

Queensland



# CRIMINAL CODE

Act No. 37 of 1995

# Queensland



## CRIMINAL CODE

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**DICTIONARY**



Queensland



## **Criminal Code**

**Act No. 37 of 1995**

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**An Act for a code of criminal law**

*[Assented to 16 June 1995]*



**The Parliament of Queensland enacts—**

## **CHAPTER 1—GENERAL**

### **PART 1—INTRODUCTION**

#### **Short title**

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

#### **Commencement**

**2.(1)** Section 458, so far as it relates to the amendments in schedule 2, part 1, commences on assent.

**(2)** Section 459, so far as it relates to the amendments in schedule 3, part 1, also commences on assent.

**(3)** Section 459, so far as it relates to the other amendments in schedule 3, commences immediately before section 3 commences.

- (4)** The remaining provisions commence on a day fixed by proclamation.

## PART 2—INTERPRETATION

### Definitions—the dictionary

3. The dictionary<sup>1</sup> in schedule 5 defines particular words used in this Act (the “Code”).

## PART 3—APPLICATION

### *Division 1—General effect of Code*

#### Code applies to all persons

4. The Code applies to all persons, including the State and, so far as the legislative power of the State permits, the Commonwealth and the other States.

#### Code applies as general law

5.(1) The Code is the law of Queensland for matters it deals with.

(2) The Code applies to all offences under the Code or another Act, unless the contrary intention appears in an Act.

(3) If another Act makes provision for an indictable offence, the Act

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<sup>1</sup> In some Acts, definitions are contained in a dictionary that appears as the last schedule and forms part of the Act—*Acts Interpretation Act 1954*, section 14(4).

Words defined elsewhere in the Code are generally signposted by entries in the dictionary. However, if a section has a definition that only applies to the section, or a part of the section, it is generally not signposted by an entry in the dictionary. If this type of definition is set out in a separate subsection, the subsection is generally the last subsection of the section.

Signpost definitions in the dictionary alert the reader to the terms defined elsewhere in the Code and tell the reader where these definitions can be found. For example, the definition ‘“offence” see section 22’, tells the reader there is a definition of the term “offence” in section 22.

must be read with the Code to the extent the other Act makes provision for the offence.

### **Indictable offences punishable only under express provision**

6. A person is not liable to be prosecuted or punished in Queensland for an indictable offence other than under the express provisions of an Act.

### **Code applies to both acts and omissions**

7. The Code applies to both acts and omissions.<sup>2</sup>

### **Code does not limit contempt of court jurisdiction**

8. The Code does not affect the power of a court to punish for contempt of court.

## *Division 2—Multiple proceedings*

### **Person not to be punished twice for same act**

9.(1) A person must not be punished twice for the same act.

(2) However, if, after a person's conviction for an act (the "**first conviction**"), the act causes anyone's death, the person may be prosecuted and punished for an offence committed by the person because the person caused the death, even though the person has already been punished for the act on the first conviction.

(3) If an act done by a person is an offence under each of 2 or more laws, the person may be prosecuted and punished under any of the laws.

(4) Subsection (3) is subject to subsection (1).

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<sup>2</sup> The dictionary in schedule 5 defines an act to include an omission, and the doing of an act to include the making of an omission.

**Previous conviction or acquittal**

**10.** It is a defence to a charge of an offence (the “**current**” charge and offence) to show that the charged person has already been tried, and convicted or acquitted on—

- (a) a charge on which the person could have been convicted of the current offence; or
- (b) a charge of an offence of which the person could be convicted on the current charge.

**An issue under this division an issue of law**

**11.** An issue under this division is an issue of law.

*Division 3—Territorial jurisdiction***Application to offences committed completely or partly in Queensland**

**12.(1)** This Code applies to anyone who does an act in Queensland that is an offence.

**(2)** If—

- (a) acts are done that, if they had all be done in Queensland, would be an offence; and
- (b) any of the acts are done in Queensland;

the person who does the acts commits an offence as if all the acts had been done in Queensland.

**(3)** If—

- (a) an event happens in Queensland caused by an act done outside Queensland; and
- (b) the act would be an offence if it had been done in Queensland;

the person who does the act commits an offence as if the act had been done in Queensland.

**(4)** If—

- (a) an event happens outside Queensland caused by an act done in Queensland; and
- (b) the act would be an offence if the event happened in Queensland;

the person who does the act commits an offence as if the event had happened in Queensland.

### **Offences enabled, aided, counselled or procured by persons out of Queensland**

**13.(1)** If, outside Queensland, a person—

- (a) does an act to enable or aid anyone to commit an offence that is actually committed in Queensland; or
- (b) aids anyone in committing an offence that is actually committed in Queensland; or
- (c) counsels or procures anyone to commit an offence actually committed in Queensland;

the person is taken to commit the offence that is committed in Queensland.

**(2)** If—

- (a) outside Queensland, a person procures anyone to do an act in Queensland; and
- (b) the act is of a type that, if the person had done the act in Queensland, the person would have committed an offence;

the person commits an offence as if the person had done the act in Queensland.

### **Offences procured in Queensland to be committed outside Queensland**

**14.(1)** If—

- (a) in Queensland, a person procures anyone to do an act at a place outside Queensland; and
- (b) the act is of a type that—
  - (i) if the person had done the act in Queensland, the person

would have committed an offence; and

- (ii) if the person had done the act in the place outside Queensland, the person would have committed an offence against the laws in force in that place;

the person commits an offence as if the person had done the act in Queensland.

(2) However, the punishment must not be more than the punishment to which the person would have been liable, under the laws in force in the place outside Queensland, for doing the act in that place.

### Code applies in coastal waters

15. For the application of the Code, Queensland is taken to include the coastal waters of the State.<sup>3</sup>

### Offences committed in adjacent high seas

16.(1) If a person connected with Queensland—

- (a) does an act while in, on, under or over the high seas within 320 km of Queensland; and
- (b) the act is of a type that, if the person had done the act in Queensland, the person would have committed an offence;

the person commits an offence as if the person had done the act in Queensland.

(2) If—

- (a) a person does an act affecting the person or property of anyone

<sup>3</sup> Under the *Acts Interpretation Act 1954*, section 36, “coastal waters of the State” means—

- (a) the parts of the territorial sea of Australia that are within the adjacent area in respect of the State, other than any part mentioned in section 4(2) of the *Coastal Waters (State Powers) Act 1980* (Cwlth); or
- (b) any sea that is on the landward side of any part of the territorial sea of Australia and within the adjacent area in respect of the State, but is not within the limits of the State.

connected with Queensland while in, under or over the high seas within 320 km of Queensland; and

- (b) the act is of a type that if the person had done the act in Queensland the person would have committed an offence; and
- (c) the person afterwards enters Queensland at any time;

the person commits an offence as if the person had done the act in Queensland.

(3) In this section—

**“anyone connected with Queensland”** includes a person who, at the time of the relevant act—

- (a) ordinarily lives in Queensland; or
- (b) is on, or operating from, a structure connected with Queensland.

**“structure connected with Queensland”** means an aircraft, boat, facility, installation, or structure regulated, completely or partly, under Queensland law.

#### *Division 4—Effect of being taken to have committed an offence*

### **Explanation of effect of certain declarations**

**17.(1)** This section applies if a provision declares that a person is taken to commit an offence, or commits an offence, as if particular facts were true.

**(2)** The person may be charged with, and punished for, the offence, and a court or anyone may exercise the same powers in relation to the person or offence, as if the person had committed the offence under the law applying apart from the declaration.

*Example—*

O aids someone else to commit an offence. Under section 29 (Each party taken to commit offence), O is taken to commit the offence. O may be charged with the offence (and is otherwise subject to this subsection) as if O had actually done the act that is the offence.

**(3)** Also, if a court or anyone may exercise a power on a suspicion or belief about an act that, if committed, would be an offence, the power may be exercised under circumstances in which the act would be taken to be an

offence under the declaration.

(4) Subsections (2) and (3) do not limit the effect of the declaration.

### *Division 5—Criminal responsibility of State and Commonwealth*

#### **State or Commonwealth cannot be prosecuted**

**18.(1)** A State or the Commonwealth cannot be prosecuted for an offence even though the provision against which the offence is committed is expressly applied to the State or Commonwealth.

(2) However, an employee or agent of a State or the Commonwealth may be prosecuted for the offence if the employee or agent is a party to the offence.

### *Division 6—Civil remedies*

#### **Relationship of Code with civil remedies**

**19.(1)** If the Code declares that an act is lawful, no action can be taken claiming that the act is unlawful.

(2) Otherwise—

- (a) the Code does not affect a right of action that a person would have had against anyone if the Code had not been enacted; and
- (b) the absence from the Code of punishment for an act that, before the commencement of the Code, was an actionable wrong does not affect a right of action about it.

(3) For subsection (1), it is sufficient if a provision of the Code states that a person may do the act.

#### **Civil remedies unaffected by prosecution or conviction**

**20.** The prosecution or conviction of a person for an offence does not affect a civil remedy anyone aggrieved by the offence may have against the person, unless an Act otherwise expressly provides.



**Division 7—Bodies corporate****Offence provisions apply to bodies corporate**

**21.** A provision of an Act relating to offences punishable on indictment or summary conviction applies to bodies corporate as well as individuals.

**PART 4—OFFENCES AND OFFENCE TYPES****What is an offence**

**22.** An act or omission that makes the person who does the act liable to punishment is called an offence.

**Types of offences**

**23.(1)** An offence is either a criminal offence or a regulatory offence.<sup>4</sup>

**(2)** A criminal offence is an offence that is either a crime or a simple offence.

**What offences are crimes**

**24.** The following offences are crimes—

- (a) every offence defined in the Code;
- (b) every indictable offence;
- (c) every offence that is expressly declared under an Act to be a crime.

**What offences are simple offences**

**25.** The following offences are simple offences—

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<sup>4</sup> See the *Regulatory Offences Act 1985*.

- (a) every offence that is neither a crime nor a regulatory offence;
- (b) every criminal offence that is not a crime;
- (c) every offence that may be prosecuted by a summary proceeding under the *Justices Act 1886*, and is neither an indictable offence nor a regulatory offence;
- (d) every offence that is expressly declared under an Act to be a simple offence.

### **What offences are regulatory offences**

**26.** An offence is a regulatory offence if it is expressly declared under an Act to be a regulatory offence.<sup>5</sup>

### **Indictable offences**

**27.** The following offences are indictable offences—

- (a) every offence that may be prosecuted on indictment, whether or not, in certain circumstances, a charge for the offence may be prosecuted in a summary proceeding;
- (b) every crime;
- (c) every offence that is declared under an Act to be an indictable offence.

### **Relationship of offence type to proceeding**

**28.(1)** A person who commits an indictable offence cannot be prosecuted or convicted other than on indictment, unless an Act otherwise expressly provides for prosecution by a summary proceeding.

**(2)** The following offences are offences for which a person may be summarily convicted, sentenced and otherwise dealt with by a Magistrates Court—

- (a) every simple offence;

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<sup>5</sup> See the *Regulatory Offences Act 1985*.

- (b) every regulatory offence;
- (c) every offence for which a summary proceeding under the *Justices Act 1886* may be taken.

(3) In an Act, a provision of the type mentioned in subsection (4) means that a proceeding for an offence, or a specified offence, against the Act is a summary proceeding under the *Justices Act 1886*.

(4) Subsection (3) applies to provisions of the following type—

- (a) a provision to the effect that a proceeding for the offence is to be decided summarily;
- (b) a provision to the effect that a proceeding for the offence is to be decided by or before justices or a magistrate;
- (c) a provision to the effect that the offence is a summary offence or is punishable on summary conviction or summarily;
- (d) a provision for an offence that does not expressly or impliedly make the offence an indictable offence.

## **PART 5—PARTIES, ATTEMPTS, PREPARATION, CONSPIRACIES AND ACCESSORIES AFTER THE FACT**

### *Division 1—Parties*

#### **Each party taken to commit offence**

**29.** Each person who is a party to an offence is taken to commit the offence.

#### **Who are parties to an offence**

**30.(1)** A person is a party to an offence that is committed if the person—

- (a) actually does the act that is the offence; or

- (b) does an act to enable or aid anyone to commit the offence; or
- (c) aids anyone in committing the offence; or
- (d) counsels or procures anyone to commit the offence.

(2) Under subsection (1)(d), the person may be charged with—

- (a) committing the offence; or
- (b) counselling or procuring its commission.

(3) If a person procures anyone to do an act that would have been an offence committed by the person had the person done the act, the person is taken to have committed an offence of the same type as if the person had done the act.

(4) Subsection (3) applies even if the person who actually does the act does not commit an offence.

(5) A conviction for counselling or procuring the commission of an offence has the same effect as a conviction for committing the offence.

### **Offence committed in prosecution of common purpose**

**31.(1)** If—

- (a) 2 or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another; and
- (b) an offence is committed in the prosecution of the purpose; and
- (c) the commission of an offence of that nature was a probable result of the prosecution of the purpose;

each person is taken to be a party to the offence and to commit the offence.

(2) Subsection (1) applies despite section 50.<sup>6</sup>

### **Offence taken to be counselled or procured**

**32.(1)** If—

- (a) a person counsels or procures anyone to commit an offence; and

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<sup>6</sup> Section 50 (Intention—motive)

- (b) an offence is actually committed by the other person after the counselling or procuring; and
- (c) the act that is the offence actually committed is a probable result of the counselling or procuring;

the person is taken to have counselled or procured the commission of the offence actually committed.

(2) It is immaterial—

- (a) whether the offence actually committed is the same as the offence counselled or procured or a different one; or
- (b) whether the offence actually committed is committed in the way counselled or procured or in a different way.

### **Effect of timely withdrawal**

**33.** A person is not taken to have committed an offence, or to have counselled or procured the commission of an offence, because of this division, if, a reasonable time before the offence is committed, the person—

- (a) withdraws from the commission of the offence, the prosecution of the unlawful purpose or the counselling or procuring; and
- (b) communicates the withdrawal to the other parties; and
- (c) takes all reasonable steps to stop the commission of the offence or the further prosecution of the unlawful purpose.

### *Division 2—Attempts and preparation to commit offences*

#### **What is an attempt to commit an offence**

**34.(1)** A person attempts to commit an offence if the person—

- (a) intending to commit the offence, does an act that is more than merely preparatory to the commission of the offence; but
- (b) does not fulfil the person's intention to the extent of committing the offence.

(2) It is immaterial, other than for punishment—

- (a) whether the person does all that is necessary on the person's part to commit the offence; or
- (b) whether the fulfilment of the person's intention is stopped by circumstances independent of the person's will; or
- (c) whether the person voluntarily stops the attempt.

(3) It is immaterial that the offence is impossible to commit because of circumstances unknown to the person.

(4) Subsection (1)(b) does not mean that a person cannot be convicted of an offence of attempting to commit an offence because there is evidence the person actually committed the offence.

(5) The same facts may be one offence and an attempt to commit another offence.

### **Attempt to commit a crime is a crime**

**35.(1)** A person must not attempt to commit a crime.

Maximum penalty—

- (a) 14 years imprisonment, if the crime attempted has a maximum penalty of life imprisonment; or
- (b) 7 years imprisonment, if the crime attempted has a maximum penalty of at least 14 years imprisonment, with or without other punishment; or
- (c) half the maximum penalty provided for committing the crime attempted, in any other case.

Crime—attempt to commit a crime.

(2) The penalty provided under subsection (1) is subject to any penalty expressly provided for attempting to commit a particular crime.

### **Seeking to procure commission of criminal acts**

**36.(1)** This section applies if a person in Queensland seeks to procure anyone to do an act in Queensland or elsewhere of a type that would be an offence if the relevant act were done by either of the persons in the relevant place.

(2) This section also applies if a person outside Queensland seeks to procure anyone to do an act in Queensland of a type that would be an offence if the relevant act were done by either of the persons in Queensland.

(3) The person is taken to commit an offence of the same type as the person would have committed if the person had attempted to do the relevant act in Queensland.

(4) However, if the relevant place is outside Queensland, the punishment must not be more than the punishment to which the person would have been liable under the law in force in the place if the attempt had happened in the place.

(5) In this section—

“**relevant act**” is the act that is to be done under a procurement sought.

“**relevant place**” is the place where the relevant act is to be done under a procurement sought.

### **Preparation for the commission of certain crimes**

**37.** A person must not possess anything the person intends anyone to use to facilitate the commission of a crime, in 1 or more of the following ways—

- (a) to cause or threaten to cause injury to anyone;
- (b) to cause or threaten to cause damage to any property;
- (c) to enter premises, without the occupier’s consent.

Maximum penalty—the lesser of the following—

- (a) 7 years imprisonment;
- (b) the maximum penalty for attempting to commit the crime for which the person intended the thing to be used.

Crime—criminal preparation.

### ***Division 3—Conspiracies***

#### **What is a “conspiracy”**

**38.(1)** If, under an Act, it is an offence to conspire for a specific purpose, it means that it is an offence for 2 or more persons to enter into an agreement for the purpose.

(2) The agreement is a “conspiracy”.

#### **Relationship between criminal responsibility of co-conspirators**

**39.** A person may be convicted of a conspiracy even though the other person claimed to be a party to the conspiracy—

- (a) cannot be convicted of the conspiracy or, if the conspiracy is to commit an offence, the offence; or
- (b) is not charged with the conspiracy; or
- (c) cannot be identified; or
- (d) has been acquitted of the conspiracy, unless in all the circumstances the conviction of the person would be inconsistent with the acquittal of the other person.

#### **Person may conspire without knowing identity of co-conspirator**

**40.(1)** This section applies if a person conspiring with a second person for a purpose knows the second person is also conspiring for the same purpose with a third person.

(2) The first person commits the offence of conspiring for the purpose with the second and third person, even if the first person does not know the third person’s identity.

#### **Conspiracy by corporation**

**41.(1)** A corporation may be convicted of conspiracy.

(2) However, a conspiracy cannot exist—

- (a) between a corporation and—



- (i) a director of the corporation; or
  - (ii) anyone having responsibility for the corporation's control or management; or
- (b) between a corporation and a wholly-owned subsidiary of the corporation.

### **Conspiracy can happen even if unlawful purpose impossible**

**42.** A person may be convicted of a conspiracy even though it was impossible to carry out the purpose of the conspiracy at any time during the conspiracy.

### **Application**

**43.** Sections 38 to 42<sup>7</sup> apply to every offence of conspiracy under an Act.

### **Conspiracy to commit an offence**

**44.(1)** A person must not conspire with anyone to—

- (a) commit an offence in Queensland; or
- (b) do an act outside Queensland that—
  - (i) if done in Queensland, would be an offence; and
  - (ii) if done in the place where the act is to be done under the conspiracy, would be an offence under the law in force in the place.

Maximum penalty—the lesser of the following—

- (a) 7 years imprisonment;
- (b) the maximum punishment for which the person would be liable if the offence or act to be done under the conspiracy were actually committed or done in Queensland.

Crime—conspiracy to commit the particular offence.

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<sup>7</sup> Section 38 (What is a “conspiracy”)  
Section 42 (Conspiracy can happen even if unlawful purpose impossible)

(2) It is immaterial whether a particular circumstance in which, or a particular person against whom, the offence or act is to be committed or done is agreed to under the conspiracy.

*Example—*

A conspiracy to commit the crime of fraud may be an agreement to commit the crime against unknown members of the public who may accept deceptive offers published under the conspiracy.

(3) A person cannot be prosecuted for the crime without the Attorney-General's consent.

### **Industrial disputes**

**45.(1)** Despite this division, if a person would not commit a particular type of offence were the person to do an act acting alone, the person does not commit the offence if the person, for an industrial dispute—

- (a) does the act with anyone; or
- (b) enters an agreement or combines with anyone to do the act or to procure the act to be done.

