



Criminal Code Act 1995

No. 12 of 1995

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DICTIONARY



Criminal Code Act 1995

No. 12 of 1995

An Act relating to the criminal law

[Assented to 15 March 1995]

The Parliament of Australia enacts:

Short title

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

Commencement

2.(1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

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

The Criminal Code

3.(1) The Schedule has effect as a law of the Commonwealth.

(2) The Schedule may be cited as the *Criminal Code*.

Definitions

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

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

SCHEDULE

Section 3

THE CRIMINAL CODE

CHAPTER 1—CODIFICATION

Division 1

Codification

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

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

SCHEDULE—continued

**CHAPTER 2—GENERAL PRINCIPLES OF CRIMINAL
RESPONSIBILITY**

PART 2.1—PURPOSE AND APPLICATION

Division 2

Purpose

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

Application

2.2(1) This Chapter applies to all offences against this Code.

(2) On and after the day occurring 5 years after the day on which the *Criminal Code Act 1995* receives the Royal Assent, this Chapter applies to all other offences.

(3) Section 11.6 applies to all offences.

SCHEDULE—continued

PART 2.2—THE ELEMENTS OF AN OFFENCE

Division 3—General

Elements

3.1(1) An offence consists of physical elements and fault elements.

(2) However, the law that creates the offence may provide that there is no fault element for one or more physical elements.

(3) The law that creates the offence may provide different fault elements for different physical elements.

Establishing guilt in respect of offences

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

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

Note: See Part 2.6 on proof of criminal responsibility.

Division 4—Physical elements

Physical elements

4.1(1) A physical element of an offence may be:

- (a) **conduct; or**
- (b) **a circumstance in which conduct occurs; or**
- (c) **a result of conduct.**

(2) In this Code:

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

Voluntariness

4.2(1) Conduct can only be a physical element if it is voluntary.

(2) Conduct is only voluntary if it is a product of the will of the person whose conduct it is.

(3) The following are examples of conduct that is not voluntary:

- (a) a spasm, convulsion or other unwilled bodily movement;
- (b) an act performed during sleep or unconsciousness;

SCHEDULE—continued

(c) an act performed during impaired consciousness depriving the person of the will to act.

(4) An omission to perform an act is only voluntary if the act omitted is one which the person is capable of performing.

(5) If the conduct constituting an offence consists only of a state of affairs, the state of affairs is only voluntary if it is one over which the person is capable of exercising control.

(6) Evidence of self-induced intoxication cannot be considered in determining whether conduct is voluntary.

(7) Intoxication is self-induced unless it came about:

(a) involuntarily; or

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

Omissions

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

(a) the law creating the offence makes it so; or

(b) the law creating the offence impliedly provides that the offence is committed by an omission to perform an act that by law there is a duty to perform.

Division 5—Fault elements

Fault elements

5.1(1) A fault element for a particular physical element may be intention, knowledge, recklessness or negligence.

(2) Subsection (1) does not prevent a law that creates a particular offence from specifying other fault elements for a physical element of that offence.

Example: The fault element for the offence of judicial corruption under section 32 of the *Crimes Act 1914* is that the relevant conduct be carried out “corruptly”.

Intention

5.2(1) A person has intention with respect to conduct if he or she means to engage in that conduct.

(2) A person has intention with respect to a circumstance if he or she believes that it exists or will exist.

(3) A person has intention with respect to a result if he or she means to bring it about or is aware that it will occur in the ordinary course of events.

SCHEDULE—continued

Knowledge

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

Recklessness

5.4(1) A person is reckless with respect to a circumstance if:

- (a) he or she is aware of a substantial risk that the circumstance exists or will exist; and
- (b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

(2) A person is reckless with respect to a result if:

- (a) he or she is aware of a substantial risk that the result will occur; and
- (b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

(3) The question whether taking a risk is unjustifiable is one of fact.

(4) If recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness will satisfy that fault element.

