; or
- (iii) misbehaviour or improper conduct of an officer of the Commonwealth;

to the Commissioner of Police; and

(c) if the information relates, or appears to relate, to:

- (i) the subject matter of a proceeding under a law of a State for the confiscation or forfeiture of property, or for the imposition of a pecuniary penalty, in connection with the commission of a prescribed offence;
- (ii) an act or omission by an officer of the Police Force of a State that may give rise to a proceeding against that officer, or to which a proceeding against that officer relates, being a police disciplinary proceeding; or
- (iii) misbehaviour or improper conduct of an officer of a State;

to the Commissioner of the Police Force of that State.

#### **Making record for purpose of permitted communication**

“8E. A person whom section 8B or 8D permits to communicate particular information to another person may, for the purpose of so communicating the information in accordance with that section, make a record of the information, or cause such a record to be made.

#### **Further dealing for permitted purpose in relation to agency**

“8F. An officer of an agency may, for a permitted purpose, or permitted purposes, in relation to the agency, and for no other purpose, communicate to another person, make use of, or make a record of, eligible information that the Commissioner has, in accordance with section 8D, communicated to an officer of that agency.

#### **Further dealing by recipient under section 8C or 8F**

“8G. A person to whom information has, in accordance with subsection 8C (1), section 8F or this section, been communicated for a purpose, or for 2 or more purposes, may, for that purpose, or for one or more of those purposes, and for no other purpose, communicate to another person, make use of, or make a record of, that information.

#### **Giving certain information in evidence in an exempt proceeding**

“8H. (1) Where a person has communicated eligible information to, or given eligible information in evidence before, the Commissioner under section 8B, the person, or any other person, may give the information in evidence in an exempt proceeding, whether begun before or after the commencement of this Part.

“(2) For the purposes of applying subsection (1) in relation to information, the question whether or not a communication was intercepted in contravention of subsection 7 (1) may be determined on the balance of probabilities.

**Effect of this Part**

“8J. This Part has effect notwithstanding subsection 7 (4).”.

**Further dealing by the Commissioner for purposes of the inquiry**

60. Section 8C of the Principal Act is amended by omitting from subsection (2) “subsection 7 (4)” and substituting “section 63”.

**Effect of this Part**

61. Section 8J of the Principal Act is amended by omitting “subsection 7 (4)” and substituting “section 63”.

62. After section 63 of the Principal Act the following section is inserted:

**Dealing in connection with existing proceeding**

“63A. (1) A person may:

- (a) for a purpose connected with a proceeding begun before the commencement of this Part, or for 2 or more such purposes, and for no other purpose, communicate to another person, make use of, or make a record of; or
- (b) give in evidence in such a proceeding;

information:

- (c) obtained by intercepting a communication before that commencement, whether or not in contravention of subsection 7 (1); or
- (d) obtained, before that commencement, by virtue of a warrant issued under section 11 or 11A or Part IV.

“(2) Nothing in subsection (1) makes admissible in evidence in any proceedings information, obtained by virtue of a warrant that was defective, that would not have been admissible in those proceedings if that subsection had not been enacted.

“(3) For the purposes of this section, a proceeding by way of a prosecution of a person on indictment for an offence shall be deemed to have begun before the commencement of this Part if a proceeding with a view to the committal of the person for trial for the offence began before that commencement.

“(4) For the purposes of this section, a proceeding by way of an appeal from, or otherwise arising out of, another proceeding shall be deemed to have begun before the commencement of this Part if the other proceeding began, or by virtue of any other application or applications of this section is deemed to have begun, before that commencement.”.

63. After section 65 of the Principal Act the following section is inserted:

**Commission may communicate to Australian Federal Police**

“65A. An officer of the Commission may, for a purpose connected with the investigation by the Australian Federal Police of a serious offence, or for 2 or more such purposes, and for no other purpose, communicate to a member of the Australian Federal Police lawfully obtained information other than section 11A information.”.

**Making record for purpose of permitted communication**

64. Section 72 of the Principal Act is amended by inserting “or 65A” after “65”.

**Further dealing by recipient under section 63A, 67 or 71**

65. Section 73 of the Principal Act is amended by inserting “63A or” before “67”.

**Intercepted material inadmissible except as provided**

66. Section 77 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (a) “unless section” and substituting “except in so far as section 8H, 63A,”;
- (b) by omitting from paragraph (1) (b) “whether or not section” and substituting “the extent (if any) to which section 8H, 63A,”; and
- (c) by inserting in subsection (2) “63A or” before “74”.

