

NORFOLK



ISLAND

Criminal Code 2007

No. 11, 2007

Compilation No. 7

Compilation date:

10 July 2021

Includes amendments up to:

Norfolk Island Continued Laws Ordinance 2015 (No. 2, 2015) as amended up to Norfolk Island Legislation Amendment (Criminal and Civil Matters) Ordinance 2021 (F2021L00975)



Criminal Code 2007

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Dictionary

NOTES

Table of Amendments



Criminal Code 2007

An Act relating to the criminal law, and for other purposes.

CHAPTER 1 — PRELIMINARY

1 Name of Act and commencement

(1) This Act is the *Criminal Code 2007*.

(2) This Act commences on January 1 2008, unless the Administrator by notice in the Gazette notifies an earlier date for its commencement.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*conduct*—see section 13.' means that the expression 'conduct' is defined in that section.

4 Notes and examples

(1) A note included in this Act is explanatory and is not part of this Act.

Note But notes may be used as an aid in interpretation see *Interpretation Act 1979*, s.10D

(2) An example included in this Act is part of the Act but is not exhaustive and may extend but does not limit the meaning of the Act or the particular provision to which it relates.

CHAPTER 2 — GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

PART 2.1 — PURPOSE AND APPLICATION—CHAPTER 2

6 Purpose—chapter 2

(1) The main purpose of this chapter is to codify general principles of criminal responsibility under Norfolk Island legislation.

(2) This Chapter contains all the general principles of criminal responsibility that apply to any offence against Norfolk Island legislation, irrespective of how the offence is created.

7 Application—chapter 2

This chapter applies to all offences against this Act and all other offences against Norfolk Island legislation.

Note Part 2.7 also applies to offences against applied NSW laws.

8 Certain provisions of this Chapter do not apply to certain pre-2008 offences

(1) Despite section 7, the provisions of this Chapter (other than the applied provisions) do not apply to a pre-2008 offence unless:

- (a) the offence has been omitted and remade (with or without changes) on or after 1 January 2008; or
- (b) an enactment, or a law made under an enactment, whether made before or after the commencement of this section, expressly provides for the provisions of this Chapter to apply to the offence.

(2) In interpreting the applied provisions in relation to an offence, the other provisions of this Act may be considered.

(3) In this section:

omitted and remade: an offence has not been omitted and remade if it has been amended without being omitted and remade.

pre-2008 offence means an offence that was in force before 1 January 2008.

10 Definition of *applied provisions*

In this Act:

applied provisions means the following provisions of this Chapter:

- (a) subsection 15(5) (Evidence of self-induced intoxication);
- (b) Division 2.3.1 (Lack of capacity—children);
- (c) Division 2.3.2 (Lack of capacity—mental impairment);
- (d) Division 2.3.3 (Intoxication);
- (e) Part 2.4 (Extensions of criminal responsibility);
- (f) Part 2.5 (Corporate criminal responsibility);
- (g) Part 2.6 (Proof of criminal responsibility);
- (h) Part 2.7 (Geographical application).

PART 2.2 — THE ELEMENTS OF AN OFFENCE

Division 2.2.1 General—Part 2.2

11 Elements

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

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

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

12 Establishing guilt of offences

(1) A person must not be found guilty of committing an offence unless the following is proved:

- (a) the existence of the physical elements that are, under the law creating the offence, relevant to establishing guilt;

- (b) for each of the physical elements for which a fault element is required—the fault element or 1 of the fault elements for the physical element.

Note 1 See Part 2.6 on proof of criminal responsibility.

Note 2 See Part 2.7 on geographical jurisdiction.

(2) However, unless the law creating the offence otherwise expressly provides, a person can be found guilty of committing the offence even though, when carrying out the conduct required for the offence, the person is mistaken about, or ignorant of, the existence or content of a law that creates the offence.

Note *Create*, in relation to an offence, is defined in the dictionary.

Division 2.2.2 — Physical Elements

13 Definitions—*conduct* and *engage in conduct*

In this Act:

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

engage in conduct means—

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

14 Physical elements

A ***physical element*** of an offence may be—

- (a) conduct; or
(b) a result of conduct; or
(c) a circumstance in which conduct, or a result of conduct, happens.

15 Voluntariness

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

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

Examples of conduct that is not voluntary

- 1 a spasm, convulsion or other unwillful bodily movement
2 an act done during sleep or unconsciousness
3 an act done during impaired consciousness depriving the person of the will to act

(3) An omission to do an act is voluntary only if the act omitted is an act that the person can do.

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

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

Note For when intoxication is *self-induced*, see s 30.

16 Omissions

An omission to do an act can only be a physical element if—

- (a) the law creating the offence makes it a physical element; or

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

Division 2.2.3 — Fault Elements

17 Fault elements

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

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

18 Intention

(1) A person has *intention* in relation to conduct if the person means to engage in the conduct.

(2) A person has *intention* in relation to a result if the person means to bring it about or is aware that it will happen in the ordinary course of events.

(3) A person has *intention* in relation to a circumstance if the person believes that it exists or will exist.

19 Knowledge

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

20 Recklessness

(1) A person is *reckless* in relation to a result if—

- (a) the person is aware of a substantial risk that the result will happen; and
- (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(2) A person is *reckless* in relation to a circumstance if—

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

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

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

21 Negligence

A person is *negligent* in relation to a physical element of an offence if the person's conduct merits criminal punishment for the offence because it 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.

22 Offences that do not provide fault elements

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

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

Division 2.2.4 — Cases Where Fault Elements Are Not Required

23 Strict liability

(1) If a law that creates an offence provides that the offence is a strict liability offence—

- (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 36 (Mistake of fact—strict liability) 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 the physical element; and
- (b) the defence of mistake of fact under section 36 is available in relation to the physical element.

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

24 Absolute liability

(1) If a law that creates an offence provides that the offence is an absolute liability offence—

- (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 36 (Mistake of fact—strict liability) is not available.

(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 the physical element; and
- (b) the defence of mistake of fact under section 36 is not available in relation to the physical element.

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

PART 2.3 — CIRCUMSTANCES WHERE THERE IS NO CRIMINAL RESPONSIBILITY

Division 2.3.1 — Lack of capacity—children

25 Children under 10

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

26 Children 10 and over but under 14

(1) A child aged 10 years or older, 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 a question of fact.

(3) The burden of proving that a child knows that his or her conduct is wrong is on the prosecution.

Division 2.3.2 Lack of capacity—mental impairment

27 Definition—*mental impairment*

(1) In this Act:

mental impairment includes senility, intellectual disability, mental illness, brain damage and severe personality disorder.

(2) In this section:

mental illness is an underlying pathological infirmity of the mind, whether of long or short duration and whether permanent or temporary, but does not include a condition (a ***reactive condition***) resulting from the reaction of a healthy mind to extraordinary external stimuli.

(3) However, a reactive condition may be evidence of a mental illness if it involves some abnormality and is prone to recur.

28 Mental impairment and criminal responsibility

(1) A person is not criminally responsible for an offence if, when carrying out the conduct required for 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; or
- (c) the person could not control the conduct.

(2) For subsection (1)(b), a person does not know that conduct is wrong if the person cannot reason with a moderate degree of sense and composure about whether the conduct, as seen by a reasonable person, is wrong.

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

(4) A person is presumed not to have been suffering from a mental impairment.

(5) The presumption is displaced only if it is proved on the balance of probabilities (by the prosecution or defence) that the person was suffering from a mental impairment.

(6) The prosecution may rely on this section only if the court gives leave.

(7) If the trier of fact is satisfied that a person is not criminally responsible for an offence only because of mental impairment, it must—

- (a) for an offence dealt with before the Supreme Court—return or enter a special verdict that the person is not guilty of the offence because of mental impairment; or
- (b) for any other offence—find the person not guilty of the offence because of mental impairment.

29 Mental impairment and other defences

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

(2) If the trier of fact is satisfied that a person carried out conduct because of a delusion caused by a mental impairment, the delusion itself cannot be relied on as a defence, but the person may rely on the mental impairment to deny criminal responsibility.

Division 2.3.3 Intoxication

30 Intoxication—interpretation

(1) In this Act:

fault element of basic intent means a fault element of intention for a physical element that consists only of conduct.

intoxication means intoxication because of the influence of alcohol, a drug or any other substance.

(2) For this Act, intoxication is *self-induced* unless it came about—

- (a) involuntarily; or
- (b) because of fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force; or
- (c) from the use of a drug for which a prescription is required and that was used in accordance with the directions of the doctor or dentist who prescribed it; or
- (d) from the use of a drug for which no prescription is required and that was used for a purpose, and in accordance with the dosage level, recommended by the manufacturer.

(3) However, subsection (2) (c) and (d) does not apply if the person using the drug knew, or had reason to believe, when the person took the drug that the drug would significantly impair the person's judgment or control.

31 Intoxication—offences involving basic intent

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

Note A fault element of intention in relation to a result or circumstance is not a fault element of basic intent (see s 30 (1), def *fault element of basic intent*).

(2) This section does not prevent evidence of self-induced intoxication being considered in deciding whether conduct was accidental.

(3) This section does not prevent evidence of self-induced intoxication being considered in deciding whether a person had a mistaken belief about facts if, when carrying out the conduct making up the physical element of the offence, the person considered whether or not the facts existed.

(4) A person may be taken to have considered whether or not facts existed when carrying out conduct if—

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

32 Intoxication—negligence as fault element

(1) If negligence is a fault element for a particular physical element of an offence, in deciding whether the fault element exists for 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.

33 Intoxication—relevance to defences

(1) If any part of a defence is based on actual knowledge or belief, evidence of intoxication may be considered in deciding whether the knowledge or belief exists.

(2) However, if—

- (a) each physical element of an offence 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 deciding whether the knowledge or belief exists.

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

(4) If a person's intoxication is not self-induced, in deciding 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.

34 Involuntary intoxication

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

Division 2.3.4 — Mistake and ignorance

35 Mistake or ignorance of fact—fault elements other than negligence

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

- (a) when carrying out the conduct making up the physical element, the person is under a mistaken belief about, or is ignorant of, facts; and

(b) the existence of the mistaken belief or ignorance negates a fault element applying to the physical element.

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

36 Mistake of fact—strict liability

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

(a) when carrying out the conduct making up the physical element, the person considered whether or not facts existed, and was under a mistaken but reasonable belief about the facts; and

(b) had the facts existed, the conduct would not have been an offence.

(2) A person may be taken to have considered whether or not facts existed when carrying out conduct if—

(a) the person had considered, on a previous occasion, whether the facts existed in the circumstances surrounding that occasion; and

(b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as the circumstances surrounding the previous occasion.

Note Section 24 (Absolute liability) prevents this section applying to offences of absolute liability.

37 Mistake or ignorance of law creating offence

(1) A person can be criminally responsible for an offence even though, when carrying out the conduct required for the offence, the person is mistaken about, or ignorant of, the existence or content of a law that creates the offence.

(2) However, the person is not criminally responsible for the offence if—

(a) the law creating the offence expressly or impliedly provides that a person is not criminally responsible for the offence in those circumstances; or

(b) the person's ignorance or mistake negates a fault element applying to a physical element of the offence.

38 Claim of right

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

(a) when carrying out the conduct required for the offence, the person is under a mistaken belief about a proprietary or possessory right; and

(b) the existence of the 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 a proprietary or possessory right that the person mistakenly believes to exist.

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

*Division 2.3.5 — External factors***39 Intervening conduct or event**

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

- (a) the physical element is brought about by someone else 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 have been expected to guard against the bringing about of the physical element.

40 Duress

(1) A person is not criminally responsible for an offence if the person carries out the conduct required for the offence under duress.

(2) A person carries out conduct under duress only if the person 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 to make the threat ineffective; and
- (c) the conduct is a reasonable response to the threat.

(3) However, the person does not carry out conduct under duress if the threat is made by or on behalf of a person with whom the person is voluntarily associating to carry out conduct of the kind required for the offence.

41 Sudden or extraordinary emergency

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

- (2) This section applies only if the person 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.

42 Self-defence

(1) A person is not criminally responsible for an offence if the person carries out the conduct required for the offence in self-defence.

- (2) A person carries out conduct in self-defence only if—
- (a) the person believes the conduct is necessary—
 - (i) to defend himself or herself or someone else; or
 - (ii) to prevent or end the unlawful imprisonment of himself or herself or someone else; or
 - (iii) to protect property from unlawful appropriation, destruction, damage or interference; or
 - (iv) to prevent criminal trespass to land or premises; or

- (v) to remove from land or premises a person committing criminal trespass; and
- (b) the conduct is a reasonable response in the circumstances as the person perceives them.
- (3) However, the person does not carry out conduct in self-defence if—
 - (a) the person uses force that involves the intentional infliction of death or serious harm—
 - (i) to protect property; or
 - (ii) to prevent criminal trespass; or
 - (iii) to remove a person committing criminal trespass; or
 - (b) the person is responding to lawful conduct that the person knows is lawful.
- (4) Conduct is not lawful for subsection (3) (b) only because the person carrying it out is not criminally responsible for it.

43 Lawful authority

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

PART 2.4 — EXTENSIONS OF CRIMINAL RESPONSIBILITY

44 Attempt

(1) If a person attempts to commit an offence, the person commits the offence of attempting to commit that offence.

(2) However, a person commits the offence of attempting to commit an offence only if the person carries out conduct that is more than merely preparatory to the commission of the offence attempted.

(3) The question whether conduct is more than merely preparatory is a question of fact.

(4) A person may be found guilty of attempting to commit an offence even though—

- (a) it was impossible to commit the offence attempted; or
- (b) the person committed the offence attempted.

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

Note Only 1 of the fault elements of intention or knowledge needs to be established for each physical element of the offence attempted (see s 12 (Establishing guilt of offences)).

(6) However, any special liability provisions that apply to an offence apply also to the offence of attempting to commit the offence.

(7) Any defence, procedure, limitation or qualifying provision applying to an offence applies to the offence of attempting to commit the offence.

(8) If a person is found guilty of attempting to commit an offence, the person cannot later be charged with committing the offence.

(9) The offence of attempting to commit an offence is punishable as if the offence attempted had been committed.

(10) This section does not apply to an offence against section 45 or section 48 (Conspiracy).

45 Complicity and common purpose

(1) A person is taken to have committed an offence if the person aids, abets, counsels or procures the commission of the offence by someone else.

(2) However, the person commits the offence because of this section only if—

(a) the person's conduct in fact aids, abets, counsels or procures the commission of the offence by the other person; and

(b) when carrying out the conduct, the person either—

(i) intends the conduct to aid, abet, counsel or procure the commission of any offence (including its fault elements) of the type committed by the other person; or

(ii) intends the conduct to aid, abet, counsel or procure the commission of an offence by the other person and is reckless about the commission of the offence (including its fault elements) in fact committed by the other person.

(3) To remove any doubt, the person is taken to have committed the offence only if the other person commits the offence.

(4) Despite subsection (2), any special liability provisions that apply to an offence apply also to the offence of aiding, abetting, counselling or procuring the commission of the offence.

(5) A person must not be found guilty of aiding, abetting, counselling or procuring the commission of an offence if, before the offence was committed, the person—

(a) ended his or her involvement; and

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

(6) A person may be found guilty of aiding, abetting, counselling or procuring the commission of an offence even if the person who committed the offence is not prosecuted or found guilty.

(7) To remove any doubt, if a person is taken to have committed an offence because of this section, the offence is punishable as if, apart from the operation of this section, the person had committed the offence.

(8) If the trier of fact is satisfied beyond reasonable doubt that a defendant committed an offence because of this section or otherwise than because of this section but cannot decide which, the trier of fact may nevertheless find the defendant guilty of the offence.

46 Agency

(1) A person is taken to have committed an offence if—

(a) the person procures someone else to engage in conduct that (whether or not together with conduct engaged in by the person)

makes up the physical elements of the offence consisting of conduct; and

- (b) any physical element of the offence consisting of a circumstance exists; and
- (c) any physical element of the offence consisting of a result of the conduct happens; and
- (d) when the person procured the other person to engage in the conduct, the person had a fault element applying to each physical element of the offence.

(2) To remove any doubt, if a person is taken to have committed an offence because of this section, the offence is punishable as if, apart from the operation of this section, the person had committed the offence.

47 Incitement

(1) If a person urges the commission of an offence (the *offence incited*), the person commits the offence of incitement.

Penalty:

- (a) if the offence incited is punishable by life imprisonment—imprisonment for 10 years, 1 000 penalty units or both; or
- (b) if the offence incited is punishable by imprisonment for 14 years or more (but not life imprisonment)—imprisonment for 7 years, 700 penalty units or both; or
- (c) if the offence incited is punishable by imprisonment for 10 years or more (but less than 14 years)—imprisonment for 5 years, 500 penalty units or both; or
- (d) if the offence incited is punishable by imprisonment for less than 10 years, either or both of the following:
 - (i) the lesser of the maximum term of imprisonment for the offence incited and imprisonment for 3 years;
 - (ii) 300 penalty units; or
- (e) if the offence incited is not punishable by imprisonment—the number of penalty units equal to the maximum number of penalty units applying to the offence incited.

(2) However, the person commits the offence of incitement only if the person intends that the offence incited be committed.

(3) Despite subsection (2), any special liability provisions that apply to an offence apply also to the offence of incitement to commit the offence.

(4) A person may be found guilty of the offence of incitement even though it was impossible to commit the offence incited.

(5) Any defence, procedure, limitation or qualifying provision applying to an offence applies to the offence of incitement in relation to the offence.

(6) This section does not apply to an offence against section 44 (Attempt), section 48 (Conspiracy) or this section.

48 Conspiracy

(1) If a person conspires with someone else to commit an offence (the *offence conspired*) punishable by imprisonment for longer than 1 year or by a fine of 200 penalty units or more (or both), the person commits the offence of conspiracy.

(2) However, the person commits the offence of conspiracy only if—

- (a) the person entered into an agreement with at least 1 other person; and
- (b) the person and at least 1 other party to the agreement intend that an offence be committed under the agreement; and
- (c) the person or at least 1 other party to the agreement commits an overt act under the agreement.

(3) Despite subsection (2), any special liability provisions that apply to an offence apply also to the offence of conspiracy to commit the offence.

(4) The offence of conspiring to commit an offence is punishable as if the offence conspired had been committed.

(5) A person may be found guilty of the offence of conspiracy even though—

- (a) it was impossible to commit the offence conspired; or
- (b) the person and each other party to the agreement is a corporation; or
- (c) each other party to the agreement is—
 - (i) a person who is not criminally responsible; or
 - (ii) a person for whose benefit or protection the offence exists; or
- (d) all other parties to the agreement are acquitted of the conspiracy (unless to find the person guilty would be inconsistent with their acquittal).

(6) A person must not be found guilty of the offence of conspiracy to commit an offence if, before the commission of an overt act under the agreement, the person—

- (a) withdrew from the agreement; and
- (b) took all reasonable steps to prevent the commission of the offence conspired.

(7) A person for whose benefit or protection an offence exists cannot be found guilty of conspiracy to commit the offence.

(8) Any defence, procedure, limitation or qualifying provision applying to an offence applies to the offence of conspiracy to commit the offence.

(9) A court may dismiss a charge of conspiracy if it considers that the interests of justice require it to dismiss the charge.

(10) A proceeding for an offence of conspiracy must not be begun without the consent of the principal Crown law officer.

(11) However, a person may be arrested for, charged with, or remanded in custody or on bail in relation to, an offence of conspiracy before the consent has been given.

PART 2.5 — CORPORATE CRIMINAL RESPONSIBILITY**49 General principles**

(1) This Act applies to corporations as well as individuals.

(2) The Act applies to corporations in the same way as it applies to individuals, but subject to the changes made by this Part and any other changes necessary because criminal responsibility is being imposed on a corporation rather than an individual.

50 Physical elements

A physical element of an offence consisting of conduct is taken to be committed by a corporation if it is committed by an employee, agent or officer of the corporation acting within the actual or apparent scope of his or her employment or within his or her actual or apparent authority.

51 Corporation—fault elements other than negligence

(1) In deciding whether the fault element of intention, knowledge or recklessness exists for an offence in relation to a corporation, the fault element is taken to exist if the corporation expressly, tacitly or impliedly authorises or permits the commission of the offence.

(2) The ways in which authorisation or permission may be established include—

(a) proving that the corporation's board of directors intentionally, knowingly or recklessly engaged in the conduct or expressly, tacitly or impliedly authorised or permitted the commission of the offence; or

(b) proving that a high managerial agent of the corporation intentionally, knowingly or recklessly engaged in the conduct or expressly, tacitly or impliedly authorised or permitted the commission of the offence; or

(c) proving that a corporate culture existed within the corporation that directed, encouraged, tolerated or led to noncompliance with the contravened law; or

(d) proving that the corporation failed to create and maintain a corporate culture requiring compliance with the contravened law.

(3) Subsection (2) (b) does not apply if the corporation proves that it exercised appropriate diligence to prevent the conduct, or the authorisation or permission.

(4) Factors relevant to subsection (2) (c) and (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 corporation; and

(b) whether the employee, agent or officer of the corporation who committed the offence reasonably believed, or had a reasonable expectation, that a high managerial agent of the corporation would have authorised or permitted the commission of the offence.

(5) If recklessness is not a fault element for 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 corporation recklessly engaged in the conduct or recklessly authorised or permitted the commission of the offence.

(6) In this section:

board of directors, of a corporation, means the body exercising the corporation's executive authority, whether or not the body is called the board of directors.

corporate culture, for a corporation, means an attitude, policy, rule, course of conduct or practice existing within the corporation generally or in the part of the corporation where the relevant conduct happens.

high managerial agent, of a corporation, means an employee, agent or officer of the corporation whose conduct may fairly be assumed to represent the corporation's policy because of the level of responsibility of his or her duties.

52 Corporation—negligence

(1) This section applies if negligence is a fault element in relation to a physical element of an offence and no individual employee, agent or officer of a corporation has the fault element.

(2) The fault element of negligence may exist for the corporation in relation to the physical element if the corporation's conduct is negligent when viewed as a whole (that is, by aggregating the conduct of a number of its employees, agents or officers).

Note The test of negligence for a corporation is that set out in s 21 (Negligence).

53 Corporation—mistake of fact—strict liability

A corporation may only rely on section 36 (Mistake of fact—strict liability) in relation to the conduct that would make up an offence by the corporation if—

- (a) the employee, agent or officer of the corporation 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 been an offence; and
- (b) the corporation proves that it exercised appropriate diligence to prevent the conduct.

54 Corporation—intervening conduct or event

A corporation may not rely on section 39 (Intervening conduct or event) in relation to a physical element of an offence brought about by someone else if the other person is an employee, agent or officer of the corporation.

55 Evidence of negligence or failure to exercise appropriate diligence

Negligence, or failure to exercise appropriate diligence, in relation to conduct of a corporation may be evidenced by the fact that the conduct was substantially attributable to—

- (a) inadequate corporate management, control or supervision of the conduct of 1 or more of the corporation's employees, agents or officers; or

- (b) failure to provide adequate systems for giving relevant information to relevant people in the corporation.

PART 2.6 — PROOF OF CRIMINAL RESPONSIBILITY

56 Legal burden of proof—prosecution

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

Note See s 11 (Elements) on what elements are relevant to a person's guilt.

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

(3) In this Act:

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

57 Standard of proof—prosecution

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

(2) Subsection (1) does not apply if a law provides for a different standard of proof.

58 Evidential burden of proof—defence

(1) Subject to section 59 (Legal burden of proof—defence), 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 (Circumstances where there is no criminal responsibility) has an evidential burden in relation to the matter.

(3) Subject to section 59, a defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence (whether or not it accompanies the description of the offence) has an evidential burden in relation to the matter.

Examples

1 The *XYZ Act 2006*, section 10(1) creates an offence of producing a false or misleading document. Section 10(2) provides—

(2) This section does not apply if the document is not false or misleading in a material particular.

Section 10(2) is an exception to section 10(1). A defendant who wishes to rely on the exception has an evidential burden that the document is not false or misleading in a material particular.

2 The *XYZ Act 2005*, section 10(1) creates an offence of a person making a statement knowing that it omits something without which the statement is misleading. Section 10(2) provides—

(2) This section does not apply if the omission does not make the statement misleading in a material particular.

Section 10(2) is an exception to section 10(1). A defendant who wishes to rely on the exception has an evidential burden that the omission did not make the statement misleading in a material particular.

3 The *XYZ Act 2004*, section 10(1) creates an offence of disclosing certain information about a restraining order. Section 10(2) provides—

(2) This section does not apply if the disclosure is made to a police officer.

Section 10(2) is an exception to section 10(1). A defendant who wishes to rely on the exception has an evidential burden that the disclosure was made to a police officer.

(4) To remove any doubt, for a strict liability offence that allows the defence of reasonable excuse, a defendant has an evidential burden in relation to the defence.

(5) The defendant no longer has the evidential burden in relation to a matter if evidence sufficient to discharge the burden is presented by the prosecution.

(6) The question whether an evidential burden has been discharged is a question of law.

(7) In this Act:

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

59 Legal burden of proof—defence

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

- (a) provides 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.

Example for paragraph (b)

The *XYZ Act 2007*, section 10 (1) creates an offence of exhibiting a film classified ‘R’ to a child. Section 10(2) provides—

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the defendant believed on reasonable grounds that the child was an adult.

Section 10(2) provides a defence to an offence against section 10(1). A defendant who wishes to rely on the defence has a legal burden of proving that the defendant believed on reasonable grounds that the child was an adult.

60 Standard of proof—defence

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

61 Use of averments

A law that allows the prosecution to make an averment (however expressed) does not allow the prosecution—

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

PART 2.7 GEOGRAPHICAL APPLICATION

62 Application and effect—Part 2.7

(1) This Part applies to all offences.

Note The definition of *offence* (together with the definition of law) in the dictionary at the end of this Act means that this subsection applies this Part to offences against Norfolk Island legislation (but not to offences against applied NSW laws). Subsection (1A) extends the application of this Part to offences against applied NSW laws.

(1A) This Part also:

- (a) applies in relation to an offence against an applied NSW law in the same way as this Part applies in relation to an offence or an offence against a law; and
- (b) applies in relation to an applied NSW law in the same way as this Part applies in relation to a law.

Note An offence against an applied NSW law is not covered by the definition of *offence* in the dictionary at the end of this Act. An applied NSW law is not covered by the definition of *law* in the dictionary at the end of this Act.

(2) This Part extends the application of a *law* that creates an offence beyond the territorial limits of Norfolk Island if the required geographical nexus exists for the offence.

(3) If a *law* that creates an offence provides for any geographical consideration for the offence, that provision prevails over any inconsistent provision of this Part.

Examples for subsection (3)

1. A law creating an offence may provide that the place of commission of the offence is (explicitly or by necessary implication) an element of the offence.

2. A law creating an offence may provide for its application outside Norfolk Island and exclude (explicitly or by necessary implication) the requirement for a geographical nexus between Norfolk Island and an element of the offence.

63 Interpretation—Part 2.7

(1) For this Part, the *required geographical nexus* is the geographical nexus mentioned in section 64 (2).

(2) For this Part, the place where an offence is committed is the place where any of the physical elements of the offence happen.

(3) For this Part, the place where an offence has an effect includes—

(a) any place whose peace, welfare or good government is threatened by the offence; and

(b) any place where the offence would have an effect (or would cause such a threat) if the offence were committed.

Note Norfolk Island used in a geographical sense means the Territory of Norfolk Island as defined in the *Norfolk Island Act 1979*.

64 Extension of offences if required geographical nexus exists

(1) An offence against a law is committed if—

(a) disregarding any geographical considerations, all elements of the offence exist; and

(b) a geographical nexus exists between Norfolk Island and the offence.

(2) A *geographical nexus* exists between Norfolk Island and an offence if—

(a) the offence is committed completely or partly in Norfolk Island, whether or not the offence has any effect in Norfolk Island; or

(b) the offence is committed completely outside Norfolk Island (whether or not outside Australia) but has an effect in Norfolk Island.

65 Geographical application—double criminality

(1) This Part applies to an offence committed partly in Norfolk Island and partly in a place outside Norfolk Island (whether or not outside Australia), even if it is not also an offence in that place.

(2) This Part applies to an offence committed completely outside Norfolk Island (whether or not outside Australia) only if—

(a) it is also an offence in the place where it is committed; or

(b) it is not also an offence in that place, but the trier of fact is satisfied that the offence is such a threat to the peace, welfare or good

government of Norfolk Island that it justifies criminal punishment in Norfolk Island.

66 Geographical application—procedure

(1) The required geographical nexus is conclusively presumed for an offence unless rebutted under subsection (2) or (4).

(2) If a person charged with an offence disputes the existence of the required geographical nexus for the offence, the following provisions apply:

- (a) the court must proceed with the trial of the offence in the usual way;
- (b) if, at the end of the trial, the trier of fact is satisfied on the balance of probabilities that the required geographical nexus does not exist, it must make or return a finding to that effect, and the court must dismiss the charge;
- (c) however, if, disregarding any geographical considerations, the trier of fact would find the person not guilty of the offence (other than because of mental impairment), it must make or return a verdict of not guilty;
- (d) also, if, disregarding any geographical considerations, the trier of fact would find the person not guilty of the offence only because of mental impairment, it must make or return a verdict that the person is not guilty of the offence because of mental impairment.

(3) This section applies to any alternative verdict available by law to the trier of fact in relation to another offence with which the person was not charged.

(4) The trier of fact may make or return a finding of guilty in relation to the other offence (mentioned in subsection (3)) unless satisfied on the balance of probabilities that the required geographical nexus does not exist for the other offence.

(5) If the issue of whether the required geographical nexus exists for an offence is raised before the trial (including at a special hearing under section 23 of the *Criminal Procedure Act 2007*, the issue must be reserved for consideration at the trial.

67 Geographical application—suspicion etc that offence committed

(1) This section applies if a person may exercise a function under a law on reasonable suspicion or belief that an offence has been committed.

(2) The person may exercise the function if the person suspects or believes, as the case requires, on reasonable grounds that all the elements required for the offence exist.

(3) Subsection (2) applies whether or not the person suspects or believes, or has any ground to suspect or believe, that the required geographical nexus exists for the offence.

CHAPTER 3 — OFFENCES AGAINST THE PERSON**PART 3.1 UNLAWFUL KILLING****68 When child born alive**

For this Part, a child shall be taken to have been born alive if he or she has breathed and has been wholly born, whether or not he or she has had an independent circulation.

69 No time limit on criminal responsibility for homicide

(1) Any rule of law that a death which occurs more than a year and a day after the injury that caused it is to be conclusively presumed not to have been caused by the injury, is abolished.

(2) This section does not apply in respect of an injury received before the commencement of this section.

70 Murder

(1) A person commits murder if he or she causes the death of another person—

- (a) intending to cause the death of any person; or
- (b) with reckless indifference to the probability of causing the death of any person.

(2) A person who commits murder is guilty of an offence punishable, on conviction, by imprisonment for life.

71 Trial for murder—provocation

(1) If, on a trial for murder—

- (a) it appears that the act or omission causing death occurred under provocation; and
- (b) apart from this subsection and the provocation, the jury would have found the accused guilty of murder;

the jury shall acquit the accused of murder and find him or her guilty of manslaughter.

(2) For subsection (1), an act or omission causing death shall be taken to have occurred under provocation if—

- (a) the act or omission was the result of the accused's loss of self-control induced by any conduct of the deceased (including grossly insulting words or gestures) towards or affecting the accused; and
- (b) the conduct of the deceased was such as could have induced an ordinary person in the position of the accused to have so far lost self-control—
 - (i) as to have formed an intent to kill the deceased; or
 - (ii) as to be recklessly indifferent to the probability of causing the deceased's death;

whether that conduct of the deceased occurred immediately before the act or omission causing death or at any previous time.

(3) However, conduct of the deceased consisting of a non-violent sexual advance (or advances) towards the accused—

- (a) is taken not to be sufficient, by itself, to be conduct to which subsection (2) (b) applies; but
- (b) may be taken into account together with other conduct of the deceased in deciding whether there has been an act or omission to which subsection (2) applies.

(4) For the purpose of determining whether an act or omission causing death occurred under provocation, there is no rule of law that provocation is negated if—

- (a) there was not a reasonable proportion between the act or omission causing death and the conduct of the deceased that induced the act or omission; or
- (b) the act or omission causing death did not occur suddenly; or
- (c) the act or omission causing death occurred with any intent to take life or inflict grievous bodily harm.

(5) If, on a trial for murder, there is evidence that the act or omission causing death occurred under provocation, the onus of proving beyond reasonable doubt that the act or omission did not occur under provocation lies on the prosecution.

(6) This section does not exclude or limit any defence to a charge of murder.

72 Trial for murder—diminished responsibility

(1) A person on trial for murder shall not be convicted of murder if, when the act or omission causing death occurred, the accused was suffering from an abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent cause or whether it was induced by disease or injury) that substantially impaired his or her mental responsibility for the act or omission.

(2) An accused has the onus of proving that he or she is, under subsection (1), not liable to be convicted of murder.

(3) A person who, apart from subsection (1), would be liable (whether as principal or accessory) to be convicted of murder is liable to be convicted of manslaughter.

(4) The fact that a person is, under subsection (1), not liable to be convicted of murder does not affect the question whether any other person is liable to be convicted of murder in respect of the same death.

(5) If, on a trial for murder, the accused contends—

- (a) that he or she is entitled to be acquitted on the ground that he or she was mentally ill at the time of the act or omission causing the death; or
- (b) that he or she is, under subsection (1), not liable to be convicted of murder;

the prosecution may offer evidence tending to prove the other of those contentions and the court may give directions as to the stage of the proceedings when that evidence may be offered.

73 Manslaughter

(1) Except if a law expressly provides otherwise, an unlawful homicide that is not, under section 12, murder shall be taken to be manslaughter.

(2) A person who commits manslaughter is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

(3) However, for an aggravated offence against this section, the Penalty is imprisonment for 26 years.

Note Section 105 (Aggravated offences—offences against pregnant women) makes provision in relation to aggravated offences against this section.