(2) This section applies subject to the express provisions of an Act to the contrary.

### ***Division 4—Accessories after the fact***

#### **Who is an “accessory after the fact” to an offence**

**46.** If a person helps anyone who, to the person's knowledge, has committed an offence, to enable the other person—

- (a) to escape punishment; or
- (b) to obtain or keep property derived from the offence;

the person is an accessory after the fact to the offence.

*Example of paragraph (b)—*

E, in the commission of the crime of extortion, demands that V deliver money extorted to a particular place. V delivers the money to the place. Afterwards, E asks A to collect the money and give it to E. A does what E requests knowing it is being

done to enable E to obtain money derived from an offence. A is an accessory after the fact to the crime of extortion.

### **Becoming an accessory after the fact**

**47.** A person must not become an accessory after the fact to a crime.

Maximum penalty—

- (a) if a maximum penalty is specifically prescribed for being an accessory after the fact to the crime—the penalty; or
- (b) 2 years imprisonment, in any other case.

Crime—becoming an accessory after the fact to the particular crime.

## **PART 6—RESPONSIBILITY**

### *Division 1—State of mind, emergency and immaturity*

#### **Ignorance of the law**

**48.(1)** Ignorance of the law does not excuse a person from criminal responsibility for an act that would otherwise be an offence, unless the person's knowledge of the law is expressly declared to be an element of the offence.

**(2)** However, a person is not criminally responsible for an act that would otherwise be a property offence if the person does the act in the exercise of an honest claim of right made in an honest way.

**(3)** To raise the claim of right, it is unnecessary when the act is done to formally state the claim or the basis of the claim.

**(4)** A person is not criminally responsible for doing an act or in contravention of a statutory instrument if, at the time of the act, the statutory instrument—

- (a) was not known to the person; and
- (b) had not been published or otherwise made reasonably available or

known to the public or the persons likely to be affected by it.

(5) In this section—

“**ignorance**” includes mistake.

“**property offence**” means an offence that has as an element—

- (a) causing anyone else to part with property; or
- (b) infringing anyone else’s rights over or in relation to property.

“**publish**” means—

- (a) for subordinate legislation—notify or publish in the Gazette; or
- (b) for a statutory instrument that is not subordinate legislation—publish in the Gazette.

### **Mistake of fact**

**49.** If a person does an act under an honest and reasonable, but mistaken, belief in the existence of a state of things, the person is not criminally responsible for the act to a greater extent than if the believed state of things were the actual state of things.

### **Intention—motive**

**50.(1)** A person is not criminally responsible for an act that happens independently of the exercise of the person’s will, or for an event that happens by accident.

(2) An event caused by the application of force by a person to anyone does not happen by accident because the person to whom the force is applied has a weakness, defect or abnormality unknown to the person using the force.

(3) Subsection (1) applies subject to the Code’s provisions about negligent acts.

(4) The result intended to be caused by an act is immaterial to the person’s criminal responsibility, unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, completely or partly, by the act.

(5) The motive that induces a person to do an act, or to form an intention, is immaterial to the person's criminal responsibility, unless otherwise expressly declared under an Act.

### **Intoxication**

**51.(1)** A person's act does not happen independently of the person's will, and an event caused by a person does not happen by accident, because the person was intoxicated at the time of the act.

(2) However, subsection (1) does not apply if the intoxication was caused by an act that happened independently of the person's will or was an event that happened by accident.

(3) Also, if a specific state of mind or an intention to cause a specific result is an element of an offence, a person's intentional or unintentional intoxication may be considered to decide whether the person had the state of mind or intention.

(4) In this section—

“**intoxicated**” means intoxicated, completely or partially, by alcohol, drugs, or anything else.

### **Unsoundness of mind**

**52.(1)** A person is not criminally responsible for an act if at the time of the act the person, because of brain injury, mental illness or mental defect, does not have the capacity—

- (a) to understand what the person is doing; or
- (b) to control the person's actions; or
- (c) to know that the person ought not do the act.

(2) A person—

- (a) whose mind is affected by a delusion on a specific matter when the person does an act; but
- (b) who is not otherwise entitled to the benefit of subsection (1);

is criminally responsible for the act to the same extent as if the actual state of things had been the state of things the person was induced by the

delusion to believe to exist.

(3) In a proceeding against a person for an offence, the following provisions apply—

- (a) the person is presumed to have been of sound mind when doing the act that was the offence (the “**relevant time**”), unless the contrary is proved;
- (b) the person or the prosecution may seek a finding that the person was not of sound mind at the relevant time;
- (c) if a party seeks the finding—
  - (i) the onus of proof is on the party seeking the finding; and
  - (ii) the standard of proof is on the balance of probabilities.

(4) In this section—

“**brain injury, mental illness or mental defect**” does not include intoxication or stupefaction from alcohol, drugs, intoxicating liquor, or another intoxicating or stupefying substance.

### **Extraordinary emergencies**

**53.(1)** A person is not criminally responsible for doing an act because of a sudden or extraordinary emergency in which an ordinary person possessing ordinary power of self-control could not reasonably be expected to act otherwise.

(2) Subsection (1) applies subject to the Code’s provisions about acts done on compulsion or provocation or in self-defence.

### **Immature age**

**54.(1)** A person under 10 years is not criminally responsible for an act.

(2) A person under 15 years is not criminally responsible for doing an act, unless it is proved that when doing the act the person had capacity to know the person ought not to do the act.

**Regulatory offences**

**55.** The following sections do not apply to regulatory offences—

- section 49
- section 50(1).<sup>8</sup>

***Division 2—Law enforcement and legal process*****Judicial officers**

**56.** A judicial officer is not criminally responsible for doing an act when exercising or purportedly exercising judicial functions, unless an Act expressly imposes criminal responsibility on a judicial officer in those circumstances.

**Actions done under lawful authority**

**57.(1)** A person is not criminally responsible for doing an act in the execution of the law.

**(2)** A person is not criminally responsible for doing an act under the order of an authority the person is required by law to obey, unless the order is manifestly unlawful.

**(3)** The issue of whether an order is or is not manifestly unlawful is an issue of law.

**(4)** Subsections (1) and (2) do not justify or excuse the use of force against anyone that is intended or likely to cause death or grievous bodily harm.

**Giving effect to legal process**

**58.(1)** If a person is charged by law with a duty to give effect to legal process issued by a court or person, the person may give effect to the legal process.

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<sup>8</sup> Section 49 (Mistake of fact)  
Section 50 (Intention—motive)

(2) If the legal process permits the person to arrest or detain someone, the person may arrest or detain the other person under the process.

(3) It is immaterial that the legal process was issued without jurisdiction if—

- (a) the court or person that issued the process had jurisdiction to issue the process under certain circumstances; and
- (b) the person giving effect to the process does not know there was no jurisdiction in the particular case.

(4) A person is not criminally responsible for doing an act to give effect to anything purporting to be legal process issued by a court or person, but that in fact was not lawfully issued, if the person—

- (a) could lawfully have done the act had the process been lawfully issued; and
- (b) did the act in the honest belief that the process was lawfully issued.

(5) If a legal process issued by a court or person is ineffective because of a defect in substance or form apparent on its face, a person who gives effect to the process in the honest belief it is effective is not criminally responsible for giving effect to the process to a greater extent than if the process were effective.

(6) The protection given to a person giving effect to legal process, or anything purporting to be legal process, also applies to anyone helping the person.

(7) In this section—

**“legal process”** issued by a court or person means—

- (a) a sentence passed by a court or other court process; or
- (b) a warrant issued by a court or person permitting anyone to be arrested or detained.

**“under”** legal process includes in accordance with the terms of, or directions given for, the legal process.



**Arrest of wrong person**

**59.(1)** If a person authorised to execute a warrant to arrest a person (the “**named person**”), arrests anyone else in the honest and reasonable, but mistaken, belief that the arrested person is the named person, the person making the arrest is not criminally responsible for the arrest to a greater extent than if the arrested person were the named person.

**(2)** If a person—

- (a) lawfully helps in making the arrest believing the person arrested is the named person; or
- (b) being permitted by the warrant to receive and detain the named person, receives and detains the arrested person;

the person is not criminally responsible for helping or receiving and detaining the arrested person to a greater extent than if the arrested person were the named person.

**Force used in executing sentence, process or any arrest**

**60.** If a person is—

- (a) lawfully executing a sentence, process, or warrant; or
- (b) making any arrest; or
- (c) lawfully helping anyone in the execution or arrest;

the person may use reasonable force against force used to resist the execution or arrest.

**Stopping escape from arrest**

**61.(1)** If—

- (a) a person is lawfully arresting anyone; and
- (b) the other person tries to escape arrest, or appears to be about to try to escape arrest;

the person may use reasonable force to stop the escape.

**(2)** However, the force used must not be intended or likely to cause death or grievous bodily harm.

**Stopping escape or rescue after arrest**

**62.(1)** If a person has lawfully arrested anyone for an offence, the person may use reasonable force to stop the escape or rescue of the arrested person.

(2) However, the force used must not be intended or likely to cause death or grievous bodily harm if the offence is not a crime for which the offender is liable to life imprisonment.

**Stopping a breach of the peace**

**63.(1)** A person present at a breach of the peace may—

- (a) intervene to stop the breach or renewal of the breach; and
- (b) for the intervention, use force that is—
  - (i) reasonable; and
  - (ii) reasonably proportioned to the danger likely to be apprehended from the continuance or renewal; and
- (c) detain anyone committing, or about to join in or renew the breach.

(2) A person detained under subsection (1)(c) must be placed in a police officer's custody as soon as practicable.

(3) The police officer must release the person unconditionally as soon as practicable after being satisfied that the detention of the person in custody is no longer necessary to stop a breach of the peace.

**Stopping offences for which a person may be arrested without warrant**

**64.(1)** This section applies to an offence for which an offender may be arrested without warrant.

(2) A person may use reasonable force to stop an act the person reasonably believes is the offence.

**Stopping violence by person of unsound mind**

**65.** A person may use reasonable force to stop anyone whom the person

reasonably believes to be of unsound mind doing violence to anyone or to property.

### **Stopping suicide**

**66.** If a person reasonably believes that anyone is attempting, or about, to commit suicide, the person may use reasonable force to stop the suicide.

### *Division 3—Personal safety and provoked force*

### **Compulsion and duress**

**67.(1)** A person (the “**first person**”) is not criminally responsible for doing an act if—

- (a) the act is done to save the first person or anyone else from immediate death or grievous bodily harm threatened by someone else able to carry out the threat; and
- (b) the first person reasonably believes the first person cannot, other than by the act, prevent the death or grievous bodily harm.

**(2)** A person (also the “**first person**”) is not criminally responsible for doing an act to resist actual and unlawful violence threatened to the first person, or to anyone in the first person’s presence, if the act is reasonable.

**(3)** However, subsections (1) and (2) do not justify or excuse the first person doing an act—

- (a) that is intended or likely to cause anyone’s death or grievous bodily harm to anyone; or
- (b) because of a threat to the first person that is the probable result of the first person entering into an unlawful association or conspiracy; or
- (c) because of a threat to anyone other than the first person that is the probable result of the first person and the threatened person having entered into an unlawful association or conspiracy.

**Self-defence**

**68.** A person may use reasonable force in self-defence.

**Defence of someone else**

**69.** If a person may use an amount of force in self-defence, anyone helping the person in good faith may use the same amount of force to defend the person.

**Defence of provocation**

**70.(1)** This section only applies to an offence of which assault is an element.

**(2)** A person is not criminally responsible for an assault committed on anyone who gives the person provocation for the assault if—

- (a) the person—
  - (i) is deprived of the power of self-control by the provocation; and
  - (ii) acts on the provocation suddenly before there is time for the person to regain self-control; and
- (b) the force used is—
  - (i) proportionate to the provocation; and
  - (ii) not intended or likely to cause death or grievous bodily harm.

**Prevention of repetition of provocation**

**71.(1)** A person may use reasonable force to stop anyone repeating an act that is provocation to the person for an assault.

**(2)** However, the force used must not be intended or likely to cause death or grievous bodily harm.

**General protection for property damage while defending or protecting person**

**72.** A person is not criminally responsible for using reasonable force consisting of damage to property to defend or protect anyone from injury that the person reasonably believes to be imminent.

***Division 4—Property defence and enforced claims*****Defence of premises against crime**

**73.(1)** This section applies if a person—

- (a) is in peaceable possession of premises; and
- (b) reasonably believes that anyone is attempting to enter the premises, or is remaining in the premises, with intent to commit a crime.

**(2)** The person, and a person lawfully helping the person, may use reasonable force to stop the other person entering the premises, or to remove the other person from the premises.

**Defence of place against trespassers or under claim of right**

**74.(1)** If a person is in peaceable possession of a place, or has the right to control or manage a place, the person may use reasonable force—

- (a) to stop anyone wrongfully entering the place; or
- (b) to remove from the place anyone who wrongfully remains in the place.

**(2)** If a person is in peaceable possession of a place under an honest and reasonable claim of right, the person may use reasonable force to defend the person's possession, even against someone who has the right to possess the place.

**(3)** If—

- (a) a person is in peaceable possession of a place (the “**occupier**”); and
- (b) someone who has the right to enter a place to exercise a relevant

right (the “**claimant**”)—

- (i) enters the place to exercise the right after receiving notice that the claimant’s right is disputed by the occupier; or
- (ii) having entered the place persists in remaining after receiving the notice;

the occupier may use reasonable force to stop the entry or remove the claimant.

(4) However, force used under subsection (1), (2) or (3) must not be intended or likely to cause death or grievous bodily harm.

(5) In this section—

“**relevant right**” means a right of way, other easement or profit.

### **Defence of moveable property against trespassers or acting under claim of right**

75.(1) If a person is in peaceable possession of moveable property, the person may use reasonable force to stop a trespasser taking the property, or to retake it from a trespasser.

(2) If a person is in peaceable possession of moveable property under an honest and reasonable claim of right, the person may use reasonable force to defend the person’s possession, even against anyone who has the right to possess the property.

(3) However, force used under subsection (1) or (2) must not be intended or likely to cause death or grievous bodily harm.

### **Forcible taking of moveable property from person who has no claim of right**

76.(1) If—

- (a) a person who has the right to possess moveable property attempts to take it from the property’s possessor who—
  - (i) does not claim a right to possess it; and
  - (ii) is not acting under the authority of a person who claims the right to possess it; and

(b) the possessor resists the taking;

the person who has the right to possess it may use reasonable force to take possession of the property.

(2) However, the force used must not be intended or likely to cause death or grievous bodily harm.

### **General protection for property damage while defending or protecting property**

77. A person is not criminally responsible for using reasonable force consisting of damage to property to defend or protect any property from damage the person reasonably believes to be imminent.

### **Extension to persons acting under authority**

78. If a person who is in peaceable possession of a place or property may use particular force under this division, anyone acting under the person's authority may use the same force.

## ***Division 5—Orderly control***

### **Removal of disorderly person**

79.(1) A person who is in peaceable possession of, or has the right to control or manage, a place, and anyone acting under the person's authority, may use reasonable force to remove anyone behaving in a disorderly way from the place.

(2) However, the force used must not be intended or likely to cause death or grievous bodily harm.

### **Orderly control of vehicle**

80. A person in charge of a vehicle, and anyone acting under the person's authority may use reasonable force to ensure safety by keeping good order and discipline in the vehicle.

**Domestic discipline**

**81.** A parent, a person in the place of a parent or a teacher may use reasonable correctional force towards a child in the person's charge.

***Division 6—Surgical operations and medical treatment*****Surgical operations and medical treatment**

**82.(1)** A person is not criminally responsible for performing or providing, in good faith and with reasonable care and skill, a surgical operation on, or medical treatment of—

- (a) a person for the patient's benefit; or
- (b) an unborn child to preserve the mother's life;

if performing the operation or providing the medical treatment is reasonable, having regard to the patient's state at the time and all the circumstances.

**(2)** Surgical or medical treatment to sterilise a patient, performed with the patient's consent, is taken to be for the patient's benefit.

**(3)** In this section—

**“medical treatment”** includes pain relief.

**“providing medical treatment”** includes withdrawing medical treatment.

***Division 7—Objective concept of reasonable force, act or belief*****Objective meaning of “reasonable” in certain circumstances**

**83.(1)** This section applies to a provision of an Act under which a person—

- (a) may use, or is not criminally responsible for using, reasonable force; or
- (b) may do an act, or is not criminally responsible for doing an act, if the act is reasonable; or



- (c) may do an act, or is not criminally responsible for doing an act, if the person has a specific reasonable suspicion or belief.
- (2) The force is reasonable if, in all the circumstances—
  - (a) it is reasonable to use some force; and
  - (b) the amount of force used is reasonable.
- (3) The act is reasonable if it is reasonable in all the circumstances.
- (4) The suspicion or belief is reasonable if it is reasonable in all the circumstances.

### *Division 8—Provocation and the ordinary person*

#### **Meaning of “provocation”**

**84.(1) “Provocation”** is an act of a nature likely to deprive an ordinary person of the power of self-control (the **“provoking”** act) and to induce the ordinary person to do an act (the **“provoked”** act) to whoever it was who did the provoking act, if the provoking act were done—

- (a) to the ordinary person; or
- (b) in the ordinary person’s presence to anyone else.

(2) If a person (the **“first person”**) does the provoking act to a second person, or in the second person’s presence to anyone else, the first person gives the second person provocation for the provoked act.

(3) An act a person does because of incitement given by anyone to induce the person to do the act, and therefore to give an excuse for a provoked act, is not provocation to the other person for an act.

(4) An unlawful arrest is not necessarily provocation, but may be provocation if the arrested person knows or reasonably believes the arrest is unlawful.

(5) A lawful act is not provocation for an act.

(6) The provoking act can be an insult or spoken words, even if the insult or words are lawful.

**Characteristics of the ordinary person**

**85.(1)** This section applies for—

- (a) this division; and
- (b) any other provision of the Code under which the criminal responsibility of a person for doing an act in particular circumstances is decided by comparison with the conduct of an ordinary person in those circumstances.

(2) The characteristics of the person that are included in the characteristics of the ordinary person are not limited to the person's age.

(3) The characteristics of the person included in the characteristics of the ordinary person include, for example, a person's race, ethnic background and gender.

**PART 7—GENERAL DUTIES****Effect of duties imposed by this part**

**86.(1)** This part imposes duties, but does not create offences.

(2) If a person contravenes a duty imposed on the person by this part, the person is taken to cause any effect that the contravention of the duty has on the life, health or safety of anyone for whom the duty is imposed.

(3) A person is not criminally responsible for an act because of the person's contravention of a duty imposed by this part unless the act amounts to gross negligence.

**Duty to provide necessities**

**87.(1)** A person in charge of anyone who cannot provide himself or herself with the necessities of life must provide the necessities of life to the other person.

(2) A person is in charge of anyone if the other person cannot withdraw from the charge for any reason, including, for example, age, sickness,

unsoundness of mind or lawful or unlawful detention.

(3) It is immaterial how the other person came to be in the charge of the person on whom the duty is imposed.

### **Duty of parent**

**88.(1)** A parent of a child under 16 years must—

- (a) provide the necessaries of life to the child; and
- (b) use reasonable care and take reasonable precautions to avoid or prevent danger to the child's life, health or safety; and
- (c) take all reasonable action to rescue the child from danger to the child's life, health or safety.

(2) It is immaterial how the child came to be in the parent's charge.

(3) A person is not in charge of a child only because the person has access to a child under a court order.

(4) In this section—

“**parent**”, of a child, means a parent, foster parent, guardian or other adult in charge of the child.