Negligence

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

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

Offences that do not specify fault elements

5.6(1) If the law creating the offence does not specify a fault element for a physical element of an offence that consists only of conduct, intention is the fault element for that physical element.

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

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

Division 6—Cases where fault elements are not required

Strict liability

6.1(1) If a law that creates an offence provides that the offence is an offence of strict liability:

SCHEDULE—continued

(a) there are no fault elements for any of the physical elements of the offence; and

(b) the defence of mistake of fact under section 9.2 is available.

(2) If a law that creates an offence provides that strict liability applies to a particular physical element of the offence:

(a) there are no fault elements for that physical element; and

(b) the defence of mistake of fact under section 9.2 is available in relation to that physical element.

(3) The existence of strict liability does not make any other defence unavailable.

Absolute liability

6.2(1) If a law that creates an offence provides that the offence is an offence of absolute liability:

(a) there are no fault elements for any of the physical elements of the offence; and

(b) the defence of mistake of fact under section 9.2 is unavailable.

(2) If a law that creates an offence provides that absolute liability applies to a particular physical element of the offence:

(a) there are no fault elements for that physical element; and

(b) the defence of mistake of fact under section 9.2 is unavailable in relation to that physical element.

(3) The existence of absolute liability does not make any other defence unavailable.

SCHEDULE—continued

**PART 2.3—CIRCUMSTANCES IN WHICH THERE IS NO
CRIMINAL RESPONSIBILITY**

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

Division 7—Circumstances involving lack of capacity

Children under 10

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

Children over 10 but under 14

7.2(1) A child aged 10 years or more but under 14 years old can only be criminally responsible for an offence if the child knows that his or her conduct is wrong.

(2) The question whether a child knows that his or her conduct is wrong is one of fact. The burden of proving this is on the prosecution.

Mental impairment

7.3(1) A person is not criminally responsible for an offence if, at the time of carrying out the conduct constituting the offence, the person was suffering from a mental impairment that had the effect that:

- (a) the person did not know the nature and quality of the conduct;
or
- (b) the person did not know that the conduct was wrong (that is, the person could not reason with a moderate degree of sense and composure about whether the conduct, as perceived by reasonable people, was wrong); or
- (c) the person was unable to control the conduct.

(2) The question whether the person was suffering from a mental impairment is one of fact.

(3) A person is presumed not to have been suffering from such a mental impairment. The presumption is only displaced if it is proved on the balance of probabilities (by the prosecution or the defence) that the person was suffering from such a mental impairment.

(4) The prosecution can only rely on this section if the court gives leave.

(5) The tribunal of fact must return a special verdict that a person is not guilty of an offence because of mental impairment if and only if it is satisfied that the person is not criminally responsible for the offence only because of a mental impairment.

SCHEDULE—continued

(6) A person cannot rely on a mental impairment to deny voluntariness or the existence of a fault element but may rely on this section to deny criminal responsibility.

(7) If the tribunal of fact is satisfied that a person carried out conduct as a result of a delusion caused by a mental impairment, the delusion cannot otherwise be relied on as a defence.

(8) In this section:
“**mental impairment**” includes senility, intellectual disability, mental illness, brain damage and severe personality disorder.

(9) The reference in subsection (8) to **mental illness** is a reference to an underlying pathological infirmity of the mind, whether of long or short duration and whether permanent or temporary, but does not include a condition that results from the reaction of a healthy mind to extraordinary external stimuli. However, such a condition may be evidence of a mental illness if it involves some abnormality and is prone to recur.

Division 8—Intoxication

Definition—self-induced intoxication

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

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

Intoxication (offences involving basic intent)

8.2(1) Evidence of self-induced intoxication cannot be considered in determining whether a fault element of basic intent existed.

(2) A fault element of basic intent is a fault element of intention for a physical element that consists only of conduct.

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

(3) This section does not prevent evidence of self-induced intoxication being taken into consideration in determining whether conduct was accidental.