PART 3.2 — SUICIDE**74 Suicide, etc—not an offence**

The rule of law that it is an offence for a person to commit, or to attempt to commit, suicide is abolished.

75 Suicide—aiding, etc

(1) A person who aids or abets the suicide or attempted suicide of another person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

(2) If—

- (a) a person incites or counsels another person to commit suicide; and
- (b) the other person commits, or attempts to commit, suicide as a consequence of that incitement or counselling;

the firstmentioned person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

76 Prevention of suicide

It is lawful for a person to use the force that is reasonable to prevent the suicide of another person or any act that the person believes on reasonable grounds would, if committed, result in the suicide of another person.

PART 3.3 — OFFENCES ENDANGERING LIFE AND HEALTH**77 Intentionally inflicting grievous bodily harm**

(1) A person who intentionally inflicts grievous bodily harm on another person is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

(2) However, for an aggravated offence against this section, the Penalty is imprisonment for 20 years.

Note Section 105 (Aggravated offences—offences against pregnant women) makes provision in relation to aggravated offences against this section.

78 Recklessly inflicting grievous bodily harm

(1) A person who recklessly inflicts grievous bodily harm on another person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

(2) However, for an aggravated offence against this section, the Penalty is imprisonment for 13 years.

Note Section 105 (Aggravated offences—offences against pregnant women) makes provision in relation to aggravated offences against this section.

79 Wounding

(1) A person who intentionally wounds another person is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

(2) However, for an aggravated offence against this section, the Penalty is imprisonment for 7 years.

Note Section 105 (Aggravated offences—offences against pregnant women) makes provision in relation to aggravated offences against this section.

80 Assault with intent to commit certain indictable offences

A person who assaults another person with intent to commit another offence against this Part punishable by imprisonment for a maximum period of 5 years or longer is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

81 Inflicting actual bodily harm

(1) A person who intentionally or recklessly inflicts actual bodily harm on another person is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

(2) However, for an aggravated offence against this section, the Penalty is imprisonment for 7 years.

Note Section 105 (Aggravated offences—offences against pregnant women) makes provision in relation to aggravated offences against this section.

82 Assault occasioning actual bodily harm

(1) A person who assaults another person and by the assault occasions actual bodily harm is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

(2) However, for an aggravated offence against this section, the Penalty is imprisonment for 7 years.

Note Section 105 (Aggravated offences—offences against pregnant women) makes provision in relation to aggravated offences against this section.

83 Causing grievous bodily harm

A person who, by any unlawful or negligent act or omission, causes grievous bodily harm to another person is guilty of an offence punishable, on conviction, by imprisonment for 2 years.

84 Common assault

A person who assaults another person is guilty of an offence punishable, on conviction, by imprisonment for 2 years.

86 Acts endangering life, etc

(1) In this section:

conveyance means a vehicle (including an aircraft) or vessel of a kind used for transporting persons, animals or goods.

public utility service means—

- (a) the supply of electricity, gas or water; or
- (b) the supply of fuel; or
- (c) the collection and disposal of sewerage and other waste;

as a service to the public.

transport facility means a facility provided to permit the transportation of persons, animals or goods, whether by air or over land or water, or provided in connection with such transportation.

(2) For subsection (3) (g), an interference shall be taken to include any act or omission that, whether temporarily or permanently, damages, renders inoperative, obstructs, causes to malfunction or puts to an improper purpose.

(3) A person who intentionally and unlawfully—

- (a) chokes, suffocates or strangles another person so as to render that person insensible or unconscious or, by any other means, renders another person insensible or unconscious; or
- (b) administers to, or causes to be taken by, another person any stupefying or overpowering drug or poison or any other injurious substance likely to endanger human life or cause a person grievous bodily harm; or
- (c) uses against another person any offensive weapon likely to endanger human life or cause a person grievous bodily harm; or
- (d) discharges any loaded arms at another person or so as to cause another person reasonable apprehension for his or her safety; or
- (e) causes an explosion or throws, places, sends or otherwise uses any explosive device or any explosive, corrosive or inflammable substance in circumstances likely to endanger human life or cause a person grievous bodily harm; or
- (f) sets a trap or device for the purpose of creating circumstances likely to endanger human life or cause a person (including a trespasser) grievous bodily harm; or
- (g) interferes with any conveyance or transport facility or any public utility service in circumstances likely to endanger human life or cause a person grievous bodily harm; or

is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

(4) A person who does an act referred to in subsection (3)—

- (a) intending to commit an indictable offence against this Part punishable by imprisonment for a maximum period exceeding 10 years; or
- (b) intending to prevent or hinder his or her lawful apprehension or detention or that of another person; or
- (c) intending to prevent or hinder a police officer from lawfully investigating an act or matter that reasonably calls for investigation by the officer;

is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

87 Acts endangering health, etc

(1) In this section:

conveyance—see section 86 (1).

interferes with—see section 86 (2).

public utility service—see section 86 (1).

transport facility—see section 86 (1).

(2) A person who intentionally and unlawfully—

(aa) chokes, suffocates or strangles another person; or

(a) administers to, or causes to be taken by, another person any poison or other injurious substance with intent to injure or cause pain or discomfort to that person; or

(b) causes an explosion or throws, places, sends or otherwise uses any explosive device or any explosive, corrosive or inflammable substance in circumstances dangerous to the health, safety or physical wellbeing of another person; or

(c) sets a trap or device for the purpose of creating circumstances dangerous to the health, safety or physical wellbeing of another person (including a trespasser); or

(d) interferes with any conveyance or transport facility or any public utility service in circumstances dangerous to the health, safety or physical wellbeing of another person;

is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

88 Culpable driving of motor vehicle

(1) A person who, by the culpable driving of a motor vehicle, causes the death of another person is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

(2) However, for an aggravated offence against subsection (2), the Penalty is imprisonment for 9 years.

Note Section 105 (Aggravated offences—offences against pregnant women) makes provision in relation to aggravated offences against this section.

(3) A person who, by the culpable driving of a motor vehicle, causes grievous bodily harm to another person is guilty of an offence punishable, on conviction, by imprisonment for 4 years.

(4) However, for an aggravated offence against subsection (4), the Penalty is imprisonment for 5 years.

(5) For this section, a person shall be taken to drive a motor vehicle culpably if the person drives the vehicle—

(a) negligently; or

(b) while under the influence of alcohol, or a drug, to such an extent as to be incapable of having proper control of the vehicle.

(6) For this section, a person shall be taken to drive a motor vehicle negligently if the person fails unjustifiably and to a gross degree to observe the standard of care that a reasonable person would have observed in all the circumstances of the case.

(7) An information or indictment for an offence against subsection (1) or (3) shall specify the nature of the culpability, within the meaning of subsection (5), that is alleged.

(8) Nothing in subsection (7) renders inadmissible in proceedings for an offence against subsection (1) or (2) evidence that, apart from that subsection, would be admissible in the proceedings.

(9) Nothing in this section affects—

- (a) the liability of a person to be convicted of murder or manslaughter or any other offence; or
- (b) the punishment that may be imposed for such an offence.

Note Under the *Road Transport (General) Act 1999*, s 46(1) (Disqualification, etc, compulsory in certain cases), if a person is convicted, or found guilty, of an offence against this section, the person is automatically disqualified from holding or obtaining a driver licence.

(10) A person who has been convicted or acquitted of an offence against subsection (1) or (3) is not liable to be convicted of any other offence against this Act on the same facts or on substantially the same facts.

(11) Subject to section 107, a person is not liable to be convicted of an offence against subsection (1) or (3) if the person has been convicted or acquitted of any other offence on the same facts or on substantially the same facts.

89 Threat to kill

If—

- (a) a person makes a threat to another person to kill that other person or any third person—
 - (i) intending that other person to fear that the threat would be carried out; or
 - (ii) being reckless whether or not that other person would fear that the threat would be carried out; and
- (b) the threat is made—
 - (i) without lawful excuse; and
 - (ii) in circumstances in which a reasonable person would fear that the threat would be carried out;

the firstmentioned person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

90 Threat to inflict grievous bodily harm

If—

- (a) a person makes a threat to another person to inflict grievous bodily harm on that other person or any third person—
 - (i) intending that other person to fear that the threat would be carried out; or
 - (ii) being reckless whether or not that other person would fear that the threat would be carried out; and
- (b) the threat is made—
 - (i) without lawful excuse; and

- (ii) in circumstances in which a reasonable person would fear that the threat would be carried out;

the firstmentioned person is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

91 Demands accompanied by threats

- (1) A person who—
 - (a) makes a demand of another person; or
 - (b) resists, prevents or hinders his or her lawful apprehension or detention, or that of another person; or
 - (c) prevents or hinders a police officer from lawfully investigating any act or matter that reasonably calls for investigation by the officer;

with a threat to kill or inflict grievous bodily harm on a person (other than the offender or an accomplice of the offender) is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

- (2) A person who—
 - (a) makes a demand of another person; or
 - (b) resists, prevents or hinders his or her lawful apprehension or detention, or that of another person; or
 - (c) prevents or hinders a police officer from lawfully investigating any act or matter that reasonably calls for investigation by the officer;

with a threat to endanger the health, safety or physical wellbeing of a person (other than the offender or an accomplice of the offender) is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

92 Possession of object with intent to kill, etc

A person who—

- (a) has possession of an object capable of causing harm to another person; and
- (b) intends to use the object, or to cause or permit another person to use the object, unlawfully to kill another person or cause grievous bodily harm to another person;

is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

93 Forcible confinement

A person who unlawfully confines or imprisons another person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

94 Stalking

- (1) A person must not stalk someone with intent—
 - (a) to cause apprehension, or fear of harm, in the person stalked or someone else; or
 - (b) to cause harm to the person stalked or someone else; or
 - (c) to harass the person stalked.

Penalty:

- (a) imprisonment for 5 years if—
 - (i) the offence involved a contravention of an injunction or other order made by a court; or
 - (ii) the offender was in possession of an offensive weapon; or
- (b) imprisonment for 2 years in any other case.

(2) For this section, a person *stalks* someone else (the *stalked person*) if, on at least 2 occasions, the person does 1 or more of the following:

- (a) follows or approaches the stalked person;
- (b) loiters near, watches, approaches or enters a place where the stalked person resides, works or visits;
- (c) keeps the stalked person under surveillance;
- (d) interferes with property in the possession of the stalked person;
- (e) gives or sends offensive material to the stalked person or leaves offensive material where it is likely to be found by, given to or brought to the attention of, the stalked person;
- (f) telephones, sends electronic messages to or otherwise contacts the stalked person;
- (g) sends electronic messages about the stalked person to anybody else;
- (h) makes electronic messages about the stalked person available to anybody else;
- (i) acts covertly in a way that could reasonably be expected to arouse apprehension or fear in the stalked person;
- (j) engages in conduct amounting to intimidation, harassment or molestation of the stalked person.

(3) However, this section does not apply to reasonable conduct engaged in by a person as part of the person's employment if it is a function of the person's employment to engage in the conduct and the conduct is not otherwise unlawful.

(4) Without limiting subsection (1), a person is also taken to have the intent mentioned in the subsection if the person knows that, or is reckless about whether, stalking the other person would be likely—

- (a) to cause apprehension or fear of harm in the person stalked or someone else; or
- (b) to harass the person stalked.

(5) In a prosecution for an offence against subsection (1), it is not necessary to prove that the person stalked or someone else apprehended or feared harm or that the person stalked was harassed.

(6) For this section:

harm means physical harm, harm to mental health, or disease, whether permanent or temporary.

harm to mental health includes psychological harm.

physical harm includes unconsciousness, pain, disfigurement and physical contact that might reasonably be objected to in the circumstances, whether or not there was an awareness of the contact at the time.

95 Torture

(1) In this section:

act of torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person—

- (a) for such purposes as—
 - (i) obtaining from the person or from a third person information or a confession; or
 - (ii) punishing the person for an act that the person or a third person has committed or is suspected of having committed; or
 - (iii) intimidating or coercing the person or a third person; or
- (b) for any reason based on discrimination of any kind;

but does not include an act arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the articles of the International Covenant on Civil and Political Rights (being the covenant a copy of the English text of which is set out in the *Human Rights and Equal Opportunity Commission Act 1986* (Cwlth), Schedule 2.

(2) A person who—

- (a) is a public employee or acting in an official capacity; or
- (b) is acting at the instigation, or with the consent or acquiescence, of a public employee or a person acting in an official capacity;

and who commits an act of torture is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

96 Abduction of young person

A person who unlawfully takes, or causes to be taken, an unmarried person under the age of 16 years out of the lawful control and against the will of a person having lawful control of the unmarried person is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

97 Kidnapping

A person who leads, takes or entices away or detains a person with intent to hold that person for ransom or for any other advantage to any person is guilty of an offence punishable, on conviction, by—

- (a) if that other person suffers any grievous bodily harm while being so led, taken or enticed away, or detained—imprisonment for 20 years; or
- (b) in any other case—imprisonment for 15 years.

PART 3.4 — OFFENCES CONCERNING CHILDREN**98 Neglect, etc of children**

- (1) A person must not—
- (a) ill-treat or abuse a child who is in the person's care; or
 - (b) neglect a child for whom he or she is caring or has parental responsibility.

Penalty: 200 penalty units, imprisonment for 2 years or both.

(2) A person is not guilty of an offence referred to in subsection (1) (b) by reason only of failing to provide a thing for a child if the person did not provide the thing because he or she could not afford to do so.

(3) A person must not, knowingly or recklessly, leave a child unattended in such circumstances and for such a time that the child could suffer injury or sickness or otherwise be in danger.

Penalty: 100 penalty units, imprisonment for 1 year or both.

(4) A police officer or medical practitioner may act (including by entering any building, place or vehicle, with such force that is necessary and reasonable) if the police officer or medical practitioner reasonably believes—

- (a) that a child is being or has been ill-treated, abused or neglected as mentioned in subsection (1) or left unattended as mentioned in subsection (3); and
- (b) that it is necessary to act immediately to safeguard the child.

(5) An action does not lie against a person by reason of the person having acted under subsection (4) in good faith, without negligence and with reasonable care in the circumstances.

(6) In this section:

parental responsibility, for a child, means all the duties, powers, responsibilities and authority parents ordinarily have by law in relation to their children.

99 Unlawfully taking child, etc

A person who, by force or deception, leads, takes or entices away or detains a child under the age of 12 years—

- (a) intending unlawfully to deprive another person of the lawful control of the child; or
- (b) intending to steal any article on or about the person of the child;

is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

100 Exposing or abandoning child

A person who unlawfully abandons or exposes a child under the age of 2 years and by the abandonment or exposure endangers the life or health of the child is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

101 Child destruction

A person who unlawfully and, either intentionally or recklessly, by any act or omission occurring in relation to a childbirth and before the child is born alive—

- (a) prevents the child from being born alive; or

- (b) contributes to the child's death;

is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

102 Childbirth—grievous bodily harm

A person who unlawfully and, either intentionally or recklessly, by any act or omission occurring in relation to a childbirth and before the child is born alive, inflicts grievous bodily harm on the child, is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

103 Concealment of birth

(1) A person who disposes of the dead body of a child (whether or not the child was born alive) with intent to conceal the child's birth is guilty of an offence punishable, on conviction, by imprisonment for 2 years.

(2) It is a defence to a charge for an offence against subsection (1) if the accused satisfies the court or jury that the body disposed of had issued from the mother's body before the end of the 28th week of pregnancy.

PART 3.5 — MISCELLANEOUS OFFENCES

104 Misconduct with regard to corpses

A person who—

- (a) indecently interferes with any dead human body; or
 (b) improperly interferes with, or offers any indignity to, any dead human body or human remains (whether buried or not);

is guilty of an offence punishable, on conviction, by imprisonment for 2 years.

105 Aggravated offences—offences against pregnant women

(1) This section applies to an offence against any of the following provisions:

- (a) section 73 (Manslaughter);
 (b) section 77 (Intentionally inflicting grievous bodily harm);
 (c) section 78 (Recklessly inflicting grievous bodily harm);
 (d) section 79 (Wounding);
 (e) section 81 (Inflicting actual bodily harm);
 (f) section 82 (Assault occasioning actual bodily harm);
 (g) section 88 (1) or (3) (Culpable driving of motor vehicle).

(2) The offence is an *aggravated offence* if—

- (a) the offence was committed against a pregnant woman; and
 (b) the commission of the offence caused—
 (i) the loss of, or serious harm to, the pregnancy; or
 (ii) the death of, or serious harm to, a child born alive as a result of the pregnancy.

(3) However, the offence is not an *aggravated offence* if the defendant proves, on the balance of probabilities, that the defendant did not know, and could not reasonably have known, that the woman was pregnant.

(4) If the prosecution intends to prove that the offence is an aggravated offence, the relevant factors of aggravation must be stated in the charge.

(5) To remove any doubt—

- (a) it is not necessary for the prosecution to prove that the defendant had a fault element in relation to any factor of aggravation; and
- (b) chapter 2 (other than the applied provisions) does not apply to an offence to which this section applies, whether or not it is an aggravated offence.

(6) In this section:

cause loss, serious harm or death—a person’s conduct causes loss, serious harm or death if it substantially contributes to the loss, serious harm or death.

factor of aggravation means a matter mentioned in subsection (2) (a) or (b).

harm to a child—see the Criminal Code, dictionary, definition of **harm**.

harm to a pregnancy includes maternal haemorrhage, rupture of the uterus or membranes, placental abruption, pre-term uterine contractions, foetal haemorrhage and trauma to the foetus.

loss of a pregnancy means a miscarriage or stillbirth.

serious harm to a child—see dictionary.

serious harm to a pregnancy means any harm (including the cumulative effect of more than 1 harm) that—

- (a) is likely to cause loss of the pregnancy; or
- (b) endangers, or is likely to endanger, the natural course of the pregnancy.

106 Alternative verdicts for aggravated offences—offences against pregnant women

(1) If, in a prosecution for an aggravated offence mentioned in column 2 of an item in table 106 the trier of fact is not satisfied that the defendant committed the aggravated offence, but is satisfied beyond reasonable doubt that the defendant committed an offence mentioned in column 3 of the item (the **alternative offence**), the trier of fact may find the defendant guilty of the alternative offence but only if the defendant has been given procedural fairness in relation to that finding of guilt.

Table 106

column 1 item	column 2 aggravated offence	column 3 alternative offences
1	section 73 (Manslaughter), aggravated offence	1.1 section 15, simple offence 1.2 section 17 (1) (Suicide—aiding etc) 1.3 section 17 (2) 1.4 section 20 (Recklessly inflicting grievous bodily harm), aggravated offence 1.5 section 20, simple offence

column 1 item	column 2 aggravated offence	column 3 alternative offences
		1.6 section 25 (Causing grievous bodily harm) 1.7 section 87(2) (Culpable driving of motor vehicle—causing death), aggravated offence 1.8 section 87(2), simple offence 1.9 section 100 (Child destruction) 1.10 section 105 (Concealment of birth)
2	section 77 (Intentionally inflicting grievous bodily harm), aggravated offence	2.1 section 77 simple offence 2.2 section 78 Recklessly inflicting grievous bodily harm), aggravated offence 2.3 section 78 simple offence 2.4 section 79 Wounding), aggravated offence 2.5 section 79 simple offence 2.6 section 81 Inflicting actual bodily harm), aggravated offence 2.7 section 81 simple offence 2.8 section 101 (Childbirth—grievous bodily harm)
3	section 78 (Recklessly inflicting grievous bodily harm), aggravated offence	3.1 section 78 simple offence 3.2 section 81 Inflicting actual bodily harm), aggravated offence 3.3 section 81 simple offence 3.4 section 83 (Causing grievous bodily harm) 3.5 section 87(4) (Culpable driving of motor vehicle—causing grievous bodily harm), aggravated offence 3.6 section 87(4), simple offence 3.7 section 101 (Childbirth—grievous bodily harm)

column 1 item	column 2 aggravated offence	column 3 alternative offences
4	section 78 (Wounding), aggravated offence	4.1 section 79, simple offence 4.2 section 81 (Inflicting actual bodily harm), aggravated offence 4.3 section 81, simple offence 4.4 section 82 (Assault occasioning actual bodily harm), aggravated offence 4.5 section 82, simple offence 4.6 section 84 (Common assault)

(2) In this section:

aggravated offence—see section 105(2).

simple offence—a *simple offence*, in relation to a provision, means an offence against the provision that is not an aggravated offence against the provision.

107 Alternative verdicts for certain other offences against the person

If, on a trial for an offence against a provision specified in column 2 in an item in table 107, the jury is not satisfied that the accused is guilty of that offence but is satisfied that the accused is guilty of an offence against a provision specified in column 3 in that item, it may find the accused not guilty of the offence charged but guilty of the offence against the provision specified in column 3:

Table 107

column 1 Item	column 2 offence charged	column 3 alternative offences
1	section 70(2) (Murder)	(a) section 73(2) (b) section 75(1) (c) section 75(2) (d) section 100 (e) section 105(1)
2	section 73(1) (Manslaughter)	(a) section 75(1) (b) section 75(2) (c) section 78 (d) section 83 (e) section 87(1) (f) section 100 (g) section 105(1)
3	section 77 (Intentionally inflicting grievous bodily harm)	(a) section 78 (b) section 79 (c) section 81 (d) section 101
4	section 78 (Recklessly inflicting	(a) section 81 (b) section 83

column 1 Item	column 2 offence charged	column 3 alternative offences
	grievous bodily harm)	(c) section 87(3) (d) section 101
5	section 79 (Wounding)	(a) section 81 (b) section 82 (c) section 84
6	section 80(2) (Assault with intent to commit indictable offence)	section 84
7	section 82 (Assault occasioning actual bodily harm)	section 84
8	section 85(3)(b) (Administering drugs etc endangering life etc)	section 84(2)(a)
9	section 85(3)(e) (Causing explosions etc endangering life etc)	section 84(2)(b)
10	section 85(3)(f) (Setting traps endangering life etc)	section 84(2)(c)
11	section 27(3)(g) (Interfering with conveyances and endangering life etc)	section 84(2)(d)

PART 3.6 — SEXUAL OFFENCES

108 Meaning of *sexual intercourse* in this Part

(1) In this Part, *sexual intercourse* means:

- (a) the penetration, to any extent, of the genitalia or anus of a person by any part of the body of another person; or
- (b) the penetration, to any extent, of the genitalia or anus of a person, by an object, carried out by another person; or
- (c) fellatio; or
- (d) cunnilingus; or
- (e) the continuation of any activity mentioned in paragraph (a), (b), (c) or (d).

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

- (a) is carried out for a proper medical or hygienic purpose; or
- (b) is carried out for a proper law enforcement purpose.

(3) In this section:

genitalia includes surgically constructed or altered genitalia.

object includes an animal.

108A Meaning of *act of indecency* in this Part

In this Part:

act of indecency means any act, other than sexual intercourse, that:

- (a) is of a sexual or indecent nature (including an indecent assault); and
- (b) involves the human body, or bodily actions or functions;

whether or not the act involves physical contact between people.

109 Sexual assault in the first degree

(1) A person who inflicts grievous bodily harm on another person with intent to engage in sexual intercourse with that other person, or with a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 17 years.

(2) A person who, acting in company with any other person, inflicts, or assists in inflicting, grievous bodily harm on a third person with the intent that the firstmentioned person, or any person with whom he or she is in company, should engage in sexual intercourse with that third person, or with any other person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

110 Sexual assault in the second degree

(1) A person who inflicts actual bodily harm on another person with intent to engage in sexual intercourse with that other person, or with a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

(2) A person who, acting in company with any other person, inflicts, or assists in inflicting, actual bodily harm on a third person with the intent that the firstmentioned person, or any person with whom he or she is in company, should engage in sexual intercourse with that third person, or with any other person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 17 years.

111 Sexual assault in the third degree

(1) A person who unlawfully assaults, or threatens to inflict grievous or actual bodily harm on, another person with intent to engage in sexual intercourse with that other person, or with a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 12 years.

(2) A person who, acting in company with any other person, unlawfully assaults, or threatens to inflict grievous or actual bodily harm on, a third person with the intent that the firstmentioned person, or any person with whom he or she is in company, should engage in sexual intercourse with that third person, or with any other person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

112 Sexual intercourse without consent

(1) A person who engages in sexual intercourse with another person without the consent of that other person and who knows that that other person does not consent, or who is reckless as to whether that other person consents, to the sexual

intercourse is guilty of an offence punishable, on conviction, by imprisonment for 12 years.

(2) A person who, acting in company with any other person, engages in sexual intercourse with another person without the consent of that other person and who knows that that other person does not consent, or who is reckless as to whether that other person consents, to the sexual intercourse is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

113 Sexual intercourse with young person

(1) A person who engages in sexual intercourse with another person who is under the age of 10 years is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

(2) A person who engages in sexual intercourse with another person who is under the age of 16 years is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

(3) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes that—

- (a) he or she believed on reasonable grounds that the person on whom the offence is alleged to have been committed was of or above the age of 16 years; or
- (b) at the time of the alleged offence—
 - (i) the person on whom the offence is alleged to have been committed was of or above the age of 10 years; and
 - (ii) the defendant was not more than 2 years older;

and that that person consented to the sexual intercourse.

113A Sexual intercourse with person aged at least 16 but under 18—defendant in position of trust or authority

- (1) A person (the *defendant*) commits an offence if:
- (a) the defendant engages in sexual intercourse with another person; and
 - (b) the other person is at least 16, but less than 18, years of age; and
 - (c) the defendant is in a position of trust or authority in relation to the other person for the purposes of the *Criminal Code* of the Commonwealth (see section 272.3 of that Code).

Penalty: Imprisonment for 10 years.

- (2) For the purposes of subsection (1):
- (a) absolute liability applies to paragraph (1)(b); and
 - (b) strict liability applies to paragraph (1)(c).

Note For absolute liability, see section 24. For strict liability, see section 23.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that:

- (a) at the time of the alleged offence, there existed between the defendant and the other person a marriage that was valid, or recognised as valid, under a law in force in:

- (i) the place where the marriage was solemnised; or
- (ii) Norfolk Island; or
- (iii) the place of the defendant's residence or domicile; and
- (b) when the marriage was solemnised:
 - (i) the marriage was genuine; and
 - (ii) the other person was at least 16 years of age.

Note A defendant bears a legal burden in relation to the matters in this subsection, see section 59.

(4) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that, at the time of the alleged offence, the defendant believed on reasonable grounds that the other person was of or above the age of 18 years.

Note A defendant bears a legal burden in relation to the matter in this subsection, see section 59.

114 Maintaining a sexual relationship with young person

(1) In this section:

sexual act means an act that constitutes an offence against this Part, but does not include an act referred to in section 113(2) or 119(2) if the person who committed the act establishes the matters referred to in section 113(3) or 119(3), as the case may be, that would be a defence if the person had been charged with an offence against section 113(2) or 119(2), as the case may be.

young person means a person who is under the age of 16 years.

(2) A person who, being an adult, maintains a sexual relationship with a young person is guilty of an offence.

(3) For subsection (2), an adult shall be taken to have maintained a sexual relationship with a young person if the adult has engaged in a sexual act in relation to the young person on 3 or more occasions.

(4) In proceedings for an offence against subsection (2), evidence of a sexual act is not inadmissible by reason only that it does not disclose the date or the exact circumstances in which the act occurred.

(5) Subject to subsection (6), a person who is convicted of an offence against subsection (2) is liable to imprisonment for 7 years.

(6) If a person convicted under subsection (2) is found, during the course of the relationship, to have committed another offence against this Part in relation to the young person (whether or not the person has been convicted of that offence), the offence against subsection (2) is punishable by imprisonment—

- (a) if the other offence is punishable by imprisonment for less than 14 years—for 14 years; or
- (b) if the other offence is punishable by imprisonment for a period of 14 years or more—for life.

(7) Subject to subsection (8), a person may be charged in 1 indictment with an offence against subsection (2) and with another offence against this Part alleged to have been committed by the person during the course of the alleged relationship and may be convicted of and punished for any or all of the offences so charged.

(8) Notwithstanding this or any other Act, where a person convicted of an offence against subsection (2) is sentenced to a term of imprisonment for that offence and a term of imprisonment for another offence against this Part committed during the course of the relationship, the court shall not direct that those sentences be cumulative.

(9) A prosecution for an offence against subsection (2) shall not be commenced except by, or with the consent of, the Crown law officer.

(10) However, a person may be arrested for, charged with, or remanded in custody or granted bail for, an offence against subsection (2) before the consent has been given.

115 Act of indecency in the first degree

A person who inflicts grievous bodily harm on another person with intent to commit an act of indecency on, or in the presence of, that other person, or a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

116 Act of indecency in the second degree

A person who inflicts actual bodily harm on another person with intent to commit an act of indecency on, or in the presence of, that other person, or a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 12 years.

117 Act of indecency in the third degree

A person who unlawfully assaults, or threatens to inflict grievous or actual bodily harm on, another person with intent to commit an act of indecency on, or in the presence of, that other person, or a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

118 Act of indecency without consent

(1) A person who commits an act of indecency on, or in the presence of, another person without the consent of that person and who knows that that other person does not consent, or who is reckless as to whether that other person consents, to the committing of the act of indecency is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

(2) A person who, acting in company with any other person, commits an act of indecency on, or in the presence of, another person without the consent of that other person and who knows that that other person does not consent, or who is reckless as to whether that other person consents, to the committing of the act of indecency is guilty of an offence punishable, on conviction, by imprisonment for 9 years.

119 Acts of indecency with young people

(1) A person who commits an act of indecency on, or in the presence of, another person who is under the age of 10 years is guilty of an offence punishable, on conviction, by imprisonment for 12 years.

(2) A person who commits an act of indecency on, or in the presence of, another person who is under the age of 16 years is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

(3) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes that—

- (a) he or she believed on reasonable grounds that the person on whom the offence is alleged to have been committed was of or above the age of 16 years; or
- (b) at the time of the alleged offence—
 - (i) the person on whom the offence is alleged to have been committed was of or above the age of 10 years; and
 - (ii) the defendant was not more than 2 years older;

and that that person consented to the committing of the act of indecency.

119A Act of indecency with person aged at least 16 but under 18—defendant in position of trust or authority

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

- (a) the defendant commits an act of indecency on, or in the presence of, another person; and
- (b) the other person is at least 16, but less than 18, years of age; and
- (c) the defendant is in a position of trust or authority in relation to the other person for the purposes of the *Criminal Code* of the Commonwealth (see section 272.3 of that Code).

Penalty: Imprisonment for 7 years.

(2) For the purposes of subsection (1):

- (a) absolute liability applies to paragraph (1)(b); and
- (b) strict liability applies to paragraph (1)(c).

Note For absolute liability, see section 24. For strict liability, see section 23.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that:

(a) at the time of the alleged offence, there existed between the defendant and the other person a marriage that was valid, or recognised as valid, under a law in force in:

- (i) the place where the marriage was solemnised; or
- (ii) Norfolk Island; or
- (iii) the place of the defendant's residence or domicile; and
- (b) when the marriage was solemnised:
 - (i) the marriage was genuine; and
 - (ii) the other person was at least 16 years of age.

Note A defendant bears a legal burden in relation to the matters in this subsection, see section 59.

(4) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that, at the time of the alleged offence, the defendant believed on reasonable grounds that the other person was of or above the age of 18 years.

Note A defendant bears a legal burden in relation to the matter in this subsection, see section 59.

120 Incest and similar offences

(1) A person who engages in sexual intercourse with another person, being a person who is under the age of 10 years and who is, to the knowledge of the firstmentioned person, his or her lineal descendant, sister, half-sister, brother, half-brother or stepchild, is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

(2) A person who engages in sexual intercourse with another person, being a person who is under the age of 16 years and who is, to the knowledge of the firstmentioned person, his or her lineal descendant, sister, half-sister, brother, half-brother or stepchild, is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

(3) A person who engages in sexual intercourse with another person, being a person who is of or above the age of 16 years and who is, to the knowledge of the firstmentioned person, his or her lineal ancestor, lineal descendant, sister, half-sister, brother or half-brother, is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

(4) A person shall not be convicted of an offence against subsection (2) or (3) if there is evidence that he or she engaged in the act alleged to constitute the offence under the coercion of the person with whom the offence is alleged to have been committed unless the evidence is rebutted by the prosecution.

(5) A person charged with an offence against this section shall, unless there is evidence to the contrary, be presumed to have known at the time of the alleged offence that he or she and the person with whom the offence is alleged to have been committed were related in the way charged.

(6) In this section:

stepchild, in relation to a person, means a person in relation to whom the firstmentioned person stands in place of a parent.

121 Abduction

A person who abducts another person by force or by any other means or who unlawfully detains another person with the intent that the other person should engage in sexual intercourse with the firstmentioned person or with a third person (whether within Norfolk Island or otherwise) is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

121A Procuring a young person for a child sex offence

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

(a) the defendant procures another person (the *young person*) for an act that constitutes, or would if it occurred in Norfolk Island constitute, a child sex offence (whether or not involving the defendant); and

(b) the young person is someone:

(i) who is under the age of 10 years; or

(ii) who the defendant believes to be under the age of 10 years;
and

(c) the defendant is of or above the age of 18 years.

Penalty: Imprisonment for 15 years.

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

(a) the defendant procures another person (the *young person*) for an act that constitutes, or would if it occurred in Norfolk Island constitute, a child sex offence (whether or not involving the defendant); and

(b) the young person is someone:

(i) who is under the age of 16 years; or

(ii) who the defendant believes to be under the age of 16 years;
and

(c) the defendant is of or above the age of 18 years.

Penalty: Imprisonment for 12 years.

(3) Absolute liability applies to subparagraph (1)(b)(i), paragraph (1)(c), subparagraph (2)(b)(i) and paragraph (2)(c).

Note For absolute liability, see section 24.

(4) A person may be found guilty of an offence against subsection (1) or (2) even if it is impossible for the act that constitutes or would constitute a child sex offence to take place.

(5) For the purposes of subsections (1) and (2), it does not matter that the young person is a fictitious person represented to the defendant as a real person.