**Where evidence otherwise inadmissible**

67. Section 78 of the Principal Act is amended by inserting “Part IIA or in” after “Nothing in”.

**PART XII—AMENDMENTS OF THE TRANSFER OF PRISONERS ACT 1983**

**Principal Act**

68. In this Part, “Principal Act” means the *Transfer of Prisoners Act 1983*<sup>11</sup>.

**Interpretation**

69. Section 3 of the Principal Act is amended:

- (a) by adding “and includes a prisoner upon whom a sentence of imprisonment was imposed for an offence against a law of the Northern Territory and who was, before 12 June 1985, removed to the State of South Australia under section 3 of the *Removal of Prisoners (Territories) Act 1923*” at the end of the definition of “Commonwealth prisoner” in subsection (1); and
- (b) by adding “or 16A” at the end of the definition of “return transfer order” in subsection (1).

**Application for transfer to stand trial on charge in respect of offence against a law of the Commonwealth or a Territory**

70. Section 8 of the Principal Act is amended:

- (a) by omitting from subsection (2) "appropriate Minister" and substituting "Attorney-General"; and
- (b) by omitting subsection (4).

**Application for transfer to stand trial on charge in respect of offence against a law of a State**

71. Section 9 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (c) "appropriate Minister" and substituting "Attorney-General";
- (b) by omitting from subsection (1) "that Minister" and substituting "that Attorney-General";
- (c) by omitting from subsection (2) "A Minister" and substituting "The Attorney-General";
- (d) by inserting in subsection (2) "of the Commonwealth" after "of the Attorney-General"; and
- (e) by omitting subsection (4).

**Revocation of return transfer orders**

72. Section 15 of the Principal Act is amended by inserting "under section 14" after "has been made".

73. After section 16 of the Principal Act the following section is inserted:

**Return of prisoner after attending appeal**

"16A. (1) Where:

- (a) a prisoner is transferred to a State or Territory under an order made under section 16 to attend a proceeding in that State or Territory;
- (b) the Attorney-General is satisfied that the proceeding (including any retrial that may have been ordered and any appeal or review arising from that proceeding or any such retrial) has been dealt with according to law; and
- (c) the prisoner has not been sentenced in that State or Territory to a term of imprisonment for an offence against a law of the Commonwealth or of that State or Territory that expires on a day later than the last day of any federal sentence, transferred sentence or translated sentence of the prisoner;

the Attorney-General shall serve a notice on the prisoner under subsection (2).

"(2) A notice shall state that unless:

- (a) the prisoner applies to the Attorney-General under subsection (3) by such date as is specified in the notice for an order declaring the prisoner to be an exempt prisoner; and

(b) the Attorney-General makes that order;  
the Attorney-General will make an order for the transfer of the prisoner from that State or Territory back to the State or Territory from which the prisoner has been transferred under section 16.

“(3) Subject to this section, upon application made to the Attorney-General by a prisoner upon whom a notice has been served, the Attorney-General may make an order declaring the prisoner to be an exempt prisoner.

“(4) An application shall set out such matters with respect to the welfare of the prisoner as the prisoner considers relevant.

“(5) The Attorney-General shall, in deciding whether to make an order declaring a prisoner to be an exempt prisoner, have regard to all matters that the Attorney-General considers relevant, including, but without limiting the generality of the foregoing:

- (a) the administration of justice; and
- (b) the welfare of the prisoner.

“(6) The Attorney-General shall not make an order declaring a prisoner who is serving a sentence of imprisonment in a State to be an exempt prisoner unless the appropriate Minister of that State has consented in writing to the making of that order.

“(7) Where:

- (a) a prisoner fails to apply in accordance with a notice for an order declaring the prisoner to be an exempt prisoner; or
- (b) a prisoner applies for such an order in accordance with a notice but the Attorney-General refuses to make the order;

the Attorney-General shall make the order for the transfer of the prisoner that is set out in the notice unless:

- (c) the Attorney-General has ceased to be satisfied with respect to the matter referred to in paragraph (1) (b); or
- (d) paragraph (1) (c) has ceased to apply in relation to the prisoner.

“(8) A return transfer order under this section shall come into force on a day specified in the order, being a day not later than 7 days after it is made.

“(9) For the purposes of this section, a sentence of imprisonment for an indeterminate period shall be taken to expire on a later day than the last day of any sentence of imprisonment for a finite period.”.