(4) This section does not prevent evidence of self-induced intoxication being taken into consideration in determining whether a person had a mistaken belief about facts if the person had considered whether or not the facts existed.

SCHEDULE—continued

(5) A person may be regarded as having considered whether or not facts existed if:

- (a) he or she had considered, on a previous occasion, whether those facts existed in circumstances surrounding that occasion; and
- (b) he or she honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

Intoxication (negligence as fault element)

8.3(1) If negligence is a fault element for a particular physical element of an offence, in determining whether that fault element existed in relation to a person who is intoxicated, regard must be had to the standard of a reasonable person who is not intoxicated.

(2) However, if intoxication is not self-induced, regard must be had to the standard of a reasonable person intoxicated to the same extent as the person concerned.

Intoxication (relevance to defences)

8.4(1) If any part of a defence is based on actual knowledge or belief, evidence of intoxication may be considered in determining whether that knowledge or belief existed.

(2) If any part of a defence is based on reasonable belief, in determining whether that reasonable belief existed, regard must be had to the standard of a reasonable person who is not intoxicated.

(3) If a person's intoxication is not self-induced, in determining whether any part of a defence based on reasonable belief exists, regard must be had to the standard of a reasonable person intoxicated to the same extent as the person concerned.

(4) If, in relation to an offence:

- (a) each physical element has a fault element of basic intent; and
- (b) any part of a defence is based on actual knowledge or belief;

evidence of self-induced intoxication cannot be considered in determining whether that knowledge or belief existed.

(5) A fault element of basic intent is a fault element of intention for a physical element that consists only of conduct.

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

Involuntary intoxication

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

SCHEDULE—continued

Division 9—Circumstances involving mistake or ignorance

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

9.1(1) A person is not criminally responsible for an offence that has a physical element for which there is a fault element other than negligence if:

- (a) at the time of the conduct constituting the physical element, the person is under a mistaken belief about, or is ignorant of, facts; and**
- (b) the existence of that mistaken belief or ignorance negates any fault element applying to that physical element.**

(2) In determining whether a person was under a mistaken belief about, or was ignorant of, facts, the tribunal of fact may consider whether the mistaken belief or ignorance was reasonable in the circumstances.

Mistake of fact (strict liability)

9.2(1) A person is not criminally responsible for an offence that has a physical element for which there is no fault element if:

- (a) at or before the time of the conduct constituting the physical element, the person considered whether or not facts existed, and is under a mistaken but reasonable belief about those facts; and**
- (b) had those facts existed, the conduct would not have constituted an offence.**

(2) A person may be regarded as having considered whether or not facts existed if:

- (a) he or she had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and**
- (b) he or she honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.**

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

Mistake or ignorance of statute law

9.3(1) A person can be criminally responsible for an offence even if, at the time of the conduct constituting the offence, he or she is mistaken about, or ignorant of, the existence or content of an Act that directly or indirectly creates the offence or directly or indirectly affects the scope or operation of the offence.

(2) Subsection (1) does not apply, and the person is not criminally responsible for the offence in those circumstances, if:

SCHEDULE—continued

- (a) the Act is expressly or impliedly to the contrary effect; or
- (b) the ignorance or mistake negates a fault element that applies to a physical element of the offence.

Mistake or ignorance of subordinate legislation

9.4(1) A person can be criminally responsible for an offence even if, at the time of the conduct constituting the offence, he or she is mistaken about, or ignorant of, the existence or content of the subordinate legislation that directly or indirectly creates the offence or directly or indirectly affects the scope or operation of the offence.

(2) Subsection (1) does not apply, and the person is not criminally responsible for the offence in those circumstances, if:

- (a) the subordinate legislation is expressly or impliedly to the contrary effect; or
- (b) the ignorance or mistake negates a fault element that applies to a physical element of the offence; or
- (c) at the time of the conduct, copies of the subordinate legislation have not been made available to the public or to persons likely to be affected by it, and the person could not be aware of its content even if he or she exercised due diligence.