(6) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that, at the time the defendant engaged in the conduct constituting the offence against subsection (2), he or she believed on reasonable grounds that the young person was of or above the age of 16 years.

Note A defendant bears a legal burden in relation to the matter in this subsection, see section 59.

(7) It is not an offence to attempt to commit, or to incite the commission of, an offence against subsection (1) or (2).

121B Grooming a person for a child sex offence

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

(a) the defendant engages in conduct in relation to a person (the *groomed person*); and

(b) the defendant does so with the intention of making it easier to procure a person (the *young person*), who need not be the groomed person, for an act that constitutes, or would if it occurred in Norfolk Island constitute, a child sex offence (whether or not involving the defendant); and

(c) the young person is someone:

(i) who is under the age of 10 years; or

(ii) who the defendant believes to be under the age of 10 years;
and

(d) the defendant is of or above the age of 18 years.

Penalty: Imprisonment for 15 years.

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

(a) the defendant engages in conduct in relation to a person (the *groomed person*); and

(b) the defendant does so with the intention of making it easier to procure a person (the *young person*), who need not be the groomed person, for an act that constitutes, or would if it occurred in Norfolk Island constitute, a child sex offence (whether or not involving the defendant); and

(c) the young person is someone:

(i) who is under the age of 16 years; or

(ii) who the defendant believes to be under the age of 16 years;
and

(d) the defendant is of or above the age of 18 years.

Penalty: Imprisonment for 12 years.

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

Note For absolute liability, see section 24.

(4) A person may be found guilty of an offence against subsection (1) or (2) even if it is impossible for the act that constitutes or would constitute a child sex offence to take place.

(5) For the purposes of subsections (1) and (2), it does not matter that the groomed person or the young person is a fictitious person represented to the defendant as a real person.

(6) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that, at the time the defendant engaged in the conduct constituting the offence against subsection (2), he or she believed on reasonable grounds that the young person was of or above the age of 16 years.

Note A defendant bears a legal burden in relation to the matter in this subsection, see section 59.

(7) It is not an offence to attempt to commit, or to incite the commission of, an offence against subsection (1) or (2).

121C Definitions for procuring and grooming offences

In sections 121A and 121B:

child sex offence means an offence against:

- (a) this Part; or
- (b) Part 3.7 (child pornography); or
- (c) Part 3.10 (sexual servitude).

procure a person for an act that constitutes, or would constitute, a child sex offence includes:

- (a) encourage, entice or recruit the person in relation to such an act; or
- (b) induce the person (whether by threats, promises or otherwise) in relation to such an act.

PART 3.7 — CHILD PORNOGRAPHY

122 Using child for production of child pornography etc

(1) A person commits an offence if—

- (a) the person uses, offers or procures a child—

- (i) for the production of child pornography; or
- (ii) for a pornographic performance; and
- (b) the child is under 12 years old.

Penalty: 1 500 penalty units, imprisonment for 15 years or both.

- (2) Absolute liability applies to subsection (1) (b).
- (3) A person commits an offence if—
 - (a) the person uses, offers or procures a child—
 - (i) for the production of child pornography; or
 - (ii) for a pornographic performance; and
 - (b) the child is 12 years old or older.

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

- (4) Strict liability applies to subsection (3) (b).
- (5) In this section:

child pornography means anything that represents—

- (a) the sexual parts of a child; or
- (b) a child engaged in an activity of a sexual nature; or
- (c) someone else engaged in an activity of a sexual nature in the presence of a child;

substantially for the sexual arousal or sexual gratification of someone other than the child.

pornographic performance means—

- (a) a performance by a child engaged in an activity of a sexual nature; or
- (b) a performance by someone else engaged in an activity of a sexual nature in the presence of a child;

substantially for the sexual arousal or sexual gratification of someone other than the child.

Examples of activity of a sexual nature

- 1 sexual intercourse or other explicit sexual activity (whether real or simulated)
- 2 a striptease

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (s 4(2)).

represent means depict or otherwise represent on or in a film, photograph, drawing, audiotape, videotape, computer game, the internet or anything else.

123 Trading in child pornography

(1) A person commits an offence if the person produces, publishes, offers or sells child pornography.

Penalty: 1 200 penalty units, imprisonment for 12 years or both.

- (2) In this section:

child pornography—see section 122 (5).

124 Possessing child pornography

- (1) A person commits an offence if—

- (a) the person intentionally possesses pornography; and
- (b) the pornography is child pornography.

Penalty: 500 penalty units, imprisonment for 5 years or both.

(2) Absolute liability applies to subsection (1) (b).

(3) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant had no reasonable grounds for suspecting that the pornography concerned was child pornography.

(4) In this section:

child pornography—see section 122(5).

125 Using the Internet, etc to deprave young people

(1) A person must not, using electronic means, suggest to a young person that the young person commit or take part in, or watch someone else committing or taking part in, an act of a sexual nature.

Penalty:

- (a) for a 1st offence—imprisonment for 5 years; or
- (b) for a 2nd or subsequent offence—imprisonment for 10 years.

(2) A person must not, using electronic means, send or make available pornographic material to a young person.

Penalty: 100 penalty units, imprisonment for 5 years or both.

(3) It is a defence to a prosecution for an offence against subsection (2) if the defendant—

- (a) is an Internet service provider; and
- (b) had no knowledge that the defendant's facilities were used to commit the offence.

(4) It is not a defence to a prosecution for an offence against this section that the young person had consented to—

- (a) the suggestion being made; or
- (b) the material being sent or made available.

(5) However, it is a defence to a prosecution for an offence against this section if the defendant proves that the defendant believed on reasonable grounds that the young person to whom the suggestion was made, or the material was sent or made available, was at least 16 years old.

(6) In this section:

act of a sexual nature means sexual intercourse or an act of indecency (both within the meaning of Part 3.6).

using electronic means, means using email, Internet chat rooms, SMS messages and real time audio/video.

young person means a person under 16 years old.

126 Consent

(1) For sections 112, 113(3)(b), 118 and 119 (3) (b) and without limiting the grounds on which it may be established that consent is negated, the

consent of a person to sexual intercourse with another person, or to the committing of an act of indecency by or with another person, is negated if that consent is caused—

- (a) by the infliction of violence or force on the person, or on a third person who is present or nearby; or
- (b) by a threat to inflict violence or force on the person, or on a third person who is present or nearby; or
- (c) by a threat to inflict violence or force on, or to use extortion against, the person or another person; or
- (d) by a threat to publicly humiliate or disgrace, or to physically or mentally harass, the person or another person; or
- (e) by the effect of intoxicating liquor, a drug or an anaesthetic; or
- (f) by a mistaken belief as to the identity of that other person; or
- (g) by a fraudulent misrepresentation of any fact made by the other person, or by a third person to the knowledge of the other person; or
- (h) by the abuse by the other person of his or her position of authority over, or professional or other trust in relation to, the person; or
- (i) by the person's physical helplessness or mental incapacity to understand the nature of the act in relation to which the consent is given; or
- (j) by the unlawful detention of the person.

(2) A person who does not offer actual physical resistance to sexual intercourse shall not, by reason only of that fact, be regarded as consenting to the sexual intercourse.

(3) If it is established that a person who knows the consent of another person to sexual intercourse or the committing of an act of indecency has been caused by any of the means set out in subsection (1) (a) to (j), the person shall be deemed to know that the other person does not consent to the sexual intercourse or the act of indecency, as the case may be.

PART 3.8 — MISCELLANEOUS PROVISIONS FOR PART 3

127 Sexual intercourse—people not to be presumed incapable by reason of age

(1) For this Part, a person shall not, by reason only of his or her age, be presumed to be incapable of engaging in sexual intercourse with another person.

(2) Subsection (1) shall not be construed so as to affect the operation of any law relating to the age when a child can be found guilty of an offence.

128 Marriage no bar to conviction

The fact that a person is married to a person on whom an offence against section 112 is alleged to have been committed shall be no bar to the conviction of the firstmentioned person for the offence.

129 Alternative verdicts for certain sexual offences

(1) If, on the trial of a person for an offence against section 109(1) or (2) or 115, the jury is satisfied that the accused inflicted actual bodily harm with the intent charged but is not satisfied that the harm was grievous bodily harm, it may find the accused not guilty of the offence charged but guilty of an offence against section 110(1) or (2) or 116, as the case requires.

(2) If, on the trial of a person for an offence against section 109(2), 110(2), 111(2), 112(2) or 118(2), the jury is not satisfied that the accused is guilty of that offence but is satisfied that the accused is guilty of an offence against section 109(1), 110(1), 111(1), 112(1) or 118(1), it may find the accused not guilty of the offence charged but guilty of an offence against section 109(1), 110(1), 111(1), 112(1) or 118(1), as the case requires.

(3) If, on the trial of a person for an offence against section 109(1) or (2) or 115 the jury is satisfied that the accused inflicted grievous bodily harm but is not satisfied that he or she did so with the intent charged, it may find the accused not guilty of the offence charged but guilty of an offence against section 77, 78 or 83.

(4) If, on the trial of a person for an offence against section 110(1) or (2) or 116, the jury is satisfied that the accused inflicted actual bodily harm but is not satisfied that he or she did so with the intent charged, it may find the accused not guilty of the offence charged but guilty of an offence against section 82.

(5) If, on the trial of a person for an offence against section 113(1), 119(1), 120(1), 121A(1) or 121B(1), the jury—

- (a) is not satisfied that the person in relation to whom the offence is alleged to have been committed was under 10 years of age when the offence is alleged to have been committed; but
- (b) is satisfied that the accused is guilty of an offence against section 113(2), 119(2), 120(2), 121A(2) or 121B(2), respectively;

the jury may find the accused not guilty of the offence charged but guilty of an offence against section 113(2), 119(2), 120(2), 121A(2) or 121B(2), respectively.

(6) However, a person may be found guilty of an offence in accordance with this section only if the person has been accorded procedural fairness in relation to that finding of guilt.

130 Adding count for act of indecency

(1) In an indictment for an offence against section 112 a count may be added for an offence against section 118.

(2) In an indictment for an offence against section 113A, a count may be added for an offence against section 119A.

131 Indictment for act of indecency

In an indictment for an offence against section 118, 119 or 119A it shall not be necessary to describe the act constituting the act of indecency with which the accused is charged.

PART 3.9 — FEMALE GENITAL MUTILATION**132 Meaning of *female genital mutilation* for Part 3.9**

In this Part:

female genital mutilation means—

- (a) clitoridectomy or the excision of any other part of the female genital organs; or
- (b) infibulation or similar procedure; or
- (c) any other mutilation of the female genital organs.

133 Prohibition of female genital mutilation

(1) A person shall not intentionally perform female genital mutilation on another person.

Penalty: imprisonment for 15 years.

(2) It is not a defence to a prosecution for an offence against this section that the person on whom the female genital mutilation was performed, or a parent or guardian of that person, consented to the mutilation.

134 Removal of child from Norfolk Island for genital mutilation

(1) A person shall not take a child from Norfolk Island, or arrange for a child to be taken from Norfolk Island, with the intention of having female genital mutilation performed on the child.

Penalty: imprisonment for 7 years.

(2) In proceedings for an offence against subsection (1), if it is proved that—

- (a) the defendant took a child, or arranged for a child to be taken, from Norfolk Island; and
- (b) female genital mutilation was performed on the child while outside Norfolk Island;

it will be presumed, in the absence of proof to the contrary, that the defendant took the child, or arranged for the child to be taken, from Norfolk Island with the intention of having female genital mutilation performed on the child.

(3) In this section:

child means a person under the age of 18 years.

135 Exception—medical procedures for genuine therapeutic purposes

(1) It is not an offence against this Part to perform a medical procedure that has a genuine therapeutic purpose or to take a person, or arrange for a person to be taken, from Norfolk Island with the intention of having such a procedure performed on the person.

- (2) A medical procedure has a genuine therapeutic purpose only if—
 - (a) performed on a person in labour, or who has just given birth, and for medical purposes connected with the labour or birth, by a doctor or midwife; or
 - (b) it is necessary for the health of the person on whom it is performed and is performed by a doctor.

(3) A medical procedure that is performed as, or as part of, a cultural, religious or other social custom is not of itself to be regarded as being performed for a genuine therapeutic purpose.

136 Exception—sexual reassignment procedures

(1) It is not an offence against this Part to perform a sexual reassignment procedure or to take, or arrange for a person to be taken, from Norfolk Island with the intention of having a sexual reassignment procedure performed on the person.

(2) In subsection (1):

sexual reassignment procedure means a surgical procedure performed by a medical practitioner to give a female person, or a person whose sex is ambivalent, the genital appearance of a person of the opposite sex or of a particular sex (whether male or female).

PART 3.10 — SEXUAL SERVITUDE

137 Meaning of *sexual servitude* and *sexual services* for Part 3.10

(1) In this Part:

sexual services means the commercial use or display of the body of the person providing the service for the sexual gratification of others.

sexual servitude is the condition of a person who provides sexual services and who, because of the use of force or a threat, is not free—

- (a) to stop providing sexual services; or
- (b) to leave the place or area where the person provides sexual services.

(2) For subsection (1), definition of *sexual servitude*, the question whether, because of the use of force or a threat, a person is not free to stop providing sexual services, or to leave the place or area where the person provides sexual services, is to be decided according to whether a reasonable adult would consider, in the circumstances, that the person is not free to stop or leave.

(3) In this section:

threat means—

- (a) a threat of force; or
- (b) a threat to cause a person's deportation; or
- (c) a threat of other detrimental action unless there are reasonable grounds for the threat.

138 Sexual servitude offences

(1) A person commits an offence if—

- (a) the person's conduct causes someone else to enter into or remain in sexual servitude; and
- (b) the person intends to cause, or is reckless about causing, someone else to enter into or remain in sexual servitude.

Penalty:

- (a) for an aggravated offence—imprisonment for 19 years; or
- (b) in any other case—imprisonment for 15 years.

Note Aggravated offence is defined in s 133.

- (2) A person commits an offence if the person—
 - (a) conducts a business that involves the sexual servitude of others; and
 - (b) knows that, or is reckless about whether, the business involves the sexual servitude of others.

Penalty:

- (a) for an aggravated offence—imprisonment for 19 years; or
- (b) in any other case—imprisonment for 15 years.

Note Aggravated offence is defined in s 133.

- (3) In this section:

conducts a business includes—

- (a) taking part in the management of the business; or
- (b) exercising control or direction over the business; or
- (c) providing finance for the business.

139 Deceptive recruiting for sexual services

A person commits an offence if the person, with the intention of inducing someone else to enter into an engagement to provide sexual services, deceives the other person about the fact that the engagement will involve the provision of sexual services.

Penalty:

- (a) for an aggravated offence—imprisonment for 9 years; or
- (b) in any other case—imprisonment for 7 years.

Note Aggravated offence is defined in s 140.

140 Increased penalty for aggravated offences

(1) An offence against section 138 or 139 is an aggravated offence if the offence was committed against a person younger than 18 years old.

(2) If the prosecution intends to prove an aggravated offence, the charge must allege that the offence was committed against a person younger than 18 years old.

(3) To prove an aggravated offence, the prosecution must prove that the defendant intended to commit, or was reckless about committing, the offence against a person younger than 18 years old.

141 Alternative verdict if aggravated offence not proven

If, on trial for an aggravated offence against section 138 or 139, the jury is not satisfied that the defendant is guilty of an aggravated offence, but is otherwise satisfied that the defendant is guilty of an offence against the section, it may find the defendant not guilty of the aggravated offence but guilty of an offence against the section.

PART 3.11 — OFFENCES RELATING TO PROPERTY

Division 3.11.1 Money laundering and organised fraud

142 Definitions for Division 3.11.1

deal, with money or other property, means—

- (a) receiving, possessing, concealing or disposing of money or other property; or
- (b) importing into or exporting from Norfolk Island money or other property.

proceeds of crime means—

- (a) any property derived or realised, directly or indirectly, by anyone from the commission of an indictable offence; or
- (b) any property derived or realised, directly or indirectly, by anyone from acts or omissions that—
 - (i) happened outside Norfolk Island; and
 - (ii) would, if they had happened in Norfolk Island, have been an indictable offence.

property includes tangible and intangible property and property located in Australia outside Norfolk Island or outside Australia.

unlawful activity means an act or omission that is an offence against the law of Norfolk Island, the Commonwealth, a State, a Territory or a foreign country.

143 Money laundering

A person commits an offence if—

- (a) the person deals with money or other property; and
- (b) the money or other property is proceeds of crime; and
- (c) the person knows that, or is reckless about the fact that, the money or other property is derived or realised, directly or indirectly, from some form of unlawful activity.

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

144 Possession etc of property suspected of being proceeds of crime

(1) A person commits an offence if—

- (a) the person deals with money or other property; and
- (b) the money or other property is proceeds of crime.

Penalty: 200 penalty units, imprisonment for 2 years or both.

(2) An offence against this section is a strict liability offence.

145 Organised fraud

(1) A person who engages in organised fraud commits an offence.

Penalty: 1 500 penalty units, imprisonment for 15 years or both.

(2) A person is taken to engage in organised fraud only if the person engages in acts or omissions—

- (a) that constitute 3 or more public fraud offences; and

(b) from which the person derives substantial benefit.

(3) If, on a trial for an offence against subsection (1) (the *offence charged*), the trier of fact is not satisfied that the person is guilty of the offence charged but is satisfied that the person is guilty of 1 or more public fraud offences (the *other offences*), the trier of fact—

(a) must acquit the person of the offence charged; and

(b) may find the person guilty of the other offences.

(4) In this section:

public fraud offence means an offence against section 210 (General dishonesty).

Division 3.11.2 Criminal damage to property

146 Interpretation for Division 3.10.2

(1) In this Division:

property means any real or personal property (other than intangible property), and includes—

(a) a wild animal that is tamed or ordinarily kept in captivity; and

(b) a wild animal that is not tamed or ordinarily kept in captivity but that is—

(i) reduced into the possession of a person who has not lost or abandoned that possession; or

(ii) in the course of being reduced into the possession of a person.

(2) For this Division, property shall be taken to belong to any person who—

(a) has possession or control of it; or

(b) has any proprietary right or interest in it, other than an equitable interest arising only from an agreement to transfer or grant an interest; or

(c) has a charge on it.

(3) If any property is subject to a trust, the trustee and any person having a right to enforce the trust shall, for this Division, be taken to be the persons to whom the property belongs.

(4) The property of a corporation sole shall, for this Division, be taken to belong to the corporation notwithstanding any vacancy in the corporation.

(5) For section 147 (Destroying or damaging property) and section 148 (Arson), a person who destroys or damages property shall be taken to have done so intentionally if he or she acted—

(a) with intent to destroy or damage any property; or

(b) in the knowledge or belief that his or her actions were likely to result in destruction of or damage to property.

(6) For section 147 (Destroying or damaging property) and section 148 (Arson), a person who destroys or damages property shall be taken to have intended to endanger the life of another person by that destruction or damage if he or she acted—

- (a) with intent to endanger the life of any other person; or
- (b) in the knowledge or belief that his or her actions were likely to endanger the life of another person.

147 Destroying or damaging property

(1) A person who destroys or damages (otherwise than by means of fire or explosive) any property with intent to endanger the life of another person by that destruction or damage commits an offence.

Penalty: imprisonment for 20 years.

(2) A person who dishonestly, with a view to gain for himself or herself or another person, destroys or damages (otherwise than by means of fire or explosive) any property commits an offence.

Penalty: 300 penalty units, imprisonment for 15 years or both.

(3) A person who, intentionally and without lawful excuse, and by means other than fire or explosive, destroys or damages property that—

- (a) belongs to another person, or to himself or herself and another person; and
- (b) does not exceed \$1 000 in value;

commits an offence.

Penalty: 50 penalty units, imprisonment for 6 months or both.

148 Arson

(1) A person who destroys or damages by means of fire or explosive any property with intent to endanger the life of another person by that destruction or damage commits an offence.

Penalty: imprisonment for 25 years.

(2) A person who dishonestly, with a view to gain for himself or herself or another person, destroys or damages by means of fire or explosive any property commits an offence.

Penalty: imprisonment for 20 years.

149 Defacing premises

(1) A person shall not—

- (a) affix a placard or paper on any private premises; or
- (b) wilfully mark, by means of chalk, paint or any other material, any private premises;

unless the person has first obtained the consent—

- (c) if the premises are occupied—of the occupier or person in charge of the premises; or
- (d) if the premises are not occupied—of the owner or person in charge of the premises.

Penalty: 10 penalty units, imprisonment for 6 months or both.

(2) A person shall not, without lawful authority, affix a placard or paper on, or wilfully mark, by means of chalk, paint or any other material, any public street, road, footpath, bus shelter or other property of the Territory or the

Commonwealth or of an authority or body constituted by or under a law of the Territory, the Commonwealth or another Territory.

Penalty: 10 penalty units, imprisonment for 6 months or both.

150 Untrue representations

A person who knowingly makes in any manner an untrue representation to any other person, being a representation that tends to give rise to apprehension for the safety of any person (including the person making the representation and the person to whom it is made) or property, or both, commits an offence.

Penalty: 100 penalty units, imprisonment for 5 years or both.

151 Alternative verdict

If, on the trial of a person for an offence against this Division, the jury is not satisfied that the person is guilty of that offence but is satisfied that the person is guilty of another offence against this Division carrying a lesser penalty than the offence charged, the jury may acquit the person of the offence charged and find him or her guilty of that other offence.

DIVISION 3.11.3 — CONTAMINATION OF GOODS AND RELATED OFFENCES

152 Definitions of *contaminate* and *goods*

In this Division:

contaminate, for goods, includes—

- (a) interfere with the goods; or
- (b) make it appear that the goods have been contaminated or interfered with.

goods includes a substance—

- (a) whether or not for human consumption; and
- (b) whether natural or manufactured; and
- (c) whether or not incorporated or mixed with other goods.

153 Meaning of economic loss

In this Part, economic loss caused through public awareness of the contamination of goods, or the possibility of contamination, includes economic loss caused through—

- (a) members of the public not buying or using the goods or similar goods; or
- (b) steps taken to avoid public alarm or anxiety or to avoid harm to members of the public.

154 Contaminating goods with intent to cause public alarm or economic loss

A person must not contaminate goods with the intention of—

- (a) causing public alarm or anxiety; or

- (b) causing economic loss through public awareness of the contamination.

Penalty: 200 penalty units, imprisonment for 10 years or both.

155 Threatening to contaminate goods with intent to cause public alarm or economic loss

(1) A person must not threaten that goods will be contaminated with the intention of—

- (a) causing public alarm or anxiety; or
- (b) causing economic loss through public awareness of the possibility of contamination.

Penalty: 200 penalty units, imprisonment for 10 years or both.

(2) For this section, a threat may be made by any conduct, and may be explicit or implicit and conditional or unconditional.

156 Making false statements about contamination of goods with intent to cause public alarm or economic loss

(1) A person must not make a statement that the person believes to be false with the intention of—

- (a) inducing the person to whom the statement is made or others to believe that goods have been contaminated; and
- (b) in that way, either—
 - (i) causing public alarm or anxiety; or
 - (ii) causing economic loss through public awareness of the contamination, or the possibility of contamination.

Penalty: 200 penalty units, imprisonment for 10 years or both.

(2) For this section, making a statement includes communicating information by any means.

157 Territorial nexus for offences

It is immaterial that the conduct of a person forming an offence against this Division happened outside the jurisdiction if the person intended by the conduct—

- (a) to cause public alarm or anxiety in Norfolk Island; or
- (b) to cause economic loss in Norfolk Island through public awareness of the contamination, or the possibility of contamination.

Division 3.11.4 Offences relating to causing public alarm

158 Acting with intent to cause public alarm

A person must not, with the intention of causing public alarm or anxiety—

- (a) do something that could endanger someone else's life or health; or
- (b) do something that, in the circumstances in which it is done, a reasonable person would suspect could endanger someone else's life or health (whether or not it could do so).

Penalty: 200 penalty units, imprisonment for 10 years or both.

159 Threatening to act with intent to cause public alarm

(1) A person must not threaten to do something that could endanger someone else's life or health with the intention of causing public alarm or anxiety.

Penalty: 200 penalty units, imprisonment for 10 years or both.

(2) For this section, a threat may be made by any conduct, and may be explicit or implicit and conditional or unconditional.

160 Making false statements with intent to cause public alarm

(1) A person must not make a statement that the person believes to be false with the intention of—

- (a) inducing the person to whom the statement is made or others to believe that something that could endanger someone else's life or health has been done; and
- (b) in that way, causing public alarm or anxiety.

Penalty: 200 penalty units, imprisonment for 10 years or both.

(2) For this section, making a statement includes communicating information by any means.

161 Territorial nexus for offences

It is immaterial that the conduct of a person forming an offence against this Division happened outside Norfolk Island if the person intended by the conduct to cause public alarm or anxiety in Norfolk Island.

*Division 3.11.5 Miscellaneous***162 Removal of sea banks, etc**

A person who without lawful authority or excuse removes any article or material fixed in or placed on the ground and used for securing a sea bank or seawall, or the bank, dam or wall of any stream, drain, aqueduct, marsh, reservoir, pool, port, harbour, dock, quay, wharf, or jetty commits an offence.

Penalty: 200 penalty units, imprisonment for 7 years or both.

163 Displaying false signals

A person who, with intent to endanger any vessel, masks, alters or removes any light or signal or displays any false light or signal commits an offence.

Penalty: 200 penalty units, imprisonment for 10 years or both.

164 Removing or concealing buoys, etc

A person who does any act with intent to cut away, cast adrift, remove, alter, deface, sink, destroy, damage or conceal any vessel, buoy, buoy-rope, perch or mark used or intended for the guidance of sailors or for the purposes of navigation commits an offence.

Penalty: 200 penalty units, imprisonment for 7 years or both.

165 Forcible entry on land

A person who enters on land that is in the actual and peaceable possession of another person in a manner likely to cause a breach of the peace commits an offence.

Penalty: 20 penalty units, imprisonment for 1 year or both.

166 Forcible detainer of land

A person who, being in actual possession of land without any legal right to possession, holds possession of the land against any person legally entitled to possession of the land in a manner likely to cause a breach of the peace commits an offence.

Penalty: 20 penalty units, imprisonment for 1 year or both.

167 Disclosure of information by public employees

(1) A person who, being an officer of the Administration, publishes or communicates, except to some person to whom he or she is authorised to publish or communicate it, any fact or document which comes to his or her knowledge, or into his or her possession, by virtue of him or her being an officer of the Administration and which it is his or her duty not to disclose, commits an offence.

Penalty: 50 penalty units, imprisonment for 2 years or both.

(2) A person who, having been an officer of the Administration, publishes or communicates, without lawful authority, any fact or document which came to his or her knowledge, or into his or her possession, by virtue of the person having been an officer of the Administration and which, at the time when he or she ceased to be an officer of the Administration, it was his or her duty not to disclose, commits an offence.

Penalty: 50 penalty units, imprisonment for 2 years or both.

(3) In this section:

officer of the Administration means—

- (a) a public sector employee; or
- (b) a person who performs services for the Administration or a public sector agency.

168 Additional offences on government premises

(1) A person who, without reasonable excuse, trespasses on government premises commits an offence.

Penalty: 1 penalty unit, imprisonment for 1 month or both.

(2) A person who—

- (a) engages in unreasonable obstruction in relation to the passage of persons or vehicles into, out of, or on government premises, or otherwise in relation to the use of government premises; or
- (b) being in or on government premises, behaves in an offensive or disorderly manner; or
- (c) being in or on government premises, refuses or neglects, without reasonable excuse, to leave those premises on being directed to do so by a police officer or by a person authorised in writing by an Minister or the public sector agency occupying the premises to give directions for this section;

commits an offence.

Penalty: 2.5 penalty units, imprisonment for 3 months or both.

(3) In this section:

government premises means any land, building or part of a building occupied by the Administration or a public sector agency.

unreasonable obstruction means anything done by someone that is, or contributes to, an obstruction of or interference with the exercise or enjoyment by other people of their lawful rights or privileges (including rights of passage on public streets) that is unreasonable in all the circumstances (including the place, time, length and nature of the obstruction or interference).

PART 3.12 — ESCAPE PROVISIONS

169 Meaning of *lawful custody*—periodic detention

For this Part, an offender serving periodic detention in the offender's periodic detention period of a sentence of imprisonment under the *Sentencing Act 2007* is taken to be in lawful custody only while performing periodic detention.

Note The *Sentencing Act 2007*, provides for the performance of periodic detention.

170 Aiding prisoner to escape

A person who—

- (a) aids another person to escape, or to attempt to escape, from lawful custody in respect of an offence against a law of Norfolk Island, a State or Territory; or
- (b) aids another person who has been lawfully arrested in respect of such an offence to escape, or to attempt to escape, from that arrest; or
- (c) takes anything into a correctional centre, lockup or another place of lawful detention with intent to facilitate the escape from there of someone else who is detained or in custody in relation to an offence against a law of Norfolk Island, the Commonwealth, a State or Territory;

commits an offence.

Penalty: 100 penalty units, imprisonment for 5 years or both.

171 Escaping

A person who has been lawfully arrested or is in lawful custody, in respect of an offence against a law of Norfolk Island, a State or Territory and who escapes from that arrest or custody commits an offence.

Penalty: 100 penalty units, imprisonment for 5 years or both.

172 Rescuing a prisoner from custody etc

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 an offence against a law of Norfolk Island, a State or Territory with which the person has been charged; or
- (b) rescues by force a person who has been lawfully arrested in respect of such an offence with which the person has not been charged from that arrest; or

- (c) rescues by force a person who is in lawful custody at a correctional centre, lockup or another place of lawful detention in relation to an offence against a law of Norfolk Island, the Commonwealth, a State or Territory from that centre, lockup or place;

commits an offence.

Penalty: imprisonment for 14 years.

173 Person unlawfully at large

A person who—

- (a) in accordance with a permission given under a law of Norfolk Island, the Commonwealth, a State or Territory, leaves a correctional centre, lockup or another place of lawful detention where the person is detained or in custody in relation to an offence against a law of Norfolk Island, the Commonwealth, a State or Territory; and
- (b) fails, without reasonable excuse, to return to that correctional centre, lockup or place in accordance with that permission;

commits an offence.

Penalty: 100 penalty units, imprisonment for 5 years or both.

174 Permitting escape

- (1) A person who—
 - (a) is a police officer; and
 - (b) is charged for the time being with the custody or detention of another person in respect of an offence against a law of Norfolk Island, a State or Territory; and
 - (c) wilfully or negligently permits that other person to escape from that custody or detention;

commits an offence.

Penalty: 100 penalty units, imprisonment for 5 years or both.

(2) A police officer who wilfully or negligently permits a person who has been lawfully arrested in respect of an offence against a law of Norfolk Island, a State or Territory to escape from that arrest commits an offence.

Penalty: 100 penalty units, imprisonment for 5 years or both.

- (3) In this section:

police officer— a person who is a member of the police force for the purposes of the *Police Act 1931*.

175 Harbours, etc escapee

A person who harbours, maintains or employs another person knowing that other person to have escaped from lawful custody or detention in respect of an offence against a law of Norfolk Island, a State or Territory commits an offence.

Penalty: 100 penalty units, imprisonment for 5 years or both.

176 Failure to answer bail, etc—offence

- (1) If—

- (a) in accordance with a law in force in Norfolk Island (other than the *Bail Act 2005*), a person arrested in respect of, or charged with, an offence against a law in force in Norfolk Island has been—
- (i) admitted to bail on an undertaking; or
 - (ii) released or discharged on entering into a recognisance, with or without a surety or sureties, on condition;

that he or she will attend, or appear before, a court at a specified time and place or at a time and place to be determined and of which he or she is to be notified; and

- (b) he or she fails, without reasonable excuse, to so attend or appear; the person commits an offence.

Penalty: 200 penalty units, imprisonment for 2 years or both.

(2) The reference in subsection (1) to *an undertaking* or *a recognisance* includes a reference to an undertaking given or a recognisance entered into (as the case requires) following the instituting of an appeal.

CHAPTER 4 — THEFT, FRAUD, BRIBERY AND RELATED OFFENCES

PART 4.1 — INTERPRETATION FOR CHAPTER 4

177 Definitions—chapter 4

In this chapter:

belongs, in relation to property—see section 178.

cause a loss means cause a loss to someone else.

dishonest means—

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

Note 1 The following provisions affect the meaning of *dishonest*:

- s 180 (Dishonesty for Part 3.2)
- s 204 (Dishonesty for Division 3.3.2)
- s 232 (Dishonesty for Part 4.7).

Note 2 In a prosecution, dishonesty is a matter for the trier of fact (see s 179).

duty, of a person who is a public official, means a function that—

- (a) is given to the person as a public official; or
- (b) the person holds himself or herself out as having as a public official.

gain means—

- (a) a gain in property, whether temporary or permanent; or
- (b) a gain by way of the supply of services;

and includes keeping what one has.

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

Norfolk Island public official means a person having public official functions for the Administration, or acting in a public official capacity for the Administration, and includes the following:

- (a) a member of the Legislative Assembly;
- (b) an Minister;
- (c) a judge, magistrate or tribunal member;
- (d) the registrar or other officer of a court or tribunal;
- (e) a public servant;
- (f) an officer or employee of a public sector agency;
- (g) a holder of a statutory office;
- (h) a police officer;
- (i) a contractor who exercises a function or performs work for the Administration or a public sector agency.

obtain includes—

- (a) obtain for someone else; and
- (b) induce a third person to do something that results in someone else obtaining.