### **Duty of child's employer**

**89.** If an employer is required to provide any necessaries of life to an employee who is a child under 16 years under the child's employment conditions, the employer must provide the necessaries of life to the child.

### **Duty of person doing dangerous act under an undertaking**

**90.** Other than in a case of necessity, a person who undertakes to do a lawful act that is or may be dangerous to anyone's life or health, including for example, surgical or medical treatment, must have reasonable skill and use reasonable care in doing the act.

**Duty of person omitting to do an act undertaken to be done**

**91.** If a person undertakes to do an act and the omission to do the act is or may be dangerous to anyone's life, health or safety, the person must do the act.

**Duty of persons in charge of dangerous things**

**92.(1)** If a person is in charge of a dangerous thing, the person must use reasonable care and take reasonable precautions in its use or management to avoid danger to anyone else's life, health or safety.

**(2)** Something is dangerous if it is a type of thing that would endanger anyone else's life, safety or health if care or precaution is not taken in its use or management.

*Example—*

A vehicle, club, pencil, person's fist.

**(3)** In this section—

**“thing”** includes anything living or inanimate, moving or stationary.

**PART 8—DEFENCES****Onus and standard of proof for defence**

**93.** If an Act provides that, in a proceeding against a person for an offence, it is a defence to prove a fact—

- (a) the onus of proof is on the person to prove the fact; and
- (b) the standard of proof is on the balance of probabilities.

## CHAPTER 2—PERSONAL OFFENCES

### PART 1—HOMICIDE AND ASSOCIATED OFFENCES

#### *Division 1—Unlawful killing*

#### **What is “murder”**

**94.** A person murders anyone if the person unlawfully kills the other person and the person—

- (a) intends to kill anyone; or
- (b) intends to do grievous bodily harm, or transmit a serious disease, to anyone; or
- (c) causes the death by an act—
  - (i) done in the prosecution of an unlawful purpose; and
  - (ii) of a nature likely to endanger human life; or
- (d) causes the death by administering a stupefying or overpowering thing to commit a crime; or
- (e) causes the death by wilfully stopping the other person’s breath to commit a crime.

#### **Murder**

**95.(1)** A person must not murder anyone.

Mandatory penalty—

- (a) life imprisonment; or
- (b) an indefinite sentence.

Crime—murder.

**(2)** For the mandatory penalty, paragraph (a), the penalty of life imprisonment can not be mitigated or varied under the Code or another Act.

**(3)** For the mandatory penalty, paragraph (b), the nominal sentence under

the *Penalties and Sentences Act 1992*, part 10, must be life imprisonment.

(4) In this section—

“**indefinite sentence**” means an indefinite sentence under the *Penalties and Sentences Act 1992*, part 10.

“**mandatory penalty**”, for the crime of murder, means the penalty that must be imposed on conviction for the crime.

### **Manslaughter**

**96.** A person must not unlawfully kill anyone.

Maximum penalty—life imprisonment.

Crime—unlawful killing.

### *Division 2—Matters related to unlawful killing*

#### **Meaning of “kill”**

**97.** A person who in any way causes anyone’s death is taken to kill the other person.

#### **When a child becomes a person capable of being killed**

**98.(1)** A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother.

(2) It is immaterial whether or not—

- (a) the child has breathed or has an independent circulation; or
- (b) the umbilical cord is severed.

#### **Injuries causing death because of later treatment**

**99.** If—

- (a) a person does grievous bodily harm to anyone; and
- (b) the other person receives surgical or medical treatment that is

reasonably appropriate in all the circumstances and applied in good faith; and

- (c) death results from the treatment;

the person is taken to kill the other person.

### **Death by acts done before or during childbirth**

**100.** If a child dies because of an act done by a person before or during the child's birth, the person is taken to kill the child.

### **Consent to death immaterial**

**101.** Consent by a person to the causing of the person's own death does not affect the criminal responsibility of a person who causes the death.

### **Killing on provocation**

**102.(1)** This section applies if a person unlawfully kills anyone in circumstances that would be murder, if this section did not apply.<sup>9</sup>

- (2) The person is guilty only of unlawful killing<sup>10</sup> if the person—

- (a) is deprived of the power of self-control by provocation; and  
(b) does the act that causes death suddenly, before there is time for the person to regain self-control.

### **Diminished responsibility**

**103.(1)** This section applies if a person unlawfully kills anyone in circumstances that would be murder, if this section did not apply.<sup>11</sup>

- (2) The person is guilty only of unlawful killing<sup>12</sup> if, while doing the act that causes death—

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<sup>9</sup> See section 94 (What is "murder").

<sup>10</sup> See section 96 (Manslaughter).

<sup>11</sup> See section 94 (What is "murder").

<sup>12</sup> See section 96 (Manslaughter).

- (a) the person is in a state of mental abnormality because of brain injury, mental illness, mental defect or intellectual or psychiatric impairment; and
- (b) the state of mental abnormality substantially impairs the persons' capacity—
  - (i) to understand what the person is doing; or
  - (ii) to control the person's actions; or
  - (iii) to know the person ought not to do the act.

(3) In a proceeding against a person for a charge of murder the following provisions apply—

- (a) the person or the prosecution may seek a finding that the person is liable to be convicted only of unlawful killing because of this section;
- (b) if a party seeks the finding—
  - (i) the onus of proof is on the party seeking the finding; and
  - (ii) the standard of proof is on the balance of probabilities.

(4) If 2 or more persons unlawfully kill anyone, the fact that 1 of the persons is guilty only of unlawful killing because of this section does not affect the issue whether the unlawful killing amounted to murder for anyone else.

(5) In this section—

**“brain injury, mental illness, mental defect or intellectual or psychiatric impairment”** does not include intoxication or stupefaction from alcohol, drugs or another intoxicating or stupefying substance.

### *Division 3—Associated offences*

#### **Attempt to murder**

**104.** A person must not—

- (a) attempt to unlawfully kill anyone; or
- (b) with intent to unlawfully kill anyone—



- (i) do an act of a nature likely to endanger human life; or
- (ii) omit to do an act that it is the person's duty to do, if the omission is of a nature likely to endanger human life.

Maximum penalty—life imprisonment.

Crime—attempted murder.

### **Accessory after the fact to murder**

**105.** A person must not become an accessory after the fact to murder.<sup>13</sup>

Maximum penalty—life imprisonment.

Crime—becoming an accessory after the fact to murder.

### **Documented threats to murder**

**106.** A person must not unlawfully cause anyone else to receive a document<sup>14</sup> that the person knows contains a threat to kill anyone.

Maximum penalty—7 years imprisonment.

Crime—giving a threat to murder.

### **Conspiring to murder**

**107.(1)** A person must not conspire with anyone to kill a person.

Maximum penalty—14 years imprisonment.

Crime—conspiring to murder.

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<sup>13</sup> See sections 46 (Who is an “accessory after the fact” to an offence) and 94 (What is “murder”).

<sup>14</sup> Under the *Acts Interpretation Act 1954*, section 36, “document” includes—

- (a) any paper or other material on which there is writing; and
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; and
- (c) any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being produced or reproduced (with or without the aid of another article or device).

(2) It is immaterial whether the person to be killed is to be killed in Queensland or elsewhere.

### **Aiding suicide**

**108.** A person must not—

- (a) procure anyone to commit suicide; or
- (b) induce anyone to commit suicide by counselling the other person to commit suicide; or
- (c) aid anyone to commit suicide.

Maximum penalty—life imprisonment.

Crime—aiding suicide.

### **Killing an unborn child**

**109.** When a female person is about to give birth to a child, a person must not stop the child from being born alive by an act of a nature that, if the child had been born alive and had then died, the person would be taken to have unlawfully killed the child.

Maximum penalty—life imprisonment.

Crime—killing an unborn child.

### **Hiding the birth of a child**

**110.(1)** A person must not try to hide the birth of a child by secretly disposing of the child's dead body.

Maximum penalty—2 years imprisonment.

Crime—trying to hide a child's birth.

(2) It is immaterial whether the child died before, during or after its birth.

**PART 2—GRIEVOUS BODILY HARM AND ASSAULT*****Division 1—Grievous bodily harm*****Grievous bodily harm**

**111.** A person must not unlawfully do grievous bodily harm to anyone else.

Maximum penalty—14 years imprisonment.

Crime—unlawful grievous bodily harm.

**Consent to grievous bodily harm immaterial**

**112.** A person who does grievous bodily harm to anyone is not excused from criminal responsibility merely because the other person consents to the grievous bodily harm.

***Division 2—Assault generally*****What is an “assault”**

**113.(1)** A person assaults anyone if, without the other person’s consent—

- (a) the person applies force to the other person; or
- (b) the person—
  - (i) by a bodily act or gesture, attempts or threatens to apply force to the other person; and
  - (ii) is able, or appears to be able, to apply the force.

**(2)** A person applies force to anyone if the person, directly or indirectly—

- (a) strikes, touches or moves the other person; or
- (b) applies heat, light, electrical or other energy, gas or odour to the other person to a degree that causes the other person injury or

- personal discomfort; or
- (c) applies force in any other way to the other person.

### **Assault**

**114.(1)** A person must not unlawfully assault anyone.

Maximum penalty—

- (a) 7 years imprisonment, if—
- (i) the assault is committed with intent to commit a crime; or
  - (ii) the person knows the other person is pregnant; or
  - (iii) the other person is under 16 years or at least 60 years; or
  - (iv) the other person relies on a guide dog, wheelchair or other remedial device; or

*Examples of remedial device—*

walking frame, caliper, walking stick and artificial limb.

- (v) the other person is operating a vehicle; or
  - (vi) the assault is committed on the other person while the other person is performing, or because the other person has performed, a lawful duty; or
  - (vii) the person does bodily harm to the other person and is, or pretends to be, armed with a dangerous or offensive weapon or instrument; or
  - (viii) the person does bodily harm to the other person and is in company with anyone; or
- (b) 3 years imprisonment, if the person does bodily harm to the other person; or
- (c) imprisonment for 1 year, in any other case.

Crime—

- (a) assault—
- (i) with intent;
  - (ii) of a pregnant female;

- (iii) of a person under 16 or at least 60;
- (iv) of a person with an impairment;
- (v) of a person operating a vehicle;
- (vi) of a person performing a lawful duty;
- (vii) with bodily harm and while armed;
- (viii) with bodily harm and in company;
- (b) assault with bodily harm;
- (c) assault.

**(2)** For this section, a person is performing a lawful duty if—

- (a) the person is a public officer performing a function of the officer's office or employment; or
- (b) the person is performing a duty imposed by law; or
- (c) the person is helping a public officer or other person in the circumstances mentioned in paragraph (a) or (b).

### **Assault of crew member in aircraft**

**115.(1)** A person must not, while in an aircraft and with guilty intent—

- (a) unlawfully assault a crew member of the aircraft; or
- (b) threaten a crew member that detriment will be caused to the member, or anyone else in the aircraft, by the person or anyone else.

Maximum penalty—14 years imprisonment.

Crime—assaulting or threatening a crew member in an aircraft.

**(2)** In this section—

**“guilty intent”** means intent to—

- (a) affect the performance, by a crew member of an aircraft, of the member's functions connected with the aircraft's operation; or
- (b) lessen the member's ability to perform the functions.

**Division 3—Rape and other sexual assaults****Rape**

**116.** A person must not have sexual intercourse with anyone without the other person's consent.

Maximum penalty—life imprisonment.

Crime—rape.

**Sexual assault**

**117.** A person must not unlawfully and indecently assault anyone.

Maximum penalty—

- (a) life imprisonment, if the person—
  - (i) inserts a part of the person's body, other than the penis, or inserts anything else into the other person's vagina, vulva or anus; or
  - (ii) inserts the person's penis into the other person's mouth; or
- (b) 14 years imprisonment, if—
  - (i) immediately before, when or immediately after committing the offence, the person—
    - (A) does, or threatens to do, bodily harm to anyone; or
    - (B) is, or pretends to be, armed with a dangerous or offensive weapon or instrument; or
    - (C) is in company with anyone; or
  - (ii) the other person is under 16 years or at least 60 years; or
  - (iii) the other person relies on a guide dog, wheelchair or other remedial device; or

*Examples of remedial device—*

walking frame, caliper, walking stick and artificial limb.

- (c) 7 years imprisonment, in any other case.

Crime—

- (a) indecent assault—grievous sexual assault;
- (b) indecent assault—aggravated sexual assault;
- (c) indecent assault.

### **Procuring act of gross indecency**

**118.(1)** A person must not procure anyone, without the other person's consent—

- (a) to commit an act of gross indecency; or
- (b) to witness an act of gross indecency.

Maximum penalty—

- (a) life imprisonment, if the other person is procured to—
  - (i) insert part of the other person's body, or anything else, into the other person's own vagina, vulva or anus or anyone else's vagina, vulva or anus; or
  - (ii) insert the other person's penis into anyone's mouth; or
- (b) 14 years imprisonment, if—
  - (i) immediately before, when or immediately after committing the offence, the person—
    - (A) does, or threatens to do, bodily harm to anyone; or
    - (B) is, or pretends to be, armed with a dangerous or offensive weapon or instrument; or
    - (C) is in company with anyone; or
  - (ii) the other person is under 16 years or at least 60 years; or
  - (iii) the other person relies on a guide dog, wheelchair or other remedial device; or

*Examples of remedial device—*

walking frame, caliper, walking stick and artificial limb.

- (c) 7 years imprisonment, in any other case.

Crime—

- (a) procuring a serious act of gross indecency;

- (b) procuring an act of gross indecency—
  - (i) with bodily harm, while armed or in company;
  - (ii) of a person under 16 or at least 60;
  - (iii) of a person with an impairment;
- (c) procuring an act of gross indecency.

(2) It is immaterial whether the act of gross indecency happens in Queensland or elsewhere.

## PART 3—INTERFERING WITH LIBERTY

### *Division 1—Deprivation of liberty*

#### **What is “kidnapping for ransom”**

**119.(1)** A person kidnaps anyone for ransom if—

- (a) the person takes, or deprives of liberty, anyone (the “**hostage**”) with intent that anyone will gain a benefit or suffer a detriment; and
- (b) the intent is to be achieved by a demand containing a threat that detriment will be caused to the hostage if the demand is not complied with.

(2) For subsection (1), it is immaterial who it may be threatened will cause the detriment.

(3) In this section—

“**threat**” includes a representation that may, in all the circumstances, be reasonably interpreted as a threat.

#### **Kidnapping for ransom**

**120.** A person must not kidnap anyone for ransom.

Maximum penalty—



- (a) life imprisonment, if paragraph (b) does not apply; or
- (b) 10 years imprisonment, if the other person is unconditionally released by the person not more than 1 month after being taken or deprived of liberty, without having suffered grievous bodily harm.

Crime—

- (a) kidnapping for ransom for more than 1 month;
- (b) kidnapping for ransom.

### **What is “kidnapping”**

**121.** A person kidnaps anyone (the “**hostage**”) if the person unlawfully deprives the hostage of liberty with intent to compel the hostage to do anything for the person or anyone else without the hostage’s consent.

### **Kidnapping**

**122.** A person must not kidnap anyone.

Maximum penalty—7 years imprisonment.

Crime—kidnapping.

### **What is “deprivation of liberty”**

**123.** A person deprives anyone of liberty if the person—

- (a) confines or detains the other person without the other person’s consent; or
- (b) deprives the other person of personal liberty in another way.

### **Deprivation of liberty**

**124.** A person must not unlawfully deprive anyone of liberty.

Maximum penalty—

- (a) life imprisonment, if—
  - (i) the person knows the other person has been kidnapped for

ransom; and

- (ii) paragraph (b) does not apply; or
- (b) 10 years imprisonment, if—
  - (i) the person knows the other person has been kidnapped for ransom; but
  - (ii) the other person is unconditionally released by the person, not more than 1 month after being unlawfully deprived of liberty by the person, without having suffered grievous bodily harm; or
- (c) 7 years imprisonment, if the person knows the other person has been kidnapped; or
- (d) 3 years imprisonment, in any other case.

Crime—

- (a) deprivation of liberty, for more than 1 month, of a hostage held for ransom;
- (b) deprivation of liberty of a hostage held for ransom;
- (c) deprivation of liberty of a hostage;
- (d) deprivation of liberty.

### *Division 2—Children and mental patients*

#### **Meaning of “guilty intent” for division**

**125.** In this division—

“**guilty intent**” means intent to—

- (a) deprive a parent, guardian or other person, who has the lawful care or charge of the child, of the possession of the child; or
- (b) steal an article on or about a child’s person.

#### **Child stealing**

**126.(1)** A person must not, with guilty intent, take a child under 16 years dishonestly by any deception or forcibly.

Maximum penalty—7 years imprisonment.

Crime—taking a child under 16 with intent.

(2) It is a defence to a charge of the offence to prove the person claimed in good faith a right to possession of the child.

### **Harbouring stolen child**

**127.(1)** A person must not, with guilty intent, receive or harbour a child under 16 years, knowing the child to have been taken dishonestly by any deception or forcibly.

Maximum penalty—7 years imprisonment.

Crime—receiving or harbouring a child under 16 with intent.

(2) It is a defence to a charge of the offence to prove the person claimed in good faith a right to possession of the child.

### **Abduction of child under 16**

**128.(1)** A person must not unlawfully take an unmarried child under 16 years from the custody or protection of the child's parent, guardian or other person, who has the lawful care or charge of the child, without the consent of the parent, guardian or other person.

Maximum penalty—3 years imprisonment.

Crime—unlawfully taking a child under 16 years.

(2) It is immaterial that—

- (a) the person believed the child to be at least 16 years; or
- (b) the child was taken with the child's consent or at the child's suggestion.

### **Unlawful custody of mental patient**

**129.(1)** A person must not detain or assume the custody of a patient contrary to the *Mental Health Act 1974*.

Maximum penalty—3 years imprisonment.

Crime—unlawful custody of a mental patient.

(2) In this section—

“**patient**” means a patient within the meaning of the *Mental Health Act 1974*.

### *Division 3—Threats*

#### **Meaning of “guilty intent” for division**

**130.** In this division—

“**guilty intent**” means intent to—

- (a) stop or hinder anyone from doing an act the person may lawfully do; or
- (b) compel anyone to do an act the person may lawfully abstain from doing.

#### **Threats**

**131.** A person must not, with guilty intent, threaten to—

- (a) kill or injure anyone; or
- (b) damage anyone’s property; or
- (c) cause other detriment to anyone that is unreasonable in all the circumstances.

Maximum penalty—

- (a) 7 years imprisonment, if the person threatens to kill or do grievous bodily harm to anyone or to damage property by explosives or fire; or
- (b) 5 years imprisonment, in any other case.

Crime—

- (a) making a threat to kill, do grievous bodily harm or cause damage by explosives or fire;
- (b) making a threat.

**Division 4—Unlawful stalking****What is unlawful stalking**

**132.(1)** A person unlawfully stalks anyone if the first person engages in stalking directed at the other person—

- (a) intentionally causing the other person to be aware of the first person's conduct; and
- (b) in a way that would cause any reasonable person in the other person's circumstances to believe the first person is likely to commit an unlawful and violent act against the other person.

**(2)** In this division—

**“circumstances”** of the other person, are the circumstances of the other person known, foreseen or reasonably foreseeable by the first person.