(3) In this section:

“available” includes available by sale;

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

Claim of right

9.5(1) A person is not criminally responsible for an offence that has a physical element relating to property if:

- (a) **at the time of the conduct constituting the offence, the person is under a mistaken belief about a proprietary or possessory right; and**
- (b) **the existence of that right would negate a fault element for any physical element of the offence.**

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

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

SCHEDULE—continued

Division 10—Circumstances involving external factors

Intervening conduct or event

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

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

Duress

10.2(1) A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence under duress.

(2) A person carries out conduct under duress if and only if he or she reasonably believes that:

- (a) a threat has been made that will be carried out unless an offence is committed; and
- (b) there is no reasonable way that the threat can be rendered ineffective; and
- (c) the conduct is a reasonable response to the threat.

(3) This section does not apply if the threat is made by or on behalf of a person with whom the person under duress is voluntarily associating for the purpose of carrying out conduct of the kind actually carried out.

Sudden or extraordinary emergency

10.3(1) A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence in response to circumstances of sudden or extraordinary emergency.

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

- (a) circumstances of sudden or extraordinary emergency exist; and
- (b) committing the offence is the only reasonable way to deal with the emergency; and
- (c) the conduct is a reasonable response to the emergency.

Self-defence

10.4(1) A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence in self-defence.

SCHEDULE—continued

(2) A person carries out conduct in self-defence if and only if he or she believes the conduct is necessary:

- (a) to defend himself or herself or another person; or
- (b) to prevent or terminate the unlawful imprisonment of himself or herself or another person; or
- (c) to protect property from unlawful appropriation, destruction, damage or interference; or
- (d) to prevent criminal trespass to any land or premises; or
- (e) to remove from any land or premises a person who is committing criminal trespass;

and the conduct is a reasonable response in the circumstances as he or she perceives them.

(3) This section does not apply if the person uses force that involves the intentional infliction of death or really serious injury:

- (a) to protect property; or
- (b) to prevent criminal trespass; or
- (c) to remove a person who is committing criminal trespass.

(4) This section does not apply if:

- (a) the person is responding to lawful conduct; and
- (b) he or she knew that the conduct was lawful.

However, conduct is not lawful merely because the person carrying it out is not criminally responsible for it.

SCHEDULE—continued

PART 2.4—EXTENSIONS OF CRIMINAL RESPONSIBILITY

Division 11

Attempt

11.1(1) A person who attempts to commit an offence is guilty of the offence of attempting to commit that offence and is punishable as if the offence attempted had been committed.

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

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

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

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

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

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

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

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

Complicity and common purpose

11.2(1) A person who aids, abets, counsels or procures the commission of an offence by another person is taken to have committed that offence and is punishable accordingly.

(2) For the person to be guilty:

- (a) the person's conduct must have in fact aided, abetted, counselled or procured the commission of the offence by the other person; and
- (b) the offence must have been committed by the other person.

(3) For the person to be guilty, the person must have intended that:

- (a) his or her conduct would aid, abet, counsel or procure the commission of any offence (including its fault elements) of the type the other person committed; or

SCHEDULE—continued

(b) his or her conduct would aid, abet, counsel or procure the commission of an offence and have been reckless about the commission of the offence (including its fault elements) that the other person in fact committed.

(4) A person cannot be found guilty of aiding, abetting, counselling or procuring the commission of an offence if, before the offence was committed, the person:

- (a) terminated his or her involvement; and
- (b) took all reasonable steps to prevent the commission of the offence.

(5) A person may be found guilty of aiding, abetting, counselling or procuring the commission of an offence even if the principal offender has not been prosecuted or has not been found guilty.

Innocent agency

11.3 A person who:

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

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

Incitement

11.4(1) A person who urges the commission of an offence is guilty of the offence of incitement.

(2) For the person to be guilty, the person must intend that the offence incited be committed.

(3) A person may be found guilty even if committing the offence incited is impossible.