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

- s 191 (9) (Receiving—meaning of **stolen property**)
- s 205 (Meaning of **obtains** for Division 4.3.2)
- s 212 (6) (Obtaining financial advantage from the Administration)
- s 233 (Meaning of **obtain** for Part 4.7).

public duty means a duty of a public official.

public official means a person having public official functions, or acting in a public official capacity, and includes the following:

- (a) a **Norfolk Island public official**;
- (b) a member of the legislature of the Commonwealth, a State or another Territory;
- (c) a member of the executive of the Commonwealth, a State or another Territory;
- (d) a member of the judiciary, the magistracy or a tribunal of the Commonwealth, a State or another Territory;
- (e) a registrar or other officer of a court or tribunal of the Commonwealth, a State or another Territory;
- (f) an individual who occupies an office under a law of the Commonwealth, a State, another Territory or a local government;
- (g) an officer or employee of the Commonwealth, a State, another Territory or a local government;
- (h) an officer or employee of an authority or instrumentality of the Commonwealth, a State, another Territory or a local government;
- (i) an individual who is otherwise in the service of the Commonwealth, a State, another Territory or a local government

(including service as a member of a military or police force or service);

- (j) a contractor who exercises a function or performs work for the Commonwealth, a State, another Territory or a local government.

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

supply includes—

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

178 Person to whom property belongs for chapter 4

(1) Property *belongs* to anyone having possession or control of it, or having any proprietary right or interest in it (other than an equitable interest arising only from an agreement to transfer or grant an interest, or from a constructive trust).

(2) This section is subject to section 207 (Money transfers).

Note Section 182 (Person to whom property belongs for Part 4.2) affects the meaning of *belongs*.

179 Dishonesty a matter for trier of fact

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

PART 4.2 — THEFT AND RELATED OFFENCES

Division 4.2.1 Interpretation for Part 4.2

180 Dishonesty for Part 4.2

(1) A person's appropriation of property belonging to someone else is not dishonest if the person appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.

(2) However, subsection (1) does not apply if the person appropriating the property held it as trustee or personal representative.

Note A defendant bears an evidential burden in relation to the matters mentioned in subsections (1) and (2) (see s 58(3)).

(3) A person's appropriation of property belonging to someone else can be dishonest even if the person or another person is willing to pay for it.

181 Appropriation of property for Part 4.2

(1) Any assumption of the rights of an owner to ownership, possession or control of property, without the consent of a person to whom the property belongs, is an appropriation of the property.

(2) If a person has come by property (innocently or not) without committing theft, subsection (1) applies to any later assumption of those rights without consent by keeping or dealing with it as owner.

(3) If property is, or purports to be, transferred or given to a person acting in good faith, a later assumption by the person of rights the person believed the person was acquiring is not an appropriation of property because of any defect in the transferor's title.

182 Person to whom property belongs for Part 4.2

(1) If property belongs to 2 or more people, a reference to the person to whom the property belongs is taken to be a reference to each of them.

(2) If property is subject to a trust—

- (a) the person to whom the property belongs includes anyone who has a right to enforce the trust; and
- (b) an intention to defeat the trust is an intention to deprive any such person of the property.

(3) Property of a corporation sole belongs to the corporation despite a vacancy in the corporation.

(4) If a person (*A*) receives property from or on account of someone else (*B*) and is under a legal obligation to *B* to retain and deal with the property or its proceeds in a particular way, the property or proceeds belong to *B*, as against *A*.

(5) If a person (*A*) gets property by someone else's fundamental mistake and is under a legal obligation to make restoration (in whole or part) of the property, its proceeds or its value—

- (a) the property or its proceeds belong (to the extent of the obligation and as against *A*) to the person entitled to restoration (*B*); and
- (b) an intention not to make restoration is—
 - (i) an intention to permanently deprive *B* of the property or proceeds; and
 - (ii) an appropriation of the property or proceeds without *B*'s consent.

(6) In this section:

fundamental mistake, in relation to property, means—

- (a) a mistake about the identity of the person getting the property; or
- (b) a mistake about the essential nature of the property; or
- (c) a mistake about the amount of any money, if the person getting the money is aware of the mistake when getting the money.

money includes anything that is equivalent to money.

Examples of things equivalent to money

1 a cheque or other negotiable instrument

2 an electronic funds transfer.

183 Intention of permanently depriving for Part 4.2

(1) A person (*A*) has the intention of permanently depriving someone else (*B*) of property belonging to *B* if—

- (a) *A* appropriates property belonging to *B* without meaning *B* to permanently lose the property; and
- (b) *A* intends to treat the property as *A*'s own to dispose of regardless of *B*'s rights.

(2) For subsection (1), if *A* borrows or lends property belonging to *B*, the borrowing or lending may amount to treating the property as *A*'s own to dispose of regardless of *B*'s rights if, but only if, the borrowing or lending is for a period, and in circumstances, making it equivalent to an outright taking or disposal.

- (3) Without limiting this section, if—
- (a) A has possession or control (lawfully or not) of property belonging to B; and
 - (b) A parts with the property under a condition about its return that A may not be able to carry out; and
 - (c) the parting is done for A's own purposes and without B's authority;

the parting amounts to treating the property as A's own to dispose of regardless of B's rights.

(4) This section does not limit the circumstances in which a person can be taken to have the intention of permanently depriving someone else of property.

184 General deficiency

A person may be found guilty of theft of all or any part of a general deficiency in money or other property even though the deficiency is made up of a number of particular amounts of money or items of other property that were appropriated over a period.

Division 4.2.2 — Indictable offences for Part 4.2

185 Theft

A person commits an offence (*theft*) if the person dishonestly appropriates property belonging to someone else with the intention of permanently depriving the other person of the property.

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

Note For alternative verdict provisions applying to this offence, see s 370, s 371 and s 372.

186 Robbery

A person commits an offence (*robbery*) if—

- (a) the person commits theft; and
- (b) when committing the theft, or immediately before or immediately after committing the theft, the person—
 - (i) uses force on someone else; or
 - (ii) threatens to use force then and there on someone else;

with intent to commit theft or to escape from the scene.

Penalty: 1 400 penalty units, imprisonment for 14 years or both.

Note *Theft* means an offence against s 185 or s 198.

187 Aggravated robbery

A person commits an offence (*aggravated robbery*) if the person—

- (a) commits robbery in company with 1 or more people; or
- (b) commits robbery and, at the time of the robbery, has an offensive weapon with him or her.

Penalty: 2 500 penalty units, imprisonment for 25 years or both.

Note *Robbery* means an offence against s 186.

188 Burglary

(1) A person commits an offence (*burglary*) if the person enters or remains in a building as a trespasser with intent—

- (a) to commit theft of any property in the building; or
- (b) to commit an offence that involves causing harm, or threatening to cause harm, to anyone in the building; or
- (c) to commit an offence in the building that—
 - (i) involves causing damage to property; and
 - (ii) is punishable by imprisonment for 5 years or longer.

Penalty: 1 400 penalty units, imprisonment for 14 years or both.

(2) In subsection (1) (b) and (c), *offence* includes an offence against a Commonwealth law.

(3) Absolute liability applies to subsection (1) (c) (ii).

(4) For this section, a person is not a trespasser only because the person is permitted to enter or remain in the building—

- (a) for a purpose that is not the person's intended purpose; or
- (b) because of fraud, misrepresentation or someone else's mistake.

(5) In this section:

building includes the following:

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

189 Aggravated burglary

A person commits an offence (*aggravated burglary*) if the person—

- (a) commits burglary in company with 1 or more people; or
- (b) commits burglary and, at the time of the burglary, has an offensive weapon with him or her.

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

190 Receiving

(1) A person commits an offence (*receiving*) if the person dishonestly receives stolen property, knowing or believing the property to be stolen.

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

Note For an alternative verdict provision applying to receiving, see s 249.

(2) A person cannot be found guilty of both theft (or a related offence) and receiving in relation to the same property if the person retains custody or possession of the property.

(3) For this section—

- (a) it is to be assumed that section 185 to section 189 and section 203 had been in force at all times before the commencement of this section; and

- (b) property that was appropriated or obtained before the commencement of this section, does not become original stolen property unless the property was appropriated or obtained in circumstances that (apart from paragraph (a)) amounted to an offence against a territory law in force at that time.

- (4) In this section:

related offence means any of the following:

- (a) robbery;
- (b) aggravated robbery;
- (c) burglary;
- (d) aggravated burglary;
- (e) obtaining property by deception.

191 Receiving—meaning of *stolen property*

- (1) For section 190, property is *stolen property* if it is—

- (a) original stolen property; or
- (b) previously received property; or
- (c) tainted property.

(2) *Stolen property* may include all or any part of a general deficiency in money or other property even though the deficiency is made up of a number of particular amounts of money or items of other property that were appropriated or obtained over a period.

(3) *Stolen property* does not include land appropriated or obtained in the course of theft or obtaining property by deception.

- (4) Property is *original stolen property* if it is—

- (a) property, or a part of property, that—
 - (i) was appropriated—
 - (A) in Norfolk Island in the course of theft or a related offence; or
 - (B) in a place outside Norfolk Island in the course of an offence in that place that would have been theft or a related offence if it had happened in Norfolk Island;

whether or not the property, or the part of the property, is in the state it was in when it was appropriated; and

- (ii) is in the custody or possession of the person who appropriated it; or
- (b) property, or a part of property, that—
 - (i) was obtained—
 - (A) in Norfolk Island in the course of obtaining property by deception; or
 - (B) in a place outside Norfolk Island in the course of an offence in that place that would have been obtaining property by deception if it had happened in Norfolk Island;

whether or not the property, or the part of the property, is in the state it was in when it was obtained; and

(ii) is in the custody or possession of the person who obtained it or for whom it was obtained.

(5) Property is *previously received property* if it is property that—

(a) was received—

(i) in Norfolk Island in the course of an offence of receiving; or

(ii) in a place outside Norfolk Island in the course of an offence in that place that would have been receiving if it had happened in Norfolk Island; and

(b) is in the custody or possession of the person who received it in the course of that offence.

(6) For subsections (4) and (5), property ceases to be original stolen property or previously received property—

(a) when it is restored to the person from whom it was appropriated or obtained, or to other lawful custody or possession; or

(b) when the person from whom it was appropriated or obtained, or anyone claiming through that person, ceases to have any right to restitution in relation to it.

(7) Property is *tainted property* if it—

(a) is, in whole or part, the proceeds of sale of, or property exchanged for—

(i) original stolen property; or

(ii) previously received property; and

(b) if paragraph (a)(i) applies—is in the custody or possession of—

(i) for original stolen property appropriated as mentioned in subsection (4)(a)(i)—the person who appropriated it; or

(ii) for original stolen property obtained as mentioned in subsection (4)(b)(i)—the person who obtained it or for whom it was obtained; and

(c) if paragraph (a)(ii) applies—is in the custody or possession of the person who received the previously received property in the course of an offence mentioned in subsection (6)(a).

(8) If, because of the application of section 207 (Money transfers), an amount credited to an account held by a person is property obtained in Norfolk Island in the course of obtaining property by deception (or outside Norfolk Island in the course of an offence that would have been obtaining property by deception if it had happened in Norfolk Island)—

(a) the property is taken to be in the possession of the person while all or any part of the amount remains credited to the account; and

(b) the person is taken to have received the property if the person fails to take the steps that are reasonable in the circumstances to ensure that the credit is cancelled; and

(c) subsection (6) of this section does not apply to the property.

(9) The definition of *obtain* in section 177 does not apply to this section.

Note See s 177 for the meaning of *obtain* for the application of this section to Division 4.3.2 (Obtaining property by deception).

(10) In this section:

account—see section 202.

related offence means any of the following:

- (a) robbery;
- (b) aggravated robbery;
- (c) burglary;
- (d) aggravated burglary.

192 Going equipped for theft, etc

(1) A person commits an offence if the person, in any place other than the person's home, has with the person an article with intent to use it in the course of or in relation to theft or a related offence.

Penalty: 300 penalty units, imprisonment for 3 years or both.

(2) In this section:

related offence means any of the following:

- (a) robbery;
- (b) aggravated robbery;
- (c) burglary;
- (d) aggravated burglary;
- (e) an offence against section 195 (Taking etc motor vehicle without consent);
- (f) obtaining property by deception.

193 Going equipped with offensive weapon for theft, etc

(1) A person commits an offence if the person, in any place other than the person's home, has with the person an offensive weapon with intent to use it in the course of or in relation to theft or a related offence.

Penalty: 500 penalty units, imprisonment for 5 years or both.

(2) In this section:

related offence means any of the following:

- (a) robbery;
- (b) aggravated robbery;
- (c) burglary;
- (d) aggravated burglary.

194 Making off without payment

(1) A person commits an offence if—

- (a) the person knows he or she is required or expected to make immediate payment for goods or services supplied by someone else; and
- (b) the person dishonestly makes off—
 - (i) without having paid the amount owing; and
 - (ii) with intent to avoid payment of the amount owing.

Penalty: 200 penalty units, imprisonment for 2 years or both.

(2) This section does not apply in relation to a supply of goods or services that is contrary to law.

(3) In this section:

immediate payment includes payment when collecting goods in relation to which a service has been supplied.

195 Taking, etc motor vehicle without consent

- (1) A person commits an offence if the person—
 - (a) dishonestly takes a motor vehicle belonging to someone else; and
 - (b) does not have consent to take the vehicle from a person to whom it belongs.

Penalty: 500 penalty units, imprisonment for 5 years or both.

Note 1 Part 2.3 (Circumstances where there is no criminal responsibility) provides for defences that apply to offences under the Code. These include the defence of lawful authority (see s 43).

Note 2 For the meaning of *dishonest*, see s 177.

- (2) A person commits an offence if—
 - (a) the person dishonestly drives or rides in or on a motor vehicle belonging to someone else; and
 - (b) the vehicle was dishonestly taken by someone without the consent of a person to whom it belongs.

Penalty: 500 penalty units, imprisonment for 5 years or both.

Note For alternative verdict provisions applying to an offence against this section, see s 248.

(3) In this section:

motor vehicle—see the *Road Traffic Act 1982* s3.

196 Dishonestly taking Administration property

- (1) A person (A) commits an offence if—
 - (a) on a particular occasion, A dishonestly takes 1 or more items of property belonging to someone else; and
 - (b) the other person is the Administration; and
 - (c) A does not have consent to take the item or any of the items from a person who has the authority to consent; and
 - (d) either—
 - (i) the property has a replacement value or total replacement value of more than \$500 when it is taken; or
 - (ii) the absence of the item or any of the items from the custody, possession or control of the person who would

otherwise have had custody, possession or control would be likely to cause substantial disruption to activities carried on by or for the Administration.

Penalty: 200 penalty units, imprisonment for 2 years or both.

- (2) Absolute liability applies to subsection (1)(b) and (d).
- (3) In this section:

Administration includes the following:

- (a) the ‘public service’;
- (b) an Administration-owned corporation;
- (c) a ‘territory instrumentality’;
- (d) a statutory office holder.

197 Dishonestly retaining Administration property

- (1) A person (*A*) commits an offence if—
 - (a) on a particular occasion, *A* takes 1 or more items of property belonging to someone else; and
 - (b) the other person is the Administration; and
 - (c) *A* dishonestly retains any or all of the items; and
 - (d) *A* does not have consent to retain the item or any of the items dishonestly retained from a person who has the authority to consent; and
 - (e) either—
 - (i) the property dishonestly retained had a replacement value or total replacement value of more than \$500 when it was taken; or
 - (ii) the absence of the item, or any of the items, dishonestly retained from the custody, possession or control of the person who would otherwise have had custody, possession or control is likely to cause substantial disruption to activities carried on by or for the Administration.

Penalty: 200 penalty units, imprisonment for 2 years or both.

- (2) Absolute liability applies to subsection (1) (b) and (d).
- (3) In this section:

Administration—see section 196.

Division 4.2.3 — Summary offences for Part 4.2

198 Minor theft

- (1) A person commits an offence (also *theft*) if—
 - (a) the person dishonestly appropriates property belonging to someone else with the intention of permanently depriving the other person of the property; and

- (b) the property has a replacement value of \$2 000 or less when it is appropriated.

Penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Absolute liability applies to subsection (1)(b).

(3) This section does not prevent a person being charged with an offence against section 185 (Theft) if the replacement value of the property appropriated is \$2 000 or less.

199 Removal of articles on public exhibition

- (1) A person commits an offence if—

- (a) the person dishonestly removes an article from premises; and
- (b) the premises are at any time open to the public; and
- (c) the article is publicly exhibited, or kept for public exhibition, at the premises; and
- (d) the person does not have the consent to remove the article from a person entitled to give the consent.

Penalty: 100 penalty units, imprisonment for 1 year or both.

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

(3) This section does not apply in relation to an article that is publicly exhibited, or kept for public exhibition, for the purpose of selling, or any other commercial dealing with, the article or articles of that kind.

- (4) In this section:

premises includes any building or part of a building.

200 Making off without payment—minor offence

- (1) A person commits an offence if—

- (a) the person knows he or she is required or expected to make immediate payment for goods or services supplied by someone else; and
- (b) the person dishonestly makes off—
 - (i) without having paid the amount owing; and
 - (ii) with intent to avoid payment of the amount owing; and
- (c) the amount owing is \$2 000 or less.

Penalty: 50 penalty units, imprisonment for 6 months or both.

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

(3) This section does not apply in relation to a supply of goods or services that is contrary to law.

(4) This section does not prevent a person being charged with an offence against section 194 (Making off without payment) if the amount owing is \$2 000 or less.

- (5) In this section:

immediate payment includes payment when collecting goods in relation to which a service has been supplied.

201 Unlawful possession of stolen property

- (1) A person commits an offence if—
- (a) the person—
- (i) has property in the person's possession; or
 - (ii) has property in someone else's possession; or
 - (iii) has property in or on any premises (whether or not the premises belong to or are occupied by the person or the property is there for the person's own use); or
 - (iv) gives possession of property to someone who is not lawfully entitled to possession of it; and
- (b) the property is reasonably suspected of being stolen property or otherwise unlawfully obtained property.

Penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Absolute liability applies to subsection (1) (b).

(3) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant had no reasonable grounds for suspecting that the property concerned was stolen property or otherwise unlawfully obtained property.

- (4) In this section:

premises includes any aircraft, building, structure, vehicle or vessel, or any place (whether built on or not), and any part of an aircraft, building, structure, vehicle, vessel or place.

stolen property—see section 191.

PART 4.3 — FRAUDULENT CONDUCT

Division 4.3.1 Interpretation for Part 4.3

202 Definitions—Part 4.3

In this Part:

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

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

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

Division 4.3.2 Obtaining property by deception

203 Obtaining property by deception

A person commits an offence (*obtaining property by deception*) if the person, by deception, dishonestly obtains property belonging to someone else with the intention of permanently depriving the other person of the property.

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

Note For alternative verdict provisions applying to obtaining property by deception, see s 249 and s 250.

204 Dishonesty for Division 4.3.2

A person's obtaining of property belonging to someone else can be dishonest even if the person or another person is willing to pay for it.

205 Meaning of *obtains* for Division 4.3.2

(1) For this Division, and for the application of section 190 (Receiving) to this Division, a person *obtains* property if—

- (a) the person obtains ownership, possession or control of it for the person or someone else; or
- (b) the person enables ownership, possession or control of it to be retained by the person or someone else; or
- (c) the person induces a third person to pass ownership, possession or control of it to someone else; or
- (d) the person induces a third person to enable someone else to retain ownership, possession or control of it; or
- (e) section 207 (2) or (3) (Money transfers) applies.

(2) The definition of *obtain* in section 177 does not apply to this Division, or for the application of section 190 (Receiving) to this Division.

206 Intention of permanently depriving—Division 4.3.2

(1) A person (*A*) has the intention of permanently depriving someone else (*B*) of property belonging to B if—

- (a) A obtains property belonging to B without meaning B to permanently lose the property; and
- (b) A intends to treat the property as A's own to dispose of regardless of B's rights.

(2) For subsection (1), if A borrows or lends property belonging to B, the borrowing or lending may amount to treating the property as A's own to dispose of regardless of B's rights if, but only if, the borrowing or lending is for a period, and in circumstances, making it equivalent to an outright taking or disposal.

(3) Without limiting this section, if—

- (a) A has possession or control (lawfully or not) of property belonging to B; and
- (b) A parts with the property under a condition about its return that A may not be able to carry out; and
- (c) the parting is done for A's own purposes and without B's authority;

the parting amounts to treating the property as A's own to dispose of regardless of B's rights.

(4) This section does not limit the circumstances in which a person can be taken to have the intention of permanently depriving someone else of property.

207 Money transfers

(1) This section applies for this Division and for the application of section 190 (Receiving) to this Division.

(2) If a person (*A*) causes an amount to be transferred from an account held by someone else (*B*) to an account held by A—

- (a) the amount is taken to have been property that belonged to B; and
- (b) A is taken to have obtained the property for A with the intention of permanently depriving B of the property.

(3) If a person (*A*) causes an amount to be transferred from an account held by someone else (*B*) to an account held by a third person (*C*)—

- (a) the amount is taken to have been property that belonged to B; and
- (b) A is taken to have obtained the property for C with the intention of permanently depriving B of the property.

(4) An amount is transferred from an account (*account 1*) to another account (*account 2*) if—

- (a) a credit is made to account 2; and
- (b) a debit is made to account 1; and
- (c) the credit results from the debit or the debit results from the credit.

(5) A person causes an amount to be transferred from an account if the person induces someone else to transfer the amount from the account (whether or not the other person is the account holder).

208 General deficiency for Division 4.3.2

A person may be found guilty of an offence of obtaining property by deception involving all or any part of a general deficiency in money or other property even though the deficiency is made up of a number of particular amounts of money or items of other property that were obtained over a period.

Division 4.3.3 — Other indictable offences for Part 4.3

209 Obtaining financial advantage by deception

A person commits an offence if the person, by deception, dishonestly obtains a financial advantage from someone else.

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

210 General dishonesty

(1) A person commits an offence if—

- (a) the person does something with the intention of dishonestly obtaining a gain from someone else; and

- (b) the other person is the Administration.

Penalty: 500 penalty units, imprisonment for 5 years or both.

- (2) Absolute liability applies to subsection (1) (b).

- (3) A person commits an offence if—

- (a) the person does something with the intention of dishonestly causing a loss to someone else; and

- (b) the other person is the Administration.

Penalty: 500 penalty units, imprisonment for 5 years or both.

- (4) Absolute liability applies to subsection (3) (b).

- (5) A person commits an offence if—

- (a) the person—

- (i) dishonestly causes a loss, or a risk of loss, to someone else; and

- (ii) knows or believes that the loss will happen or that there is a substantial risk of the loss happening; and

- (b) the other person is the Administration.

Penalty: 500 penalty units, imprisonment for 5 years or both.

- (6) Absolute liability applies to subsection (5) (b) .

- (7) A person commits an offence if—

- (a) the person does something with the intention of dishonestly influencing a public official in the exercise of the official's duty as a public official; and

- (b) the public official is a Norfolk Island public official; and

- (c) the duty is a duty as a Norfolk Island public official.

Penalty: 500 penalty units, imprisonment for 5 years or both.

- (8) Absolute liability applies to subsection (7) (b) and (c).

- (9) In this section:

Administration—see section 196.

211 Conspiracy to defraud

(1) A person commits an offence if the person conspires with someone else with the intention of dishonestly obtaining a gain from a third person.

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

(2) A person commits an offence if the person conspires with someone else with the intention of dishonestly causing a loss to a third person.

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

- (3) A person commits an offence if the person—

- (a) conspires with someone else to dishonestly cause a loss, or a risk of loss, to a third person; and

- (b) knows or believes that the loss will happen, or that there is a substantial risk of the loss happening.

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

(4) A person commits an offence if the person conspires with someone else with the intention of dishonestly influencing a public official in the exercise of the official's duty as a public official.

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

(5) A person commits an offence against this section (*conspiracy to defraud*) only if—

- (a) the person enters into an agreement with at least 1 other person; and
- (b) the person and at least 1 other party to the agreement intend to do the thing under the agreement; and
- (c) the person or at least 1 other party to the agreement commits an overt act under the agreement.

(6) A person may be found guilty of conspiracy to defraud even if—

- (a) it was impossible to obtain the gain, cause the loss or risk of loss, or influence the public official; or
- (b) the person and each other party to the agreement is a corporation; or
- (c) each other party to the agreement is—
- (i) a person who is not criminally responsible; or
- (ii) for an agreement to commit an offence—a person for whose benefit or protection the offence exists; or
- (d) all other parties to the agreement are acquitted of the offence (unless to find the person guilty would be inconsistent with their acquittal).

(7) A person must not be found guilty of conspiracy to defraud if, before the commission of an overt act under the agreement, the person—

- (a) withdrew from the agreement; and
- (b) took all reasonable steps to prevent the doing of the thing.

(8) A person must not be found guilty of an offence of conspiracy to defraud in relation to an agreement to commit an offence (an *agreed offence*) if the person is someone for whose benefit or protection the agreed offence exists.

(9) Any defence, procedure, limitation or qualifying provision applying to an agreed offence applies also to an offence of conspiracy to defraud in relation to the agreed offence.

(10) A court may dismiss a charge of conspiracy to defraud if it considers that the interests of justice require it to dismiss the charge.

(11) A proceeding for an offence of conspiracy to defraud must not be begun without the consent of a *Crown law officer*.

(12) However, a person may be arrested for, charged with or remanded in custody or released on bail in relation to an offence of conspiracy to defraud before the consent is given.

Division 4.3.4 Summary offences for Part 4.3

212 Obtaining financial advantage from the Administration

- (1) A person commits an offence if—
- (a) the person engages in conduct that results in the person obtaining a financial advantage from someone else; and
 - (b) the person knows or believes that the person is not eligible to receive the financial advantage; and
 - (c) the other person is the Administration.

Penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) Absolute liability applies to subsection (1)(c).
- (3) A person commits an offence if—
- (a) the person engages in conduct that results in the person obtaining a financial advantage for someone else (**B**) from a third person; and
 - (b) the person knows or believes that B is not eligible to receive the financial advantage; and
 - (c) the third person is the Administration.

Penalty: 100 penalty units, imprisonment for 1 year or both.

- (4) Absolute liability applies to subsection (3) (c).

(5) For subsection (3), a person (**A**) is taken to have obtained a financial advantage for someone else from Norfolk Island if A induces the Administration to do something that results in the other person obtaining the financial advantage.

(6) The definition of *obtain* in section 177 does not apply to this section.

- (7) In this section:

Administration—see section 196.

213 Passing valueless cheques

- (1) A person commits an offence if—
- (a) the person obtains property, a financial advantage or other benefit from someone else by passing a cheque; and
 - (b) the person—
 - (i) does not have reasonable grounds for believing that the cheque will be paid in full on presentation; or
 - (ii) intends to dishonestly obtain the property, financial advantage or benefit from someone else.

Penalty: 100 penalty units, imprisonment for 1 year or both.

(2) A person may be found guilty of an offence against this section even though, when the cheque was passed, there were some funds to the credit of the account on which the cheque was drawn.

**PART 4.4 — FALSE OR MISLEADING STATEMENTS, INFORMATION
AND DOCUMENTS**

214 Making false statements on oath or in statutory declarations

A person commits an offence if—

- (a) the person makes a statement on oath or in a statutory declaration; and
- (b) the statement is false; and
- (c) the person knows the statement is false.

Penalty: 500 penalty units, imprisonment for 5 years or both.

215 Making false or misleading statements

(1) A person commits an offence if—

- (a) the person makes a statement (whether orally, in a document or in any other way); and
- (b) the statement is false or misleading; and
- (c) the person knows that the statement—
 - (i) is false or misleading; or
 - (ii) omits anything without which the statement is false or misleading; and
- (d) the statement is made in or in relation to an application or claim for a statutory entitlement or a benefit; and
- (e) any of the following applies:
 - (i) the statement is made to the Administration;
 - (ii) the statement is made to a person who is exercising a function under a law of Norfolk Island;
 - (iii) the statement is made in compliance or purported compliance with a law of Norfolk Island.

Penalty: 100 penalty units, imprisonment for 1 year or both.

(2) Absolute liability applies to subsection (1) (e) (i), (ii) and (iii).

(3) A person commits an offence if—

- (a) the person makes a statement (whether orally, in a document or in any other way); and
- (b) the statement is false or misleading; and
- (c) the person is reckless about whether the statement—
 - (i) is false or misleading; or
 - (ii) omits anything without which the statement is false or misleading; and
- (d) the statement is made in or in relation to an application or claim for a statutory entitlement or a benefit; and
- (e) any of the following applies:
 - (i) the statement is made to the Administration;

- (ii) the statement is made to a person who is exercising a function under a law of Norfolk Island;
- (iii) the statement is made in compliance or purported compliance with a law of Norfolk Island.

Penalty: 50 penalty units, imprisonment for 6 months or both.

(4) Absolute liability applies to subsection (3) (e) (i), (ii) and (iii).

(5) Subsections (1)(b), (1)(c)(i), (3)(b) and (3)(c)(i) do not apply if the statement is not false or misleading in a material particular.

(6) Subsections (1)(b), (1)(c)(ii), (3)(b) and (3)(c)(ii) do not apply if the omission does not make the statement false or misleading in a material particular.

Note The defendant bears an evidential burden in relation to the matters mentioned in ss (5) and (6) (see s 5(3)).

(7) In this section:

statutory entitlement includes an accreditation, approval, assessment, authority, certificate, condition, decision, determination, exemption, licence, permission, permit, registration or other prescribed thing giving a status, privilege or benefit under a law (whether or not required under the law for doing anything).

Administration—see section 196.

Note For an alternative verdict provision applying to this offence, see s 374.

216 Giving false or misleading information

(1) A person commits an offence if—

- (a) the person gives information to someone else; and
- (b) the information is false or misleading; and
- (c) the person knows that the information—
 - (i) is false or misleading; or
 - (ii) omits anything without which the information is false or misleading; and
- (d) any of the following applies:
 - (i) the person to whom the information is given is the Administration;
 - (ii) the person to whom the information is given is a person who is exercising a function under a law of Norfolk Island;
 - (iii) the information is given in compliance or purported compliance with a law of Norfolk Island.

Penalty: 100 penalty units, imprisonment for 1 year or both.

(2) Absolute liability applies to subsection (1) (d) (i), (ii) and (iii).

(3) Subsection (1)(b) and (c)(i) does not apply if the information is not false or misleading in a material particular.

(4) Subsection (1) (b) and (c) (ii) does not apply if the omission does not make the information false or misleading in a material particular.

(5) Subsection (1) (d) (i) does not apply if, before the information was given by the person to the Administration, the Administration did not take reasonable steps to tell the person about the existence of the offence against subsection (1).

(6) Subsection (1)(d)(ii) does not apply if, before the information was given by a person (**A**) to the person mentioned in that subparagraph (**B**), B did not take reasonable steps to tell A about the existence of the offence against subsection (1).

(7) For subsections (5) and (6), it is sufficient if the following form of words is used:

‘Giving false or misleading information is a serious offence’.

(8) In this section:

Administration—see section 196.

217 Producing false or misleading documents

- (1) A person commits an offence if—
- (a) the person produces a document to someone else; and
 - (b) the document is false or misleading; and
 - (c) the person knows that the document is false or misleading; and
 - (d) the document is produced in compliance or purported compliance with a territory law.

Penalty: 100 penalty units, imprisonment for 1 year or both.

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

(3) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a signed statement—

- (a) stating that the document is, to the signing person’s knowledge, false or misleading in a material particular; and
 - (b) setting out, or referring to, the material particular in which the document is, to the signing person’s knowledge, false or misleading.
- (4) The statement under subsection (3) must be signed by—
- (a) the person; or
 - (b) if the person who produces the document is a corporation—a competent officer of the corporation.

PART 4.5 — BLACKMAIL

218 Meaning of *menace* for Part 4.5

- (1) A *menace* includes—
- (a) an express or implied threat of action that is detrimental or unpleasant to someone else; or
 - (b) a general threat of detrimental or unpleasant action that is implied because the person making the demand is a public official.
- (2) A threat against an individual is a *menace* only if—
- (a) the threat would be likely to cause an individual of normal stability and courage to act unwillingly; or

- (b) the threat would be likely to cause the individual to act unwillingly because of a particular vulnerability of which the maker of the threat is aware.
- (3) A threat against an entity other than an individual is a *menace* only if—
 - (a) the threat would ordinarily cause an unwilling response; or
 - (b) the threat would be likely to cause an unwilling response because of a particular vulnerability of which the maker of the threat is aware.

219 Meaning of *unwarranted demand with a menace* for Part 4.5

- (1) A person makes an *unwarranted demand with a menace* of someone else only if the person—
- (a) makes a demand with a menace of the other person; and
 - (b) does not believe that he or she has reasonable grounds for making the demand; and
 - (c) does not reasonably believe that the use of the menace is a proper means of reinforcing the demand.
- (2) The demand need not be a demand for money or other property.
- (3) It does not matter whether the menace relates to action to be taken by the person making the demand.

220 Blackmail

A person commits an offence if the person makes an unwarranted demand with a menace of someone else with the intention of—

- (a) obtaining a gain; or
- (b) causing a loss; or
- (c) influencing the exercise of a public duty.

Penalty: 1 400 penalty units, imprisonment for 14 years or both.

PART 4.6 — FORGERY AND RELATED OFFENCES

Division 4.6.1 Interpretation for Part 4.6

221 Definitions—Part 4.6

In this Part:

document includes any of the following:

- (a) anything on which there are figures, marks, numbers, perforations, symbols or anything else that can be responded to by a computer, machine or electronic device;
- (b) a credit card or debit card;
- (c) a formal or informal document.

false document—see section 222.

222 Meaning of *false* document, etc for Part 4.6

(1) A document is *false* only if the document, or any part of the document, purports—

- (a) to have been made in the form in which it is made by a person who did not make it in that form; or
- (b) to have been made in the form in which it is made on the authority of a person who did not authorise its making in that form; or
- (c) to have been made in the terms in which it is made by a person who did not make it in those terms; or
- (d) to have been made in the terms in which it is made on the authority of a person who did not authorise its making in those terms; or
- (e) to have been changed in any way by a person who did not change it in that way; or
- (f) to have been changed in any way on the authority of a person who did not authorise it to be changed in that way; or
- (g) to have been made or changed by an existing person who did not exist; or
- (h) to have been made or changed on the authority of an existing person who did not exist; or
- (i) to have been made or changed on a date on which, at a time or place at which, or otherwise in circumstances in which it was not made or changed.