### **PART XIII—MISCELLANEOUS**

#### **Consequential amendments of other Acts**

**74.** (1) The *Acts Interpretation Act 1901*<sup>12</sup> is amended as set out in Schedule 5.

(2) The Acts specified in Schedule 6 are amended as set out in that Schedule.

**Application**

75. (1) In spite of the repeal of sections 12 and 12A of the *Crimes Act 1914*, those sections, as in force immediately before the commencing day, continue to apply in relation to offences in respect of which proceedings had been started before that day.

(2) In spite of the repeal of sections 42 and 43 of the *Acts Interpretation Act 1901*, those sections, as in force immediately before the commencing day, continue to apply in relation to offences committed before that day, whether or not proceedings in respect of those offences had been started before that day.

(3) Subsections 4J (1), (2), (3), (6) and (7) of the *Crimes Act 1914* extend to offences against a law of the Commonwealth (other than offences referred to in subsection (4)), being offences committed before the commencing day in respect of which proceedings are started on or after that day.

(4) Subsections 4J (1), (2) and (7) of the *Crimes Act 1914* extend to offences against that Act committed before the commencing day, being offences in respect of which proceedings are started on or after that day.

(5) Where an offence referred to in subsection (4) is dealt with by a court of summary jurisdiction under subsection 4J (1) of the *Crimes Act 1914*, the court may, unless the contrary intention appears, impose a sentence of imprisonment for a period not exceeding 12 months or a fine not exceeding \$2,000.

(6) Subsections 4J (4), (5), (6) and (7) of the *Crimes Act 1914* extend to offences against that Act committed before the commencing day, being offences in respect of which proceedings are started on or after that day.

(7) In this section, "commencing day" means the day on which this section comes into operation.

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**SCHEDULE 1**

Section 18

**OTHER AMENDMENTS OF THE CRIMES ACT 1914**

**Subsection 5 (1):**

Omit "or of a Territory".

**Section 6:**

Omit "or of a Territory".

**Section 7:**

Omit "or of a Territory".

**SCHEDULE 1—continued**

**Section 7A:**

Omit “or of a Territory”.

**Subsection 86 (3):**

Omit the subsection.

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**SCHEDULE 2**

Section 26

**OTHER AMENDMENTS OF THE CRIMES (FOREIGN INCURSIONS  
AND RECRUITMENT) ACT 1978**

**Section 5:**

Omit “his”, substitute “the person’s”.

**Paragraph 6 (3) (a):**

Omit “country”, substitute “State or of a part of the foreign State”.

**Paragraph 6 (3) (b):**

Omit “country”, substitute “State”.

**Subparagraph 6 (3) (c) (i):**

Omit “country”, substitute “State”.

**Subparagraph 6 (3) (c) (ii):**

Omit “country”, substitute “State or of a part of the foreign State”.

**Paragraph 6 (3) (d):**

Omit “country”, substitute “State or of a part of the foreign State”.

**Subsection 6 (4):**

Omit “his”, substitute “the person’s”.

**Paragraph 6 (4) (a):**

Omit “country”, substitute “State”.

**Paragraph 7 (1) (d):**

After “himself” (wherever occurring), insert “or herself”.

**Paragraph 7 (1) (g):**

Omit “this section”, substitute “paragraph (a), (b), (c), (d), (e) or (f)”.

**Paragraph 9 (1) (a):**

Omit “country” (wherever occurring), substitute “State”.

**SCHEDULE 2—continued**

**Subparagraph 9 (1) (c) (ii):**

Omit “country”, substitute “State”.

**Subsection 9 (2):**

Omit “him”, substitute “the Minister”.

**Subsection 9 (3):**

Omit “he”, substitute “the first-mentioned person”.

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**SCHEDULE 3**

Section 29

**OTHER AMENDMENTS OF THE CRIMES (INTERNATIONALLY  
PROTECTED PERSONS) ACT 1976**

**Subsection 3 (1) (definition of “Australian aircraft”):**

Omit “his”, substitute “the member’s”.

**Subsection 6 (2):**

Omit “he”, substitute “that person”.

**Subsection 6 (3):**

Omit “he”, substitute “that person”.

**Paragraph 8 (2) (b):**

Omit “14”, substitute “20”.

**Paragraph 8 (2) (c):**

Omit “7”, substitute “10”.

**Subsection 8 (6):**

(a) Omit “him” (wherever occurring), substitute “the person”.