**“property”**, of anyone else, includes property in which both the first person and the other person have an interest.

**“stalking”** means a course of conduct consisting of acts of the following type or other similar acts done to, or to the property of, the other person or anyone else on at least 2 separate occasions—

- (a) contacting, following, loitering near, watching or approaching anyone;
- (b) contacting, loitering near, watching, approaching or entering a place where anyone else lives, works or visits;
- (c) interfering with property in anyone else's possession;
- (d) giving offensive material to anyone else, directly or indirectly, including for example, by leaving the material where it will be found by, given to or brought to the attention of, anyone else;
- (e) harassing, intimidating or threatening anyone else;
- (f) doing an unlawful act against anyone else or anyone's else's property.

**“unlawful and violent act”**, committed against a person, means an act that is an offence committed against—

- (a) the person or anyone else about whose health or custody the

person would reasonably be expected to be seriously concerned if the act were done, including, for example, a dependant, relative, friend, employer or associate; or

- (b) the property of the person or property about which the person would reasonably be expected to be seriously concerned if the act were done, including, for example—
  - (i) the premises where the person lives or works; or
  - (ii) the property of a dependant, relative, friend, employer or associate of the person.

**“violent”** act, includes—

- (a) for a violent act committed against a person—an act depriving a person of liberty; and
- (b) for a violent act committed against property—an unlawful act of damaging, removing, using or interfering with property.

### **Unlawful stalking**

**133.(1)** A person must not unlawfully stalk anyone.

Maximum penalty—

- (a) 7 years imprisonment if, for any stalking act, the person—
  - (i) uses or threatens to use unlawful violence against anyone or anyone’s property; or
  - (ii) possesses a weapon; or
  - (iii) contravenes, or threatens to contravene, an injunction or order imposed or made by a court under a law of a State or the Commonwealth; or
- (b) 5 years imprisonment, in any other case.

Crime—

- (a) unlawful stalking—
  - (i) with violence;
  - (ii) while armed;
  - (iii) in contravention of a court order;

(b) unlawful stalking.

(2) It is a defence to a charge of the crime for the charged person to prove the course of conduct was engaged in for—

(a) a genuine industrial dispute; or

(b) a genuine political or other public dispute or issue carried on in the public interest.

## **PART 4—OTHER OFFENCES ENDANGERING LIFE, HEALTH OR SAFETY**

### *Division 1—Offences involving vehicles*

#### **Dangerous operation of a vehicle**

**134.(1)** A person must not operate a vehicle dangerously in a public place.

Maximum penalty—

(a) 14 years imprisonment, if—

(i) the person kills or does grievous bodily harm to anyone else; and

(ii) the concentration of alcohol in the person's blood is at least 150 mg of alcohol per 100 ml of blood; or

(b) 10 years imprisonment, if the person—

(i) kills or does grievous bodily harm to anyone else; and

(ii) is adversely affected by an intoxicating substance; or

(c) 7 years imprisonment, if the person kills or does grievous bodily harm to anyone else; or

(d) 5 years imprisonment, if the person is adversely affected by an intoxicating substance; or

(e) 3 years imprisonment, in any other case.

## Crime—

- (a) dangerous operation of a vehicle causing death or grievous bodily harm and while having a blood-alcohol level of at least 0.15;
- (b) dangerous operation of a vehicle causing death or grievous bodily harm and while intoxicated;
- (c) dangerous operation of a vehicle causing death or grievous bodily harm;
- (d) dangerous operation of a vehicle while intoxicated;
- (e) dangerous operation of a vehicle.

## (2) In this section—

**“operate a vehicle dangerously”** in a public place means operate the vehicle at a speed or in a way dangerous to the public, having regard to all the circumstances, including, for example—

- (a) the nature, condition and use of the public place; and
- (b) the nature and condition of the vehicle; and
- (c) the number of persons or vehicles or other objects that are, or might reasonably be expected to be, in the public place; and
- (d) the concentration of alcohol in the operator’s blood; and
- (e) the presence of any other intoxicating substance in the operator’s body.

**“public place”** includes—

- (a) a road; and
- (b) a place of public resort open to or used by the public as of right; and
- (c) a place being used for a public purpose or open to the public, whether or not on payment; and
- (d) a place open to the public by the express or tacit consent or sufferance of the owner, whether or not the place is always open to the public;

but does not include a place being used to race or test vehicles and from which other traffic is excluded at the time.



### **Contravening Act about commercial vehicles**

**135.(1)** A person must not operate, or permit to be operated, a vehicle used for commercial purposes if—

- (a) the person has contravened an Act applying to the vehicle about its construction, maintenance or use; and
- (b) the operation endangers, or is likely to endanger, anyone else's life because of the contravention.

Maximum penalty—3 years imprisonment.

Crime—operating a commercial vehicle causing danger.

**(2)** In this section—

“**Act**” includes an Act of the Commonwealth or another State.

### **Putting destructive thing in vehicle etc.**

**136.(1)** A person must not—

- (a) put a destructive thing in a vehicle; or
- (b) give a destructive thing to anyone to put it in a vehicle; or
- (c) possess a destructive thing in a vehicle.

Maximum penalty—7 years imprisonment.

Crime—causing a destructive thing to be in a vehicle.

**(2)** It is a defence to a charge of the crime to prove the act claimed to be the crime was—

- (a) if the person is the owner or operator of the vehicle—lawful, apart from subsection (1); or
- (b) lawfully consented to by the owner or operator of the vehicle, knowing the thing was a destructive thing; or
- (c) authorised under an Act.

**(3)** In this section—

“**Act**” includes an Act of the Commonwealth or another State.

“**destructive thing**” means an explosive or noxious substance, or another

thing, that may directly or indirectly endanger the safety of a person in the vehicle.

### **Endangering vehicle passenger**

**137.(1)** A person must not do a harmful act—

- (a) with intent to harm a vehicle passenger, whether or not a particular passenger; or
- (b) causing harm to a vehicle passenger.

Maximum penalty—

- (a) for paragraph (a)—life imprisonment; or
- (b) for paragraph (b)—14 years imprisonment.

Crime—

- (a) doing an unlawful act with intent to harm a vehicle passenger;
- (b) doing an unlawful act causing harm to a vehicle passenger.

**(2)** For subsection (1), a vehicle passenger is harmed if the passenger is injured or the passenger's safety is endangered.

**(3)** In this section—

**“anything connected with a vehicle's control, operation or maintenance”** includes anything used in connection with the vehicle's control, operation or maintenance, including, for example—

- (a) for a train—a railway line; or
- (b) for a motor vehicle—a road; or
- (c) for a boat—a port; or
- (d) for an aircraft—an airport.

**“do a harmful act”** means unlawfully—

- (a) deal with a vehicle or anything connected with a vehicle's control, operation or maintenance; or
- (b) make, or interfere with, a signal or communication; or
- (c) show, or interfere with, a light; or
- (d) for a person who has a duty to do anything—omit to do the thing.

“**vehicle passenger**” means a person travelling, or who may travel, in the vehicle.

*Division 2—Other dangerous acts*

**Disabling or stupefying with intent to commit a crime**

**138.(1)** A person must not, with intent to commit a crime—

- (a) make, or attempt to make, anyone incapable of resistance in a way likely to choke, suffocate or strangle the other person; or
- (b) administer, or attempt to administer, a stupefying drug or thing to anyone.

Maximum penalty—life imprisonment.

Crime—disabling, or attempting to disable, with intent.

**(2)** In this section—

“**stupefying**” includes overpowering.

**Acts intended to cause serious harm or stop arrest or detention**

**139.(1)** A person must not, with guilty intent—

- (a) unlawfully do grievous bodily harm or transmit a serious disease to anyone; or
- (b) unlawfully strike, or attempt to strike, anyone with a thing capable of achieving the guilty intent; or
- (c) unlawfully cause an explosion; or
- (d) send or give an explosive substance or other dangerous or noxious thing to anyone; or
- (e) cause an explosive substance or other dangerous or noxious thing to be taken or received by anyone; or
- (f) put a corrosive fluid or a destructive or explosive substance in a place; or
- (g) unlawfully throw at anyone, or otherwise apply to anyone, a

corrosive fluid or a destructive or explosive substance.

Maximum penalty—life imprisonment.

Crime—doing a harmful act with intent to cause serious harm or stop arrest.

(2) In this section—

“**guilty intent**” means intent to—

- (a) do grievous bodily harm or transmit a serious disease to anyone else; or
- (b) resist or stop the lawful arrest or detention of anyone.

### **Placing explosive or noxious substance with intent**

**140.** A person must not unlawfully, and with intent to do bodily harm to anyone else, put an explosive or noxious substance in a place.

Maximum penalty—14 years imprisonment.

Crime—placing an explosive or noxious substance with intent.

### **Placing explosive substance**

**141.** A person must not wilfully and unlawfully put an explosive substance in a place in circumstances that the substance may cause bodily harm to anyone else.

Maximum penalty—3 years imprisonment.

Crime—wilfully placing an explosive substance where it may cause bodily harm.

### **Setting traps**

**142.(1)** A person must not set a trap—

- (a) with intent to kill or do grievous bodily harm to anyone else; or
- (b) in a way likely to kill or do grievous bodily harm to anyone else who comes into contact with the trap.

Maximum penalty—14 years imprisonment.

Crime—setting a trap.

(2) This section does not make it unlawful to set a trap—

- (a) of a type that is usually set for destroying vermin; or
- (b) in a reasonable way to protect a dwelling house.

(3) In this section—

“set” includes place.

“trap” includes anything likely to kill or do grievous bodily harm to anyone.

### **Permitting traps to remain**

**143.(1)** A person who possesses or occupies a place must not knowingly permit a trap that has been set in the place by anyone else, in contravention of section 142,<sup>15</sup> to remain there.

Maximum penalty—3 years imprisonment.

Crime—permitting a trap to remain in a place.

(2) In this section—

“set” includes placed.

“trap” includes anything likely to kill or do grievous bodily harm to a person.

### **Acts causing bodily harm**

**144.** A person must not unlawfully do an act, or omit to do an act that it is the person’s duty to do, if the act or omission causes bodily harm to anyone else.

Maximum penalty—3 years imprisonment.

Crime—unlawfully causing bodily harm.

### **Obstructing rescue or escape from unsafe premises**

**145.(1)** A person must not unlawfully obstruct anyone in the other person’s efforts to save the life of anyone who is in, or escaping from, dangerous, destroyed or other unsafe premises.

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<sup>15</sup> Section 142 (Setting traps)

Maximum penalty—life imprisonment.

Crime—obstructing rescue or escape from unsafe premises.

(2) Subsection (1) applies whether the other person is trying to save his or her own life or anyone else's life.

### **Administering poison with intent to harm**

**146.** A person must not unlawfully, and with intent to injure or annoy anyone else, cause a poison or other noxious thing to be administered to, or taken by, anyone.

Maximum penalty—

- (a) 14 years imprisonment, if the poison or other noxious thing endangers the life of, or does grievous bodily harm to, the person to whom it is administered or by whom it is taken; or
- (b) 7 years imprisonment, in any other case.

Crime—

- (a) administering poison with intent and causing harm;
- (b) administering poison with intent.

### *Division 3—Offences against persons under care*

#### **Failing to supply necessities**

**147.** A person who has a duty to provide the necessities of life for anyone must not unlawfully fail to perform the duty if, because of the failure—

- (a) the other person's life is, or is likely to be, endangered; or
- (b) the other person's health is, or is likely to be, permanently injured.

Maximum penalty—5 years imprisonment.

Crime—failing to supply the necessities of life.

**Endangering life or health of an employee under 16**

**148.** An employer who has a duty to provide necessary food, clothing or accommodation for an employee under 16 years must not unlawfully fail to perform the duty if, because of the failure—

- (a) the employee's life is, or is likely to be, endangered; or
- (b) the employee's health is, or is likely to be, permanently injured.

Maximum penalty—5 years imprisonment.

Crime—failing to provide necessary food, clothing or accommodation to an employee under 16 years.

**Endangering a child under 7 by exposure**

**149.** A person must not unlawfully abandon or expose a child under 7 years if, by doing so—

- (a) the child's life is, or is likely to be, endangered; or
- (b) the child's health is, or is likely to be, permanently injured.

Maximum penalty—12 years imprisonment.

Crime—endangering a child under 7 by abandonment or exposure.

**Cruelty to a child under 16**

**150.(1)** A person who has charge of a child under 16 years must not, by cruelty, cause unnecessary suffering to the child.

Maximum penalty—5 years imprisonment.

Crime—cruelty to a child under 16.

**(2)** It may, for example, be cruelty that causes unnecessary suffering to a child—

- (a) for a person who can provide adequate food, clothing, medical treatment, accommodation or care for the child from the person's own resources—to fail to do so; or
- (b) for a person who can not provide adequate food, clothing, medical treatment, accommodation or care for the child from the person's own resources—to fail to take all lawful steps to obtain

adequate food, clothing, medical treatment, accommodation and care for the child; or

- (c) to desert the child leaving the child without means of support.

## **CHAPTER 3—PROPERTY OFFENCES, DISHONESTY OFFENCES AND ASSOCIATED OFFENCES**

### **PART 1—STEALING, DISHONEST APPROPRIATION AND ASSOCIATED OFFENCES**

#### *Division 1—Property concepts*

#### **Meaning for pt 1 of “property”**

**151.(1)** In this part—

“property” includes—

- (a) money; and
- (b) electrical or other energy, gas and water; and
- (c) an animal mentioned in subsection (2); and
- (d) a thing produced by an animal mentioned in subsection (2); and
- (e) any other property real or personal, legal or equitable, including things in action and other intangible property.

**(2)** For this part, an animal is property if it is—

- (a) a tame animal, whether naturally tame or otherwise; or
- (b) an untamed animal of a type that, if kept, is usually kept confined;  
or



- (c) an untamed animal in a person's possession or being pursued for return to possession after escape.

### **Meaning for pt 1 of "owner" of property**

**152.** In this part—

**"owner"** of property, includes a person who is taken to be the property's owner under section 153 or 154.

### **When particular property is anyone else's property**

**153.(1)** This section applies for deciding under this part whether a person has done an act that is an offence in relation to anyone else's property.

**(2)** The property is the other person's property if the other person—

- (a) is the owner of the property; or
- (b) is a part owner of the property; or
- (c) possesses the property; or
- (d) has a special interest in the property.

**(3)** The property is the other person's property even if the person doing the act—

- (a) owns the property, subject to the other person's special interest in the property; or
- (b) is a part owner of the property; or
- (c) possesses the property; or
- (d) has a special interest in the property; or
- (e) is a member, director or officer of a corporation, partnership or association that owns the property.

**(4)** In this section—

**"special interest"** in property includes—

- (a) a legal or equitable interest in, or claim to, the property; and
- (b) a right arising from, or dependent on, possessing the property, whether possession is held by—

- (i) the person who has the right; or
- (ii) anyone for the persons' benefit.

### **When property held for someone else is the other person's property**

**154.(1)** This section also applies for deciding under this part whether the person referred to in this section as the receiver has done an act that is an offence in relation to anyone else's property.

**(2)** If a person (the **"receiver"**) receives property to hold for anyone else, the property is the other person's property.

**(3)** If a person (also the **"receiver"**) receives property, or a power of attorney for property, from anyone (the **"giver"**) with a direction from the giver requiring the receiver—

- (a) to apply the property, or property received in exchange for the property, to a particular purpose; or
- (b) to give, or account for, the property, or property received in exchange for the property, to a particular person; or
- (c) to dispose of the property and apply all or part of the proceeds to a particular purpose; or
- (d) to dispose of the property and give, or account for, all or part of the proceeds to a particular person;

the property or the proceeds are the giver's property until the direction has been complied with.

**(4)** However, the receiver does not commit an offence under this part in relation to anyone else's property only because the other person is taken to be the property's owner under subsection (2) or (3) if the property or proceeds are received on terms that—

- (a) the property or proceeds are to form an item in a debtor and creditor account between the receiver and the other person ; and
- (b) only the relationship of debtor and creditor is to exist between the receiver and the other person.

**(5)** Subsection (4) is taken to apply if the other person—

- (a) ordinarily deals with the receiver on the basis the property or

proceeds are to form an item in a debtor and creditor account between the person and the other person; and

- (b) has not given the receiver a written direction stating that the circumstances mentioned in paragraph (a) do not apply.

(6) In this section—

“**dispose**” means dispose by sale, mortgage, pledge or another way.

“**power of attorney**” means a power for the sale, mortgage, pledge, or other disposition of property.

“**proceeds**”, of a disposal, includes anything directly or indirectly received from the disposal.

“**receives**” includes receives jointly with anyone.

## *Division 2—Stealing and dishonest appropriation offences*

### *Subdivision 1—Stealing*

#### **What is “stealing”**

**155.(1)** A person “**steals**” anyone’s property if the person—

- (a) fraudulently takes the property or converts the property to the use of the person or anyone else; and
- (b) for the stealing, actually moves the property or otherwise actually deals with the property by some physical act.

(2) A person takes or converts property fraudulently if the person acts with intent to—

- (a) permanently deprive the other person of it; or
- (b) use it as a pledge or security; or
- (c) part with it on a condition about its return that the person may be unable to perform; or
- (d) deal with it in a way that it cannot be returned in the same condition; or

- (e) if the property is money—use it at the person’s will, even if the person intends to repay the other person afterwards.

## Stealing

**156.(1)** A person must not steal anyone’s property.

Maximum penalty—

- (a) 14 years, if the property—
  - (i) is stolen from someone’s person; or
  - (ii) is stolen by looting; or
  - (iii) has a value of at least 167 penalty units; or
  - (iv) is a firearm and the person steals it intending that it be used by anyone to commit a crime; or
  - (v) is a testamentary instrument, whether the testator is alive or dead; or
  - (vi) is stolen by a contravention of fiduciary duty owed by the person to anyone; or
- (b) 7 years imprisonment, in any other case.

Crime—

- (a) stealing—
  - (i) from the person;
  - (ii) looting;
  - (iii) property of high value;
  - (iv) a firearm stolen with intent;
  - (v) a testamentary instrument;
  - (vi) in contravention of fiduciary duty;
- (b) stealing.

**(2)** In this section—

**“looting”** means stealing property that has been left unattended because of natural disaster, civil unrest, industrial dispute or the death or incapacity of anyone who possesses the property.

**Subdivision 2—Dishonest appropriation****What is an “appropriation”**

**157.** A person “**appropriates**” anyone else’s property if the person—

- (a) takes the property; or
- (b) converts the property to the use of anyone other than the owner; or
- (c) uses the property; or
- (d) otherwise assumes the owner’s right to the property.

**Dishonest appropriation**

**158.** A person must not dishonestly appropriate anyone else’s property.

Maximum penalty—

- (a) 14 years imprisonment, if—
  - (i) the person is a director of a corporation, and the property is owned by the corporation; or
  - (ii) the person is the other person’s employee, and the property is owned by the employer; or
  - (iii) the person uses or intends to use the property to facilitate the commission of a crime; or
  - (iv) the property came into the person’s possession subject to a trust, direction or condition that it be applied to a purpose or be given to a particular person; or
  - (v) the property came into the person’s possession on account of anyone else; or
  - (vi) the benefit derived by the person from the appropriation of the property has a value of at least 167 penalty units; or
- (b) 7 years imprisonment, in any other case.

Crime—

- (a) dishonest appropriation—

- (i) as a corporation director;
  - (ii) as an employee;
  - (iii) with intent to commit a crime;
  - (iv) in contravention of a trust, direction or condition;
  - (v) of property held on account of anyone else;
  - (vi) to a high value;
- (b) dishonest appropriation.

***Subdivision 3—Provisions common to stealing and dishonest appropriation***

**Conversion of property**

**159.** A person may convert property—

- (a) whether the person takes possession of the property to convert the property; or
- (b) whether the property is in the person's possession when the conversion happens.

**Example of acts that may be fraudulent or dishonest**

**160.(1)** A person's act may be fraudulent or dishonest, even though it is done without secrecy or an attempt to conceal.