(2) For this Part, *making* a false document includes changing the document so as to make it a false document under subsection (1) (whether or not it already was false in some other way).

(3) For this section, a document that purports to be a true copy of another document is to be treated as if it were the original document.

223 Inducing acceptance that document genuine

For section 224 (Forgery), section 225 (Using false document) and section 226 (Possessing false document)—

- (a) a reference to inducing a person to accept a document as genuine includes a reference to causing a computer, machine or electronic device to respond to the document as if it were genuine; and
- (b) it is not necessary to prove an intention to induce a particular person to accept the false document as genuine.

Division 4.6.2 Offences for Part 4.6

224 Forgery

A person commits an offence (*forgery*) if the person makes a false document with the intention that the person or someone else will use it—

- (a) to dishonestly induce another person (C) to accept it as genuine; and
- (b) because C accepts it as genuine, to dishonestly—
 - (i) obtain a gain; or

- (ii) cause a loss; or
- (iii) influence the exercise of a public duty.

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

225 Using false document

A person commits an offence if the person uses a false document, knowing that it is false, with the intention of—

- (a) dishonestly inducing someone else to accept it as genuine; and
- (b) because the other person accepts it as genuine, dishonestly—
 - (i) obtaining a gain; or
 - (ii) causing a loss; or
 - (iii) influencing the exercise of a public duty.

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

226 Possessing false document

A person commits an offence if the person has in the person's possession a false document, knowing that it is false, with the intention that the person or someone else will use it—

- (a) to dishonestly induce another person (C) to accept it as genuine; and
- (b) because C accepts it as genuine, to dishonestly—
 - (i) obtain a gain; or
 - (ii) cause a loss; or
 - (iii) influence the exercise of a public duty.

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

227 Making or possessing device, etc for making false document

(1) A person commits an offence if the person makes or adapts a device, material or other thing—

- (a) knowing that the thing is designed or adapted for making a false document (whether or not it is designed or adapted for another purpose); and
- (b) with the intention that the person or someone else will use the thing to commit forgery.

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

(2) A person commits an offence if—

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

- (b) the person has the device, material or other thing in the person's possession with the intention that the person or someone else will use it to commit forgery.

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

(3) A person commits an offence if the person makes or adapts a device, material or other thing knowing that it is designed or adapted for making a false document (whether or not it is designed or adapted for another purpose).

Penalty: 200 penalty units, imprisonment for 2 years or both.

(4) A person commits an offence if the person has in the person's possession a device, material or other thing knowing that it is designed or adapted for making a false document (whether or not it is designed or adapted for another purpose).

Penalty: 200 penalty units, imprisonment for 2 years or both.

(5) Subsection (4) does not apply if the person has a reasonable excuse.

228 False accounting

(1) A person commits an offence if—

- (a) the person dishonestly damages, destroys or conceals an accounting document; and
- (b) the person does so with the intention of obtaining a gain or causing a loss.

Penalty: 700 penalty units, imprisonment for 7 years or both.

(2) A person commits an offence if—

- (a) the person dishonestly—
 - (i) makes, or concurs in making, in an accounting document an entry that is false or misleading in a material particular; or
 - (ii) omits, or concurs in omitting, a material particular from an accounting document; and
- (b) the person does so with the intention of obtaining a gain or causing a loss.

Penalty: 700 penalty units, imprisonment for 7 years or both.

(3) A person commits an offence if, in giving information for any purpose—

- (a) the person dishonestly produces to someone, or makes use of, an accounting document that is false or misleading in a material particular; and
- (b) the person is reckless about whether the accounting document is false or misleading in a material particular; and

- (c) the person produces or makes use of the accounting document with the intention of obtaining a gain or causing a loss.

Penalty: 700 penalty units, imprisonment for 7 years or both.

- (4) In this section:

accounting document means any account, record or other document made or required for an accounting purpose.

229 False statement by officer of body

- (1) An officer of a body commits an offence if—
 - (a) the officer dishonestly publishes or concurs in the publishing of a document containing a statement or account that is false or misleading in a material particular; or
 - (b) the officer is reckless about whether the statement or account is false or misleading in a material particular; and
 - (c) the officer publishes or concurs in the publishing of the document with the intention of deceiving members or creditors of the body about its affairs.

Penalty: 700 penalty units, imprisonment for 7 years or both.

- (2) In this section:

creditor, of a body, includes a person who has entered into a security for the benefit of the body.

officer, of a body, includes—

- (a) any member of the body who is concerned in its management; and
- (b) anyone purporting to act as an officer of the body.

PART 4.7 — BRIBERY AND RELATED OFFENCES

Division 4.7.1 Interpretation for Part 4.7

230 Definitions—Part 4.7

In this Part:

agent—see section 231.

favour—an agent provides a **favour** if the agent—

- (a) is influenced or affected in the exercise of his or her function as agent; or
- (b) does or does not do something as agent, or because of his or her position as agent; or
- (c) causes or influences his or her principal, or another agent of the principal, to do or not do something.

function, of an agent, includes a function the agent holds himself or herself out as having as agent.

principal—see section 231.

231 Meaning of *agent* and *principal* for Part 4.7

(1) An *agent* (and the *principal* of the agent) includes the following:

column 1 item	column 2 agent	column 3 principal of the agent
1	a person acting for someone else with that other person's actual or implied authority	that other person
2	a public official	the government or other body for which the official acts
3	an employee	the employer
4	a lawyer acting for a client	the client
5	a partner	the partnership
6	an officer of a corporation (whether or not employed by it)	the corporation
7	an officer of another body (whether or not employed by it)	the body
8	a consultant to a person	that person

(2) A person is an agent or principal if the person is, or has been or intends to be, an agent or principal.

232 Dishonesty for Part 4.7

The provision of a benefit can be dishonest even if the provision of the benefit is customary in a trade, business, profession or calling.

233 Meaning of *obtain* for Part 4.7

(1) For this Part, a person (*A*) is taken to *obtain* a benefit for someone else (*B*) if *A* induces a third person to do something that results in *B* obtaining the benefit.

(2) The definition of *obtain* in section 177 does not apply to this Part.

*Division 4.7.2 Offences for Part 4.7***234 Bribery**

(1) A person commits an offence if—

(a) the person dishonestly—

(i) provides a benefit to an agent or someone else; or

(ii) causes a benefit to be provided to an agent or someone else; or

- (iii) offers to provide, or promises to provide, a benefit to an agent or someone else; or
 - (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to an agent or someone else; and
- (b) the person does so with the intention that the agent will provide a favour.

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

- (2) An agent commits an offence if—
- (a) the agent dishonestly—
 - (i) asks for a benefit for the agent or someone else; or
 - (ii) obtains a benefit for the agent or someone else; or
 - (iii) agrees to obtain a benefit for the agent or someone else; and
 - (b) the agent does so with the intention—
 - (i) that the agent will provide a favour; or
 - (ii) of inducing, fostering or sustaining a belief that the agent will provide a favour.

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

235 Other corrupting benefits

- (1) A person commits an offence if—
- (a) the person dishonestly—
 - (i) provides a benefit to an agent or someone else; or
 - (ii) causes a benefit to be provided to an agent or someone else; or
 - (iii) offers to provide, or promises to provide, a benefit to an agent or someone else; or
 - (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to an agent or someone else; and
 - (b) obtaining, or expecting to obtain, the benefit would tend to influence the agent to provide a favour.

Penalty: 500 penalty units, imprisonment for 5 years or both.

- (2) An agent commits an offence if—
- (a) the agent dishonestly—
 - (i) asks for a benefit for the agent or someone else; or
 - (ii) obtains a benefit for the agent or someone else; or
 - (iii) agrees to obtain a benefit for the agent or someone else; and

- (b) obtaining, or expecting to obtain, the benefit would tend to influence the agent to provide a favour.

Penalty: 500 penalty units, imprisonment for 5 years or both.

(3) For this section, it does not matter whether the benefit is in the nature of a reward.

236 Payola

A person commits an offence if—

- (a) the person holds the person out to the public as being engaged in a business or activity of—
 - (i) making disinterested selections or examinations; or
 - (ii) expressing disinterested opinions in relation to property or services; and
- (b) the person dishonestly asks for or obtains, or agrees to obtain, a benefit for the person or someone else in order to influence the selection, examination or opinion.

Penalty: 500 penalty units, imprisonment for 5 years or both.

237 Abuse of public office

(1) A public official commits an offence if—

- (a) the official—
 - (i) exercises any function or influence that the official has as a public official; or
 - (ii) fails to exercise any function the official has as a public official; or
 - (iii) engages in any conduct in the exercise of the official's duties as a public official; or
 - (iv) uses any information that the official has gained as a public official; and
- (b) the official does so with the intention of—
 - (i) dishonestly obtaining a benefit for the official or someone else; or
 - (ii) dishonestly causing a detriment to someone else.

Penalty: 500 penalty units, imprisonment for 5 years or both.

(2) A person commits an offence if—

- (a) the person has ceased to be a public official in a particular capacity; and
- (b) the person uses any information the person gained in that capacity; and
- (c) the person does so with the intention of—
 - (i) dishonestly obtaining a benefit for the person or someone else; or

- (ii) dishonestly causing a detriment to someone else.

Penalty: 500 penalty units, imprisonment for 5 years or both.

- (3) Subsection (2) (a) applies to a person—
 - (a) whether the person ceased to be a public official as mentioned in the paragraph before, at or after the commencement of this section; and
 - (b) whether or not the person continues to be a public official in another capacity.

PART 4.8 — IMPERSONATION OR OBSTRUCTION OF PUBLIC OFFICIALS

Division 4.8.1 Indictable offences for Part 4.8

238 Impersonating public official

- (1) A person commits an offence if the person—
 - (a) on a particular occasion, impersonates someone else in the other person's capacity as a territory public official; and
 - (b) does so—
 - (i) knowing it to be in circumstances when the official is likely to be performing his or her duty; and
 - (ii) with intent to deceive.

Penalty: 200 penalty units, imprisonment for 2 years or both.

- (2) A person commits an offence if the person—
 - (a) falsely represents the person to be a public official in a particular capacity (whether or not that capacity exists or is fictitious); and
 - (b) does so in the course of doing an act, or attending a place, in the assumed capacity of such an official.

Penalty: 200 penalty units, imprisonment for 2 years or both.

- (3) A person commits an offence if the person—
 - (a) either—
 - (i) impersonates someone else in the other person's capacity as a public official; or
 - (ii) falsely represents himself or herself to be a public official in a particular capacity (whether or not that capacity exists or is fictitious); and
 - (b) does so—
 - (i) with the intention of obtaining a gain, causing a loss or influencing the exercise of a public duty; and
 - (ii) if paragraph (a) (i) applies—also with intent to deceive.

Penalty: 500 penalty units, imprisonment for 5 years or both.

- (4) To remove any doubt, in this section:

false representation does not include conduct engaged in solely for entertainment.

impersonation does not include conduct engaged in solely for entertainment.

239 Obstructing public official

- (1) A person commits an offence if—
- (a) the person obstructs, hinders, intimidates or resists a public official in the exercise of his or her functions as a public official; and
 - (b) the person knows that the public official is a public official; and
 - (c) the functions are functions as a public official.

Penalty: 200 penalty units, imprisonment for 2 years or both.

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

(3) Strict liability applies to the circumstance that the public official was exercising the official's functions as a public official.

- (4) In this section:

function—in relation to a person who is a public official—means a function that is given to the person as a public official.

Note public official – see s. 177

Division 4.8.2 Summary offences for Part 4.8

240 Impersonating police officer

(1) A person who is not a police officer commits an offence if the person wears a uniform or badge of a police officer.

Penalty: 50 penalty units, imprisonment for 6 months or both.

(2) A person who is not a police officer commits an offence if the person represents himself or herself to be a police officer.

Penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) An offence against subsection (1) or (2) is a strict liability offence.

(4) A person who is not a police officer commits an offence if the person wears clothing or a badge reckless about whether the clothing or badge would cause someone to believe that the person is a police officer.

Penalty: 50 penalty units, imprisonment for 6 months or both.

(5) This section does not apply to conduct engaged in solely for entertainment.

241 Obstructing public official

- (1) A person commits an offence if—
- (a) the person obstructs, hinders, intimidates or resists a public official in the exercise of his or her functions as a public official; and
 - (b) the person is reckless about whether the public official is a public official; and
 - (c) the public official is a public official; and
 - (d) the functions are functions as a public official.

Penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Absolute liability applies to subsection (1) (c) and (d).

(3) Strict liability applies to the circumstance that the public official was exercising the official's functions as a public official.

(4) In this section:

function—see section 239.

PART 4.9 — PROCEDURAL MATTERS FOR CHAPTER 4

Division 4.9.1 General—Part 4.9

242 Stolen property held by dealers, etc—owners rights

(1) If the owner of stolen property makes a complaint to a magistrate that the property is in the possession of a dealer in second-hand goods or a person (the *lender*) who has advanced money on the security of the property, the magistrate may—

- (a) issue a summons for the appearance of the dealer or lender and for the production of the property; and
- (b) order the dealer or lender to give the property to the owner on payment by the owner of the amount (if any) that the magistrate considers appropriate.

(2) A dealer or lender who contravenes an order under subsection (1)(b), or who disposes of any property after being told by the owner of the property that it is stolen, is liable to pay to the owner of the property the full value of the property as decided by a magistrate.

(3) In this section:

related offence means any of the following:

- (a) robbery;
- (b) aggravated robbery;
- (c) burglary;
- (d) aggravated burglary;
- (e) obtaining property by deception.

stolen property means property appropriated or obtained in the course of theft or a related offence.

243 Stolen property held by police—disposal

(1) This section applies if—

- (a) property is lawfully in the custody of a police officer; and
- (b) a person is charged with theft or a related offence in relation to the property; and
- (c) the person charged—
 - (i) cannot be found; or
 - (ii) is convicted, discharged or acquitted in relation to the charge.

(2) A magistrate may—

- (a) make an order for the property to be given to the person who appears to be the owner of the property; or

(b) if there is no-one who appears to be the owner—make any order in relation to the property that the magistrate considers just.

(3) An order under this section does not prevent anyone from recovering the property from the person to whom the property is given under the order if a proceeding for the recovery is begun within 6 months after the day the order is made.

(4) In this section:

related offence—see section 242.

244 Procedure and evidence—*theft, receiving, etc*

(1) Any number of defendants may be charged in a single indictment with theft or receiving in relation to the same property and the defendants charged may be tried together.

(2) Any number of defendants may be charged in a single indictment with obtaining property by deception or receiving in relation to the same property and the defendants charged may be tried together.

(3) On the trial of a defendant or 2 or more defendants for theft, unless the court otherwise orders, a count on the indictment may include an allegation that the defendant or 1 or more of the defendants stole 2 or more items of property.

(4) On the trial of a defendant or 2 or more defendants for receiving, unless the court otherwise orders, a count on the indictment—

(a) may include an allegation that the defendant or 1 or more of the defendants received 2 or more items of property; and

(b) may include the allegation whether or not all the items of property were received from the same person or at the same time.

(5) If, on the trial of a defendant for receiving, it is proved that the defendant had 4 or more items of stolen property in his or her possession, it must be presumed, unless there is evidence to the contrary, that the defendant—

(a) received the items; and

(b) at the time of receiving them, knew or believed them to be items of stolen property.

(6) The defendant has an evidential burden in relation to evidence to the contrary mentioned in subsection (5).

(7) On the trial of 2 or more defendants for jointly receiving stolen property, the trier of fact may find a defendant guilty if satisfied that the defendant received all or any of the stolen property, whether or not the defendant received it jointly with 1 or more of the other defendants.

(8) On the trial of 2 or more defendants for theft and receiving, the trier of fact may find 1 or more of the defendants guilty of theft or receiving, or may find any of them guilty of theft and any other or others guilty of receiving.

(9) On the trial of 2 or more defendants for obtaining property by deception and receiving, the trier of fact may find 1 or more of the defendants guilty of obtaining property by deception or receiving, or may find any of them guilty of obtaining property by deception and any other or others guilty of receiving.

(10) Subsection (11) applies to a proceeding for the theft of property in the course of transmission (whether by post or otherwise), or for receiving stolen property from such a theft.

(11) A statutory declaration by a person that the person sent, received or failed to receive goods or a postal packet, or that goods or a postal packet when sent or received by the person were or was in a particular state or condition, is admissible as evidence of the facts stated in the declaration—

- (a) if and to the extent to which oral evidence to the same effect would have been admissible in the proceeding; and
- (b) if, at least 7 days before the day of the beginning of the hearing or trial, a copy of the declaration is given to the defendant, and the defendant has not, at least 3 days before the day of the beginning of the hearing or trial, or within any further time that the court in special circumstances allows, given to the prosecution written notice requiring the attendance at the hearing or trial of the person making the declaration.

(12) In this section:

stolen property—see section 191.

245 Certain proceedings not to be heard together

If a person is charged with an offence against section 201 (Unlawful possession of stolen property) and an offence of receiving in relation to the same property, proceedings for the offences must not be heard together.

246 Indictment for offence relating to deeds, money etc

(1) In an indictment for an offence against this chapter in relation to a document of title to land, or a part of a document of title to land, it is sufficient to state that the document or the part of the document is or contains evidence of the title to the land, and to mention the person, or any of the people, with an interest in the land, or in any part of the land.

(2) In an indictment for an offence against this chapter in relation to money or a valuable security, it is sufficient to describe it as a certain amount of money, or a certain valuable security, without specifying a particular kind of money or security, and the description will be sustained by proof of the offence in relation to any money or valuable security even if it is agreed that part of the value of the money or security has been returned, or part was in fact returned.

(3) In this section:

document of title to land includes any document that is or contains evidence of title to the land or an estate in the land.

247 Theft of motor vehicle—cancellation of licence

(1) This section applies if a person is found guilty of any of the following offences:

- (a) theft of a motor vehicle;
 - (b) an offence against section 195 (Taking etc motor vehicle without consent).
- (2) The court may, by order—

- (a) if the person holds a driver licence—disqualify the person from holding or obtaining a driver licence for the period the court considers appropriate; or
 - (b) if the person does not hold a driver licence—disqualify the person from obtaining a driver licence for the period the court considers appropriate.
- (3) If the court makes an order under this section, the court must give particulars of the order to the Registrar of Motor Vehicles.
- (4) In this section:
motor vehicle—see the *Road Traffic Act 1982*, s.3 .

DIVISION 4.9.2 — ALTERNATIVE VERDICTS—CHAPTER 4

248 Alternative verdicts—theft and taking motor vehicle without consent

(1) This section applies if, in a prosecution for theft, the trier of fact is not satisfied that the defendant committed theft but is satisfied beyond reasonable doubt that the defendant committed an offence against section 195 (Taking etc motor vehicle without consent).

(2) The trier of fact may find the defendant guilty of the offence against section 318, but only if the defendant has been given procedural fairness in relation to that finding of guilt.

(3) In this section:

theft does not include an offence against section 198 (Minor theft).

249 Alternative verdicts—theft or obtaining property by deception and receiving

(1) If, in a prosecution for theft or obtaining property by deception, the trier of fact is not satisfied that the defendant committed the offence but is satisfied beyond reasonable doubt that the defendant committed an offence of receiving, the trier of fact may find the defendant guilty of receiving, but only if the defendant has been given procedural fairness in relation to that finding of guilt.

(2) If, in a prosecution for an offence of receiving, the trier of fact is not satisfied that the defendant committed the offence but is satisfied beyond reasonable doubt that the defendant committed theft or obtaining property by deception, the trier of fact may find the defendant guilty of theft or obtaining property by deception, but only if the defendant has been given procedural fairness in relation to that finding of guilt.

250 Alternative verdicts—theft and obtaining property by deception

(1) If, in a prosecution for an offence of theft, the trier of fact is not satisfied that the defendant committed the offence but is satisfied beyond reasonable doubt that the defendant committed an offence of obtaining property by deception, the trier of fact may find the defendant guilty of obtaining property by deception, but only if the defendant has been given procedural fairness in relation to that finding of guilt.

(2) If, in a prosecution for an offence of obtaining property by deception, the trier of fact is not satisfied that the defendant committed the offence but is satisfied beyond reasonable doubt that the defendant committed an offence of theft,

the trier of fact may find the defendant guilty of theft, but only if the defendant has been given procedural fairness in relation to that finding of guilt.

(3) In this section:

theft does not include an offence against section 198 (Minor theft).

251 Verdict of “theft or receiving” etc

(1) If, on the trial of a defendant charged with theft and receiving in relation to the same property, the trier of fact is satisfied beyond reasonable doubt that the defendant committed theft or receiving but cannot decide which of the offences the defendant committed, the trier of fact must find the defendant guilty of—

- (a) the offence that is more probable; or
- (b) if the trier of fact cannot decide which of the offences is more probable—theft.

(2) If, on the trial of a defendant charged with obtaining property by deception and receiving in relation to the same property, the trier of fact is satisfied beyond reasonable doubt that the defendant committed obtaining property by deception or receiving but cannot decide which of the offences the defendant committed, the trier of fact must find the defendant guilty of—

- (a) the offence that is more probable; or
- (b) if the trier of fact cannot decide which of the offences is more probable—obtaining property by deception.

(3) In this section:

theft does not include an offence against section 198 (Minor theft).

252 Alternative verdicts—making false or misleading statements

(1) This section applies if, in a prosecution for an offence against section 215(1) (Making false or misleading statements), the trier of fact is not satisfied that the defendant committed the offence but is satisfied beyond reasonable doubt that the defendant committed an offence against section 215(3).

(2) The trier of fact may find the defendant guilty of the offence against section 215(3), but only if the defendant has been given procedural fairness in relation to that finding of guilt.

DIVISION 4.9.3 — FORFEITURE—CHAPTER 4

253 Going equipped offences—forfeiture

(1) If a person is found guilty of an offence against section 192 (Going equipped for theft etc) in relation to an article, the person must forfeit to the Administration the article and any other article of the kind mentioned in that section that is in the person’s custody or possession.

(2) If a person is found guilty of an offence against section 193 (Going equipped with offensive weapon for theft etc) in relation to an offensive weapon, the person must forfeit to the Administration the weapon and any other offensive weapon of the kind mentioned in that section that is in the person’s custody or possession.

254 Unlawful possession offence—forfeiture

If a person is found guilty of an offence against section 201 (Unlawful possession of stolen property), the property to which the offence relates is forfeited to the Administration—

- (a) if the person found guilty is the owner of the property—when the person is found guilty; or
- (b) in any other case—at the end of 90 days after the day the person is found guilty of the offence unless the owner of the property is known.

255 Forgery offences—forfeiture

(1) This section applies if a person is found guilty of an offence against any of the following sections:

- (a) section 224 (Forgery);
- (b) section 225 (Using false document);
- (c) section 226 (Possessing false document);
- (d) section 227 (Making or possessing device etc for making false document).

(2) The court may order, under the *Criminal Procedure Act 2007* (Procedure on forfeiture), that any article used in relation to the offence be forfeited to the Administration.

CHAPTER 5 — PROPERTY DAMAGE AND COMPUTER OFFENCES**PART 5.1 — PROPERTY DAMAGE OFFENCES***Division 5.1.1 — Interpretation for Part 5.1***256 Definitions—Part 5.1**

In this Part:

causes damage or another result—a person **causes** damage or another result if the person's conduct substantially contributes to the damage or other result.

damage property, includes the following:

- (a) destroy the property;
- (b) cause the physical loss of the property by interfering with the property (including by removing any restraint over the property or abandoning the property);
- (c) cause loss of a use or function of the property by interfering with the property;
- (d) deface the property;
- (e) for a document—obliterate or make illegible the whole or part of the document;
- (f) for an animal—harm or kill the animal;
- (g) for a plant or other thing forming part of land—cut it from the land.

property means any property of a tangible nature.

257 Person to whom property belongs

(1) For this Part, property belongs to anyone having possession or control of it, or having any proprietary right or interest in it (other than an equitable interest arising only from an agreement to transfer or grant an interest or from a constructive trust).

(2) If property is subject to a trust, a reference to the people to whom it belongs includes a reference to anyone having a right to enforce the trust.

(3) If property belongs to 2 or more people, a reference to the person to whom the property belongs is a reference to all the people.

258 Meaning of *threat* for Part 5.1

For this Part—

- (a) a threat to a person includes a threat to a group of people; and
- (b) fear that a threat will be carried out includes apprehension that it will be carried out.

Note For further definition of *threat*, see the dictionary.

Division 5.1.2 Offences—Part 5.1

259 Damaging property

(1) A person commits an offence if the person—

- (a) causes damage to property belonging to someone else; and
- (b) intends to cause, or is reckless about causing, damage to that property or any other property belonging to someone else.

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

(2) A conviction for an offence against this section is an alternative verdict to a charge for—

- (a) an offence against section 272 (Unauthorised modification of data to cause impairment); or
- (b) an offence against section 273 (Unauthorised impairment of electronic communication).

260 Arson

(1) A person commits an offence if the person—

- (a) causes damage to a building or vehicle by fire or explosive; and
- (b) intends to cause, or is reckless about causing, damage to that or any other building or vehicle.

Penalty: 1 500 penalty units, imprisonment for 15 years or both.

(2) A person commits an offence if the person—

- (a) makes to someone else (*person B*) a threat to damage, by fire or explosive, a building or vehicle belonging to person B or to another person; and
- (b) intends to cause, or is reckless about causing, person B to fear that the threat will be carried out.

Penalty: 700 penalty units, imprisonment for 7 years or both.

(3) In the prosecution of an offence against subsection (2) it is not necessary to prove that the person threatened (person B) actually feared that the threat would be carried out.

(4) In this section:

building includes—

- (a) part of a building; or
- (b) any structure (whether or not moveable) that is used, designed or adapted for residential purposes.

vehicle means motor vehicle, motorised vessel or aircraft.

261 Causing bushfires

(1) A person commits an offence if the person—

- (a) intentionally or recklessly causes a fire; and
- (b) is reckless about the spread of the fire to vegetation on property belonging to someone else.

Penalty: 1 500 penalty units, imprisonment for 15 years or both.

Note The fault element of recklessness can be satisfied by proof of intention, knowledge or recklessness (see s 20 (4)).

(2) In this section:

causes a fire—a person **causes** a fire if the person does any of the following:

- (a) lights a fire;
- (b) maintains a fire;
- (c) fails to contain or extinguish a fire that was lit by the person if it is not beyond the person's capacity to contain or extinguish it.

spread, of a fire, means spread of the fire beyond the capacity of the person who caused the fire to contain or extinguish it.

262 Threat to cause property damage—fear of death or serious harm

(1) A person commits an offence if the person—

- (a) intentionally makes to someone else a threat to damage property; and
- (b) is reckless about causing that person to fear that the carrying out of the threat will kill or cause serious harm to that person or another person.

Penalty: 700 penalty units, imprisonment for 7 years or both.

Note The fault element of recklessness can be satisfied by proof of intention, knowledge or recklessness (see s 20(4)).

(2) In the prosecution of an offence against this section it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

263 Threat to cause property damage

(1) A person commits an offence if the person—

- (a) intentionally makes to someone else a threat to damage property belonging to that person or another person; and
- (b) intends that person to fear that the threat will be carried out.

Penalty: 200 penalty units, imprisonment for 2 years or both.

(2) In the prosecution of an offence against this section it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

264 Possession of thing with intent to damage property

(1) A person commits an offence if the person possesses a thing with the intention that the person or someone else will use it to damage property belonging to another person.

Penalty: 300 penalty units, imprisonment for 3 years or both.

- (2) In this section:

possess a thing includes—

- (a) have control over disposing of the thing (whether or not the thing is in the custody of the person); or
- (b) have joint possession of the thing.

Division 5.1.3 Defences—Part 5.1

Note A defendant bears an evidential burden in relation to the defences in this Division (see s 58(3)).

265 Consent—Part 5.1 offences

(1) A person (*person A*) is not criminally responsible for an offence against this Part if, when the conduct required for the offence was carried out—

- (a) a person entitled to consent to the damage to the property concerned had consented; or
- (b) person A believed that a person entitled to consent to the damage to the property concerned—
 - (i) had consented; or
 - (ii) would have consented if the person had known about the damage to the property and its circumstances.

(2) For the application of this defence to an offence against section 261 (Causing bushfires):

damage, to property, means the risk of fire spreading to the property.

266 Claim of right—Part 5.1 offences

(1) A person is not criminally responsible for an offence against this Part if, when engaging in the conduct required for the offence, the person believed that the person had a right or interest in the property concerned that entitled the person to engage in the conduct.

- (2) In this section:

right or interest in property includes a right or privilege in or over land or waters, whether created by grant, licence or otherwise.

267 Self-defence

To remove any doubt, section 42 (Self-defence) applies to an offence against this Part.

PART 5.2 — COMPUTER OFFENCES**268 Definitions—Part 5.2**

In this Part:

access, to data held in a computer, means—

- (a) the display of the data by the computer or any other output of the data from the computer; or
- (b) the copying or moving of the data to another place in the computer or to a data storage device; or
- (c) for a program—the execution of the program.

causes—a person **causes** unauthorised access to or modification of data, or impairment of electronic communication or of the reliability, security or operation of data, if the person's conduct substantially contributes to the unauthorised access, modification or impairment.

data includes—

- (a) information in any form; and
- (b) a program (or part of a program).

data held in a computer includes—

- (a) data entered or copied into the computer; and
- (b) data held in a removable storage device in the computer; and
- (c) data held in a data storage device on a computer network of which the computer forms part.

data storage device means anything containing or designed to contain data for use by a computer.

Examples of data storage devices

- 1 a disc
- 2 a file server

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears s.4(2)

electronic communication means a communication of information in any form by way of guided or unguided electromagnetic energy.

impairment, of electronic communication to or from a computer, includes—

- (a) the prevention of the communication, and
- (b) the impairment of the communication on an electronic link or network used by the computer;

but does not include a mere interception of the communication.

modification, of data held in a computer, means—

- (a) the alteration or removal of the data, or
- (b) an addition to the data.

serious computer offence means—

- (a) an offence against section 271, section 272 or section 273; or

- (b) conduct in another jurisdiction that is an offence in that jurisdiction and would be an offence against section 271, section 272 or section 273 if the conduct happened in Norfolk Island.

269 Limited meaning of *access to data*, etc

In this Part, a reference to—

- (a) access to data held in a computer; or
- (b) modification of data held in a computer; or
- (c) impairment of electronic communication to or from a computer;

is limited to access, modification or impairment caused (directly or indirectly) by the execution of a function of a computer.

270 Meaning of *unauthorised* access, modification or impairment

(1) For this Part, access to or modification of data, or impairment of electronic communication or of the reliability, security or operation of data, by a person is *unauthorised* if the person is not entitled to cause the access, modification or impairment.

(2) However, the access, modification or impairment is not unauthorised only because the person has an ulterior purpose for causing it.

271 Unauthorised access, modification or impairment with intent to commit serious offence

- (1) A person commits an offence if—
 - (a) the person causes—
 - (i) unauthorised access to data held in a computer; or
 - (ii) unauthorised modification of data held in a computer, or
 - (iii) unauthorised impairment of electronic communication to or from a computer; and
 - (b) the person knows the access, modification or impairment is unauthorised; and
 - (c) the person intends to commit, or enable the commission of, a serious offence (by the person or by someone else).

Penalty: the Penalty applicable if the person had committed, or enabled the commission of, the serious offence in Norfolk Island.

(2) In the prosecution of an offence against this section it is not necessary to prove that the defendant knew that the offence was a serious offence.

- (3) A person can be found guilty of an offence against this section—
 - (a) even if committing the serious offence is impossible; or
 - (b) whether the serious offence is to be committed at the time of the unauthorised conduct or at a later time.
- (4) It is not an offence to attempt to commit an offence against this

section.

(5) In this section:

serious offence means an offence punishable by imprisonment for 5 years or longer, and includes an offence in another jurisdiction that would be a serious offence if committed in Norfolk Island.

272 Unauthorised modification of data to cause impairment

- (1) A person commits an offence if—
- (a) the person causes unauthorised modification of data held in a computer; and
 - (b) the person knows the modification is unauthorised; and
 - (c) the person—
 - (i) intends by the modification to impair access to, or to impair the reliability, security or operation of, data held in a computer; or
 - (ii) is reckless about any such impairment.

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

(2) A person can be found guilty of an offence against this section even if there is or will be no actual impairment to access to, or the reliability, security or operation of, data held in a computer.

(3) A conviction for an offence against this section is an alternative verdict to a charge for—

- (a) an offence against section 259 (Damaging property); or
- (b) an offence against section 273 (Unauthorised impairment of electronic communication).

273 Unauthorised impairment of electronic communication

- (1) A person commits an offence if—
- (a) the person causes an unauthorised impairment of electronic communication to or from a computer; and
 - (b) the person knows the impairment is unauthorised; and
 - (c) the person—
 - (i) intends to impair electronic communication to or from the computer; or
 - (ii) is reckless about any such impairment.

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

(2) A conviction for an offence against this section is an alternative verdict to a charge for—

- (a) an offence against section 259 (Damaging property); or
- (b) an offence against section 272 (Unauthorised modification of data to cause impairment).

274 Possession of data with intent to commit serious computer offence

(1) A person commits an offence if the person has possession or control of data with the intention of—

- (a) committing a serious computer offence; or
- (b) enabling the commission of a serious computer offence (whether by the person or by someone else).

Penalty: 300 penalty units, imprisonment for 3 years or both.

- (2) For this section:

possession or control of data includes—

- (a) possession of a computer or data storage device holding or containing the data; or
- (b) possession of a document in which the data is recorded; or
- (c) control of data held in a computer that is in the possession of someone else (whether the computer is in or outside Norfolk Island).

(3) A person can be found guilty of an offence against this section even if committing the serious computer offence is impossible.

(4) It is not an offence to attempt to commit an offence against this section.

275 Producing, supplying or obtaining data with intent to commit serious computer offence

(1) A person commits an offence if the person produces, supplies or obtains data with the intention of—

- (a) committing a serious computer offence; or
- (b) enabling the commission of a serious computer offence (whether by the person or by someone else).