(b) Omit “he”, substitute “the person”.

**Paragraph 8 (7) (a):**

Omit “him”, substitute “the person”.

**Section 9:**

Repeal the section.

**Subparagraph 11 (2) (b) (ii):**

Omit “he”, substitute “the person”.

**Subsection 11 (4):**

Omit “he” (wherever occurring), substitute “the Magistrate”.

**Subsection 11 (6):**

Omit “him” (wherever occurring), substitute “the person”.



**SCHEDULE 3—continued**

**Subsection 12 (2):**

Omit “his”, substitute “the person’s”.

**Section 17:**

- (a) Omit “his” (first occurring), substitute “the person’s”.
- (b) After “his” (second occurring), insert “or her”.

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**SCHEDULE 4**

Section 50

**OTHER AMENDMENTS OF THE PROCEEDS OF CRIME ACT 1987**

**Subsection 4 (1):**

Insert the following definitions:

“‘agent’ includes, if the agent is a corporation, the officers and agents of the corporation;

‘director’, in relation to a financial institution or a corporation, means:

- (a) if the institution or corporation is a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory—a constituent member of the body corporate;
- (b) any person occupying or acting in the position of director of the institution or corporation, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and
- (c) any person in accordance with whose directions or instructions the directors of the institution or corporation are accustomed to act;

‘executive officer’, in relation to a financial institution or a corporation, means any person, by whatever name called and whether or not he or she is a director of the institution or corporation, who is concerned, or takes part, in the management of the institution or corporation;

‘officer’ means a director, secretary, executive officer or employee;”.

**Section 4:**

Add at the end the following subsection:

“(8) For the purposes of this Act, a person shall not be regarded as a director within the meaning of paragraph (c) of the definition of ‘director’ in subsection (1) by reason only that the directors act on advice given by that person in the proper performance of the functions attaching to his or her professional capacity or to his or her business relationship with the directors of the financial institution or corporation, as the case may be.”.

**Paragraph 36 (9) (b):**

Omit “Commission”, substitute “commission”.

**SCHEDULE 4—continued**

**Paragraph 53 (1) (a):**

Omit “51”, substitute “49”.

**Subsection 53 (2):**

Omit “51 (1)”, substitute “49 (1) or (2)”.

**Paragraph 53 (2) (a):**

Omit “51”, substitute “49”.

**Subsection 66 (4):**

Omit “(8)”, substitute “(6)”.

**Subsection 73 (1):**

Omit “agency”, substitute “authority”.

**Subsection 74 (6):**

Omit the subsection.

**Subsection 74 (8):**

Omit the subsection.

**Section 84:**

Omit “75” (wherever occurring), substitute “74”.

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**SCHEDULE 5**

Subsection 74 (1)

**CONSEQUENTIAL AMENDMENTS OF THE ACTS  
INTERPRETATION ACT 1901**

**Section 24:**

Repeal the section.

**Paragraph 27 (a):**

Omit the paragraph.

**Paragraph 27 (d):**

Omit the paragraph.

**Section 30:**

Repeal the section.

**Part X:**

Repeal the Part.

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**SCHEDULE 6**

Subsection 74 (2)

**CONSEQUENTIAL AMENDMENTS OF OTHER ACTS**

***Removal of Prisoners (Australian Capital Territory) Act 1968***

**Subsection 7 (2):**

Omit "section 7,".

***Removal of Prisoners (Territories) Act 1923***

**Section 7:**

Repeal the section.