**(2)** A person may do an act in relation to anyone else's property fraudulently or dishonestly even though the person—

- (a) is willing to pay for the property; or
- (b) intends to restore the property afterwards to the other person; or
- (c) intends to make restitution for the property to the other person; or
- (d) intends to afterwards fulfil the person's obligations relating to the property.

**(3)** A person may take property fraudulently or dishonestly if—

- (a) the person receives the property in circumstances in which—

- (i) it is then not identifiable; and
  - (ii) property in it has passed to the person; and
- (b) the person then fraudulently moves or dishonestly appropriates the property without discharging or making arrangements with its previous owner to discharge the person's indebtedness or other lawful obligation in relation to the thing.

*Example of subsection (3)—*

S, a member of the public, drives a vehicle with a partially filled petrol tank into a self-service petrol station. S fills the tank up with petrol and drives away without paying for the petrol or making arrangement to pay for the petrol. S has acted fraudulently or dishonestly under subsection (3).

(4) A person may take or convert property fraudulently or dishonestly if the person—

- (a) receives the property because of anyone else's mistake; and
- (b) takes or converts the property after the person knows about the mistake.

### **Example of act that is not fraudulent or dishonest**

**161.(1)** A person's taking, conversion or appropriation of property is not fraudulent or dishonest if, when the person does the taking, converting or appropriating, the person—

- (a) does not know who its owner is; and
- (b) reasonably believes the owner cannot be found.

(2) Subsection (1) does not apply to property that comes into a person's possession as a trustee or personal representative.

### **Examples of what is not stealing or dishonest appropriation**

**162.(1)** A person does not steal or dishonestly appropriate the body of an untamed animal that is not in captivity if the person takes the body—

- (a) after the person, or anyone for whom the person acts, kills the animal; but
- (b) before the owner of the land where the animal dies has taken

actual possession of the body.

(2) A person's agent does not steal or dishonestly appropriate goods or a document of title to goods given to the agent if the agent pledges or gives a lien on the goods or title document for an amount not more than the total of—

- (a) the amount owing to the agent from the person when pledging or giving the lien; and
- (b) the amount of a bill of exchange or promissory note accepted or made by the agent for the person.

(3) An employee does not steal or dishonestly appropriate food from the employee's employer if the employee, against the employer's orders, takes the food from the employer's possession to give to an animal belonging to, or in the possession of, the employer.

### **Making property moveable with intent to steal or dishonestly appropriate**

**163.** A person must not make property moveable with intent to steal or dishonestly appropriate it.

Maximum penalty—the maximum penalty that would apply had the thing been stolen or dishonestly appropriated after it became moveable.

Crime—making property moveable with intent.

### ***Division 3—Offences about property derived from other offences***

#### **Bringing stolen property into Queensland**

**164.(1)** A person must not bring stolen property into Queensland.

Maximum penalty—the lesser of the following—

- (a) the maximum penalty that would apply if the property were stolen in Queensland;
- (b) the maximum penalty for the act under the law in force in the place where the act was done.

Crime—bringing stolen property into Queensland.



(2) In this section—

**“stolen property”** means property obtained outside Queensland by an act that—

- (a) if it had been done in Queensland would have been stealing or a dishonest appropriation; and
- (b) is an offence under the law in force in the place where it was done.

### **Receiving tainted property**

**165.(1)** A person must not receive tainted property believing it to be tainted property.

Maximum penalty—14 years imprisonment.

Crime—receiving tainted property.

(2) To prove a person received property it is enough to prove that the person, either alone or with anyone else—

- (a) possessed it; or
- (b) helped to dispose of or hide it.

(3) A person who receives property from anyone who has acquired lawful title to it does not commit an offence even though the person knows it was previously tainted property.

(4) In this section—

**“tainted property”** means—

- (a) property obtained by—
  - (i) an act that is a crime; or
  - (ii) an act done outside Queensland that—
    - (A) if it had been done in Queensland would have been a crime; and
    - (B) is an offence under the law in force in the place where it was done; or
- (b) if property mentioned in paragraph (a) has (completely or partly)

been converted to, or mortgaged, pledged or exchanged for, other property—the other property.

### **Taking reward for recovery of tainted property**

**166.(1)** A person must not dishonestly take a reward under an arrangement that the person will help anyone else recover tainted property.

Maximum penalty—7 years imprisonment.

Crime—dishonestly taking reward for recovery of tainted property.

**(2)** In this section—

**“arrangement”** includes agreement, contract and understanding.

**“tainted property”** means property obtained by—

- (a) an act that is a crime; or
- (b) an act done outside Queensland that—
  - (i) if it had been done in Queensland would have been a crime; and
  - (ii) is an offence under the law in force in the place where it was done.

**“take a reward”** means—

- (a) receive or obtain a benefit; or
- (b) agree to receive or obtain a benefit.

## **PART 2—ROBBERY AND EXTORTION**

### **Robbery**

**167.(1)** A person must not—

- (a) steal anyone’s property; and
- (b) immediately before, when or immediately after stealing the property, use or threaten to use actual violence to a person or any

property to obtain the stolen property or to stop or overcome resistance to its being stolen.

Maximum penalty—

- (a) life imprisonment, if the person—
  - (i) is, or pretends to be, armed with a dangerous thing; or
  - (ii) is in company with anyone; or
  - (iii) immediately before, when or immediately after committing the offence, does bodily harm to a person; or
- (b) 14 years imprisonment, in any other case.

Crime—

- (a) robbery—
  - (i) while armed;
  - (ii) in company;
  - (iii) with bodily harm;
- (b) robbery.

(2) In this section—

“**dangerous thing**” includes—

- (a) a dangerous or offensive weapon or instrument; and
- (b) an explosive or noxious substance.

### **Attempted robbery**

**168.(1)** A person must not—

- (a) attempt to steal anyone’s property; and
- (b) immediately before, when or immediately after attempting to steal the property, use or threaten to use actual violence to a person or property to obtain the property to be stolen or to stop or overcome resistance to its being stolen.

Maximum penalty—

- (a) life imprisonment, if the person is armed with a dangerous thing and, immediately before, when or immediately after committing

the offence, does bodily harm to a person with the thing; or

- (b) 14 years imprisonment, if the person—
  - (i) is, or pretends to be, armed with a dangerous thing; or
  - (ii) is in company with anyone; or
  - (iii) immediately before, when or immediately after committing the offence, does bodily harm to a person; or
- (c) 7 years imprisonment in any other case.

Crime—

- (a) attempted robbery while armed and with bodily harm;
- (b) attempted robbery—
  - (i) while armed;
  - (ii) in company;
  - (iii) with bodily harm;
- (c) attempted robbery.

(2) In this section—

“**dangerous thing**” includes—

- (a) a dangerous or offensive weapon or instrument; and
- (b) an explosive or noxious substance.

## **Extortion**

**169.(1)** A person must not, without reasonable or probable cause, make an unlawful demand with intent—

- (a) to gain a benefit for anyone; or
- (b) to cause a detriment to anyone.

Maximum penalty—life imprisonment.

Crime—extortion.

(2) It is immaterial that—

- (a) the demand is made in a way ordinarily used to inform the public rather than a particular person; or

- (b) the threat does not specify—
  - (i) the detriment to be caused; or
  - (ii) the person to whom, or the property to which, the detriment is to be caused.

*Example—*

A threat may be made to the public or an unidentified member of the public.

**(3)** In this section—

**“make”** an unlawful demand includes cause anyone to receive an unlawful demand.

**“threat”** includes a representation that, in all the circumstances, may reasonably be interpreted as a threat, but does not include a person’s threat to cause detriment to the person’s own self or to property owned solely by the person.

**“unlawful demand”** made by a person, means a demand made in any way with a threat to cause detriment to anyone or any property whether by the person or anyone else.

## PART 3—BURGLARY

### Burglary

**170.(1)** A person who is not the occupier of particular premises must not—

- (a) enter, or be in, the premises without the occupier’s consent with intent to commit a crime in the premises; or
- (b) enter, or be in, the premises without the occupier’s consent and commit a crime in the premises.

Maximum penalty—

- (a) life imprisonment, if the person immediately before, when or immediately after committing the offence, does grievous bodily harm to anyone else; or

- (b) 20 years imprisonment, if—
  - (i) the person immediately before, when or immediately after committing the offence, unlawfully assaults anyone else or unlawfully damages property; or
  - (ii) the person is, or pretends to be, armed with a dangerous thing; or
  - (iii) the person enters, or is in, the premises at night; or
  - (iv) the premises are a dwelling house; or
- (c) 14 years imprisonment, in any other case.

Crime—

- (a) burglary with grievous bodily harm;
- (b) burglary—
  - (i) with violence;
  - (ii) while armed with a dangerous thing;
  - (iii) of premises at night;
  - (iv) of a dwelling house.
- (c) burglary.

(2) A person enters premises as soon as a part of the person's body, or part of an instrument used by the person to enter, is inside the premises.

(3) In this section—

**“dangerous thing”** includes—

- (a) a dangerous or offensive weapon or instrument; and
- (b) an explosive or noxious substance.

**“occupier”**, of premises, means the person in peaceable possession of the premises.

## **PART 4—UNLAWFUL USE, POSSESSION OR CONTROL**

### **Unlawful use or possession of vehicle**

**171.(1)** A person must not—

- (a) unlawfully use a vehicle without the consent of the person who lawfully possesses it; or
- (b) possess a vehicle without the consent of the person who lawfully possesses it with intent to deprive the person or its owner of the use and possession of it, either temporarily or permanently.

Maximum penalty—

- (a) 12 years imprisonment, if the person wilfully damages, removes or otherwise interferes with part of the vehicle or equipment attached to it or intends to do so; or
- (b) 10 years imprisonment, if the person uses, intends to use the vehicle or intends that the vehicle be used—
  - (i) to facilitate the commission of a crime; or
  - (ii) to enable anyone to escape punishment for a crime; or
- (c) 7 years imprisonment in any other case.

Crime—

- (a) unlawful use or possession of a vehicle with property interference;
- (b) unlawful use or possession of a vehicle for a crime;
- (c) unlawful use or possession of a vehicle.

**(2)** It is a defence to a charge of the crime to prove the person had the lawful consent of the vehicle's owner to its use or possession.

### **Unlawfully taking control of aircraft**

**172.(1)** A person must not unlawfully take control of an aircraft.

Maximum penalty—

- (a) life imprisonment, if the person—

- (i) immediately before, when or immediately after taking control, uses or threatens to use actual violence to a person or property to take control or to stop or overcome resistance to control being taken; or
- (ii) is, or pretends to be, armed with a dangerous thing; or
- (iii) is in company with anyone; or
- (iv) takes control by deception; or
- (b) 14 years imprisonment, if anyone other than the person or the person's accomplice is in the aircraft; or
- (c) 7 years imprisonment, in any other case.

Crime—

- (a) taking control of an aircraft—
  - (i) with violence;
  - (ii) while armed;
  - (iii) in company;
  - (iv) by deception;
- (b) taking control of an occupied aircraft;
- (c) taking control of an aircraft.

(2) In this section—

**“dangerous thing”** includes—

- (a) a dangerous or offensive weapon or instrument; and
- (b) an explosive or noxious substance.

**“take”** control includes exercise control.

### Meaning of “restricted computer”

**173. “Restricted computer”** means all or part of a computer, computer system or computer network (the **“computer”**) for which—

- (a) a device or a particular sequence of electronic impulses is necessary to use the computer; and
- (b) the controller—



- (i) withholds access to the device or knowledge of, or the way of producing, the sequence from everyone else; or
- (ii) restricts access to the device or knowledge of, or the way of producing, the sequence to anyone authorised by the controller.

### **Meaning of computer “controller”**

**174.** A “**controller**” of a computer is the person who has the right to control the computer’s use.

### **Unlawful computer use**

**175.(1)** A person must not use a restricted computer without the consent of the computer’s controller.

Maximum penalty—

- (a) 10 years imprisonment, if the offence was committed with intent to commit a crime; or
- (b) 5 years imprisonment, in any other case.

Crime—

- (a) unauthorised use of a computer with intent;
- (b) unauthorised use of a computer.

**(2)** In this section—

“**use**” a restricted computer includes accessing any information stored in, or communicated to or from, the restricted computer.

## **PART 5—TAMPERING, FORGERY, FRAUD AND IMPERSONATION**

### *Division 1—Concepts of gaining benefit and causing detriment*

#### **Meaning of “benefit”**

**176. “Benefit”** includes—

- (a) property, advantage and service; and
- (b) the causing of a detriment; and
- (c) anything that is for a person’s good; and
- (d) direct or indirect benefit, relief or abstention from direct or indirect benefit, and promise of direct or indirect benefit.

#### **Meaning of “to gain a benefit”**

**177.** A person does an act to gain a benefit for anyone if the person does the act for the purpose of anyone gaining the benefit for anyone.

#### **Meaning of “detriment”**

**178. “Detriment”** includes—

- (a) personal injury, injury to reputation, property damage and financial loss; and
- (b) forcing anyone to do an act against the person’s will; and
- (c) loss, damage or injury of any kind; and
- (d) direct or indirect detriment and threat of direct or indirect detriment.

#### **Meaning of “to cause a detriment”**

**179.** A person does an act to cause a detriment to anyone if the person does the act for the purpose of anyone causing the detriment to anyone else.

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*Division 2—Offences***Tampering with documents**

**180.(1)** A person must not tamper with a document to dishonestly gain a benefit for anyone or dishonestly cause a detriment to anyone.

Maximum penalty—

- (a) 14 years imprisonment, if the document is a valuable security, testamentary instrument or document kept by a lawful authority; or
- (b) 7 years imprisonment, in any other case.

Crime—

- (a) dishonestly tampering with a legal document;
- (b) dishonestly tampering with a document.

**(2)** In this section—

“**tamper**” with a document means damage, hide or falsify the document.

**When does a person engage in “forgery”**

**181.** A person engages in forgery if the person—

- (a) makes, amends or deals with a document (the “**forged document**”) so that all the document, or a material part of it, purports—
  - (i) to be what in fact it is not; or
  - (ii) to be made by a person who did not make it; or
  - (iii) to be made by or for a person who does not exist; or
  - (iv) to be made by authority of a person who did not give the authority; or
  - (v) to have an effect it does not; or
- (b) uses a forged document.

**Forgery**

**182.** A person must not dishonestly engage in forgery to gain a benefit for anyone or cause a detriment to anyone.

Maximum penalty—

- (a) 14 years imprisonment, if—
  - (i) the person contravenes a fiduciary duty when committing the offence; or
  - (ii) the benefit gained, or the detriment caused, by the person in committing the offence has a value of at least 167 penalty units; or
- (b) 7 years imprisonment, in any other case.

Crime—

- (a) engaging in forgery—
  - (i) contravening a fiduciary duty;
  - (ii) affecting something of high value;
- (b) engaging in forgery.

**Dealing with things used for forgery**

**183.(1)** A person must not—

- (a) prepare a thing with the intent that anyone may use it to engage in forgery; or
- (b) possess a thing with the intent that anyone may use it to engage in forgery; or
- (c) use a thing with intent to engage in forgery; or
- (d) possess a thing the person used to engage in forgery; or
- (e) dispose of a thing the person used to engage in forgery.

Maximum penalty—3 years imprisonment.

Crime—dealing with thing used or for use in forgery.

**(2)** In this section—

“**prepare**” means prepare, begin to make or make

**Fraud**

**184.** A person must not dishonestly by any deception—

- (a) obtain property from anyone; or
- (b) induce anyone to give property to anyone else; or
- (c) induce anyone to do an act the other person may lawfully abstain from doing; or
- (d) induce anyone to abstain from doing an act the other person may lawfully do; or
- (e) gain a benefit for anyone; or
- (f) cause a detriment to anyone.

Example—

F induces V to sign a document by a deception that made V believe it was another type of document. F induces V to sign the document dishonestly by a deception. F commits fraud under paragraph (c).

Maximum penalty—

- (a) 14 years imprisonment, if the property, benefit or detriment has a value of at least 167 penalty units; or
- (b) 7 years imprisonment, in any other case.

Crime—

- (a) fraud affecting anything of high value;
- (b) fraud.

**Impersonation**

**185.(1)** A person must not dishonestly pretend to be anyone else to gain a benefit for anyone or cause a detriment to anyone.

Maximum penalty—5 years imprisonment.

- (2)** It is immaterial whether the other person is alive, dead or fictitious.

Crime—dishonest impersonation.

### Unlawful acknowledgment

**186.** A person must not unlawfully acknowledge a liability or a deed or other instrument in anyone else's name before a court or person lawfully authorised to take the acknowledgment.

Maximum penalty—7 years imprisonment.

Crime—unlawful acknowledgment.

### Gaining or giving unauthorised status

**187.(1)** A person must not—

- (a) dishonestly cause a lawful authority to issue a certificate to anyone; or
- (b) dishonestly cause a lawful authority to register anyone in a register kept by the authority as a person having, or having a right to, a certificate, office, privilege, rank, right or status; or
- (c) dishonestly represent to anyone that the person has been issued with a certificate or been registered by a lawful authority; or
- (d) give anyone a certificate knowing the other person intends to use it for an offence mentioned in paragraph (a), (b) or (c).

*Example of paragraph (c)—*

A false representation contained in an advertisement or publication.

Maximum penalty—3 years imprisonment.

Crime—gaining or giving unauthorised status.

**(2)** In this section—

**“certificate”** means a certificate issued by a lawful authority evidencing that the certificate holder has the right to an office, privilege, rank, right or status.

**“registered”** by a lawful authority, means registered by a lawful authority as a person who has the right to an office, privilege, rank, right or status.

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**PART 6—DAMAGE TO PROPERTY***Division 1—Basic concepts***What acts are “unlawful” damage to property**

**188.(1)** An act that damages a person’s property is unlawful if it—

- (a) is done without the person’s consent; and
- (b) is not authorised, justified or excused by law.

(2) It is immaterial that the person doing the act possesses, or has an interest in, the property.

(3) An act that damages property and that would otherwise be lawful is unlawful if it is done with intent to commit fraud, even if it is done by a person to the person’s own property.

**What is “damage” to property**

**189. “Damage”** property includes—

- (a) destroy the property; and
- (b) for an animal—kill or injure the animal; and
- (c) for a document—deal with the document so that—
  - (i) information contained in the document is altered, obliterated or made illegible, irrecoverable or inaccessible; or
  - (ii) it cannot convey a meaning in a visible or recoverable form as effectively as before the damage; and
- (d) for a mine—obstruct the working of the mine.

*Division 2—Offences***Unlawful damage**

**190.(1)** A person must not wilfully and unlawfully damage property.

Maximum penalty—

- (a) life imprisonment, if the damage—
  - (i) endangers a person's life; or
  - (ii) is to an animal and is caused by an infectious disease or poison; or
  - (iii) is caused by an explosive substance to property that is a place while anyone else is in the place; or
  - (iv) is caused by fire in circumstances amounting to arson; or
- (b) 14 years, if—
  - (i) the damage is caused by fire or an explosive or noxious substance; or
  - (ii) the property has a value of at least 167 penalty units; or
- (c) 7 years imprisonment, in any other case.

Crime—

- (a) unlawful damage—
    - (i) endangering life;
    - (ii) by infecting or poisoning an animal;
    - (iii) by explosion in an occupied place;
    - (iv) arson;
  - (b) unlawful damage—
    - (i) by fire or explosive or noxious substance;
    - (ii) to valuable property;
  - (c) unlawful damage.
- (2)** A person must not wilfully set fire to anything if—
- (a) relevant property is also likely to catch fire as a result; and
  - (b) it would be unlawful for the person to set fire to the relevant property.