Penalty: 300 penalty units, imprisonment for 3 years or both.

- (2) For this section:

produce, supply or obtain data includes—

- (a) produce, supply or obtain data held or contained in a computer or data storage device; or
- (b) produce, supply or obtain a document in which the data is recorded.

(3) A person can be found guilty of an offence against this section even if committing the serious computer offence concerned is impossible.

276 Unauthorised access to or modification of restricted data held in computer

(1) A person commits an offence if—

- (a) the person causes unauthorised access to or modification of restricted data held in a computer; and
- (b) the person knows the access or modification is unauthorised; and
- (c) the person intends to cause the access or modification.

Penalty: 200 penalty units, imprisonment for 2 years or both.

(2) In this section:

restricted data means data held in a computer to which access is restricted by an access control system associated with a function of the computer.

277 **Unauthorised impairment of data held in computer disc, credit card, etc**

A person commits an offence if—

- (a) the person causes unauthorised impairment of the reliability, security or operation of data held in a computer disc, credit card or other device used to store data by electronic means; and
- (b) the person knows the impairment is unauthorised; and
- (c) the person intends to cause the impairment.

Penalty: 200 penalty units, imprisonment for 2 years or both.

PART 5.3 — SABOTAGE

278 **Definitions—Part 5.3**

In this Part:

causes damage or disruption—a person **causes** damage or disruption if the person's conduct substantially contributes to the damage or disruption.

damage, to a public facility, means—

- (a) damage to the facility or part of the facility; or
- (b) disruption to the use or operation of the facility.

property offence means—

- (a) an offence against Part 5.1 (Property damage offences); or
- (b) conduct in another jurisdiction that is an offence in that jurisdiction and would be an offence against Part 5.1 if the conduct happened in Norfolk Island.

public facility means any of the following (whether publicly or privately owned):

- (a) an Administration facility, including premises used by Administration employees for official duties;
- (b) a public infrastructure facility, including a facility providing water, sewerage, energy, fuel, communication or other services to the public;
- (c) a public information system, including a system used to generate, send, receive, store or otherwise process electronic communications;
- (d) a public transport facility, including a vehicle used to transport people or goods;
- (e) a public place, including any premises, land or water open to the public.

unauthorised computer function means any of the following (within the meaning of Part 5.2 (Computer offences)):

- (a) unauthorised access to data held in a computer;

- (b) unauthorised modification of data held in a computer;
- (c) unauthorised impairment of electronic communication to or from a computer.

279 Sabotage

- (1) A person commits an offence if—
- (a) the person causes damage to a public facility by committing a property offence or by causing an unauthorised computer function; and
 - (b) the person intends to cause—
 - (i) major disruption to Administration functions; or
 - (ii) major disruption to the use of services by the public; or
 - (iii) major economic loss.

Penalty: 2 500 penalty units, imprisonment for 25 years or both.

(2) To remove any doubt, a person does not commit an offence against this section only because the person takes part in a protest, strike or lockout.

280 Threaten sabotage

- (1) A person commits an offence if—
- (a) the person intentionally makes to someone else a threat to cause damage to a public facility by committing a property offence or by causing an unauthorised computer function; and
 - (b) the person intends the other person to fear that the threat will be carried out and will cause—
 - (i) major disruption to Administration functions; or
 - (ii) major disruption to the use of services by the public; or
 - (iii) major economic loss.

Penalty: 1 500 penalty units, imprisonment for 15 years or both.

(2) To remove any doubt, a person does not commit an offence against this section only because the person intends to or threatens to take part in a protest, strike or lockout.

(3) In the prosecution of an offence against this section it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

- (4) For this section—
- (a) a threat to a person includes a threat to a group of people; and
 - (b) fear that a threat will be carried out includes apprehension that it will be carried out.

Note For further definition of *threat*, see the dictionary.

CHAPTER 6 — SERIOUS DRUG OFFENCES

PART 6.1 — INTERPRETATION FOR CHAPTER 6

281 Definitions—chapter 6

In this chapter:

cannabis means a substance consisting of or containing—

- (a) the fresh or dried parts of a cannabis plant, other than goods that consist completely or mainly of cannabis fibre; or
- (b) tetrahydrocannabinol.

cannabis plant means a plant of the genus *Cannabis*.

commercial quantity—see section 282.

conceal a thing includes conceal or disguise—

- (a) the nature, source or location of the thing; or
- (b) any movement of the thing; or
- (c) someone's rights in relation to the thing; or
- (d) the identity of any owner of the thing.

controlled drug means a **prohibited drug** within the meaning of the NSW Drug Misuse and Trafficking Act.

controlled plant means a **prohibited plant** within the meaning of the NSW Drug Misuse and Trafficking Act.

controlled precursor means a substance prescribed by regulation as a controlled precursor.

cultivates a plant—see section 296.

cultivation, of a plant—see section 296.

large commercial quantity—see section 282.

manufacture—see section 287.

manufactures—see section 287.

NSW Drug Misuse and Trafficking Act means the *Drug Misuse and Trafficking Act 1985* (NSW) as in force at the commencement of the *Norfolk Island Legislation Amendment (Criminal and Civil Matters) Ordinance 2021*.

possession, of a thing, includes the following:

- (a) receiving or obtaining possession of the thing;
- (b) having control over the disposition of the thing (whether or not having custody of the thing);
- (c) having joint possession of the thing.

prepare a drug for supply includes pack the drug or separate the drug into discrete units.

sell includes—

- (a) barter or exchange; and

- (b) give to someone in the belief that the person will provide property or services in return at a later time, whether by agreement or otherwise; and
- (c) agree to sell.

supply includes—

- (a) supply by way of sale or otherwise; and
- (b) agree to supply.

trafficable quantity—see section 282.

traffics in a controlled drug—see section 283.

transport includes deliver.

282 Meaning of *trafficable quantity*, *commercial quantity* and *large commercial quantity*

- (1) In this chapter:

commercial quantity of a controlled drug, or controlled plant, means the quantity specified for that drug or plant in column 4 of the table in Schedule 1 to the NSW Drug Misuse and Trafficking Act.

large commercial quantity of a controlled drug, or controlled plant, means the quantity specified for that drug or plant in column 5 of the table in Schedule 1 to the NSW Drug Misuse and Trafficking Act.

trafficable quantity of a controlled drug, or controlled plant, means the quantity specified for that drug or plant in column 1 of the table in Schedule 1 to the NSW Drug Misuse and Trafficking Act.

PART 6.2 — TRAFFICKING IN CONTROLLED DRUGS

283 Meaning of *trafficking*

For this chapter, a person *traffics* in a controlled drug if the person—

- (a) sells the drug; or
- (b) prepares the drug for supply—
 - (i) with the intention of selling any of it; or
 - (ii) believing that someone else intends to sell any of it; or
- (c) transports the drug—
 - (i) with the intention of selling any of it; or
 - (ii) believing that someone else intends to sell any of it; or
- (d) guards or conceals the drug with the intention of—
 - (i) selling any of it; or
 - (ii) helping someone else to sell any of it; or
- (e) possesses the drug with the intention of selling any of it; and
- (f) with respect to a controlled drug that is also controlled by the *Dangerous Drugs Act 1927*, the person is not the holder of a licence under that Act permitting the person to do that thing.

284 Trafficking in controlled drug

(1) A person commits an offence if the person traffics in a large commercial quantity of a controlled drug.

Penalty: imprisonment for life.

(2) Absolute liability applies to the circumstance that the quantity trafficked in was a large commercial quantity.

(3) A person commits an offence if the person traffics in a commercial quantity of a controlled drug.

Penalty: 2 500 penalty units, imprisonment for 25 years or both.

(4) Absolute liability applies to the circumstance that the quantity trafficked in was a commercial quantity.

(5) A person commits an offence if the person traffics in a trafficable quantity of cannabis.

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

(6) Absolute liability applies to the circumstance that the quantity trafficked in was a trafficable quantity.

(7) A person commits an offence if the person traffics in a controlled drug other than cannabis.

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

(8) A person commits an offence if the person traffics in cannabis.

Penalty: 300 penalty units, imprisonment for 3 years or both.

285 Trafficking offence—presumption if trafficable quantity possessed etc

(1) If, in a prosecution for an offence against section 284, it is proved that the defendant—

- (a) prepared a trafficable quantity of a controlled drug for supply; or
- (b) transported a trafficable quantity of a controlled drug; or
- (c) guarded or concealed a trafficable quantity of a controlled drug; or
- (d) possessed a trafficable quantity of a controlled drug;

it is presumed, unless the contrary is proved, that the defendant had the intention or belief about the sale of the drug required for the offence.

Note A defendant bears a legal burden of proving that the defendant did not have the intention or belief mentioned in this subsection (see s 59 (c)).

(2) This section does not apply to a single charge under section 310 (Single offence for trafficking etc on different occasions) if the conduct on each occasion to which the charge relates did not involve a trafficable quantity of the controlled drug.

286 Complicity, incitement and conspiracy offences do not apply to buyers of drugs

A person does not commit any of the following offences only because the person bought or intended to buy a controlled drug from someone else:

- (a) an offence under section 45 (Complicity and common purpose);
- (b) an offence against section 47 (Incitement);

- (c) an offence against section 48 (Conspiracy).

Note For additional offences relating to possessing etc., dangerous drugs, see the *Dangerous Drugs Act 1927*.

PART 6.3 — MANUFACTURING CONTROLLED DRUGS AND PRECURSORS

287 Meaning of *manufacture*

In this chapter:

manufacture—the ***manufacture*** of a substance is any process by which the substance is produced (other than the cultivation of a plant), and includes the process of—

- (a) extracting or refining it; or
- (b) transforming it into a different substance.

manufactures—a person ***manufactures*** a substance if the person—

- (a) engages in its manufacture; or
- (b) exercises control or direction over its manufacture; or
- (c) provides or arranges finance for its manufacture; and
- (d) does so without a licence under the *Dangerous Drugs Act 1927*.

288 Manufacturing controlled drug for selling

(1) A person commits an offence if the person manufactures a large commercial quantity of a controlled drug—

- (a) with the intention of selling any of it; or
- (b) believing that someone else intends to sell any of it.

Penalty: imprisonment for life.

(2) Absolute liability applies to the circumstance that the quantity manufactured was a large commercial quantity.

(3) A person commits an offence if the person manufactures a commercial quantity of a controlled drug—

- (a) with the intention of selling any of it; or
- (b) believing that someone else intends to sell any of it.

Penalty: 2 500 penalty units, imprisonment for 25 years or both.

(4) Absolute liability applies to the circumstance that the quantity manufactured was a commercial quantity.

(5) A person commits an offence if the person manufactures a controlled drug—

- (a) with the intention of selling any of it; or

- (b) believing that someone else intends to sell any of it.

Penalty: 1 500 penalty units, imprisonment for 15 years or both.

289 Manufacturing offence—presumption if trafficable quantity manufactured

If, in a prosecution for an offence against section 288 (Manufacturing controlled drug for selling), it is proved that the defendant manufactured a trafficable quantity of a controlled drug, it is presumed, unless the contrary is proved, that the defendant had the intention or belief about the sale of the drug required for the offence.

290 Manufacturing controlled drug

A person commits an offence if the person manufactures a dangerous drug without a licence issued under the *Dangerous Drugs Act 1927*.

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

291 Selling controlled precursor for manufacture of controlled drug

(1) A person commits an offence if the person sells a large commercial quantity of a controlled precursor believing that the person to whom it is sold, or someone else, intends to use any of it to manufacture a controlled drug.

Penalty: 2 500 penalty units, imprisonment for 25 years or both.

(2) Absolute liability applies to the circumstance that the quantity sold was a large commercial quantity.

(3) A person commits an offence if the person sells a commercial quantity of a controlled precursor believing that the person to whom it is sold, or someone else, intends to use any of it to manufacture a controlled drug.

Penalty: 1 500 penalty units, imprisonment for 15 years or both.

(4) Absolute liability applies to the circumstance that the quantity sold was a commercial quantity.

(5) A person commits an offence if the person sells a controlled precursor believing that the person to whom it is sold, or someone else, intends to use any of it to manufacture a controlled drug.

Penalty: 700 penalty units, imprisonment for 7 years or both.

292 Manufacturing controlled precursor for manufacture of controlled drug

(1) A person commits an offence if the person manufactures a large commercial quantity of a controlled precursor—

- (a) with the intention of manufacturing a controlled drug; and
(b) with the intention of selling any of the manufactured drug or believing that someone else intends to sell any of the manufactured drug.

Penalty: 2 500 penalty units, imprisonment for 25 years or both.

(2) Absolute liability applies to the circumstance that the quantity manufactured was a large commercial quantity.

(3) A person commits an offence if the person manufactures a large commercial quantity of a controlled precursor—

- (a) with the intention of selling any of it to someone else; and
- (b) believing that the other person intends to use it to manufacture a controlled drug.

Penalty: 2 500 penalty units, imprisonment for 25 years or both.

(4) Absolute liability applies to the circumstance that the quantity manufactured was a large commercial quantity.

(5) A person commits an offence if the person manufactures a commercial quantity of a controlled precursor—

- (a) with the intention of manufacturing a controlled drug; and
- (b) with the intention of selling any of the manufactured drug or believing that someone else intends to sell any of the manufactured drug.

Penalty: 1 500 penalty units, imprisonment for 15 years or both.

(6) Absolute liability applies to the circumstance that the quantity manufactured was a commercial quantity.

(7) A person commits an offence if the person manufactures a commercial quantity of a controlled precursor—

- (a) with the intention of selling any of it to someone else; and
- (b) believing that the other person intends to use it to manufacture a controlled drug.

Penalty: 1 500 penalty units, imprisonment for 15 years or both.

(8) Absolute liability applies to the circumstance that the quantity manufactured was a commercial quantity.

(9) A person commits an offence if the person manufactures a controlled precursor—

- (a) with the intention of manufacturing a controlled drug; and
- (b) with the intention of selling any of the manufactured drug or believing that someone else intends to sell any of the manufactured drug.

Penalty: 700 penalty units, imprisonment for 7 years or both.

(10) A person commits an offence if the person manufactures a controlled precursor—

- (a) with the intention of selling any of it to someone else; and
- (b) believing that the other person intends to use it to manufacture a controlled drug.

Penalty: 700 penalty units imprisonment for 7 years or both.

293 Possessing controlled precursor

(1) A person commits an offence if the person possesses a large commercial quantity of a controlled precursor—

- (a) with the intention of using any of it to manufacture a controlled drug; and

- (b) with the intention of selling any of the manufactured drug or believing that someone else intends to sell any of the manufactured drug.

Penalty: 2 500 penalty units, imprisonment for 25 years or both.

(2) Absolute liability applies to the circumstance that the quantity possessed was a large commercial quantity.

(3) A person commits an offence if the person possesses a commercial quantity of a controlled precursor—

- (a) with the intention of using any of it to manufacture a controlled drug; and
- (b) with the intention of selling any of the manufactured drug or believing that someone else intends to sell any of the manufactured drug.

Penalty: 1 500 penalty units, imprisonment for 15 years or both.

(4) Absolute liability applies to the circumstance that the quantity possessed was a commercial quantity.

(5) A person commits an offence if the person possesses a controlled precursor—

- (a) with the intention of using any of it to manufacture a controlled drug; and
- (b) with the intention of selling any of the manufactured drug or believing that someone else intends to sell any of the manufactured drug.

Penalty: 700 penalty units, imprisonment for 7 years or both.

294 Supplying substance, equipment or instructions for manufacturing controlled drug

(1) A person commits an offence if the person supplies to someone else any substance, any equipment, or any document containing instructions for manufacturing a controlled drug—

- (a) believing that the other person intends to use it to manufacture a controlled drug; and
- (b) with the intention of selling any of the manufactured drug or believing that the other person or someone else intends to sell any of the manufactured drug.

Penalty: 700 penalty units, imprisonment for 7 years or both.

(2) A person commits an offence if the person possesses any substance, any equipment, or any document containing instructions for manufacturing a controlled drug—

- (a) with the intention of supplying it to someone else; and
- (b) believing that the other person intends to use it to manufacture a controlled drug; and

- (c) with the intention of selling any of the manufactured drug or believing that the other person or someone else intends to sell any of the manufactured drug.

Penalty: 700 penalty units, imprisonment for 7 years or both.

295 Possessing substance, equipment or instructions for manufacturing controlled drug

A person commits an offence if the person possesses any substance, any equipment, or any document containing instructions for manufacturing a controlled drug—

- (a) with the intention of using it to manufacture a controlled drug; and
- (b) with the intention of selling any of the manufactured drug or believing that someone else intends to sell any of the manufactured drug.

Penalty: 500 penalty units, imprisonment for 5 years or both.

Note For additional offences relating to possessing certain drugs, see the *Dangerous Drugs Act 1927*.

PART 6.4 — CULTIVATING CONTROLLED PLANTS

296 Meaning of *cultivate*

In this chapter:

cultivates—a person ***cultivates*** a plant if the person—

- (a) engages in its cultivation; or
- (b) exercises control or direction over its cultivation; or
- (c) provides or arranges finance for its cultivation

and does so without a licence under the *Dangerous Drugs Act 1927*.

cultivation, of a plant, includes—

- (a) planting a seed, seedling or cutting of the plant or transplanting the plant; or
- (b) nurturing, tending or growing the plant; or
- (c) guarding or concealing the plant (including against interference or discovery by humans or natural predators); or
- (d) harvesting the plant (including picking any part of the plant or separating any resin or other substance from the plant).

product, of a plant, includes—

- (a) a seed of the plant; and
- (b) a part of the plant (whether live or dead); and
- (c) a substance separated from the plant.

297 Cultivating controlled plant for selling

(1) A person commits an offence if the person cultivates a large commercial quantity of a controlled plant—

- (a) with the intention of selling any of the plants or their products; or

- (b) believing that someone else intends to sell any of the plants or their products.

Penalty: imprisonment for life.

(2) Absolute liability applies to the circumstance that the quantity cultivated was a large commercial quantity.

(3) A person commits an offence if the person cultivates a commercial quantity of a controlled plant—

- (a) with the intention of selling any of the plants or their products; or
- (b) believing that someone else intends to sell any of the plants or their products.

Penalty: 2 500 penalty units, imprisonment for 25 years or both.

(4) Absolute liability applies to the circumstance that the quantity cultivated was a commercial quantity.

(5) A person commits an offence if the person cultivates a trafficable quantity of cannabis plants—

- (a) with the intention of selling any of the plants or their products; or
- (b) believing that someone else intends to sell any of the plants or their products.

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

(6) Absolute liability applies to the circumstance that the quantity cultivated was a trafficable quantity.

(7) A person commits an offence if the person cultivates a controlled plant (other than a cannabis plant)—

- (a) with the intention of selling it or any of its products; or
- (b) believing that someone else intends to sell it or any of its products.

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

(8) A person commits an offence if the person cultivates a cannabis plant—

- (a) with the intention of selling it or any of its products; or
- (b) believing that someone else intends to sell it or any of its products.

Penalty: 300 penalty units, imprisonment for 3 years or both.

298 Cultivating offence—presumption if trafficable quantity cultivated

If, in a prosecution for an offence against section 297 (Cultivating controlled plant for selling), it is proved that the defendant cultivated a trafficable quantity of a controlled plant, it is presumed, unless the contrary is proved, that the defendant had the intention or belief about the sale of the plant or its products required for the offence.

299 Cultivating controlled plant

(1) A person commits an offence if the person cultivates a controlled plant other than a cannabis plant.

Penalty: 200 penalty units, imprisonment for 2 years or both.

(2) A person commits an offence if the person—

- (a) cultivates (artificially or otherwise) 3 or more cannabis plants; or
- (b) artificially cultivates 1 or 2 cannabis plants.

Penalty: 200 penalty units, imprisonment for 2 years or both.

- (3) In this section:

artificially cultivate means—

- (a) hydroponically cultivate; or
- (b) cultivate with the application of an artificial source of light or heat.

300 Selling controlled plant

(1) A person commits an offence if the person sells a large commercial quantity of a controlled plant.

Penalty: imprisonment for life.

(2) Absolute liability applies to the circumstance that the quantity sold was a large commercial quantity.

(3) A person commits an offence if the person sells a commercial quantity of a controlled plant.

Penalty: 2 500 penalty units, imprisonment for 25 years or both.

(4) Absolute liability applies to the circumstance that the quantity sold was a commercial quantity.

(5) A person commits an offence if the person sells a trafficable quantity of cannabis plants.

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

(6) Absolute liability applies to the circumstance that the quantity sold was a trafficable quantity.

(7) A person commits an offence if the person sells a controlled plant other than a cannabis plant.

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

- (8) A person commits an offence if the person sells a cannabis plant.

Penalty: 300 penalty units, imprisonment for 3 years or both.

301 Supplying plant material, equipment or instructions for cultivating controlled plant

(1) A person commits an offence if the person supplies to someone else any controlled plant, any product of a controlled plant, any equipment, or any document containing instructions for cultivating a controlled plant—

- (a) believing that the other person intends to use it to cultivate a controlled plant; and
- (b) with the intention of selling any of the cultivated plant or believing that the other person or someone else intends to sell any of the cultivated plant.

Penalty: 700 penalty units, imprisonment for 7 years or both.

(2) A person commits an offence if the person possesses any controlled plant, any product of a controlled plant, any equipment, or any document containing instructions for cultivating a controlled plant—

- (a) with the intention of supplying it to someone else; and
- (b) believing that the other person intends to use it to cultivate a controlled plant; and
- (c) with the intention of selling any of the cultivated plant or believing that the other person or someone else intends to sell any of the cultivated plant.

Penalty: 700 penalty units, imprisonment for 7 years or both.

302 Possessing plant material, equipment or instructions for cultivating controlled plant

A person commits an offence if the person possesses any controlled plant, any product of a controlled plant, any equipment, or any document containing instructions for cultivating a controlled plant—

- (a) with the intention of using it to cultivate controlled plants; and
- (b) with the intention of selling any of the cultivated plants or their products or believing that someone else intends to sell any of the cultivated plants or their products.

Penalty: 500 penalty units, imprisonment for 5 years or both.

PART 6.4A — USE OF DRUGS

302A Use of controlled drugs or hallucinogenic substances

(1) A person shall not, without lawful authority, use, take, or consume, a controlled drug or a controlled hallucinogenic substance.

Penalty: (a) 20 penalty units; or
(b) 2 years imprisonment.

(2) For the purposes of this section, it is a defence to the charge if the person proves that, at the time of the alleged offence, he believed, and had reasonable grounds for believing, that he was using, taking or consuming, as the case may be, the substance in accordance with the directions contained in a prescription given in writing by a legally qualified medical practitioner in respect of the person or with the directions of a legally qualified dentist.

PART 6.5 — DRUG OFFENCES INVOLVING CHILDREN

303 Supplying controlled drug to child for selling

- (1) A person commits an offence if—
 - (a) the person—
 - (i) supplies a commercial quantity of a controlled drug to a child; or
 - (ii) possesses a commercial quantity of a controlled drug with the intention of supplying any of the drug to a child; and
 - (b) the person does so believing that the child intends to sell any of the drug.

Penalty: imprisonment for life.

- (2) Absolute liability applies to—

- (a) the circumstance that the quantity supplied or possessed was a commercial quantity; and
- (b) the circumstance that the person to whom the controlled drug was supplied or intended to be supplied was a child.
- (3)** A person commits an offence if—
 - (a) the person—
 - (i) supplies a controlled drug to a child; or
 - (ii) possesses a controlled drug with the intention of supplying any of the drug to a child; and
 - (b) the person does so believing that the child intends to sell any of the drug.

Penalty: 2 500 penalty units, imprisonment for 25 years or both.

(4) Absolute liability applies to the circumstance that the person to whom the controlled drug was supplied or intended to be supplied was a child.

(5) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant—

- (a) considered whether or not the person to whom the controlled drug was supplied or intended to be supplied was a child; and
- (b) had no reasonable grounds for believing that the person was a child.

304 Supplying offence—presumption if trafficable quantity supplied, etc

(1) If, in a prosecution for an offence against section 303 (Supplying controlled drug to child for selling), it is proved that the defendant—

- (a) supplied a trafficable quantity of a controlled drug to a child; or
- (b) possessed a trafficable quantity of a controlled drug with the intention of supplying any of it to a child;

it is presumed, unless the contrary is proved, that the defendant had the belief about the sale of the drug by the child required for the offence.

(2) This section does not apply to a single charge under section 310 (Single offence for trafficking etc on different occasions) if the conduct on each occasion to which the charge relates did not involve a trafficable quantity of the controlled drug.

305 Procuring child to traffic in controlled drug

(1) A person commits an offence if the person procures a child to traffic in a commercial quantity of a controlled drug.

Penalty: imprisonment for life.

- (2)** Absolute liability applies to—
 - (a) the circumstance that the person procured was a child; and
 - (b) the circumstance that the quantity the child was procured to traffic in was a commercial quantity.

(3) Subsection (1) applies whether the child was procured to traffic in a commercial quantity of a controlled drug on a single occasion or over a period.

(4) A person commits an offence if the person procures a child to traffic in a controlled drug.

Penalty: 2 500 penalty units, imprisonment for 25 years or both.

(5) Absolute liability applies to the circumstance that the person procured was a child.

(6) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant—

- (a) considered whether or not the person procured was a child; and
- (b) had no reasonable grounds for believing that the person was a child.

(7) In this section:

procures a child to traffic in a controlled drug—a person *procures* a child to traffic in a controlled drug if—

- (a) the person procures the child to sell the drug; or
- (b) the person, with the intention of selling any of the drug or believing that someone else intends to sell any of the drug, procures the child to prepare the drug for supply or to transport the drug; or
- (c) the person, with the intention of selling any of the drug or assisting someone else to sell any of the drug, procures the child to guard or conceal the drug.

306 Supplying controlled drug to child

(1) A person commits an offence if the person—

- (a) supplies a controlled drug other than cannabis to a child; or
- (b) possesses a controlled drug other than cannabis with the intention of supplying it to a child.

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

(2) A person commits an offence if the person—

- (a) supplies a trafficable quantity of cannabis to a child; or
- (b) possesses a trafficable quantity of cannabis with the intention of supplying it to a child.

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

(3) Absolute liability applies to the circumstance that the quantity supplied or possessed was a trafficable quantity.

(4) A person commits an offence if the person—

- (a) supplies cannabis to a child; or
- (b) possesses cannabis with the intention of supplying it to a child.

Penalty: 500 penalty units, imprisonment for 5 years or both.

(5) For this section, absolute liability applies to the circumstance that the person to whom the drug was supplied, or intended to be supplied, was a child.

(6) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant—

- (a) considered whether or not the person to whom the controlled drug was supplied or intended to be supplied was a child; and
- (b) had no reasonable grounds for believing that the person was a child.

307 Children not criminally responsible for offences against Part 7.5

A child is not criminally responsible for an offence against this Part.

PART 6.6 — GENERAL PROVISIONS FOR DRUG OFFENCES

308 Application—Part 6.6

This Part applies to offences against this chapter other than Part 6.7 (Offences relating to property derived from drug offences).

309 Carrying on business of trafficking

- (1) This section applies to an offence against—
 - (a) section 284(1) (which is about trafficking in a large commercial quantity of a controlled drug); or
 - (b) section 284 (3) (which is about trafficking in a commercial quantity of a controlled drug); or
 - (c) section 284 (5) (which is about trafficking in a trafficable quantity of cannabis); or
 - (d) section 303 (1) (which is about supplying a commercial quantity of a controlled drug to a child for selling).
- (2) For the application of this section to an offence against section 303(1), a reference to trafficking in drugs is a reference to supplying drugs.
- (3) In a prosecution for an offence, the prosecution may establish that the defendant trafficked in the quantity of a controlled drug required for the offence (the *required quantity*), without proof of trafficking in the required quantity on a particular occasion, by establishing that—
 - (a) the person carried on a business of trafficking in controlled drugs; and
 - (b) the required quantity of the controlled drug (or a combination of controlled drugs) was trafficked over repeated transactions in the course of the business.
- (4) For a person's conduct to be the carrying on of a business, the trier of fact must be satisfied that the conduct establishes that the person was engaged in an organised commercial activity involving repeated transactions.
- (5) In a prosecution in which this section is relied on—
 - (a) it is not necessary for the prosecution to state or prove the exact date of each transaction or the exact quantity trafficked in each transaction; and
 - (b) the prosecution may not rely on a transaction if the defendant has already been tried and found guilty or acquitted of an offence against this chapter in relation to the transaction; and

(c) section 285 (Trafficking offence—presumption if trafficable quantity possessed etc) and section 304 (Supplying offence—presumption if trafficable quantity supplied etc) do not apply.

(6) If the prosecution intends to rely on this section—

(a) that fact must be stated in the charge; and

(b) a description of the conduct that establishes, under this section, that the defendant trafficked in the required quantity of a controlled drug must be stated in the charge or given to the defendant within a reasonable time before the trial.

(7) If a person has been tried and found guilty or acquitted of an offence in a prosecution in which this section was relied on, the person may not be charged with another offence against this chapter that is claimed to have been committed in connection with any of the transactions on which the prosecution relied in that prosecution.

(8) Except as mentioned in subsection (5) (b) or (7), this section does not prevent a person being charged with separate offences in relation to conduct on different occasions.

310 Single offence for trafficking, etc on different occasions

(1) This section applies to an offence against this chapter that involves—

(a) trafficking in controlled drugs on different occasions; or

(b) supplying controlled drugs to a child on different occasions;

whether they are the same or different kinds of drugs.

(2) A person may be charged with a single offence in relation to trafficking in or supplying controlled drugs on different occasions if each occasion was not longer than 7 days apart from another of the occasions.

(3) For the single offence, the quantity of controlled drugs trafficked or supplied is the total of the quantities of the controlled drugs trafficked or supplied on the occasions stated in the charge.

(4) However, the same parcel of controlled drugs cannot be counted more than once.

Example

A person possesses a parcel of a controlled drug for sale (the 1st occasion) and later sells the parcel to someone else (the 2nd occasion) who in turn sells it to another person (the 3rd occasion). The same parcel of controlled drugs has been trafficked on 3 occasions but the quantity of drugs in the parcel can only be counted once under this section.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see s4(2)).

(5) If the prosecution intends to rely on this section, particulars of each occasion must be stated in the charge.

(6) This section does not prevent a person being charged with separate offences in relation to conduct on different occasions.

311 Single offence for different parcels trafficked, etc on the same occasion

(1) This section applies to an offence against this chapter that involves—

- (a) trafficking in different parcels of controlled drugs on the same occasion; or
- (b) manufacturing different parcels of controlled drugs on the same occasion; or
- (c) selling different parcels of controlled precursors on the same occasion; or
- (d) manufacturing different parcels of controlled precursors on the same occasion; or
- (e) possessing different parcels of controlled precursors on the same occasion; or
- (f) cultivating different parcels of controlled plants on the same occasion; or
- (g) selling different parcels of controlled plants on the same occasion; or
- (h) supplying different parcels of controlled drugs to a child on the same occasion;

whether they are the same or different kinds of drug, precursor or plant.

(2) A person may be charged with a single offence in relation to 2 or more of the different parcels of controlled drugs, precursors or plants.

(3) For the single offence, the quantity of controlled drugs, precursors or plants trafficked in, manufactured, sold, possessed, cultivated or supplied is the total of the quantities of the controlled drugs, precursors or plants in the different parcels.

(4) However, if there are different kinds of controlled drugs, precursors or plants in the parcels, this section is subject to section 312.

(5) If the prosecution intends to rely on this section, particulars of each parcel of controlled drugs, precursors or plants must be stated in the charge.

(6) This section does not prevent a person being charged with separate offences in relation to different parcels of controlled drugs, precursors or plants.

312 Single offence—working out quantities if different kinds of controlled drug, etc involved

(1) This section applies if a person is charged with a single offence against this chapter that involves—

- (a) trafficking in 2 or more kinds of controlled drug; or
 - (b) manufacturing 2 or more kinds of controlled drug; or
 - (c) selling 2 or more kinds of controlled precursor; or
 - (d) manufacturing 2 or more kinds of controlled precursor; or
 - (e) possessing 2 or more kinds of controlled precursor; or
 - (f) cultivating 2 or more kinds of controlled plant; or
 - (g) selling 2 or more kinds of controlled plant; or
 - (h) supplying 2 or more kinds of controlled drug to a child.
- (2) In a prosecution for the single offence—

- (a) the quantity of drugs or plants is a trafficable quantity if the total of the required fractions of the trafficable quantity of each of the drugs or plants is 1 or more; or
 - (b) the quantity of drugs, precursors or plants is a commercial quantity if the total of the required fractions of the commercial quantity of each of the drugs, precursors or plants is 1 or more; or
 - (c) the quantity of drugs, precursors or plants is a large commercial quantity if the total of the required fractions of the large commercial quantity of each of the drugs, precursors or plants is 1 or more.
- (2) In this section, the *required fraction* of—
- (a) a trafficable quantity of a drug or plant is the actual quantity of the drug or plant divided by the smallest trafficable quantity of the drug or plant; and
 - (b) a commercial quantity of a controlled drug, precursor or plant is the actual quantity of the drug, precursor or plant divided by the smallest commercial quantity of the drug, precursor or plant; and
 - (c) a large commercial quantity of a controlled drug, precursor or plant is the actual quantity of the drug, precursor or plant divided by the smallest large commercial quantity of the drug, precursor or plant.
- (3) For a trafficable, commercial or large commercial quantity of a controlled drug—
- (a) the required fraction must be worked out on the basis of quantities of the drug in pure form; and
 - (b) the required fraction is zero if—
 - (i) a regulation does not prescribe a trafficable, commercial or large commercial quantity of the controlled drug; or
 - (ii) a regulation prescribes a trafficable, commercial or large commercial quantity for a mixture of substances containing the controlled drug but not for the drug in pure form; or
 - (iii) a regulation prescribes different forms of the controlled drug by reference to the percentage of a particular substance in the drug.