(4) Any defences, procedures, limitations or qualifying provisions that apply to an offence apply also to the offence of incitement in respect of that offence.

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

Penalty:

- (a) if the offence incited is punishable by life imprisonment—imprisonment for 10 years; or

SCHEDULE—continued

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

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

Conspiracy

11.5(1) A person who conspires with another person to commit an offence punishable by imprisonment for more than 12 months, or by a fine of 200 penalty units or more, is guilty of the offence of conspiracy to commit that offence and is punishable as if the offence to which the conspiracy relates had been committed.

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

- (2) For the person to be guilty:
 - (a) the person must have entered into an agreement with one or more other persons; and
 - (b) the person and at least one other party to the agreement must have intended that an offence would be committed pursuant to the agreement; and
 - (c) the person or at least one other party to the agreement must have committed an overt act pursuant to the agreement.
- (3) A person may be found guilty of conspiracy to commit an offence even if:
 - (a) committing the offence is impossible; or
 - (b) the only other party to the agreement is a body corporate; or
 - (c) each other party to the agreement is at least one of the following:
 - (i) a person who is not criminally responsible;
 - (ii) a person for whose benefit or protection the offence exists; or

SCHEDULE—continued

(d) subject to paragraph (4)(a), all other parties to the agreement have been acquitted of the conspiracy.

(4) A person cannot be found guilty of conspiracy to commit an offence if:

(a) all other parties to the agreement have been acquitted of the conspiracy and a finding of guilt would be inconsistent with their acquittal; or

(b) he or she is a person for whose benefit or protection the offence exists.

(5) A person cannot be found guilty of conspiracy to commit an offence if, before the commission of an overt act pursuant to the agreement, the person:

(a) withdrew from the agreement; and

(b) took all reasonable steps to prevent the commission of the offence.

(6) A court may dismiss a charge of conspiracy if it thinks that the interests of justice require it to do so.

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

(8) Proceedings for an offence of conspiracy must not be commenced without the consent of the Director of Public Prosecutions. However, a person may be arrested for, charged with, or remanded in custody or on bail in connection with, an offence of conspiracy before the necessary consent has been given.

References in Acts to offences

11.6(1) A reference in an Act to an offence against an Act (including this Code) includes a reference to an offence against section 11.1 (attempt), 11.4 (incitement) or 11.5 (conspiracy) of this Code that relates to such an offence.

(2) A reference in an Act (including this Code) to a particular offence includes a reference to an offence against section 11.1 (attempt), 11.4 (incitement) or 11.5 (conspiracy) of this Code that relates to that particular offence.

(3) Subsection (1) or (2) does not apply if an Act is expressly or impliedly to the contrary effect.

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

SCHEDULE—continued

PART 2.5—CORPORATE CRIMINAL RESPONSIBILITY

Division 12

General principles

12.1(1) This Code applies to bodies corporate in the same way as it applies to individuals. It so applies with such modifications as are set out in this Part, and with such other modifications as are made necessary by the fact that criminal liability is being imposed on bodies corporate rather than individuals.

(2) A body corporate may be found guilty of any offence, including one punishable by imprisonment.

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

Physical elements

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

Fault elements other than negligence

12.3(1) If intention, knowledge or recklessness is a fault element in relation to a physical element of an offence, that fault element must be attributed to a body corporate that expressly, tacitly or impliedly authorised or permitted the commission of the offence.

(2) The means by which such an authorisation or permission may be established include:

- (a) proving that the body corporate's board of directors intentionally, knowingly or recklessly carried out the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence; or
- (b) proving that a high managerial agent of the body corporate intentionally, knowingly or recklessly engaged in the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence; or
- (c) proving that a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to non-compliance with the relevant provision; or
- (d) proving that the body corporate failed to create and maintain a corporate culture that required compliance with the relevant provision.

SCHEDULE—continued

(3) Paragraph (2)(b) does not apply if the body corporate proves that it exercised due diligence to prevent the conduct, or the authorisation or permission.