Maximum penalty—14 years imprisonment.

Crime—endangering relevant property by fire.

- (3)** In this section—



“**arson**” means wilfully and unlawfully setting fire to relevant property.

“**infectious**” includes contagious.

“**relevant property**” means—

- (a) complete or incomplete premises; or
- (b) a complete or incomplete vehicle; or
- (c) a mine or a mine’s workings, fittings or appliances; or
- (d) a stack of cultivated vegetable produce, or of mineral or vegetable fuel; or
- (e) a crop of cultivated vegetable produce, hay or grass, whether standing or cut; or
- (f) a stand, paddock or other area of trees, shrubs or grass.

### **Danger by placing explosive or noxious substance**

**191.(1)** A person must not wilfully and unlawfully put an explosive or noxious substance in a place in circumstances that the substance may cause damage to property.

Maximum penalty—3 years imprisonment.

Crime—causing danger to property by placing explosive or noxious substance.

**(2)** A person must not put an explosive or noxious substance in a place, with intent to commit the crime of unlawful damage.

Maximum penalty—14 years imprisonment.

Crime—placing explosive or noxious substance in a place with intent.

### **Damaging mines**

**192.(1)** A person must not unlawfully and with intent to damage a mine—

- (a) obstruct the mine, including, for example, by running water into the mine or into an underground passage leading into the mine; or
- (b) interfere with equipment connected or used with the mine.

Maximum penalty—7 years imprisonment.

Crime—obstructing a mine, or interfering with mine equipment, with intent.

(2) Subsection (1)(a) does not apply to an act done underground when working an adjoining mine.

(3) In this section—

“**equipment**” includes an appliance, apparatus, cable or machinery and incomplete equipment.

“**interfere**” with equipment means detrimentally interfere with the equipment’s effective or efficient operation.

## CHAPTER 4—PUBLIC ORDER AND AUTHORITY OFFENCES

### PART 1—SEDITION, INTERFERING WITH POLITICAL LIBERTY AND INFLUENCING MLAs

#### Meaning of “**sedition intention**”

**193.(1)** An intention is a “**sedition intention**” if it is not justified by subsection (2) and is an intention—

- (a) to bring the Sovereign into hatred or contempt; or
- (b) to excite disaffection against—
  - (i) the Sovereign; or
  - (ii) the Government of Queensland as established under law; or
  - (iii) the Constitution of Queensland; or
  - (iv) the Legislative Assembly; or
  - (v) the administration of justice; or
- (c) to excite Queensland residents to attempt to change, in an unlawful way, anything established under Queensland law; or

- (d) to raise disaffection among Queensland residents; or
- (e) to promote a feeling of enmity between different groups of Queensland residents.

(2) It is lawful for a person acting in good faith to—

- (a) try to show the Sovereign has been mistaken or misled in the Sovereign's advices; or
- (b) point out, so that they can be remedied, mistakes or defects in—
  - (i) the government of Queensland; or
  - (ii) the Constitution of Queensland; or
  - (iii) Acts; or
  - (iv) the administration of justice; or
- (c) excite Queensland residents to attempt in a lawful way to change anything established under Queensland law; or
- (d) point out things that produce, or tend to produce, a feeling of enmity between different groups of Queensland residents so that the things can be remedied.

## **Sedition**

**194.(1)** A person must not—

- (a) undertake an enterprise to carry out a seditious intention; or
- (b) intentionally publish seditious words or seditious writing.

Maximum penalty—

- (a) 7 years imprisonment, if the person has been convicted previously of the offence; or
- (b) 3 years imprisonment, in any other case.

Crime—

- (a) sedition—aggravated;
- (b) sedition.

(2) A person may be prosecuted for the crime only if the prosecution is started within 6 months after the crime is committed.

(3) Also, a person cannot be prosecuted for the crime without the Attorney-General's consent.

(4) In this section—

**“seditious words”** means words stating a seditious intention.

**“seditious writing”** means writing, including anything intended to be read, stating a seditious intention.

### **Interfering with political liberty**

**195.** A person must not unlawfully use violence, threats or intimidation to hinder or interfere with the free exercise or performance of anyone's political right or duty.

Maximum penalty—3 years imprisonment.

Crime—interfering with political liberty.

### **Unlawfully interfering with an election**

**196.(1)** A person must not unlawfully do an act with intent to—

- (a) interfere with the lawful conduct of an election; or
- (b) improperly influence the result of an election.

Maximum penalty—7 years imprisonment.

Crime—interfering with an election.

(2) In this section—

**“election”** includes—

- (a) an election for the Legislative Assembly or a local government;  
and
- (b) an election held under an Act to fill a public office.

### **Attempt to unlawfully influence MLA**

**197.(1)** A person must not by unlawful threats or intimidation, or dishonestly by any deception—

- (a) attempt to influence a member of the Legislative Assembly in the

member's vote, opinion, judgment or action about anything to be decided in the Legislative Assembly or any of its committees; or

- (b) attempt to induce a member of the Legislative Assembly to be absent from the Legislative Assembly or any of its committees.

Maximum penalty—7 years imprisonment.

Crime—attempting to unlawfully influence an MLA.

- (2) It is immaterial whether the attempt is direct or indirect.

## **PART 2—PUBLIC ADMINISTRATION OFFENCES**

### **Disclosing official secret**

**198.** A person who is or has been a public officer must not unlawfully publish or communicate—

- (a) information coming, or that came, to the person's knowledge because of the office and that the person has a duty to keep secret; or
- (b) a document coming, or that came, into the person's possession because of the office and that the person has a duty to keep secret.

Maximum penalty—3 years imprisonment.

Crime—disclosing official secrets.

### **Abuse of office by public officer**

**199.** A public officer must not unlawfully and with intent to gain a benefit for, or cause a detriment to, anyone—

- (a) act on knowledge or information gained because of the officer's office or employment; or
- (b) perform a function of the officer's office or employment in relation to anything in which the officer has a direct or indirect financial interest; or

- (c) fail to perform a function of the officer's office; or
- (d) abuse the officer's office or its powers.

Maximum penalty—7 years imprisonment.

Crime—abuse of office by a public officer.

### **Breach of duty by public officer**

**200.** A public officer must not unlawfully and in breach of the officer's duty—

- (a) make a false entry in a document; or
- (b) fail to make an entry in a document; or
- (c) give a certificate that is false in a material particular; or
- (d) falsify or damage a document by doing or not doing anything; or
- (e) give a return about property or remuneration that is false in a material particular; or
- (f) fail to give a return about property or remuneration; or
- (g) fail to give other information that the officer is required under law to give.

Maximum penalty—3 years imprisonment.

Crime—breach of duty by a public officer.

### **Obstructing or resisting public officer**

**201.** A person must not unlawfully obstruct a public officer in the exercise of a power, or the performance of a function, of the office.

Maximum penalty—3 years imprisonment.

Crime—obstructing a public officer.

## **PART 3—JUSTICE ADMINISTRATION OFFENCES**

### **Dishonestly attempting to influence juror**

**202.(1)** A person must not dishonestly attempt to influence anyone in the other person's conduct as a juror in a judicial proceeding.

Maximum penalty—7 years imprisonment.

Crime—dishonestly attempting to influence a juror.

**(2)** It is immaterial whether or not the other person has been sworn as a juror.

**(3)** In this section—

“**dishonestly**” includes by threats or intimidation.

### **Threatening juror**

**203.** A person must not threaten to cause a detriment to anyone because of anything done by the other person as a juror in a judicial proceeding.

Maximum penalty—7 years imprisonment.

Crime—threatening a juror.

### **Perjury**

**204.(1)** A person must not, in a judicial proceeding or for starting a judicial proceeding, knowingly give false testimony about anything that is material to an issue pending in the proceeding, or intended to be raised in the proceeding.

Maximum penalty—

- (a) life imprisonment, if the person commits the offence to obtain the conviction of anyone for an offence of a type for which the penalty, or maximum penalty, is life imprisonment; or
- (b) 14 years imprisonment, in any other case.

Crime—

- (a) perjury to obtain a conviction for an offence punishable with life imprisonment;

(b) perjury.

(2) It is immaterial—

- (a) whether the testimony is given on oath or under another sanction authorised by law; or
- (b) what forms and ceremonies are used to bind the person giving the testimony to speak the truth, if the person assents to the forms and ceremonies used; or
- (c) whether the testimony is given orally or in writing; or
- (d) whether or not the tribunal concerned is appropriately constituted or conducts its proceedings in the appropriate place, if it acts as a tribunal in the judicial proceeding; or
- (e) whether or not the person who gives the testimony is a competent witness; or
- (f) whether or not the testimony is admissible in the judicial proceeding.

(3) The issue about whether or not anything is material to an issue pending in a judicial proceeding, or intended to be raised in a judicial proceeding, is an issue of law.

(4) If, on the trial of a person for perjury, the jury is satisfied—

- (a) the person made 2 statements on oath or under another sanction authorised by law and 1 of the statements irreconcilably conflicts with the other; and
- (b) 1 of the statements was made by the person knowing it to be false but the jury cannot say which statement was made in that way;

the jury may make a special finding to that effect and find the person guilty of perjury.

### **Fabricating evidence with intent**

**205.(1)** A person must not fabricate evidence with intent to mislead a tribunal in a judicial proceeding.

Maximum penalty—7 years imprisonment.

Crime—fabricating evidence with intent.



(2) Subsection (1) does not apply if the fabrication of the evidence is perjury or counselling or procuring the commission of perjury.

### **Using fabricated evidence with intent**

**206.** A person must not knowingly use fabricated evidence with intent to mislead a tribunal in a judicial proceeding.

Maximum penalty—7 years imprisonment.

Crime—knowingly using fabricated evidence with intent.

### **Deceiving witness with intent**

**207.** A person must not deceive or attempt to deceive anyone called, or to be called, as a witness in a judicial proceeding with intent to affect the other person's testimony as a witness.

Maximum penalty—3 years imprisonment.

Crime—deceiving, or attempting to deceive, a witness with intent.

### **Damaging evidence with intent**

**208.** A person who knows anything is, or may be, needed in evidence in a judicial proceeding must not damage it with intent to stop it being used in evidence.

Maximum penalty—7 years imprisonment.

Crime—damaging evidence with intent.

### **Stopping witness from attending tribunal**

**209.(1)** A person must not wilfully stop, or attempt to stop, a person who has been properly summoned to attend as a witness before a tribunal from attending as a witness, or from producing anything in evidence, under the summons.

(2) In this section—

“**summons**” includes subpoena.

Maximum penalty—7 years imprisonment.

Crime—wilfully stopping, or attempting to stop, a witness from attending a tribunal.

### **Conspiring to bring false accusation**

**210.(1)** A person (the “**conspirator**”) must not conspire with anyone to charge a person, or cause a person to be charged, with an offence (the “**claimed offence**”), if the conspirator—

- (a) knows the person is innocent of the claimed offence; or
- (b) does not believe the person is guilty of the claimed offence.

Maximum penalty—

- (a) life imprisonment, if the claimed offence is of a type for which the penalty, or maximum penalty, is life imprisonment; or
- (b) 14 years imprisonment, if the claimed offence is of a type for which the maximum penalty is another term of imprisonment; or
- (c) 7 years imprisonment, in any other case.

Crime—

- (a) conspiracy to falsely charge with an offence punishable with life imprisonment;
- (b) conspiracy to falsely charge with an offence punishable with imprisonment;
- (c) conspiracy to falsely charge with an offence.

**(2)** It is immaterial whether the claimed offence is claimed to have been committed in or outside Queensland.

**(3)** A person cannot be prosecuted for the crime without the Attorney-General’s consent.

### **Conspiring to obstruct justice**

**211.(1)** A person must not conspire with anyone to obstruct the course of justice.

Maximum penalty—7 years imprisonment.

Crime—conspiracy to obstruct justice.

(2) A person cannot be prosecuted for the crime without the Attorney-General's consent.

### **Attempting to obstruct justice**

**212.** A person must not attempt to obstruct the course of justice.

Maximum penalty—14 years imprisonment.

Crime—attempting to obstruct justice.

### **Delaying to take arrested person before Magistrates Court**

**213.** If a person arrests anyone for an offence, the person must not wilfully delay taking the other person before a Magistrates Court to be dealt with under law.

Maximum penalty—3 years imprisonment.

Crime—wilfully delaying to take an arrested person before a Magistrates Court.

### **Interfering with property under lawful seizure**

**214.(1)** A person must not interfere with property attached or taken under the process or authority of a court with intent to obstruct the course of justice.

Maximum penalty—7 years imprisonment.

Crime—interfering with lawfully seized property with intent.

(2) In this section—

**“interfere with”** means receive, take away, keep, hide or dispose of.

## PART 4—PUBLIC AUTHORITY OFFENCES

### Application of part

**215.** This part does not apply to the custody of a person under the *Mental Health Act 1974*, section 66,<sup>16</sup> or who is a child in care within the meaning of the *Children's Services Act 1965*, unless the person is held in a prison.

### Aiding person to escape from lawful custody

**216.** A person must not—

- (a) aid anyone in lawful custody to escape, or to attempt to escape, from lawful custody; or
- (b) give anything to anyone in lawful custody, or deliver anything to a place where anyone is or will be in lawful custody, with intent to aid anyone to escape from lawful custody.

Maximum penalty—7 years imprisonment.

Crime—aiding escape from lawful custody.

### Freeing person from lawful custody without authority

**217.** A person must not free anyone from lawful custody without authority.

Maximum penalty—7 years imprisonment.

Crime—freeing person from lawful custody without authority.

### Escaping from lawful custody

**218.** A person must not escape from lawful custody.

Maximum penalty—7 years imprisonment.

Crime—escaping from lawful custody.

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<sup>16</sup> Section 66 (Provisions as to custody, conveyance and detention).

**Permitting escape from lawful custody**

**219.** A person responsible for keeping anyone in lawful custody must not permit the other person to escape.

Maximum penalty—7 years imprisonment.

Crime—permitting a person to escape from lawful custody.

**Harbouring etc. escaped prisoner**

**220.** A person must not harbour, maintain or employ anyone knowing the other person has escaped from lawful custody.

Maximum penalty—2 years imprisonment.

Crime—harbouring an escapee from lawful custody.

**False statements on oath etc.**

**221.(1)** A person must not state anything the person knows is false in a material particular in a statement that—

- (a) is permitted under law to be verified on oath or in another way; and
- (b) is verified by the person in the way permitted under law.

Maximum penalty—7 years imprisonment.

Crime—verifying a false statement.

(2) The issue of materiality is an issue of law.

**Other false statements**

**222.(1)** A person must not state anything the person knows is false in a material particular in a statement that—

- (a) is permitted under law to be made before someone else; and
- (b) is made by the person before the other person.

Maximum penalty—3 years imprisonment.

Crime—making a false statement before someone else.

(2) The issue of materiality is an issue of law.

**Contradictory statements—false statements**

**223.(1)** This section applies if a person is on trial for the crime of verifying a false statement<sup>17</sup> or making a false statement before someone else.<sup>18</sup>

**(2)** If the jury is satisfied—

- (a) the person has made 2 statements and 1 of the statements irreconcilably conflicts with the other; and
- (b) 1 of the statements was made by the person knowing it to be false in a material particular but the jury cannot say which statement was made in that way;

the jury may make a special finding to that effect and find the person guilty of the crime charged.

**Disobeying lawful order issued by court or under Act**

**224.(1)** A person must not unlawfully disobey a lawful order issued by a court, or a person authorised under an Act to make the order.

Maximum penalty—

- (a) 5 years imprisonment, if the order is made under section 416(2);<sup>19</sup> or
- (b) 5 years imprisonment or 2000 penalty units, if the order is made under section 417(7);<sup>20</sup> or
- (c) 1 year imprisonment, in any other case.

Crime—

- (a) unlawfully disobeying a lawful order prohibiting publication about a drugs misuse offence;
- (b) unlawfully disobeying a lawful order prohibiting publication of identifying matter about a person charged with attending a place being used for

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<sup>17</sup> Section 221 (False statements on oath etc.)

<sup>18</sup> Section 222 (Other false statements)

<sup>19</sup> Section 416 (Power to prohibit publication of drugs misuse offence proceedings)

<sup>20</sup> Section 417 (Certificate of discharge for s 290 crime)

unlawful prostitution;

(c) unlawfully disobeying a lawful order.

(2) Subsection (1) does not apply if a way of proceeding against the person for the disobedience is specifically provided by an Act and is intended to exclude all other punishment.

(3) A person cannot be prosecuted for the crime without a State law officer's consent.

(4) This section has effect subject to section 8.<sup>21</sup>

### **Conspiring to stop enforcement of Act**

**225.(1)** A person must not conspire with anyone to stop the enforcement of an Act.

Maximum penalty—3 years imprisonment.

Crime—conspiracy to stop an Act's enforcement.

(2) A person cannot be prosecuted for the crime without the Attorney-General's consent.

(3) In this section—

“**enforcement**” includes execution.

“**stop**” includes defeat.

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<sup>21</sup> Section 8 (Code does not limit contempt of court jurisdiction)

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## CHAPTER 5—OTHER PUBLIC INTEREST OFFENCES

### PART 1—SEXUAL OFFENCES

#### Indecently dealing with child under 16

**226.(1)** A person must not unlawfully and indecently deal with a child under 16 years.

Maximum penalty—

- (a) 14 years imprisonment, if—
  - (i) the child is, to the person's knowledge, the person's descendant; or
  - (ii) the person is the child's guardian or has the child under the person's care; or
  - (iii) the child is under 12 years; or
- (b) 7 years imprisonment, in any other case.

Crime—

- (a) indecently dealing—
  - (i) with a child under 16 by an ancestor;
  - (ii) with a child under 16 by a guardian or carer;
  - (iii) with a child under 12;
- (b) indecently dealing with a child under 16.

**(2)** Without limiting subsection (1), a person is taken to unlawfully and indecently deal with a child under 16 years if the person—

- (a) unlawfully procures the child to commit an indecent act; or
- (b) unlawfully permits himself or herself to be indecently dealt with by the child; or
- (c) wilfully and unlawfully exposes the child to an indecent act by anyone; or
- (d) without legitimate reason, wilfully exposes the child to indecent



material; or

(e) unlawfully uses the child for anyone's sexual gratification.

(3) If the child was at least 12 years when the crime was committed, it is a defence to prove the person reasonably believed that the child was at least 16 years.

(4) In this section—

“**deal with**” includes do an act that, if done without consent, would be an assault.

“**material**” includes objects and documents.

### **Vaginal intercourse with female under 16**

**227.(1)** A person must not have unlawful vaginal intercourse with a female child under 16 years.

Maximum penalty—

(a) life imprisonment, if—

(i) the person is the child's guardian or has the child under the person's care; or

(ii) the child is under 12 years; or

(b) 5 years imprisonment, in any other case.

Crime—

(a) having unlawful vaginal intercourse—

(i) with a female under 16, by a guardian or carer;

(ii) with a female under 12;

(b) having unlawful vaginal intercourse with a female under 16.

(2) If the child was at least 12 years when the crime was committed, it is a defence to prove the person reasonably believed the child was at least 16 years.

(3) If a prosecution of a person for the crime is not started within 2 years after the crime is committed, the person cannot be prosecuted for the crime without a State law officer's consent.

**Taking a child under 16 for an immoral purpose**

**228.(1)** A person must not take a child under 16 years for anyone to do an act in relation to the child that is the crime of indecently dealing with a child under 16<sup>22</sup> or having unlawful vaginal intercourse with a female under 16.<sup>23</sup>

Maximum penalty—

- (a) life imprisonment, if the child is a female under 12 years and the act is the crime of having unlawful vaginal intercourse with a female under 16 years; or
- (b) 10 years imprisonment, if the child is under 12 years and the act is the crime of indecently dealing with a child under 16; or
- (c) 5 years imprisonment, in any other case.