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**NOTES**

1. No. 41, 1958, as amended. For previous amendments, see No. 9, 1959; No. 21, 1963; No. 131, 1965; No. 93, 1966; No. 216, 1973; No. 37, 1976; No. 174, 1980; Nos. 26 and 80, 1982; No. 39, 1983; Nos. 72 and 120, 1984; No. 65, 1985; and No. 168, 1986.
2. No. 12, 1914, as amended. For previous amendments, see No. 6, 1915; No. 54, 1920; No. 9, 1926; No. 13, 1928; No. 30, 1932; No. 5, 1937; No. 6, 1941; No. 77, 1946; No. 80, 1950; No. 10, 1955; No. 11, 1959; No. 84, 1960; No. 93, 1966; Nos. 33 and 216, 1973; No. 56, 1975; No. 37, 1976; Nos. 19 and 155, 1979; No. 70, 1980; No. 122, 1981; Nos. 67, 80 and 153, 1982; Nos. 91, 114 and 136, 1983; Nos. 10, 63 and 165, 1984; No. 193, 1985; Nos. 76, 102 and 168, 1986; and No. 73, 1987.
3. No. 13, 1978.
4. No. 8, 1977, as amended. For previous amendments, see No. 155, 1979; and No. 70, 1980.
5. No. 27, 1936, as amended. For previous amendments, see No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; Nos. 1, 28, 45 and 81, 1953; No. 43, 1954; Nos. 18 and 62, 1955; Nos. 25, 30 and 101, 1956; Nos. 39 and 65, 1957; No. 55, 1958; Nos. 12, 70 and 85, 1959; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; Nos. 34 and 69, 1963; Nos. 46, 68, 110 and 115, 1964; Nos. 33, 103 and 143, 1965; Nos. 50 and 83, 1966; Nos. 19, 38, 76 and 85, 1967; Nos. 4, 70, 87 and 148, 1968; Nos. 18, 93 and 101, 1969; No. 87, 1970; Nos. 6, 54 and 93, 1971; Nos. 5, 46, 47, 65 and 85, 1972; Nos. 51, 52, 53, 164 and 165, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 26 and 126, 1974; Nos. 80 and 117, 1975; Nos. 50, 53, 56, 98, 143, 165 and 205, 1976; Nos. 57, 126 and 127, 1977; Nos. 36, 57, 87, 90, 123, 171 and 172, 1978; Nos. 12, 19, 27, 43, 62, 146, 147 and 149, 1979; Nos. 19, 24, 57, 58, 124, 133, 134 and 159, 1980; Nos. 61, 92, 108, 109, 110, 111, 154 and 175, 1981; Nos. 29, 38, 39, 76, 80, 106 and 123, 1982; Nos. 14, 25, 39, 49, 51, 54 and 103, 1983; Nos. 14, 42, 47, 63, 76, 115, 124, 165 and 174, 1984; No. 123, 1984 (as amended by No. 65, 1985); Nos. 47, 49, 104, 123 and 168, 1985; No. 173, 1985 (as amended by No. 49, 1986); Nos. 41, 46, 48, 49, 51, 52, 90, 109, 112 and 154, 1986; and Nos. 23, 58, 61, 62, 108, 138, 139, 145 and 163, 1987.

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6. No. 1, 1953, as amended. For previous amendments, see Nos. 28, 39, 40 and 52, 1953; No. 18, 1955; No. 39, 1957; No. 95, 1959; No. 17, 1960; No. 75, 1964; No. 155, 1965; No. 93, 1966; No. 120, 1968; No. 216, 1973; No. 133, 1974; No. 37, 1976; Nos. 19 and 59, 1979; Nos. 39 and 117, 1983; No. 123, 1984; No. 65, 1985 (as amended by No. 193, 1985); Nos. 4, 47, 104, 123 and 168, 1985; Nos. 41, 46, 48, 49, 112, 144 and 154, 1986; and Nos. 58, 62, 108, 138 and 145, 1987.
7. No. 87, 1987.
8. No. 12, 1902, as amended. For previous amendments, see No. 4, 1912; No. 1, 1933; No. 93, 1966; No. 216, 1973; No. 36, 1978; No. 19, 1979; Nos. 26 and 139, 1982; and No. 114, 1983.
9. No. 89, 1987.
10. No. 114, 1979, as amended. For previous amendments, see No. 181, 1979; Nos. 114 and 116, 1983; Nos. 6 and 116, 1984; Nos. 8 and 63, 1985; No. 102, 1986; and No. 89, 1987.
11. No. 95, 1983, as amended. For previous amendments, see No. 164, 1984.
12. No. 2, 1901, as amended. For previous amendments, see No. 4, 1916; No. 8, 1918; No. 23, 1930; No. 24, 1932; No. 10, 1937; No. 7, 1941; No. 78, 1947; No. 79, 1948; No. 80, 1950; No. 69, 1957; No. 19, 1963; No. 52, 1964; No. 93, 1966; Nos. 79 and 216, 1973; Nos. 37 and 144, 1976; No. 35, 1978; No. 1, 1980; No. 61, 1981; Nos. 26 and 80, 1982; No. 39, 1983; Nos. 27, 63, 72 and 165, 1984; and No. 193, 1985.

*[Minister's second reading speech made in—  
Senate on 5 November 1987  
House of Representatives on 8 December 1987]*