313 Knowledge or recklessness about identity of controlled drugs, plants and precursors

In a prosecution for an offence against this chapter that involves conduct relating to a controlled drug, plant or precursor, the prosecution—

- (a) must establish that the defendant knew or was reckless about whether the substance or plant was a controlled drug, plant or precursor; but
- (b) need not establish that the defendant knew or was reckless about the identity of the controlled drug, plant or precursor.

314 Alternative verdicts—mistaken belief about identity of controlled drug, precursor or plant

(1) This section applies if, in a prosecution for an offence against this chapter that involves conduct relating to a trafficable, commercial or large commercial quantity of a controlled drug, precursor or plant, the trier of fact is satisfied that—

- (a) at the time of the conduct, the defendant had considered, and was under a mistaken belief about, the identity of the controlled drug, precursor or plant; and
- (b) if the mistaken belief had been correct, the defendant would have committed an offence against this chapter or the *Dangerous Drugs Act 1927* for which the Penalty is the same as or less than the Penalty for the offence charged (the *alternative offence*).

(2) The trier of fact may find the defendant not guilty of the offence charged but guilty of the alternative offence, but only if the defendant has been given procedural fairness in relation to that finding of guilt.

(3) A defendant who claims to have considered, and been under a mistaken belief about, the identity of a drug, precursor or plant must prove that he or she was under that mistaken belief.

315 Alternative verdicts—mistaken belief about quantity of controlled drug, precursor or plant

(1) This section applies if, in a prosecution for an offence against this chapter that involves trafficking, manufacturing or cultivating a trafficable, commercial or large commercial quantity of a controlled drug, precursor or plant, the trier of fact is satisfied that—

- (a) at the time of the conduct, the defendant had considered, and was under a mistaken belief about, the quantity of the controlled drug, precursor or plant trafficked, manufactured or cultivated; and
- (b) if the mistaken belief had been correct, the defendant would have committed an offence against this chapter or the *Dangerous Drugs Act 1927* for which the Penalty is the same as or less than the Penalty for the offence charged (the *alternative offence*).

(2) The trier of fact may find the defendant not guilty of the offence charged but guilty of the alternative offence, but only if the defendant has been given procedural fairness in relation to that finding of guilt.

(3) A defendant who claims to have considered, and been under a mistaken belief about, the quantity of a drug or plant must prove that he or she was under that mistaken belief.

316 Alternative verdicts—different quantities

(1) This section applies if, in a prosecution for an offence against this chapter that involves conduct relating to a trafficable, commercial or large commercial quantity of a controlled drug, precursor or plant, the trier of fact—

- (a) is not satisfied that the defendant committed the offence charged; but

(b) is satisfied beyond reasonable doubt that the defendant committed an offence against this chapter or the *Dangerous Drugs Act 1927* involving a lesser quantity of a controlled drug, precursor or plant than the quantity required to establish the offence charged (a *lesser offence*).

(2) The trier of fact may find the defendant not guilty of the offence charged but guilty of the lesser offence, but only if the defendant has been given procedural fairness in relation to that finding of guilt.

317 Alternative verdicts—trafficking and obtaining property by deception

(1) This section applies if, in a prosecution for an offence against section 284 (Trafficking in controlled drug)—

(a) the trier of fact is satisfied beyond reasonable doubt that the defendant committed the offence charged or an offence against section 203 (Obtaining property by deception) but cannot decide which of the offences the defendant committed; or

(b) the trier of fact is not satisfied beyond reasonable doubt that the defendant committed the offence charged but is satisfied beyond reasonable doubt that the defendant committed an offence against section 203.

(2) The trier of fact must find the defendant guilty of the offence against section 203, but only if the defendant has been given procedural fairness in relation to that finding of guilt.

317A Defences for hallucinogenic substances

(1) Where a person is charged with the offence of administering a controlled drug that is a *controlled hallucinogenic substance* to another person, it is a defence to the charge if the person charged with the alleged offence proves that, at the time of the alleged offence, he believed, and had reasonable grounds for believing —

(a) that a legally qualified medical practitioner had, in a prescription given in writing in respect of that other person, directed the use of the substance by that other person and that he was administering the substance to that other person in accordance with those directions; or

(b) that he was administering the substance to that person in accordance with the directions of a legally qualified dentist.

(2) Where a person is charged with the offence of having a controlled drug that is a *controlled hallucinogenic substance* in his possession, it is a defence to the charge if the person proves that, at the time of the alleged offence, he believed, and had reasonable grounds for believing, that a legally qualified medical practitioner had, in a prescription given in writing in respect of a particular person, directed the using, taking or consuming of the substance by or the administration of the substance to that particular person and the person charged with the offence had the substance in his possession for the purpose of its use, taking or consumption by or its administration to that particular person as directed in that prescription, and not otherwise.

(3) In this section *controlled hallucinogenic substance* is, or consists in whole or in part of, or contains, a substance the name of which is specified in Schedule 4 of the *Dangerous Drugs Act 1927*.

317B Certificate of evidence

(1) In proceedings in respect of an offence under this Chapter, a certificate signed, or purporting to be signed, by an *analyst* certifying—

- (a) that the person signing the certificate is an *analyst* referred to in subsection (2); and
- (b) the person's qualifications or experience as an *analyst*; and
- (c) the person from whom a sample was received and the date on which it was received; and
- (d) the description of the container in which the sample was contained and the manner in which the container was labelled or otherwise identified; and
- (e) the manner in which the sample was labelled or otherwise identified; and
- (f) the description and weight of the sample; and
- (g) the method by which the sample was analysed; and
- (h) the result of the analysis of the sample,

is admissible and is evidence of those matters and of the facts on which they are based.

(2) In this section —

analyst means —

- (a) any person appointed as an analyst for the purposes of the *Customs Act 1901* of the Commonwealth; or
- (b) any person appointed as an analyst for the purposes of the *Drugs of Dependence Act 1989* of the Australian Capital Territory; or
- (c) a person prescribed for the purposes of this section.

PART 6.7 — OFFENCES RELATING TO PROPERTY DERIVED FROM DRUG OFFENCES

318 Meaning of drug offence

In this Part:

drug offence means—

- (a) an offence against this chapter (other than this Part); or
- (b) conduct in another jurisdiction that is an offence in that jurisdiction and would be an offence against this chapter (other than this Part) if the conduct happened in Norfolk Island; or
- (c) conduct before the commencement of this chapter that would be an offence against this chapter (other than this Part) if the conduct happened after the commencement of this chapter.

319 Property directly or indirectly derived from drug offence

(1) For this Part, property is *directly derived* from a drug offence if the property—

- (a) is all or part of the proceeds of a drug offence; or

(b) is completely or partly acquired by disposing of, or using, the proceeds of a drug offence.

(2) The *proceeds* of a drug offence include the proceeds of any sale involved in committing the offence or any remuneration or other reward for committing the offence.

(3) For this Part, property is *indirectly derived* from a drug offence if the property—

(a) is completely or partly acquired by disposing of, or using, property directly derived from a drug offence; or

(b) is completely or partly acquired by disposing of, or using, property indirectly derived from a drug offence (including property indirectly derived because of a previous operation of paragraph (a))

(4) Property *directly derived* or *indirectly derived* from a drug offence does not include a controlled drug, plant or precursor.

(5) Property *directly derived* or *indirectly derived* from a drug offence does not lose its identity as such only because it is deposited with a financial institution or other entity for credit to an account or for investment.

320 Concealing, etc property derived from drug offence

A person commits an offence if—

(a) the person—

(i) conceals property; or

(ii) transfers property to someone else; or

(iii) converts property; or

(iv) removes property from Norfolk Island;

knowing that the property is directly or indirectly derived from a drug offence; and

(b) the person does so with the intention of evading or assisting someone else to evade—

(i) prosecution for a drug offence; or

(ii) the imposition or enforcement of a pecuniary penalty for a drug offence; or

(iii) the making or enforcement of an order for the confiscation or forfeiture of property or any part of it.

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

321 Receiving property directly derived from drug offence

(1) A person commits an offence if the person receives property—

(a) knowing that the property is directly derived from a drug offence committed by someone else; and

(b) without any legal entitlement to the property.

Penalty: imprisonment for 7 years, 700 penalty units or both.

(2) For this section, property to which a person is *legally entitled*—

- (a) includes property received under a will or as a reasonable payment for the legal supply of goods and services received or in repayment of a lawful debt; but
- (b) does not include property received completely or partly as a gift.

PART 6.8 — APPLICATION OF CHAPTER 6

322 **Uncertainty about when conduct engaged in**

(1) This section applies if, in a prosecution for an offence against this chapter as in force at any time before the commencement of this chapter—

- (a) it is necessary for the trier of fact to decide when alleged conduct was engaged in by a person; and
- (b) the trier of fact is satisfied beyond reasonable doubt that the person engaged in the conduct but is not satisfied beyond reasonable doubt that—
 - (i) the alleged conduct was engaged in before the commencement of this chapter; or
 - (ii) the alleged conduct was engaged in on or after the commencement of this chapter.

(2) The alleged conduct is taken to have been engaged in by the person before the commencement of this chapter.

- (3) This section expires 5 years after the day it commences.

CHAPTER 7 — ADMINISTRATION OF JUSTICE OFFENCES

PART 7.1 — INTERPRETATION FOR CHAPTER 7

323 **Definitions—chapter 7**

In this chapter:

aggravated perjury—see section 325.

causes a detriment or another result—a person ***causes*** a detriment or another result if the person's conduct substantially contributes to the detriment or other result.

evidence includes anything that may be used as evidence.

interpreter includes a person who interprets signs or other things made or done by someone who cannot speak adequately for the purpose of giving evidence in a legal proceeding.

law enforcement officer means any of the following:

- (a) a police officer;
- (b) a member of the police service or force of a State, a Territory or a foreign country;
- (c) a person exercising a law enforcement function for the Customs of Norfolk Island, the Australian Customs Service or the Australian Crime Commission;
- (d) the Minister or the Attorney-General for the Commonwealth, a State or a Territory;

- (e) A Crown law officer, or a person performing a similar function under a law of the Commonwealth, a State or Territory;
- (f) a person employed in the legal services unit of the Administration or a similar entity established under a law of the Commonwealth, a State or Territory;
- (g) any other person responsible for the investigation or prosecution of offences against a law of Norfolk Island or a law of the Commonwealth, a State or Territory;
- (h) a lawyer to the extent that the lawyer is engaged to prosecute offences against a law of Norfolk Island, or a law of the Commonwealth, a State or Territory.

legal proceeding—see section 324.

perjury—see section 326.

statement means a statement made orally, in a document or in any other way.

sworn statement means a statement made or verified on oath.

Note **Oath** includes affirmation (see section 2B of the *Acts Interpretation Act 1901* of the Commonwealth, applying because of section 8A of the *Interpretation Act 1979*) and see *Evidence Act 2004* Part 2.1 Division 2.), and see also *Oaths Act 1960*.

subpoena includes a summons or notice (however described) issued by an entity for a legal proceeding before the entity.

witness, in a legal proceeding, includes a witness not subpoenaed as a witness in the proceeding.

324 Meaning of *legal proceeding* for chapter 7

- (1) In this chapter:

legal proceeding means—

- (a) a proceeding in which evidence may be taken on oath; or
- (b) a proceeding in which judicial power is exercised; or
- (c) a proceeding or anything else that a law declares to be a legal proceeding for this chapter;

but does not include a proceeding or anything else that a law declares not to be a legal proceeding for this chapter.

(2) A reference to a **legal proceeding** includes a reference to a legal proceeding that has been or may be started.

- (3) In this chapter:

in a legal proceeding includes for the purposes of the legal proceeding.

(4) A declaration made for subsection (1) about a proceeding or other thing does not imply that, in the absence of a declaration about it, another proceeding is or is not a legal proceeding for this chapter.

PART 7.2 — INDICTABLE OFFENCES FOR CHAPTER 7

Division 7.2.1 — Perjury

325 Aggravated perjury

- (1) A person commits an offence (**aggravated perjury**) if—

- (a) the person makes a sworn statement in a legal proceeding with the intention of procuring the person's or someone else's conviction for, or acquittal of, an offence (the *relevant offence*); and
- (b) the relevant offence is punishable by imprisonment; and
- (c) the statement is false; and
- (d) the person is reckless about whether the statement is false.

Penalty: 1 400 penalty units, imprisonment for 14 years or both.

- (2) An interpreter commits an offence (also *aggravated perjury*) if—
 - (a) the interpreter, by a sworn statement, gives an interpretation of a statement or other thing in a legal proceeding with the intention of procuring someone else's conviction for, or acquittal of, an offence (the *relevant offence*); and
 - (b) the relevant offence is punishable by imprisonment; and
 - (c) the interpreter's statement is false or misleading; and
 - (d) the interpreter is reckless about whether the interpreter's statement is false or misleading.

Penalty: 1 400 penalty units, imprisonment for 14 years or both.

Note Sworn statement is defined in s 323.

326 Perjury

- (1) A person commits an offence (*perjury*) if—
 - (a) the person makes a sworn statement in a legal proceeding; and
 - (b) the statement is false; and
 - (c) the person is reckless about whether the statement is false.

Penalty: 700 penalty units, imprisonment for 7 years or both.

- (2) An interpreter commits an offence (also *perjury*) if—
 - (a) the interpreter, by a sworn statement, gives an interpretation of a statement or other thing in a legal proceeding; and
 - (b) the interpreter's statement is false or misleading; and
 - (c) the interpreter is reckless about whether the interpreter's statement is false or misleading.

Penalty: 700 penalty units, imprisonment for 7 years or both.

327 Additional provisions about perjury or aggravated perjury

- (1) For the offence of perjury or aggravated perjury, it does not matter whether—
 - (a) the sworn statement related to something material to the legal proceeding; or
 - (b) the sworn statement was admitted in evidence in the proceeding; or
 - (c) the court or other entity dealing with the proceeding had jurisdiction, was properly constituted or was sitting in the proper place; or
 - (d) the person who made the sworn statement was competent to give evidence in the proceeding; or

(e) there was any formal defect in the sworn statement.

(2) However, a person does not commit perjury or aggravated perjury if the person is not competent under the *Evidence Act 2004*, section 13 (Competence: lack of capacity) to give sworn evidence.

(3) If the trier of fact is satisfied beyond reasonable doubt that a person committed perjury or aggravated perjury in relation to 1 of 2 sworn statements made by the person that are irreconcilably in conflict, the trier of fact may find the person guilty of perjury or aggravated perjury even though the trier of fact cannot decide which of the statements is false.

(4) For subsection (3), it does not matter whether the 2 statements were made in the same proceeding.

(5) If a sworn statement is about an opinion of the person making the statement, the statement is false for the offence of perjury or aggravated perjury if the opinion is not genuinely held by the person.

(6) It is not necessary for the conviction of a person for perjury or aggravated perjury that evidence of the perjury be corroborated.

(7) In this section:

formal defect includes—

- (a) any formal error; and
- (b) any irregularity; and
- (c) any noncompliance with a rule of court, approved form or rule of practice.

DIVISION 7.2.2 — FALSIFYING, DESTROYING OR CONCEALING EVIDENCE

328 Making or using false evidence

(1) A person commits an offence if the person makes false evidence with the intention of—

- (a) influencing a decision about starting a legal proceeding; or
- (b) influencing the outcome of a legal proceeding.

Penalty: 700 penalty units, imprisonment for 7 years or both.

(2) A person commits an offence if—

- (a) the person uses false evidence; and
- (b) the person—
 - (i) knows the evidence is false; or
 - (ii) believes the evidence is false; and
- (c) the person is reckless about whether the use of the evidence could—
 - (i) influence a decision about starting a legal proceeding; or
 - (ii) influence the outcome of a legal proceeding.

Penalty: 700 penalty units, imprisonment for 7 years or both.

(3) Subsection (2) does not apply to—

- (a) a lawyer or person assisting a lawyer who uses the evidence on instructions from a client and does not know that the evidence is false; or
- (b) a person who—
 - (i) is, or may be, involved in a legal proceeding as a law enforcement officer, lawyer, or party (or as a person assisting any of them); and
 - (ii) uses the evidence for a legitimate forensic purpose in the proceeding.

(4) Subsection (2)(b)(i) does not apply to a person who discloses, when or before using the evidence, that the evidence is false.

(5) Subsection (2)(b)(ii) does not apply to a person who discloses, when or before using the evidence, that the person believes the evidence is false.

(6) In this section:

legitimate forensic purpose includes the purpose of demonstrating that evidence is false or misleading.

make evidence includes change evidence, but does not include commit perjury or aggravated perjury.

329 Destroying or concealing evidence

(1) A person commits an offence if the person destroys or conceals evidence with the intention of—

- (a) influencing a decision about starting a legal proceeding; or
- (b) influencing the outcome of a legal proceeding.

Penalty: 700 penalty units, imprisonment for 7 years or both.

(2) In this section:

destroy evidence includes—

- (a) mutilate or change evidence; and
- (b) make evidence illegible, indecipherable or otherwise unable to be identified.

Division 7.2.3 — Protection Of People Involved In Legal Proceedings

330 Corruption in relation to legal proceedings

(1) A person commits an offence if—

- (a) the person—
 - (i) provides a benefit to someone else; or
 - (ii) causes a benefit to be provided to someone else; or
 - (iii) offers to provide, or promises to provide, a benefit to someone else; or
 - (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to someone else; and
- (b) the person does so with the intention that the other person or a third person will—

- (i) not attend as a witness, interpreter or juror in a legal proceeding; or
- (ii) give false or misleading evidence in a legal proceeding; or
- (iii) withhold true evidence in a legal proceeding; or
- (iv) give a false or misleading interpretation as an interpreter in a legal proceeding; or
- (v) improperly make a decision as a juror in a legal proceeding; or
- (vi) improperly influence a juror in a legal proceeding.

Penalty: 700 penalty units, imprisonment for 7 years or both.

- (2) A person commits an offence if—
 - (a) the person—
 - (i) asks for a benefit for the person or someone else; or
 - (ii) obtains a benefit for the person or someone else; or
 - (iii) agrees to obtain a benefit for the person or someone else; and
 - (b) the person does so with the intention that, or with the intention of inducing, fostering or sustaining a belief that, the person or someone else will—
 - (i) not attend as a witness, interpreter or juror in a legal proceeding; or
 - (ii) give false or misleading evidence in a legal proceeding; or
 - (iii) withhold true evidence in a legal proceeding; or
 - (iv) give a false or misleading interpretation as an interpreter in a legal proceeding; or
 - (v) improperly make a decision as a juror in a legal proceeding; or
 - (vi) improperly influence a juror in a legal proceeding.

Penalty: 700 penalty units, imprisonment for 7 years or both.

(3) For this section, a person (**A**) is taken to obtain a benefit for someone else (**B**) if A induces a third person to do something that results in B obtaining the benefit.

331 Deceiving witness, interpreter or juror

A person commits an offence if the person deceives someone else with the intention that the other person or a third person will—

- (a) not attend as a witness, interpreter or juror in a legal proceeding; or
- (b) give false or misleading evidence in a legal proceeding; or
- (c) withhold true evidence in a legal proceeding.

Penalty: 500 penalty units, imprisonment for 5 years or both.

332 Threatening, etc witness, interpreter or juror

A person commits an offence if the person causes or threatens to cause a detriment to someone else with the intention that the other person or a third person will—

- (a) not attend as a witness, interpreter or juror in a legal proceeding; or
- (b) give false or misleading evidence in a legal proceeding; or
- (c) withhold true evidence in a legal proceeding; or
- (d) give a false or misleading interpretation as an interpreter in a legal proceeding; or
- (e) improperly make a decision as a juror in a legal proceeding; or
- (f) improperly influence a juror in a legal proceeding.

Penalty: 500 penalty units, imprisonment for 5 years or both.

333 Preventing attendance, etc of witness, interpreter or juror

A person commits an offence if the person, by his or her conduct, intentionally prevents someone else from—

- (a) attending as a witness, interpreter or juror in a legal proceeding; or
- (b) answering a question the other person is required by law to answer in a legal proceeding.

Penalty: 500 penalty units, imprisonment for 5 years or both.

334 Preventing production of thing in evidence

A person commits an offence if the person, by his or her conduct, intentionally prevents someone else from producing in evidence in a legal proceeding a document or other thing that is required by law to be produced.

Penalty: 500 penalty units, imprisonment for 5 years or both.

335 Reprisal against person involved in proceeding

(1) A person commits an offence if the person causes or threatens to cause a detriment to a person involved in a legal proceeding—

- (a) because of something done by the involved person in the proceeding; and
- (b) in the belief that the involved person was an involved person who had done that thing.

Penalty: 500 penalty units, imprisonment for 5 years or both.

(2) In this section:

interpreter includes a person who attends in the proceeding as an interpreter but is not called as an interpreter.

involved person, in relation to a legal proceeding, means—

- (a) a judge, magistrate or member of a tribunal or other entity the proceeding is before; or
- (b) a registrar, deputy registrar or other official of the court, tribunal or other entity the proceeding is before; or

- (c) a witness, interpreter, juror or lawyer involved in the proceeding; or
- (d) for a criminal proceeding—a complainant, informant or party to the proceeding.

witness includes a person who attends in the proceeding as a witness but is not called as a witness.

Division 7.2.4 Perverting the course of justice and related offences

336 Perverting the course of justice

(1) A person commits an offence if the person, by his or her conduct, intentionally perverts the course of justice.

Penalty: 700 penalty units, imprisonment for 7 years or both.

(2) In this section:

perverts includes obstructs, prevents and defeats.

337 Publication that could cause miscarriage of justice

(1) A person commits an offence if—

- (a) the person publishes something that could cause a miscarriage of justice in a legal proceeding; and
- (b) the person does so with the intention of causing a miscarriage of justice in the proceeding.

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

(2) A person commits an offence if—

- (a) the person publishes something that could cause a miscarriage of justice in a legal proceeding; and
- (b) the person is reckless about whether publishing the thing could cause a miscarriage of justice in the proceeding.

Penalty: 700 penalty units, imprisonment for 7 years or both.

338 False accusation of offence

(1) A person commits an offence if the person makes an accusation to a law enforcement officer that someone else has committed an offence—

- (a) knowing or believing that the other person did not commit the offence; and
- (b) intending that—
 - (i) the other person will be charged with committing the offence; or
 - (ii) law enforcement officers will be deflected from prosecuting the offender.

Penalty: 500 penalty units, imprisonment for 5 years or both.

(2) Subsection (1) (b) (i) does not apply to a law enforcement officer exercising his or her functions as a law enforcement officer if the officer—

- (a) does not know that the other person did not commit the offence; and

(b) believes that there are reasonable grounds for charging the other person with the offence.

(3) A law enforcement officer commits an offence if the officer charges someone with an offence knowing that the person did not commit the offence.

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

339 Compounding of offence

(1) A person commits an offence if—

(a) the person—

(i) provides a benefit to someone else; or

(ii) causes a benefit to be provided to someone else; or

(iii) offers to provide, or promises to provide, a benefit to someone else; or

(iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to someone else; and

(b) the person does so with the intention that the other person or a third person will—

(i) conceal the commission of an offence; or

(ii) not start, or discontinue or delay, a prosecution for an offence; or

(iii) withhold information, or provide false or misleading information, in relation to the commission of an offence; or

(iv) obstruct or hinder the investigation of an offence by law enforcement officers.

Penalty: 700 penalty units, imprisonment for 7 years or both.

(2) A person commits an offence if—

(a) the person—

(i) asks for a benefit for the person or someone else; or

(ii) obtains a benefit for the person or someone else; or

(iii) agrees to obtain a benefit for the person or someone else; and

(b) the person does so with the intention that, or with the intention of inducing, fostering or sustaining a belief that, the person or someone else will—

(i) conceal the commission of an offence; or

(ii) not start, or discontinue or delay, a prosecution for an offence; or

(iii) withhold information, or provide false or misleading information, in relation to the commission of an offence; or

(iv) obstruct or hinder the investigation of an offence by law enforcement officers.

Penalty: 700 penalty units, imprisonment for 7 years or both.

(3) For this section, a person (*A*) is taken to obtain a benefit for someone else (*B*) if *A* induces a third person to do something that results in *B* obtaining the benefit.

340 Accessory after the fact

- (1) A person (the *accessory*) commits an offence if—
- (a) someone else (the *principal offender*) has committed an offence; and
 - (b) the accessory assists the principal offender—
 - (i) knowing the principal offender committed the offence; or
 - (ii) believing the principal offender committed the offence or a related offence; and
 - (c) the accessory does so with the intention of allowing the principal offender to—
 - (i) escape apprehension or prosecution; or
 - (ii) obtain, keep or dispose of the proceeds of the offence.

Penalty:

- (a) if the offence committed by the principal offender is murder—imprisonment for 20 years, 2 000 penalty units or both; or
 - (b) if the offence committed by the principal offender has a Penalty of at least 2 000 penalty units, imprisonment for 20 years or both (but is not murder)—1 500 penalty units, imprisonment for 15 years or both; or
 - (c) if the offence committed by the principal offender has a Penalty of at least 1 500 penalty units, imprisonment for 15 years or both but less than 2 000 penalty units, imprisonment for 20 years or both—700 penalty units, imprisonment for 7 years or both; or
 - (d) if the offence committed by the principal offender has a Penalty of at least 1 000 penalty units, imprisonment for 10 years or both but less than 1 500 penalty units, imprisonment for 15 years or both—500 penalty units, imprisonment for 5 years or both; or
 - (e) in any other case—the lesser of—
 - (i) 300 penalty units, imprisonment for 3 years or both; and
 - (ii) the Penalty for the principal offence.
- (2) However, if the offence the accessory believes the principal offender committed is not the offence the principal offender committed, the Penalty is the lesser of—
- (a) the Penalty applying under subsection (1); and
 - (b) the Penalty that would apply under that subsection if the principal offender had committed the offence the accessory believed the principal offender had committed.
- (3) For this section, an offence the accessory believes the principal offender committed is a *related offence* to the offence the principal offender committed if the circumstances in which the accessory believes the offence to have

been committed are the same, or partly the same, as the circumstances in which the actual offence was committed.

(4) It is not an offence to attempt to commit an offence against this section.

PART 7.3 — SUMMARY OFFENCES FOR CHAPTER 7

341 Pleading guilty in another's name

(1) A person commits an offence if the person pleads guilty to a charge for an offence knowing the charge is in someone else's name.

Penalty: 50 penalty units, imprisonment for 6 months or both.

(2) In a prosecution for an offence against this section it is not necessary to prove the identity or existence of the other person.

342 Failing to attend

(1) A person commits an offence if—

- (a) the person is served with a subpoena to attend to give evidence or information, or answer questions, in a legal proceeding; and
- (b) the person—
 - (i) fails to attend as required by the subpoena; or
 - (ii) fails to continue to attend until excused from further attendance.

Penalty: 50 penalty units, imprisonment for 6 months or both.

(2) This section does not apply if the person has a reasonable excuse.

343 Failing to produce document or other thing

(1) A person commits an offence if—

- (a) the person—
 - (i) is served with a subpoena to produce a document or other thing in a legal proceeding; or
 - (ii) is otherwise required by law to produce a document or other thing in a legal proceeding; and
- (b) the person fails to produce the document or other thing as required by the subpoena or other requirement.

Penalty: 50 penalty units, imprisonment for 6 months or both.

(2) This section does not apply if the person has a reasonable excuse.

344 Failing to take oath

(1) A person commits an offence if—

- (a) the person is required by law to take an oath to give evidence in a legal proceeding; and
- (b) the person fails to take the oath when required.

Penalty: 50 penalty units, imprisonment for 6 months or both.

(2) This section does not apply if the person has a reasonable excuse.

345 Failing to answer question or give information

- (1) A person commits an offence if—
- (a) the person is required by law to answer a question or give information in a legal proceeding; and
 - (b) the person fails to answer the question or give the information when required.

Penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) This section does not apply if the person has a reasonable excuse.

346 Making, etc false or misleading statements in legal proceeding

- (1) A person commits an offence if—
- (a) the person makes a sworn or unsworn statement in a legal proceeding before a court; and
 - (b) the statement is false; and
 - (c) the person is reckless about whether the statement is false.

Penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) A person commits an offence if—
- (a) the person makes a sworn or unsworn statement in a legal proceeding before an entity that is not a court; and
 - (b) the statement is false or misleading; and
 - (c) the person is reckless about whether the statement is false or misleading.

Penalty: 100 penalty units, imprisonment for 1 year or both.

(3) Subsection (2) (b) and (c) does not apply if the statement is not false or misleading in a material particular.

(4) Subsections (1) and (2) do not apply in relation to an unsworn statement if, before the statement was made, the entity did not take reasonable steps to tell the person making the statement about the existence of the offence against the subsection.

(5) For subsection (4), it is sufficient if the following form of words is used:

‘Making false or misleading statements is a serious offence’.

- (6) A person commits an offence if—
- (a) the person files or gives a sworn document in a legal proceeding; and
 - (b) the document contains false or misleading information; and
 - (c) the person is reckless about whether the document contains false or misleading information.

Penalty: 100 penalty units, imprisonment for 1 year or both.

- (7) Subsection (6) does not apply to—
- (a) a lawyer or person assisting a lawyer who—
 - (i) files or gives the document on instructions from a client; and

- (ii) does not know the document contains false or misleading information; or
 - (b) a person involved in the legal proceeding as a law enforcement officer, lawyer, or party (or as a person assisting any of them) who files or gives the document for a legitimate forensic purpose; or
 - (c) a person who, when filing or giving the document, discloses that it contains or may contain false or misleading information.
- (8) Also, subsection (6) (b) and (c) does not apply if the information is not false or misleading in a material particular.
- (9) In this section:

file includes lodge for filing.

legitimate forensic purpose—see section 328 (6).

unsworn statement means a statement that is not made or verified on oath.

Note Sworn statement is defined in s 323.

347 Obstructing, etc legal proceeding

A person commits an offence if the person—

- (a) intentionally obstructs or hinders a court, tribunal, commission, board or other entity in the exercise of its functions in a legal proceeding; or
- (b) intentionally causes a substantial disruption to a legal proceeding before a court, tribunal, commission, board or other entity.

Penalty: 100 penalty units, imprisonment for 1 year or both.

348 Obstructing or hindering investigation

A person commits an offence if the person does something with the intention of obstructing or hindering the investigation of an offence by a law enforcement officer.

Penalty: 50 penalty units, imprisonment for 6 months or both.

PART 7.4 — PROCEDURAL MATTERS FOR CHAPTER 7

349 Consent required for certain prosecutions

(1) A proceeding for an offence against any of the following provisions must not be started without the consent of a Crown law officer:

- (a) section 325 (Aggravated perjury);
- (b) section 326 (Perjury);
- (c) section 330 (Corruption in relation to legal proceedings);
- (d) section 331 (Deceiving witness, interpreter or juror);
- (e) section 332 (Threatening etc witness, interpreter or juror);
- (f) section 339 (Compounding of offence);
- (g) section 340 (Accessory after the fact).

(2) However, a person may be arrested for, charged with, or remanded in custody or granted bail for, an offence mentioned in subsection (1) before the consent has been given.

350 Alternative verdicts—aggravated perjury and perjury

(1) This section applies if, in a prosecution for an offence against section 325 (Aggravated perjury), the trier of fact is not satisfied that the defendant committed the offence but is satisfied beyond reasonable doubt that the defendant committed an offence against section 326 (Perjury).

(2) The trier of fact may find the defendant guilty of the offence against section 336 (Perverting the course of justice), but only if the defendant has been given procedural fairness in relation to that finding of guilt.

351 Alternative verdicts—perverting the course of justice and publication that could cause miscarriage of justice

(1) This section applies if, in a prosecution for an offence against section 337 (Publication that could cause miscarriage of justice), the trier of fact is not satisfied that the defendant committed the offence but is satisfied beyond reasonable doubt that the defendant committed an offence against section 336 (Perverting the course of justice).

(2) The trier of fact may find the defendant guilty of the offence against section 336, but only if the defendant has been given procedural fairness in relation to that finding of guilt.

CHAPTER 8 — OFFENCES PUNISHABLE SUMMARILY AND SUMMARY PROCEDURE GENERALLY**352 Summary offences**

An offence against this Act that is—

- (a) not punishable by imprisonment; or
- (b) punishable by imprisonment for a term not exceeding 2 years;

is punishable on summary conviction.

353 Summary disposal of certain cases

(1) This section applies in relation to any offence against a Norfolk Island law, being an offence punishable by imprisonment for a term not exceeding—

- (a) if the offence relates to money or other property—14 years; or
- (b) in any other case—10 years.

(2) If—

- (a) a person (the *defendant*) is before the Court of Petty Sessions charged with an offence in relation to which this section applies; and
- (b) the court is of the opinion that it has no jurisdiction, apart from this section, to hear and determine the charge summarily; and
- (c) for a charge relating to money or to property other than a motor vehicle—the amount of the money or the value of the property does not, in the opinion of the court, exceed \$60,000;

the court may proceed in accordance with subsections (3) to (12).

(3) The court may invite the defendant to plead guilty or not guilty to the charge.

(4) If the defendant pleads guilty to the charge, the court may accept or reject the plea.

(5) If—

- (a) the defendant does not plead to the charge when invited to do so under subsection (3); or
- (b) a plea of guilty to the charge is rejected under subsection (4);

the defendant shall be taken to have pleaded not guilty to the charge.

(6) If—

- (a) the defendant pleads or is to be taken to have pleaded not guilty to a charge; and
- (b) the court is of the opinion that the case can properly be disposed of summarily; and
- (c) the defendant has consented to its being so disposed of;

the court may hear and determine the charge summarily and may sentence or otherwise deal with the defendant according to law.

(7) If—

- (a) the court accepts a plea of guilty to a charge; and
- (b) the court is of the opinion that the case can properly be disposed of summarily; and
- (c) the defendant has consented to its being so disposed of;

the court may sentence or otherwise deal with the defendant according to law.