Crime—

- (a) taking a female under 12 for unlawful vaginal intercourse;
- (b) taking a child under 12 for indecently dealing;
- (c) taking a child under 16 for an immoral purpose.

**(2)** It is immaterial whether or not the child is taken for a particular person to do the act concerned.

**(3)** If the child was at least 12 years when the crime was committed, it is a defence to prove the person reasonably believed the child was at least 16 years.

**Taking a child for anal intercourse**

**229.(1)** A person must not take a child for anyone to do an act in relation to the child that is the crime of having anal intercourse with a child.<sup>24</sup>

Maximum penalty—

- (a) life imprisonment, if the child is under 12 years; or

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<sup>22</sup> Section 226 (Indecently dealing with child under 16)

<sup>23</sup> Section 227 (Vaginal intercourse with female under 16)

<sup>24</sup> Section 243 (Anal intercourse with a child)

- (b) 7 years imprisonment, in any other case.

Crime—

- (a) taking a child under 12 for anal intercourse;  
(b) taking a child for anal intercourse.

(2) It is immaterial whether or not the child is taken for a particular person to do the act concerned.

(3) If the child was at least 12 years when the crime was committed it is a defence to prove the person reasonably believed the child was an adult.

### **Maintaining a sexual relationship with a child under 16**

**230.(1)** An adult must not maintain an unlawful relationship of a sexual nature with a child under 16 years.

Maximum penalty—

- (a) life imprisonment, if, in the course of the relationship, the adult commits a sexual offence for which the adult is liable to imprisonment for life or at least 14 years; or  
(b) 14 years imprisonment, if, in the course of the relationship, the adult commits a sexual offence for which the adult is liable to imprisonment for at least 5 years; or  
(c) 7 years imprisonment, in any other case.

Crime—

- (a) maintaining an unlawful sexual relationship, with a child under 16, involving a sexual offence punishable by imprisonment for life or at least 14 years;  
(b) maintaining an unlawful sexual relationship, with a child under 16, involving a sexual offence punishable by imprisonment for at least 5 years;  
(c) maintaining an unlawful sexual relationship with a child under 16.

(2) An adult is not liable to be convicted of the crime unless the adult has, as an adult, done an act that is a relevant sexual offence in relation to the child at least 3 times while the adult maintained the claimed unlawful relationship.

(3) Evidence the adult did the act in relation to the child is admissible

against the adult and is probative of the unlawful relationship being maintained even if it does not disclose the date or exact circumstances of the act.

(4) If the child was at least 12 years when the crime was committed, it is a defence to prove the adult reasonably believed throughout the relationship that the child was at least 16 years.

(5) A person cannot be prosecuted for the crime without a State law officer's consent.

(6) In this section—

**“relevant sexual offence”** means a sexual offence other than the crime of indecently dealing with a child under 16 constituted only by wilfully exposing the child to indecent material without a legitimate reason as mentioned in section 226(2)(d).<sup>25</sup>

**“sexual offence”** means an offence of a sexual nature.

### **Owner of premises inducing child under 16 to be on the premises to be abused**

**231.(1)** An owner of premises must not induce a child under 16 years to be on the premises for anyone to do an act in relation to the child that is any of the following crimes—

- indecently dealing with a child under 16
- having unlawful vaginal intercourse with a female under 16
- incest with female
- incest with male.<sup>26</sup>

Maximum penalty—

(a) life imprisonment, if—

- (i) the child is a female under 12 years and the act is the crime of having unlawful vaginal intercourse with a female

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<sup>25</sup> Section 226 (Indecently dealing with child under 16)

<sup>26</sup> Sections 226 (Indecently dealing with child under 16), 227 (Vaginal intercourse with female under 16), 244 (Incest with female) and 245 (Incest with male)

- under 16; or
- (ii) the act is the crime of incest with female or incest with male; or
- (b) 10 years imprisonment, if the child is under 12 years and the act is the crime of indecently dealing with a child under 16; or
- (c) 7 years imprisonment, in any other case.

Crime—

- (a) inducing—
- (i) a female under 12 to be on premises for unlawful vaginal intercourse;
- (ii) a child under 16 to be on premises for incest;
- (b) inducing a child under 12 to be on premises for indecently dealing;
- (c) inducing a child under 16 to be on premises for an immoral act.

(2) It is immaterial whether or not the child is induced to be on the premises for a particular person to do the act concerned.

(3) If the act was the crime of indecently dealing with a child under 16 or having unlawful vaginal intercourse with a female under 16<sup>27</sup> and the child concerned was at least 12 years when the act happened, it is a defence to prove the owner reasonably believed the child was at least 16 years.

(4) In this section—

“**induce**” includes knowingly permit.

“**owner**”, of premises, includes the occupier of the premises and anyone having, or acting or helping in, the control or management of the premises.

### **Owner of premises inducing child to be on the premises for anal intercourse**

**232.(1)** An owner of premises must not induce a child to be on the

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<sup>27</sup> Sections 226 (Indecently dealing with child under 16) and 227 (Vaginal intercourse with female under 16)

premises for anyone to do an act in relation to the child that is the crime of having anal intercourse with a child.<sup>28</sup>

Maximum penalty—

- (a) life imprisonment, if the child is under 12 years; or
- (b) 7 years imprisonment, in any other case.

Crime—

- (a) inducing a child under 12 to be on premises for anal intercourse;
- (b) inducing a child to be on premises for anal intercourse.

(2) It is immaterial whether or not the child is induced to be on the premises for a particular person to do the act concerned.

(3) If the child was at least 12 years when the act happened, it is a defence to prove the owner reasonably believed the child was an adult.

(4) In this section—

“**induce**” includes knowingly permit.

“**owner**”, of premises, includes the occupier of the premises and anyone having, or acting or helping in, the control or management of the premises.

### **Unlawful sexual intercourse with a person who has an intellectual or psychiatric impairment**

**233.(1)** A person must not have, or attempt to have, unlawful sexual intercourse with someone who has an intellectual or psychiatric impairment.

Maximum penalty—

- (a) life imprisonment, if the person is the other person’s guardian or, for the time being, has the other person under the person’s care; or
- (b) 7 years imprisonment, in any other case.

Crime—having, or attempting to have, unlawful sexual intercourse—

- (a) with a person who has an intellectual or psychiatric impairment by a

<sup>28</sup> Section 243 (Anal intercourse with a child)

guardian or carer;

- (b) with a person who has an intellectual or psychiatric impairment.

**(2)** It is a defence to prove—

- (a) the person reasonably believed the other person was not a person who has an intellectual or psychiatric impairment; or
- (b) the act that was the crime was not, in the circumstances, sexual exploitation of the other person.

### **Indecently dealing with a person who has an intellectual or psychiatric impairment**

**234.(1)** A person must not unlawfully and indecently deal with someone who has an intellectual or psychiatric impairment.

Maximum penalty—

- (a) 14 years imprisonment, if the other person is, to the person's knowledge, the person's descendant; or
- (b) 10 years imprisonment, if the person is the other person's guardian or has the other person under the person's care; or
- (c) 5 years imprisonment, in any other case.

Crime—

- (a) indecently dealing with a person who has an intellectual or psychiatric impairment by an ancestor;
- (b) indecently dealing with a person who has an intellectual or psychiatric impairment by a guardian or carer;
- (c) indecently dealing with a person who has an intellectual or psychiatric impairment.

**(2)** Without limiting subsection (1), a person is taken to unlawfully and indecently deal with someone who has an intellectual or psychiatric impairment if the person—

- (a) unlawfully procures the other person to commit an indecent act; or
- (b) unlawfully permits himself or herself to be indecently dealt with by the other person; or

- (c) wilfully and unlawfully exposes the other person to an indecent act by anyone; or
- (d) without legitimate reason, wilfully exposes the other person to indecent material; or
- (e) unlawfully uses the other person for anyone's sexual gratification.

(3) It is a defence to prove—

- (a) the person reasonably believed the other person was not a person who has an intellectual or psychiatric impairment; or
- (b) the act or omission that was the crime was not, in the circumstances, sexual exploitation of the other person.

(4) In this section—

**“deal with”** includes do an act that, if done without consent, would be an assault.

**“material”** includes objects and documents.

### **Procuring a child for sexual intercourse**

**235.(1)** A person must not procure a child for the purpose of the child engaging in sexual intercourse.

Maximum penalty—14 years imprisonment.

Crime—procuring a child for sexual intercourse.

(2) It is immaterial whether the sexual intercourse is to be engaged in in Queensland or elsewhere.

(3) In this section—

**“procure”** means knowingly entice or recruit for sexual exploitation.

### **Procuring a person who has an intellectual or psychiatric impairment for sexual intercourse**

**236.(1)** A person must not procure anyone who has an intellectual or psychiatric impairment for the purpose of the other person engaging in sexual intercourse.

Maximum penalty—14 years imprisonment.



Crime—procuring a person who has an intellectual or psychiatric impairment for sexual intercourse.

(2) It is immaterial whether the sexual intercourse is to be engaged in in Queensland or elsewhere.

(3) In this section—

“procure” means knowingly entice or recruit for sexual exploitation.

### **Procuring sexual acts by deception or coercion**

**237.(1)** A person must not procure anyone for the purpose of the other person engaging in a sexual act—

- (a) by any deception as to the nature of the act or who the person is; or
- (b) by threats or intimidation.

Maximum penalty—

- (a) 14 years imprisonment, if the other person is a child under 16 years, or a person who has an intellectual or psychiatric impairment; or
- (b) 7 years imprisonment in any other case.

Crime—

- (a) unlawfully procuring a child under 16, or a person who has an intellectual or psychiatric impairment, to engage in a sexual act;
- (b) unlawfully procuring a person to engage in a sexual act.

*Examples of deception—*

It is deception as to who a person is if A pretends to be B.

It is not deception as to who a person is if A pretends to be unmarried.

(2) It is immaterial whether the sexual act is to be engaged in in Queensland or elsewhere.

### **Drugging person to allow sexual act to be engaged in**

**238.(1)** A person must not, with intent to stupefy anyone without the other person’s consent and to allow a sexual act to be engaged in with the

other person—

- (a) administer a drug or other thing to the other person; or
- (b) cause the other person to take a drug or other thing.

Maximum penalty—

- (a) 14 years imprisonment, if the other person is a child under 16 years, or a person who has an intellectual or psychiatric impairment; or
- (b) 7 years imprisonment in any other case.

Crime—

- (a) drugging a child under 16, or a person who has an intellectual or psychiatric impairment, to allow a sexual act to be engaged in;
- (b) drugging a person to allow a sexual act to be engaged in.

(2) In this section—

“**stupefy**” includes overpower.

### **Indecent acts or shows with intent to insult**

**239.(1)** A person must not do an indecent act, or exhibit an indecent show, with intent to insult anyone.

Maximum penalty—2 years imprisonment.

Crime—doing something indecent with intent to insult.

(2) In this section—

“**insult**” includes offend.

“**show**” includes performance.

### **Public use of obscene materials**

**240.(1)** A person must not knowingly and unlawfully—

- (a) publicly sell obscene material or expose obscene material for sale;  
or
- (b) expose obscene material to view in a place to which the public has access.

Maximum penalty—

- (a) 7 years imprisonment, if the obscene material depicts a child under 16 years (whether or not engaged in sexual activity) in a way that is likely to cause offence to a reasonable adult; or
- (b) 2 years imprisonment in any other case.

Crime—

- (a) dealing with obscene material depicting a child under 16;
- (b) dealing with obscene material.

(2) It is immaterial whether or not an amount is charged for admitting the public to the place.

(3) It is a defence to prove the sale or exposure was for the public benefit.

(4) The issue of whether or not the sale or exposure was for the public benefit is an issue of fact.

(5) In this section—

“**material**” includes objects and documents.

“**sell**” includes hire.

### **Public exhibition of indecent show**

**241.(1)** A person must not knowingly and unlawfully publicly exhibit an indecent show.

Maximum penalty—

- (a) 14 years imprisonment, if a person appearing in the show is, or is represented to be, under 12 years; or
- (b) 7 years imprisonment, if a person appearing in the show is, or is represented to be, under 16 years; or
- (c) 2 years imprisonment in any other case.

Crime—

- (a) publicly exhibiting an indecent show involving a child under 12;
- (b) publicly exhibiting an indecent show involving a child under 16;
- (c) publicly exhibiting an indecent show.

(2) It is immaterial whether or not an amount is charged for admission to the show.

(3) It is a defence to prove that it was for the public benefit that the indecent show was publicly exhibited.

(4) The issue of whether or not the public exhibition of the indecent show was for the public benefit is an issue of fact.

(5) In this section—

“**show**” includes performance.

### **Person must not permit a child under 12 to witness indecent show**

**242.(1)** A person must not permit a child under 12 years to witness the public exhibition of an indecent show.

Maximum penalty—7 years imprisonment.

Crime—permitting a child under 12 to witness the public exhibition of an indecent show.

(2) It is a defence to prove that it was for the child’s benefit that the child was permitted to witness the public exhibition of the indecent show.

(3) The issue of whether or not it was for the child’s benefit that the child was permitted to witness the public exhibition of the indecent show is an issue of fact.

(4) In this section—

“**show**” includes performance.

### **Anal intercourse with a child**

**243.(1)** A person must not have anal intercourse with a child.

Maximum penalty—

(a) life imprisonment, if—

(i) the offence is committed in relation to a child under 12 years; or

(ii) the offence is committed in relation to child under 16 years and—

- (A) the child is, to the person's knowledge, the person's descendant; or
  - (B) the person is the child's guardian or has the child under the person's care.
- (b) 14 years imprisonment, if the offence is committed in relation to a child under 16 years; or
  - (c) 7 years imprisonment in any other case.

Crime—

- (a) having anal intercourse with a child—
  - (i) under 12;
  - (ii) under 16 by an ancestor, guardian or carer;
- (b) having anal intercourse with a child under 16;
- (c) having anal intercourse with a child.

(2) If the child was at least 12 years when the crime was committed, it is a defence to prove the person reasonably believed the child was an adult.

### **Incest with female**

**244.(1)** A person must not have sexual intercourse with a female the person knows is the person's female relative.

Maximum penalty—life imprisonment.

Crime—incest with female.

(2) In this section—

**“daughter”** includes adopted daughter.

**“female relative”**, of a person, means the person's—

- (a) mother or other female ancestor; or
- (b) sister; or
- (c) daughter or other female descendant.

**“mother”** includes adoptive mother.

**“sister”** includes adoptive sister.

**Incest with male**

**245.(1)** An adult female person must not permit a male she knows is her male relative to have sexual intercourse with her.

Maximum penalty—life imprisonment.

Crime—incest with male.

**(2)** It is a defence to prove that, when the female permitted her male relative to have sexual intercourse with her, she was acting under his coercion.

**(3)** In this section—

“**brother**” includes adoptive brother.

“**father**” includes adoptive father.

“**male relative**”, of a female person, means the female’s—

- (a) father or other male ancestor; or
- (b) brother; or
- (c) son or other male descendant.

“**son**” includes adopted son.

**Bestiality**

**246.** A person must not have sexual intercourse with an animal.

Maximum penalty—7 years imprisonment.

Crime—bestiality.

**Knowledge of age immaterial**

**247.(1)** This section applies to an offence against this part committed in relation to a person under a stated age.

**(2)** It is immaterial that the person charged with the offence did not know the person was under the age, or believed the person was not under the age.

**(3)** Subsection (2) applies unless it is stated otherwise.

## PART 2—BREACHES OF THE PEACE

### *Division 1—Riot*

#### Meaning of “violence” for division

**248.(1)** In this division—

“**violence**” means violent conduct and includes violent conduct towards property as well as towards persons.

(2) Violence is not restricted to conduct causing or intended to cause injury or damage but includes other violent conduct.

*Example of other violent conduct—*

Throwing a missile of a type capable of causing injury at or towards a person even though the missile does not hit, or falls short of, the person and does not cause or is not intended to cause injury.

#### Riot

**249.(1)** A person must not take part in a riot.

Maximum penalty—

- (a) life imprisonment, if there is unlawful violence consisting of, or including, violent conduct towards a building and the building is destroyed or partially destroyed; or
- (b) 10 years imprisonment, in any other case.

Crime—

- (a) riot destroying a building;
- (b) riot.

(2) A person takes part in a riot if—

- (a) at least 12 persons who are present together use or threaten unlawful violence for a common purpose; and
- (b) the person is one of the persons and uses unlawful violence for the common purpose; and
- (c) the conduct of the persons (taken together) would cause a person

of reasonable firmness present at the scene to fear for his or her personal safety.

(3) It is immaterial whether or not the persons use or threaten unlawful violence simultaneously.

(4) The common purpose may be inferred from conduct.

(5) A person of reasonable firmness need not be, or be likely to be, present at the scene.

(6) The crime may be committed in any place.

### *Division 2—Affray*

#### **Meaning of “violence” for division**

**250.(1)** In this division—

“**violence**” means violent conduct, but does not include violent conduct towards property.

(2) Violence is not restricted to conduct causing or intended to cause injury but includes other violent conduct towards persons.

*Example of other violent conduct—*

Throwing a missile of a type capable of causing injury at or towards a person even though the missile does not hit, or falls short of, the person and does not cause or is not intended to cause injury.

#### **Affray**

**251.(1)** A person must not make an affray.

Maximum penalty—5 years imprisonment.

Crime—affray.

(2) A person makes an affray if—

- (a) the person uses or threatens unlawful violence towards anyone; and
- (b) the person’s conduct would cause a person of reasonable firmness, present at the scene, to fear for his or her personal



safety.

(3) If 2 or more persons use or threaten unlawful violence, it is the conduct of them (taken together) that must be considered.

(4) For this section, a threat cannot be made using words alone.

(5) A person of reasonable firmness need not be, or be likely to be, present at the scene.

(6) The crime may be committed in any place.

### *Division 3—Other breaches of the peace*

#### **Being armed in a way likely to cause fear**

**252.** A person must not, without lawful excuse, be armed in public in a way likely to cause fear to anyone.

Maximum penalty—2 years imprisonment.

Crime—being armed in a way likely to cause fear.

#### **Forcible entry**

**253.(1)** A person must not, in a way likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, enter land that is in anyone else's actual and peaceable possession.

Maximum penalty—2 years imprisonment.

Crime—forcibly entering land in anyone else's possession.

(2) It is immaterial whether or not the person has a right to enter the land.

#### **Forcible holding**

**254.** A person in actual possession of land without the appearance of right must not hold possession of it, in a way likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, against anyone entitled by law to possess the land.

Maximum penalty—2 years imprisonment.

Crime—unlawfully holding land against anyone entitled to its possession.

**Threatening to enter or damage premises with intent to intimidate or annoy**

**255.** A person must not threaten to enter or damage premises with intent to intimidate or annoy anyone.

Maximum penalty—

- (a) 4 years imprisonment, if the offence is committed at night; or
- (b) 3 years imprisonment, in any other case.

Crime—

- (a) threatening, at night, to enter or damage premises with intent;
- (b) threatening to enter or damage premises with intent.

**Committing breach of the peace with intent to alarm**

**256.** A person must not discharge a loaded firearm, or commit another breach of the peace, with intent to alarm anyone.

Maximum penalty—

- (a) 4 years imprisonment, if the offence is committed at night; or
- (b) 3 years imprisonment, in any other case.

Crime—

- (a) committing a breach of the peace, at night, with intent;
- (b) committing a breach of the peace with intent.