(4) Factors relevant to the application of paragraph (2)(c) or (d) include:

- (a) whether authority to commit an offence of the same or a similar character had been given by a high managerial agent of the body corporate; and
- (b) whether the employee, agent or officer of the body corporate who committed the offence believed on reasonable grounds, or entertained a reasonable expectation, that a high managerial agent of the body corporate would have authorised or permitted the commission of the offence.

(5) If recklessness is not a fault element in relation to a physical element of an offence, subsection (2) does not enable the fault element to be proved by proving that the board of directors, or a high managerial agent, of the body corporate recklessly engaged in the conduct or recklessly authorised or permitted the commission of the offence.

(6) In this section:

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

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

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

Negligence

12.4(1) The test of negligence for a body corporate is that set out in section 5.5.

(2) If:

- (a) negligence is a fault element in relation to a physical element of an offence; and
- (b) no individual employee, agent or officer of the body corporate has that fault element;

that fault element may exist on the part of the body corporate if the body corporate’s conduct is negligent when viewed as a whole (that is, by aggregating the conduct of any number of its employees, agents or officers).

(3) Negligence may be evidenced by the fact that the prohibited conduct was substantially attributable to:

SCHEDULE—continued

- (a) inadequate corporate management, control or supervision of the conduct of one or more of its employees, agents or officers; or
- (b) failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.

Mistake of fact (strict liability)

12.5(1) A body corporate can only rely on section 9.2 (mistake of fact (strict liability)) in respect of conduct that would, apart from this section, constitute an offence on its part if:

- (a) the employee, agent or officer of the body corporate who carried out the conduct was under a mistaken but reasonable belief about facts that, had they existed, would have meant that the conduct would not have constituted an offence; and
- (b) the body corporate proves that it exercised due diligence to prevent the conduct.

(2) A failure to exercise due diligence may be evidenced by the fact that the prohibited conduct was substantially attributable to:

- (a) inadequate corporate management, control or supervision of the conduct of one or more of its employees, agents or officers; or
- (b) failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.

Intervening conduct or event

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

SCHEDULE—continued

PART 2.6—PROOF OF CRIMINAL RESPONSIBILITY

Division 13

Legal burden of proof—prosecution

13.1(1) The prosecution bears a legal burden of proving every element of an offence relevant to the guilt of the person charged.

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

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

(3) In this Code:

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

Standard of proof—prosecution

13.2(1) A legal burden of proof on the prosecution must be discharged beyond reasonable doubt.

(2) Subsection (1) does not apply if the law creating the offence specifies a different standard of proof.

Evidential burden of proof—defence

13.3(1) Subject to section 13.4, a burden of proof that a law imposes on a defendant is an evidential burden only.

(2) A defendant who wishes to deny criminal responsibility by relying on a provision of Part 2.3 (other than section 7.3) bears an evidential burden in relation to that matter.

(3) A defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence bears an evidential burden in relation to that matter. The exception, exemption, excuse, qualification or justification need not accompany the description of the offence.

(4) The defendant no longer bears the evidential burden in relation to a matter if evidence sufficient to discharge the burden is adduced by the prosecution or by the court.

(5) The question whether an evidential burden has been discharged is one of law.

SCHEDULE—continued

(6) In this Code:

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

Legal burden of proof—defence

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

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

Standard of proof—defence

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

Use of averments

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

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

SCHEDULE—continued

DICTIONARY

conduct is defined in subsection 4.1(2).

employee includes a servant.

evidential burden is defined in subsection 13.3(6).

intention has the meaning given in section 5.2.

knowledge has the meaning given in section 5.3.

law means a law of the Commonwealth, and includes this Code.

legal burden is defined in subsection 13.1(3).

negligence has the meaning given in section 5.5.

offence means an offence against a law of the Commonwealth.

recklessness has the meaning given in section 5.4.

*[Minister's second reading speech made in—
Senate on 30 June 1994
House of Representatives on 1 March 1995]*