(8) Before forming an opinion whether or not a case can properly be disposed of summarily, the court shall have regard to—

- (a) any relevant representations made by the defendant; and
- (b) any relevant representations made by the prosecutor in the presence of the defendant; and
- (c) whether, if the defendant were found guilty or the defendant's plea of guilty has been accepted by the court, the court is, under this section, empowered to impose an adequate penalty, having regard to the circumstances and, in particular, to the degree of seriousness of the case; and
- (d) any other circumstances that appear to the court to make it more appropriate for the case to be dealt with on indictment rather than summarily.

(9) If the court accepts a plea of guilty to a charge, and—

- (a) the court is of the opinion that the case cannot properly be disposed of summarily; or
- (b) the defendant has not consented to its being so disposed of;

the *Court of Petty Sessions Act 1960*, section 59(3) to (7) applies in relation to the defendant as if the court had accepted a plea of guilty to the charge under that section.

(10) If the court disposes of a case summarily under this section and convicts the defendant of the offence, then, subject to subsections (11) and (12), but

notwithstanding any other Norfolk Island law, the court may not impose a sentence of imprisonment exceeding 2 years nor impose a fine exceeding 100 penalty units.

(11) If, under this section, the court disposes of a case summarily and convicts a defendant who, at the time of the commission of the offence of which he or she was convicted, had not attained the age of 18 years, then, subject to subsection (12), but notwithstanding any other Norfolk Island law, the court may not impose a sentence of imprisonment exceeding 6 months nor impose a fine exceeding 50 penalty units.

(12) If—

- (a) the court disposes of a case summarily under this section and convicts the defendant of an offence; and
- (b) the Penalty prescribed for the offence by the law creating that offence (the *prescribed penalty*) is less than the Penalty that the court, under subsection (10) or (11), as the case requires, is authorised to impose;

the court shall not impose on the defendant a penalty that exceeds the prescribed penalty.

354 Saving of other summary jurisdiction

Nothing in this part affects the operation of any other law in force in Norfolk Island by which jurisdiction is given to the Court of Petty Sessions.

355 Certificate of dismissal

If the Court of Petty Sessions has heard and determined a charge under section 353 and has dismissed the charge, the magistrate constituting the court or the registrar of the court shall, if so requested by the person charged, give that person a certificate signed by the magistrate or clerk stating the fact of the dismissal.

356 Summary conviction or dismissal bar to indictment

(1) A conviction on a charge disposed of summarily under section 353 has the same effect as a conviction on indictment for the offence would have had and a person who is so convicted is not afterwards liable to prosecution for the same cause.

(2) The dismissal by the Court of Petty Sessions of an information heard and determined by the court under section 353 has the same effect as an acquittal of the person charged in a trial on indictment.

357 Misbehaviour at public meetings

(1) A person shall not, in any premises where a public meeting is being held, behave in a manner that disrupts, or is likely to disrupt, the meeting.

Penalty: 10 penalty units, imprisonment for 6 months or both.

(2) If a person presiding at any public meeting reasonably believes that another person in the premises where the meeting is being held is behaving in a manner that is disrupting, or is likely to disrupt, the meeting, the person so presiding may request any police officer who is present to remove the other person and the police officer may remove that other person accordingly.

358 Possession of offensive weapons and disabling substances

(1) A person who, without reasonable excuse, has in his or her possession, in a public place, in circumstances likely to cause alarm, an offensive weapon or a disabling substance is guilty of an offence punishable, on conviction, by a fine of 10 penalty units, imprisonment for 6 months or both.

(2) In subsection (1):

disabling substance means any anaesthetising or other substance made for use for disabling a person, or intended for that use by the person who has it in his or her possession.

359 Possession of offensive weapons and disabling substances with intent

(1) A person who has on his or her person an offensive weapon or a disabling substance, in circumstances indicating intent to use the weapon or substance to commit an offence involving actual or threatened violence, is guilty of an offence punishable, on conviction, by a fine of 20 penalty units, imprisonment for 1 year or both.

(2) In subsection (1):

disabling substance means any anaesthetising or other substance made for use for disabling a person, or intended for that use by the person who has it in his or her possession.

360 Possession of knife in public place or school

(1) A person shall not, without reasonable excuse, have a knife in his or her possession in a public place or school.

Penalty: 10 penalty units, imprisonment for 6 months or both.

(2) Without limiting what may constitute a reasonable excuse, it is a reasonable excuse for a person to have a knife in his or her possession in a public place or school if—

- (a) the possession is necessary or reasonable for, or for a purpose incidental to—
 - (i) the lawful pursuit of the person's occupation; or
 - (ii) the preparation or consumption of food; or
 - (iii) participation in a lawful entertainment, recreation or sport; or
 - (iv) the exhibition of knives for retail or other trade purposes; or
 - (v) an organised exhibition by knife collectors; or
 - (vi) the wearing of an official uniform; or
 - (vii) religious purposes; or
- (b) the possession is of a prescribed kind.

(3) It is not a reasonable excuse for a person to have a knife in his or her possession in a public place or school solely for the purpose of self-defence or the defence of another person.

361 Sale of knife to person under 16

(1) A person shall not sell a knife to a person under 16 years old.

Penalty: 10 penalty units, imprisonment for 6 months or both.

(2) In this section:

sell includes—

- (a) barter or exchange; and
- (b) offer or expose for sale, barter or exchange; and
- (c) supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit; and
- (d) supply, or offer to supply, gratuitously but with a view to gaining or maintaining custom, or otherwise with a view to commercial gain.

362 Retail supplier of knives to display sign

(1) A person who sells knives by retail must ensure that a sign complying with subsections (2), (3) and (4) is clearly visible to a person at the place, or each place, where such a sale is made.

Penalty: 5 penalty units.

(2) The sign must display at least the following words in the following sequence:

‘It is an offence to sell a knife to a person under the age of 16.

Proof of age may be required.’

(3) The lettering of the words stated in subsection (2) must be at least 8mm in height.

(4) The dimensions of the sign must not be less than 210mm x 145mm.

(5) Subsection (1) does not apply to a person, or a knife, of a kind specified in, or ascertained in accordance with, the regulations.

363 Laying of poison

A person shall not lay any poison that endangers, or is likely to endanger, the life of any domestic animal or bird.

Penalty: 10 penalty units, imprisonment for 6 months or both.

364 Making false invoice

A person who fraudulently prepares, causes to be prepared or produces an invoice, receipt or document containing a false statement, with intent to induce the belief that anything was not stolen or otherwise unlawfully obtained or to prevent anything from being seized on suspicion of being stolen or otherwise unlawfully obtained or from being produced in evidence concerning an alleged offence, is guilty of an offence punishable, on conviction, by a fine of 2 penalty units, imprisonment for 3 months or both.

365 Application of compensation

For private property, the compensation for the damage or injury done shall be paid to the party aggrieved, and for property of a public nature, or if any public right is concerned, shall be applied as the magistrate thinks fit.

366 Entrance to cellars, etc

The owner or occupier of any premises in or on which there is any cellar, manhole or other similar place having an entrance that opens into, on or near a public place shall have and maintain in good repair a rail, gate, fence or cover effectively enclosing that entrance and shall not permit that entrance to remain open for longer than is reasonably necessary.

Penalty: 10 penalty units, imprisonment for 6 months or both.

367 Fighting

A person shall not fight with another person in a public place.

Penalty: 10 penalty units.

368 Offensive behaviour

A person shall not in, near, or within the view or hearing of a person in, a public place behave in a riotous, indecent, offensive or insulting manner.

Penalty: 10 penalty units.

369 Indecent exposure

A person who offends against decency by the exposure of his or her person in a public place, or in any place within the view of a person who is in a public place, commits an offence.

Penalty: 10 penalty units, imprisonment for 6 months or both.

370 Bogus advertisements

(1) A person shall not publish nor cause to be published a bogus advertisement, knowing the advertisement to be bogus.

Penalty: 10 penalty units, imprisonment for 6 months or both.

(2) In subsection (1):

bogus advertisement means an advertisement or notice containing any statement or representation that is false or misleading in a material particular with respect to—

- (a) any matter related to birth, death, engagement to be married, marriage or employment; or
- (b) any matter concerning a person or the property of a person, other than the person who published the advertisement or caused it to be published.

371 Public mischief

(1) A person who, by any means, makes any representation, creates any circumstance or does any other act intended to make it appear falsely that a situation exists, or an event has occurred, that calls for investigation or action by a police officer or member of the emergency services is, if the representation, circumstance or act comes to the knowledge of a police officer or member of the emergency services, guilty of an offence punishable, on conviction, by a fine of 20 penalty units, imprisonment for 1 year or both.

(2) In this section:

member of the emergency services means a member of—

- (a) the ambulance service; or

- (b) the fire brigade.

372 Apprehended violence or injury—recognisance to keep the peace, etc

(1) In every case of apprehended violence by any person to the person of another, or of his or her domestic partner or child, or of apprehended injury to his or her property, a magistrate may on the complaint of the person apprehending the violence or injury, issue a summons or warrant as in any case of apprehended violence to the person, if at present security is required to keep the peace, and a magistrate may examine the complainant, and defendant, and their witnesses, as to the truth of the matter alleged, and, if it appears that the apprehension alleged is reasonable, but not otherwise, the magistrate may require the defendant to enter into a recognisance to keep the peace, with or without sureties, as in any case of a like nature.

(2) If in any such case the defendant has spoken any offensive or defamatory words to or of the complainant, on an occasion when a breach of the peace might have been induced thereby, he or she may be required by the magistrate to enter into a recognisance, with or without sureties, to be of good behaviour for a term not exceeding 6 months, and, in default of its being entered into forthwith, the magistrate may order that the defendant be imprisoned for 3 months, unless such recognisance is sooner entered into.

(3) The magistrate, in every such case, may award costs to either complainant or defendant, to be recovered as costs in summary jurisdiction cases are recoverable.

373 Alternative methods of proceeding before magistrate

If by this Act a person is made liable to imprisonment, or to pay a sum of money, on conviction before a magistrate, the person may be proceeded against and convicted in a summary way under this Act, so far as it is applicable, or under any law in force in Norfolk Island regulating proceedings on summary convictions, and every provision contained in any such law shall be applicable to the proceedings as if it were incorporated in this Act.

374 General averment of intent to defraud or injure

In any proceeding before a magistrate if it is necessary to allege an intent to defraud, or to injure, it shall be sufficient to allege that the accused did Norfolk Island with such intent, without alleging an intent to defraud or to injure any particular person.

CHAPTER 9 — MISCELLANEOUS

375 Joinder of charges

(1) Charges against the same person for any number of offences against the same provision of Norfolk Island legislation or an applied NSW law may be joined in the same information or summons if the charges are founded on the same facts or form, or are part of, a series of offences of the same or a similar character.

(2) If a person is convicted of 2 or more offences mentioned in subsection (1), and the offences relate to doing or failing to do the same act, the court may impose 1 penalty in relation to both or all the offences, but the penalty must not

exceed the total of the maximum penalties that could be imposed if a separate penalty were imposed in relation to each offence.

376 Protection of persons acting under Act

(1) All actions against any person, for anything done, or reasonably supposed to have been done under this Act, shall be commenced within 6 months after the fact committed, and written notice of any such action, and of the cause of it, shall be given to the defendant 1 month at least before commencement of the action, and in any such action the defendant may plead the general issue, and give the special matter in evidence.

(2) No plaintiff shall recover in any such action, if a tender of sufficient amends was made before action brought, or if a sufficient sum is paid into court, on behalf of the defendant, after action brought.

(3) If a verdict passes for the defendant, or the plaintiff becomes nonsuit, or discontinues his or her action after issue joined, or if on demurrer, or otherwise, judgment is given against the plaintiff, the defendant shall recover costs as between solicitor and client.

377 Power of courts to bring detainees before them

For a trial or prosecution of an offence against Norfolk Island legislation or an applied NSW law, a court may order the person in charge of a place where a person is detained in lawful custody to bring the person before the court and to return the person to the place in accordance with the order.

378 Witnesses neglecting to attend trial and captured under warrant may be admitted to bail

If a person bound by recognisance, or served with a subpoena, to attend as a witness in any court at a trial of an offence against Norfolk Island legislation or an applied NSW law, who has failed to appear when called in open court, either at the trial, or on the day appointed for the trial, has been captured under a warrant issued by the court, bail may be taken before any magistrate for his or her appearance at the trial.

379 Offence of criminal defamation

(1) A person must not publish matter defamatory of another living person (the *victim*)—

- (a) knowing the matter to be false; and
- (b) with intent to cause serious harm to the victim or any other person or being reckless as to whether such harm is caused.

Penalty: 300 penalty units, imprisonment for 3 years or both.

(2) Subsection (1) does not apply to the publication of defamatory matter about the victim if, and only if, the defendant would, having regard only to the circumstances happening before or at the time of the publication, have had a defence for the publication if the victim had brought civil proceedings for defamation against the defendant.

Note Under s 58 (3) a defendant who wishes to rely on this exception has an evidential burden in relation to the matter.

- (3) On a trial before a jury for an offence against this section—

- (a) the question of whether the matter complained of is capable of bearing a defamatory meaning is a question for determination by the judicial officer presiding; and
- (b) the question of whether the matter complained of does bear a defamatory meaning is a question for the jury; and
- (c) the jury may give a general verdict of guilty or not guilty on the issues as a whole.

(4) A proceeding for an offence against this section must not be begun without the written consent of the Crown law officer.

(5) However, a person may be arrested for, charged with, or remanded in custody or on bail in relation to, an offence against this section before the consent has been given.

(6) In a proceeding for an offence against this section a consent purporting to have been signed by the Crown law officer is, without proof of the signature, evidence of that consent.

(7) The commencement of criminal proceedings for an offence against this section does not prevent—

- (a) the commencement of civil proceedings for defamation against the defendant in the criminal proceedings; or
- (b) the determination of the civil proceedings pending the determination of the criminal proceedings.

(8) In this section, *publish* and *defamatory* have the meanings that they have in the law of tort relating to defamation.

(9) In this section:

harm—means harm of any kind, and includes—

- (a) personal injury; and
- (b) damage to property; and
- (c) economic loss.

380 Offence notices

(1) If a police officer—

- (a) is satisfied as to the identity of a person who has attained the age of 18 years; and
- (b) reasonably believes that the person has committed a prescribed offence;

he or she may serve an offence notice on the person.

(2) An offence notice shall—

- (a) specify the nature of the alleged prescribed offence; and
- (b) specify the date and time when, and the place where, the prescribed offence is alleged to have been committed; and

- (c) contain a statement to the effect that, if the alleged offender pays the prescribed penalty within 60 days after the date of service of the notice, no further action will be taken in respect of that offence; and
- (d) specify the place where and the way in which the prescribed penalty may be paid; and
- (e) contain the other particulars (if any) that are prescribed.
- (3)** If the prescribed penalty is paid in accordance with the offence notice—
- (a) any liability of the person in respect of the alleged prescribed offence shall be deemed to be discharged; and
- (b) no further proceedings shall be taken in respect of the alleged offence; and
- (c) the person shall not be regarded as having been convicted of the alleged offence.
- (4)** Any substance, equipment or object seized under any Act in connection with the alleged offence that would have been liable to forfeiture in the event of a conviction shall, on payment of the prescribed penalty in accordance with the offence notice, be forfeited to the Territory.
- (5)** Subject to subsection (3), nothing in this section shall be construed as affecting the institution or prosecution of proceedings for a prescribed offence.
- (6)** Notwithstanding subsection (3)(b) and (c), if—
- (a) a person pays the prescribed penalty in accordance with an offence notice; and
- (b) a conviction for the relevant prescribed offence would constitute a breach of conditions of—
- (i) bail; or
- (ii) a good behaviour order; or
- (iii) parole;
- the person shall be dealt with as if he or she had breached the relevant conditions.
- (7)** The officer in charge of police may extend, by the period he or she thinks fit, the period of 60 days referred to in subsection (2) (c) on receipt, before the end of that period, of a written request to do so from a person who has been served with an offence notice.
- (8)** If a person who has been served with an offence notice fails to pay the prescribed penalty—
- (a) within 60 days after the date of service of the notice; or
- (b) if an extension of time has been granted under subsection (7), within that period;
- the officer in charge of police shall cause an information, in writing and on oath, to be laid before a magistrate commencing proceedings against the person in respect of the offence to which the offence notice relates.

(9) If an information is laid before a magistrate under subsection (8), the magistrate must issue a warrant for the person's arrest under the *Court of Petty Sessions Act 1960*, section 48(1) (Warrant and summons – in what cases issued).

(10) In this section:

prescribed offence means an offence against this Act for which a pecuniary penalty of 10 penalty units or less is the only penalty prescribed, the *Summary Offences Act 2005*, section 36 (Noise abatement directions), and the *Liquor Act 2005*, subsection 91(1).

prescribed penalty means 1 penalty unit.

381 Approved forms

(1) The Minister may, in writing, approve forms for this Act.

(2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

382 Regulation-making power

The Administrator may make Regulations for this Act.

Dictionary

(see s 3)

Note The *Interpretation Act 1979* and the *Evidence Act 2004* contain definitions and other provisions relevant to this Act.

access, to data held in a computer, for Part 5.2 (Computer offences)—see section 268.

account, for Part 4.3 (Fraudulent conduct)—see section 202.

Act, unless otherwise indicated, means an enactment of the Legislative Assembly of Norfolk Island.

actual bodily harm to a pregnant woman includes harm to the pregnancy other than in the course of a medical procedure (whether or not the woman suffers any other harm).

agent, for Part 4.7 (Bribery and related offences)—see section 230.

aggravated burglary—see section 189.

aggravated offence, for Part 3.10 (Sexual servitude)—see section 140.

aggravated perjury—see section 325.

aggravated robbery—see section 187.

applied NSW law means a law in force in Norfolk Island in accordance with section 18A of the *Norfolk Island Act 1979* of the Commonwealth.

applied provisions—see section 10.

belongs, in relation to property, for chapter 4 (Theft, fraud, bribery and related offences)—see section 178.

benefit includes any advantage and is not limited to property.

burglary—see section 188.

cannabis—see section 281.

cannabis plant—see section 281.

cause a loss, for chapter 4 (Theft, fraud, bribery and related offences)—see section 177.

causes—

- (a) for Part 5.1 (Property damage offences)—see section 256; and
- (b) for Part 5.2 (Computer offences)—see section 268; and
- (c) for Part 5.3 (Sabotage)—see section 278; and
- (d) for chapter 7 (Administration of justice offences)—see section 323.

child—

- (a) means a person who has not attained the age of 18 years; and
- (b) in relation to a person, includes a child—
 - (i) who normally or regularly resides with the person; or
 - (ii) of whom the person is a guardian.

commercial quantity, for chapter 6 (Serious drug offences)—see section 282.

conceal a thing, for chapter 6 (Serious drug offences)—see section 281.

conduct—see section 13.

controlled drug—see section 281.

controlled plant—see section 281.

controlled precursor—see section 281.

create—a law **creates** an offence if it directly or indirectly creates the offence or directly or indirectly affects its scope or operation.

cultivates a plant, for chapter 6 (Serious drug offences)—see section 296.

cultivation, of a plant, for chapter 6 (Serious drug offences)—see section 296.

damage—

(a) for Part 5.1 (Property damage offences)—see section 256; and

(b) for Part 5.3 (Sabotage)—see section 278.

data, for Part 5.2 (Computer offences)—see section 268.

data held in a computer, for Part 5.2 (Computer offences)—see section 268.

data storage device, for Part 5.2 (Computer offences)—see section 268.

death means—

(a) the irreversible cessation of all function of a person's brain (including the brain stem); or

(b) the irreversible cessation of circulation of blood in a person's body.

deception, for Part 4.3 (Fraudulent conduct)—see section 202.

default application date—see section 10.

detriment includes any disadvantage and is not limited to personal injury or to loss of or damage to property.

directly derived, for Part 6.7 (Offences relating to property derived from drug offences)—see section 319.

dishonest, for chapter 4 (Theft, fraud, bribery and related offences)—see section 177.

document, for Part 4.6 (Forgery and related offences)—see section 221.

domestic partner includes former domestic partner.

drug offence, for Part 6.7 (Offences relating to property derived from drug offences)—see section 318.

duty, of a person who is a public official, for chapter 4 (Theft, fraud, bribery and related offences)—see section 177.

electronic communication, for Part 5.2 (Computer offences)—see section 268.

employee includes a servant.

engage in conduct—see section 13.

evidence, for chapter 6 (Administration of justice offences)—see section 323.

evidential burden—see section 58 (7).

explosive means a substance or article that—

- (a) is manufactured for the purpose of producing an explosion; or
- (b) a person has with the intention of using it to produce an explosion.

false document, for Part 4.6 (Forgery and related offences)—see section 222.

fault element—see section 17.

fault element of basic intent—see section 30.

favour, for Part 4.7 (Bribery and related offences)—see section 230.

firearm has the meaning given by the *Firearms Act 1997* but includes an airgun and an air pistol.

forgery—see section 224.

function, of an agent, for Part 4.7 (Bribery and related offences)—see section 230.

gain, for chapter 4 (Theft, fraud, bribery and related offences)—see section 177.

grievous disease includes HIV or human-immuno-virus, a causative agent of the acquired immune deficiency syndrome (AIDS) and other related conditions;

grievous bodily harm means any physical or mental injury of such a nature as to endanger or be likely to endanger life or to cause or be likely to cause permanent injury to health and includes grievous disease;

harm means—

- (a) physical harm to a person, including unconsciousness, pain, disfigurement, infection with a disease and any physical contact with the person that a person might reasonably object to in the circumstances (whether or not the person was aware of it at the time); and
- (b) harm to a person's mental health, including psychological harm, but not including mere ordinary emotional reactions (for example, distress, grief, fear or anger);

whether temporary or permanent, but does not include being subjected to any force or impact that is within the limits of what is acceptable as incidental to social interaction or to life in the community.

harm to a pregnancy—see section 105(6).

impairment, for Part 5.2 (Computer offences)—see section 268.

in a legal proceeding, for chapter 7 (Administration of justice offences)—see section 324(3).

indictable offence—see *Interpretation Act 1979* s. 39

indictment includes any information presented or filed as provided by law for the prosecution of offences.

indirectly derived, for Part 6.7 (Offences relating to property derived from drug offences)—see section 319.

intention—see section 18.

interpreter, for chapter 7 (Administration of justice offences)—see section 323.

intoxication—see section 30.

irreversible means irreversible by natural or artificial means.

knife includes—

- (a) a knife blade; and
- (b) a razor blade; and
- (c) any other blade.

knowledge—see section 19.

large commercial quantity, for chapter 6 (Serious drug offences)—see section 282.

law means Norfolk Island legislation or a provision of Norfolk Island legislation.

law of Norfolk Island means a law in force in Norfolk Island in accordance with section 15 of the *Norfolk Island Act 1979* of the Commonwealth.

law enforcement officer, for chapter 7 (Administration of justice offences)—see section 323.

legal burden—see section 56.

legal proceeding, for chapter 7 (Administration of justice offences)—see section 323.

loaded arms means any firearm, airgun or air pistol that is loaded with any projectile or missile, whether or not the firearm, airgun or air pistol is capable of being discharged.

loss, for chapter 4 (Theft, fraud, bribery and related offences)—see section 177.

manufacture, for chapter 6 (Serious drug offences)—see section 287.

manufactures, for chapter 6 (Serious drug offences)—see section 287.

menace, for Part 4.5 (Blackmail)—see section 218.

mental impairment—see section 27.

modification, for Part 5.2 (Computer offences)—see section 268.

motor vehicle—see the *Road Traffic Act 1982*, s.3

negligent—see section 21.

Norfolk Island—means the Territory of Norfolk Island as defined in the *Norfolk Island Act 1979* (Clth) unless the context otherwise requires.

Norfolk Island legislation means an enactment or legislation made under an enactment, except so far as the enactment:

- (a) is a section 19A Ordinance; and
- (b) has the effect (directly or indirectly) of:
 - (i) amending an applied NSW law so that the applied NSW law (as amended) provides for an offence; or

- (ii) ending the suspension of the operation in Norfolk Island of an applied NSW law that provides for an offence.

Note A section 19A Ordinance may indirectly have the effect of amending an applied NSW law by amending another section 19A Ordinance (e.g. the *Norfolk Island Applied Laws Ordinance 2016*) so it amends an applied NSW law. Likewise, a section 19A Ordinance may indirectly have the effect of ending the suspension of operation of an applied NSW law by amending another section 19A Ordinance so that it no longer suspends the operation of the applied NSW law.

Norfolk Island public official, for chapter 4 (Theft, fraud, bribery and related offences)—see section 177.

obtain, for chapter 4 (Theft, fraud, bribery and related offences)—see section 177.

obtaining property by deception—see section 203.

offence means an offence against a law.

offensive weapon includes the following:

- (a) anything made or adapted for use for causing injury to or incapacitating a person;
- (b) anything that a person has with the intention of using, or threatening to use, to cause injury to or incapacitate someone else;
- (c) a firearm, or anything that may reasonably be taken in the circumstances to be a firearm;
- (d) a knife, or anything that may reasonably be taken in the circumstances to be a knife;
- (e) an explosive, or anything that may reasonably be taken in the circumstances to be or contain an explosive.

perjury—see section 326.

physical element of an offence—see section 14.

possession, of a thing, for chapter 6 (Serious drug offences)—see section 281.

prepare a drug for supply, for chapter 6 (Serious drug offences)—see section 281.

principal, for Part 4.7 (Bribery and related offences)—see section 231.

proceeds of a drug offence, for Part 6.7 (Offences relating to property derived from drug offences)—see section 319.

product, of a plant, for chapter 6 (Serious drug offences)—see section 296.

property includes the following:

- (a) electricity;
- (b) gas;
- (c) water;
- (d) a wild creature that is tamed or ordinarily kept in captivity or that is, or is being taken into, someone's possession;
- (e) any organ or part of a human body and any blood, ova, semen or other substance extracted from a human body.

property offence, for Part 5.3 (Sabotage)—see section 278.

public duty, for chapter 4 (Theft, fraud, bribery and related offences)—see section 177.

public facility, for Part 5.3 (Sabotage)—see section 278.

public official, for chapter 4 (Theft, fraud, bribery and related offences)—see section 177.

receiving—see section 190.

reckless—see section 20.

required geographical nexus, for Part 2.7 (Geographical application)—see section 63.

relative, of a person (the **original person**)—

- (a) means the original person's—
 - (i) father, mother, grandfather, grandmother, stepfather, stepmother, father-in-law or mother-in-law; or
 - (ii) son, daughter, grandson, granddaughter, stepson, stepdaughter, son-in-law or daughter-in-law; or
 - (iii) brother, sister, half-brother, half-sister, stepbrother, stepsister, brother-in-law or sister-in-law; or
 - (iv) uncle, aunt, uncle-in-law or aunt-in-law; or
 - (v) nephew, niece or cousin; and
- (b) if the original person has or had a domestic partner (other than a spouse)—includes someone who would have been a relative of a kind mentioned in paragraph (a) if the original person had been legally married to the domestic partner; and
- (c) includes someone who has been a relative of a kind mentioned in paragraph (a) or (b) of the original person.

robbery—see section 186.

self-induced intoxication—see section 30.

sell, for chapter 6 (Serious drug offences)—see section 281.

serious computer offence, for Part 5.2 (Computer offences)—see section 268.

serious harm means any harm (including the cumulative effect of more than 1 harm) that—

- (a) endangers, or is likely to endanger, human life; or
- (b) is, or is likely to be, significant and longstanding.

services, for chapter 4 (Theft, fraud, bribery and related offences)—see section 177.

sexual services, for Part 3.10 (Sexual servitude)—see section 137.

sexual servitude, for Part 3.10 (Sexual servitude)—see section 137.

special liability provision means—

- (a) a provision providing that absolute liability applies to 1 or more (but not all) of the physical elements of an offence; or
- (b) a provision providing that, in a prosecution for an offence, it is not necessary to prove that the defendant knew something; or
- (c) a provision providing that, in a prosecution for an offence, it is not necessary to prove that the defendant knew or believed something.

statement, for chapter 7 (Administration of justice offences)—see section 323.

subpoena, for chapter 7 (Administration of justice offences)—see section 323.

summary offence— see section 352 (Summary offences).

supply—

- (a) for chapter 4 (Theft, fraud, bribery and related offences)—see section 177; and
- (b) for chapter 6 (Serious drug offences)—see section 281.

sworn statement, for chapter 7 (Administration of justice offences)—see section 323.

theft—see section 185 (Theft) and section 198 (Minor theft).

threat includes a threat made by any conduct, whether explicit or implicit and whether conditional or unconditional.

trafficable quantity, for chapter 6 (Serious drug offences)—see section 282.

traffics in a controlled drug—see section 283.

transport, for chapter 6 (Serious drug offences)—see section 281.

unauthorised computer function, for Part 5.3 (Sabotage)—see section 278.

unwarranted demand with a menace, for Part 4.5 (Blackmail)—see section 219.

vessel means any ship or vessel used in or intended for navigation, other than an undecked boat.

witness, for chapter 7 (Administration of justice offences)—see section 323.

NOTES

The *Criminal Code 2007* as shown in this consolidation comprises Act No. 11 of 2007 and amendments as indicated in the Tables below.

Enactment	Number and year	Date of commencement	Application saving or transitional provision
<i>Criminal Code 2007</i>	11, 2007	1.1.2008	
<i>Justice Legislation (Miscellaneous Amendments) Act 2009</i>	14, 2009	11.09.2009	
<i>[Previously consolidated as at 15 September 2009 and re-issued 30 July 2010 to correct citation of this enactment]</i>			
<i>Interpretation (Amendment) Act 2012</i> <i>[to substitute throughout — Commonwealth Minister for Minister; and to substitute Minister for executive member]</i>	14, 2012	28.12.2012	
<i>[Previously consolidated as at 20 December 2013]</i>			
<i>Public Service Act 2014</i>	11, 2014	Sch 3 (item 5): 23 Dec 2014	

Ordinance	Registration	Commencement	Application, saving and transitional provisions
Norfolk Island Continued Laws Amendment Ordinance 2015 (No. 2, 2015) (now cited as Norfolk Island Continued Laws Ordinance 2015 (see F2015L01491))	17 June 2015 (F2015L00835)	Sch 1 (items 53–56, 344, 345): 18 June 2015 (s 2(1) item 1)	Sch 1 (items 344–372, 417, 418)
as amended by			
Norfolk Island Continued Laws Amendment (2015 Measures No. 1) Ordinance 2015 (No. 10, 2015)	14 Dec 2015 (F2015L01994)	Sch 2 (item 1): 15 Dec 2015 (s 2(1) item 2)	—
Norfolk Island Continued Laws Amendment (2016 Measures No. 2) Ordinance 2016 (No. 5, 2016)	10 May 2016 (F2016L00751)	Sch 4 (item 16): 1 July 2016 (s 2(1) item 4)	—
Norfolk Island Continued Laws Amendment (Director of Public Prosecutions) Ordinance 2017	3 Aug 2017 (F2017L00986)	Sch 1 (items 5–9): 5 Aug 2017 (s 2(1) item 1)	—
Norfolk Island Continued Laws Amendment (2017 Measures No. 3) Ordinance 2017	20 Nov 2017 (F2017L01499)	Sch 2 (items 1–9): 21 Nov 2017 (s 2(1) item 1)	—
Norfolk Island Legislation Amendment (Criminal Justice Measures) Ordinance 2019	5 Apr 2019 (F2019L00546)	Sch 1 (items 1–4): 6 Apr 2019 (s 2(1) item 1)	—
Norfolk Island Legislation Amendment (Criminal and Civil Matters) Ordinance 2021	9 July 2021 (F2021L00975)	Sch 1 (items 5–10): 10 July 2021 (s 2(1) item 1)	—

Note: The amendment history in the Table of Amendments below reflects the amendment of this title by the *Norfolk Island Continued Laws Ordinance 2015* (Ord No 2, 2015) incorporating all amendments to the *Norfolk Island Continued Laws Ordinance 2015* up to the compilation date. The as amended by information is not referenced in the Table of Amendments but can be seen in the legislation history above.

Table of Amendments

ad = added or inserted am = amended exp = expires/expired or ceases/ceased to have effect rep = repealed rs = repealed and substituted

Provisions affected	How affected
2	rep Ord No 2, 2015
4	am Ord No 2, 2015
5	rep Ord No 2, 2015
6	am Ord No 2, 2015
7	am Ord No 2, 2015
8	rs Ord No 2, 2015
9	rep Ord No 2, 2015
10	rs Ord No 2, 2015
48	am Ord No 2, 2015
62	am Ord No 2, 2015
85	rep Ord No 2, 2015
87	am Ord No 2, 2015
105	am Ord No 2, 2015
108	rs Ord No 2, 2015
108A	ad Ord No 2, 2015
113	am Ord No 2, 2015
113A	ad Ord No 2, 2015
114	am Ord No 2, 2015
118	am Ord No 2, 2015
119A	ad Ord No 2, 2015
121A	ad Ord No 2, 2015
121B	ad Ord No 2, 2015
121C	ad Ord No 2, 2015
125	am Ord No 2, 2015
126	am Ord No 2, 2015
129	am Ord No 2, 2015
130	am Ord No 2, 2015
131	am Ord No 2, 2015
142	am 14, 2009
196	am 11, 2014; Ord No 2, 2015
211	am Ord No 2, 2015
281	am 14, 2009; Ord No 2, 2015
282	am Ord No 2, 2015
302A	ad 14, 2009
317A	ad 14, 2009
317B	ad 14, 2009
322	exp 1 Jan 2013 (s 322(3))
323	am Ord No 2, 2015
349	am Ord No 2, 2015

ad = added or inserted am = amended exp = expires/expired or ceases/ceased to have effect rep = repealed rs = repealed and substituted

Provisions affected	How affected	
352	am	14, 2009
353	am	14, 2009; Ord No 2, 2015
375	am	Ord No 2, 2015
377	am	Ord No 2, 2015
378	am	Ord No 2, 2015
380	am	14, 2009
381	am	Ord No 2, 2015
382	am	Ord No 2, 2015
Dictionary	am	Ord No 2, 2015
Schedule	rep	Ord No 2, 2015