## PART 3—BRIBERY

### *Division 1—Bribery of agents, MLAs and public officers*

#### **Meaning of “agent”, “MLA” and “prescribed person” for division**

**257.** In this division—

**“agent”** means—

- (a) an agent or employee; or
- (b) a guardian or trustee; or
- (c) an accountant, architect, doctor, engineer, lawyer, surveyor, valuer or other professional adviser; or
- (d) a director of a corporation, or anyone else responsible for controlling or managing a corporation; or
- (e) a member of the governing body of an unincorporated body, or anyone else responsible for controlling or managing an unincorporated body; or
- (f) a partner in a partnership; or
- (g) an adjudicator or referee; or
- (h) a person who holds himself or herself out to the public as being engaged in the business of making, for commercial purposes—
  - (i) disinterested selections or examinations; or
  - (ii) giving disinterested opinions about property or services.

**“MLA”** means a member of the Legislative Assembly.

**“prescribed person”** means an agent, MLA or public officer.

#### **Bribing an agent, MLA or public officer**

**258.** A prescribed person must not dishonestly seek or accept a benefit for anyone because of anything the prescribed person has done or not done, or will do or not do, as a prescribed person.

Maximum penalty—

- (a) 14 years imprisonment, if—
  - (i) the prescribed person is an MLA who is a Minister; or
  - (ii) if the prescribed person is a public officer and the crime is committed with intent to—
    - (A) interfere with the proper administration of justice; or
    - (B) procure or assist the commission of another offence; or
    - (C) protect anyone who has committed, or intends to commit, an offence from being found out or punished; or
- (b) 7 years imprisonment, in any other case.

Crime—

- (a) seeking or accepting a bribe—
  - (i) as an MLA while serving as a Minister;
  - (ii) as a public officer with intent;
- (b) seeking or accepting a bribe as the particular class of prescribed person.

### **Giving a bribe in relation to an agent, MLA or public officer**

**259.(1)** A person (the “**first person**”) must not dishonestly give or seek to give a benefit to anyone because of anything a prescribed person has done or not done, or will do or not do, as a prescribed person.

Maximum penalty—

- (a) 14 years imprisonment, if—
  - (i) the first person is a Minister, or the prescribed person is an MLA who is a Minister; or
  - (ii) the first person is a public officer, the prescribed person is an MLA and the crime is committed with intent to—
    - (A) interfere with the proper administration of justice; or
    - (B) procure or assist the commission of another offence; or
    - (C) protect anyone who has committed, or intends to commit, an offence from being found out or punished; or

- (iii) the prescribed person is a public officer and the crime is committed with intent to—
  - (A) interfere with the proper administration of justice; or
  - (B) procure or assist the commission of another offence; or
  - (C) protect anyone who has committed, or intends to commit, an offence from being found out or punished; or
- (b) 7 years imprisonment, in any other case.

Crime—

- (a) giving a bribe for the particular class of prescribed person's act or omission—
  - (i) involving a Minister;
  - (ii) by a public officer, with intent;
  - (iii) with intent;
- (b) giving a bribe for the particular class of prescribed person's act or omission.

(2) It is immaterial that the prescribed person is unaware of the first person's actions.

### **Seeking a bribe in relation to an agent, MLA or public officer**

**260.(1)** A person (the “**first person**”) must not dishonestly seek or accept a benefit for anyone because of anything a prescribed person has done or not done, or will do or not do, as a prescribed person.

Maximum penalty—

- (a) 14 years imprisonment, if—
  - (i) the first person is a Minister, or the prescribed person is an MLA who is a Minister; or
  - (ii) the first person is a public officer, the prescribed person is an MLA and the crime is committed with intent to—
    - (A) interfere with the proper administration of justice; or
    - (B) procure or assist the commission of another offence; or

- (C) protect anyone who has committed, or intends to commit, an offence from being found out or punished; or
- (iii) the prescribed person is a public officer and the crime is committed with intent to—
  - (A) interfere with the proper administration of justice; or
  - (B) procure or assist the commission of another offence; or
  - (C) protect anyone who has committed, or intends to commit, an offence from being found out or punished; or
- (b) 7 years imprisonment, in any other case.

Crime—

- (a) seeking or accepting a bribe for the particular class of prescribed person's act or omission—
  - (i) involving a Minister;
  - (ii) by a public officer, with intent;
  - (iii) with intent;
- (b) seeking or accepting a bribe for the particular class of prescribed person's act or omission.

(2) It is immaterial that the prescribed person is unaware of the first person's actions.

### **Custom of itself no defence**

**261.(1)** In a prosecution for an offence against this division committed in relation to an agent, it is not a defence that the seeking, accepting or giving of a benefit is customary in a trade, business or calling.

(2) Subsection (1) does not by implication extend the defences available to a person charged with a crime against this division.

***Division 2—Bribery relating to the administration of justice*****Bribing a judicial officer**

**262.(1)** A judicial officer must not dishonestly seek or accept a benefit for anyone because of anything the judicial officer has done or not done, or will do or not do, as a judicial officer.

Maximum penalty—14 years imprisonment.

Crime—seeking or accepting a bribe as a judicial officer.

**(2)** A person cannot be prosecuted for the crime without a State law officer's consent.

**Giving a bribe in relation to a judicial officer**

**263.(1)** A person must not dishonestly give or seek to give a benefit to anyone because of anything a judicial officer has done or not done, or will do or not do, as a judicial officer.

Maximum penalty—14 years imprisonment.

Crime—giving a bribe for a judicial officer's act or omission.

**(2)** It is immaterial that the judicial officer is unaware of the person's actions.

**(3)** A person cannot be prosecuted for the crime without a State law officer's consent.

**Seeking a bribe in relation to a judicial officer**

**264.(1)** A person must not dishonestly seek or accept a benefit for anyone because of anything a judicial officer has done or not done, or will do or not do, as a judicial officer.

Maximum penalty—14 years imprisonment.

Crime—seeking or accepting a bribe for a judicial officer's act or omission.

**(2)** It is immaterial that the judicial officer is unaware of the person's actions.

(3) A person cannot be prosecuted for the crime without a State law officer's consent.

### **Seeking a bribe for anything to be done as a juror**

**265.(1)** A person must not dishonestly seek or accept a benefit because of anything the person is to do as a juror in a judicial proceeding.

Maximum penalty—7 years imprisonment.

Crime—seeking or accepting a bribe for anything to be done as a juror.

(2) It is immaterial whether or not the person has been sworn as a juror.

### **Seeking a bribe for anything done as a juror**

**266.** A person must not dishonestly seek or accept a benefit because of anything the person did as a juror in a judicial proceeding.

Maximum penalty—7 years imprisonment.

Crime—seeking or accepting a bribe for anything done as a juror.

### **Seeking a bribe in relation to false testimony**

**267.(1)** A person must not seek or accept a benefit for anyone under an arrangement that a person called, or to be called, as a witness in a judicial proceeding will give false testimony or withhold true testimony.

Maximum penalty—7 years imprisonment.

Crime—seeking or accepting a bribe for a witness to give false testimony.

(2) In this section—

“**arrangement**” includes agreement, contract and understanding.

### **Giving a bribe in relation to false testimony**

**268.(1)** A person must not give or seek to give a benefit to anyone under an arrangement that a person called, or to be called, as a witness in a judicial proceeding will give false testimony or withhold true testimony.

Maximum penalty—7 years imprisonment.



Crime—giving a bribe for a witness to give false testimony.

(2) In this section—

“**arrangement**” includes agreement, contract and understanding.

### **Inducing a witness to give false testimony**

**269.** A person must not seek in a way other than that mentioned in section 267 or 268<sup>29</sup> to induce a person called, or to be called, as a witness in a judicial proceeding to give false testimony or withhold true testimony.

Maximum penalty—7 years imprisonment.

Crime—inducing a witness to give false testimony.

### **Compounding etc. offences**

**270.(1)** A person must not seek or accept a benefit for anyone on an agreement or understanding that the person—

- (a) will compound or conceal an offence; or
- (b) will not start, or will stop or delay, a prosecution for an offence; or
- (c) will withhold evidence of an offence.

Maximum penalty—

- (a) 7 years imprisonment, if the offence is of a type punishable with life imprisonment; or
- (b) 3 years imprisonment, in any other case.

Crime—

- (a) seeking or accepting a bribe to affect proceedings about an offence punishable with life imprisonment;
- (b) seeking or accepting a bribe to affect proceedings about an offence.

(2) This section does not apply to appropriate arrangements made for the

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<sup>29</sup> Sections 267 (Seeking a bribe in relation to false testimony) and 268 (Giving a bribe in relation to false testimony)

State about the start, end or delay of prosecutions for the administration of an Act.

## PART 4—ORGANISED CRIME

### When does a person engage in organised crime

**271.(1)** A person engages in organised crime if—

- (a) the person commits an organised crime offence on at least 3 separate occasions; and
- (b) the organised crime offences form all or part of a substantially planned and organised activity carried out by the person with at least 1 other person.

**(2)** It is immaterial whether the person is charged with any of the organised crime offences relied on to prove the person engaged in organised crime.

**(3)** It is immaterial—

- (a) whether the organised crime offences are the same or different types of organised crime offences; or
- (b) whether the person committed each of the offences with the same or a different person.

**(4)** In this section—

**“organised crime offence”** means any of the following offences—

- (a) a crime defined in chapter 3, parts 1, 2 and 4;<sup>30</sup>
- (b) forgery;
- (c) fraud;<sup>31</sup>

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<sup>30</sup> Chapter 3 (Property offences, dishonesty offences and associated offences), part 1 (Stealing, dishonest appropriation and associated offences), part 2 (Robbery and extortion) and part 4 (Unlawful use, possession or control)

<sup>31</sup> See sections 182 (Forgery) and 184 (Fraud).

- (d) a crime against chapter 5, part 3;<sup>32</sup>
- (e) dealing with obscene material;<sup>33</sup>
- (f) trafficking in a—
  - (i) schedule 1, part 1 dangerous drug; or
  - (ii) schedule 1, part 2 dangerous drug;
- (g) knowingly participating in the provision of prostitution;
- (h) unlawfully keeping a common gaming house;
- (i) unlawfully opening, keeping or using a common betting house;
- (j) unlawfully carrying on a lottery;<sup>34</sup>
- (k) an offence against the *Nature Conservation Act 1992*, section 88;<sup>35</sup>
- (l) an offence against the *Nature Conservation Act 1992*, section 89.<sup>36</sup>

### **Engaging in organised crime**

**272.(1)** A person must not engage in organised crime.

Maximum penalty—life imprisonment.

Crime—engaging in organised crime.

**(2)** A prosecution for the crime must not be started without a State law officer's consent.

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<sup>32</sup> Chapter 5 (Other public interest offences), part 3 (Bribery)

<sup>33</sup> See section 240 (Public use of obscene materials).

<sup>34</sup> See sections 275 (Trafficking in a dangerous drug), 289 (Knowingly participating in provision of prostitution), 301 (Keeping a common gaming house), 302 (Opening etc. a common betting house) and 303 (Opening etc. place to carry on lottery).

<sup>35</sup> Section 88 (Restriction on taking etc. protected animals)

<sup>36</sup> Section 89 (Restriction on taking etc. protected plants)

## PART 5—DRUG MISUSE OFFENCES

### What is a “dangerous drug”

**273.(1)** A “dangerous drug” is—

- (a) a thing specified in schedule 1, part 1 or 2; or
- (b) if the thing specified in schedule 1,<sup>37</sup> part 1 or 2 is a plant—part of the thing; or
- (c) a thing mentioned in paragraph (a) or (b) contained in a natural substance or in a preparation, solution or admixture.

**(2)** A reference in the Code to—

- (a) a thing specified in schedule 1, part 1 or 2; or
- (b) a dangerous drug specified in schedule 1, part 3, 4 or 5;

includes a reference to a salt, derivative or stereo-isomer of the thing or a salt of the derivative or stereo-isomer.

### Who is a “drug dependent person”

**274.** A “drug dependent person” is a person who—

- (a) because of the repeated administration of dangerous drugs to the person—
  - (i) demonstrates impaired control over the person’s continued use of dangerous drugs; or
  - (ii) exhibits drug-seeking behaviour suggesting impaired control over the person’s continued use of dangerous drugs; and
- (b) when the administration of dangerous drugs to the person stops, suffers or is likely to suffer mental or physical distress or disorder.

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<sup>37</sup> Schedule 1 (Drugs misuse)

**Trafficking in a dangerous drug**

**275.** A person must not carry on the business of unlawfully trafficking in a dangerous drug.

Maximum penalty—

- (a) 25 years imprisonment, if the dangerous drug is a thing specified in schedule 1,<sup>38</sup> part 1; or
- (b) 20 years imprisonment, if the dangerous drug is a thing specified in schedule 1, part 2.

Crime—

- (a) trafficking in a schedule 1, part 1 dangerous drug;
- (b) trafficking in a schedule 1, part 2 dangerous drug.

**Supplying a dangerous drug**

**276.(1)** A person must not unlawfully supply a dangerous drug to anyone, whether or not the other person is in Queensland.

Maximum penalty—

- (a) 25 years imprisonment, if the dangerous drug is a thing specified in schedule 1, part 1 and the offence is one of aggravated supply; or
- (b) 20 years imprisonment, if the dangerous drug—
  - (i) is a thing specified in schedule 1, part 1 and the offence is not one of aggravated supply; or
  - (ii) is a thing specified in schedule 1, part 2 and the offence is one of aggravated supply; or
- (c) 15 years imprisonment, if the dangerous drug is a thing specified in schedule 1, part 2 and the offence is not one of aggravated supply.

Crime—

- (a) aggravated supply of schedule 1, part 1 dangerous drug;

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<sup>38</sup> Schedule 1 (Drugs misuse)

- (b) (i) supply of schedule 1, part 1 dangerous drug;
- (ii) aggravated supply of schedule 1, part 2 dangerous drug;
- (c) supply of schedule 1, part 2 dangerous drug.

(2) The offence is one of aggravated supply if the supplier is an adult and the person to whom the thing is supplied—

- (a) is a child; or
- (b) has an intellectual or psychiatric impairment; or
- (c) is within an educational institution; or
- (d) is within a correctional institution; or
- (e) does not know the person is being supplied with the thing.

(3) It is a defence to a charge under subsection (1) that the charged person supplied a dangerous drug specified in schedule 1, part 5 for the charged person to prove the dangerous drug was—

- (a) prescribed for the charged person by a doctor for a condition the charged person had when it was prescribed; and
- (b) given by the charged person to someone whom the charged person reasonably believed had the same or a similar condition; and
- (c) a quantity not greater than a single dosage prescribed for the charged person; and
- (d) immediately consumed by the other person in the presence of the charged person.

(4) In this section—

**“supply”** means—

- (a) administer, distribute, give, sell, supply or transport; or
- (b) offering to do an act mentioned in paragraph (a); or
- (c) doing or offering to do an act preparatory to, in furtherance of, or for, an act mentioned in paragraph (a).

**Receiving or possessing property derived from trafficking or supplying dangerous drugs or converted property**

**277.(1)** A person must not receive or possess property derived from—

- (a) the commission of—
  - (i) the crime of trafficking in a dangerous drug;<sup>39</sup> or
  - (ii) the crime of supplying a dangerous drug;<sup>40</sup> or
- (b) the doing of an act outside Queensland that—
  - (i) if it had been done in Queensland would have been—
    - (A) the crime of trafficking in a dangerous drug; or
    - (B) the crime of supplying a dangerous drug; and
  - (ii) is an offence in the place where it was done;

knowing or believing the property to be that type of property.

Maximum penalty—20 years imprisonment.

Crime—knowingly receiving or possessing property derived from trafficking in or supplying a dangerous drug.

**(2)** A person must not receive or possess property that has been completely or partly converted into that property from property previously received or possessed in contravention of subsection (1) knowing or believing the property to be that type of property.

Maximum penalty—20 years imprisonment.

Crime—knowingly receiving or possessing property converted from property derived from trafficking in or supplying a dangerous drug.

**(3)** For subsection (2), property completely or partly mortgaged, pledged or exchanged for other property is taken to be converted to the other property.

**(4)** To prove the receiving of property it is enough to show the person has, either alone or jointly with anyone, aided in hiding the property or disposing of it.

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<sup>39</sup> See section 275 (Trafficking in a dangerous drug).

<sup>40</sup> See section 276 (Supplying a dangerous drug).

(5) This section does not apply to the receipt or possession of a dangerous drug.

### **Producing a dangerous drug**

**278.(1)** A person must not unlawfully produce a dangerous drug.

Maximum penalty—

- (a) 25 years imprisonment, if the dangerous drug is a thing—
  - (i) specified in schedule 1, part 1 and the quantity of the thing is at least the quantity specified in schedule 1, part 4 for the thing; or
  - (ii) specified in schedule 1, part 1 and—
    - (A) the quantity of the thing is at least the quantity specified in schedule 1, part 3 but less than the quantity specified in schedule 1, part 4 for the thing; and
    - (B) the person does not satisfy the judge that, when the person committed the offence, the person was a drug dependent person; or
- (b) 20 years imprisonment, if the dangerous drug is a thing—
  - (i) specified in schedule 1, part 1 and—
    - (A) the quantity of the thing is at least the quantity specified in schedule 1, part 3 but less than the quantity specified in schedule 1, part 4 for the thing; and
    - (B) the person satisfies the judge that, when the person committed the offence, the person was a drug dependent person; or
  - (ii) specified in schedule 1, part 2 and the quantity of the thing is at least the quantity specified in schedule 1, part 3 for the thing; or
  - (iii) specified in schedule 1, part 1, in any other case; or
- (c) 15 years imprisonment, in any other case if the dangerous drug is a thing specified in schedule 1, part 2.

Crime—



- (a) producing—
  - (i) a high level quantity of schedule 1, part 1 dangerous drug;
  - (ii) a certain quantity of schedule 1, part 1 dangerous drug;
- (b) producing—
  - (i) a high level quantity of schedule 1, part 1 dangerous drug by a drug dependent person;
  - (ii) a high level quantity of schedule 1, part 2 dangerous drug;
  - (iii) a schedule 1, part 1 dangerous drug;
- (c) producing a schedule 1, part 2 dangerous drug.

(2) In this section—

**“judge”** means the judge constituting the court before which a person is convicted of a crime against this section.

**“produce”** means—

- (a) cultivate, manufacture, package, prepare or produce; or
- (b) offering to do an act mentioned in paragraph (a); or
- (c) doing or offering to do an act preparatory to, in furtherance of, or for, an act mentioned in paragraph (a).

### **Possessing a dangerous drug**

**279.(1)** A person must not unlawfully possess a dangerous drug.

Maximum penalty—

- (a) 25 years imprisonment, if the dangerous drug is a thing—
  - (i) specified in schedule 1,<sup>41</sup> part 1 and the quantity of the thing is at least the quantity specified in schedule 1, part 4 for the thing; or
  - (ii) specified in schedule 1, part 1 and—
    - (A) the quantity of the thing is at least the quantity specified in schedule 1, part 3 but less than the quantity specified in schedule 1, part 4 for the thing; and

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<sup>41</sup> Schedule 1 (Drugs misuse)

- (B) the person does not satisfy the judge that, when the person committed the offence, the person was a drug dependent person; or
- (b) 20 years imprisonment, if the dangerous drug is a thing—
  - (i) specified in schedule 1, part 1 and—
    - (A) the quantity of the thing is at least the quantity specified in schedule 1, part 3 but less than the quantity specified in schedule 1, part 4 for the thing; and
    - (B) the person satisfies the judge that, when the person committed the offence, the person was a drug dependent person; or
  - (ii) specified in schedule 1, part 2 and the quantity of the thing is at least the quantity specified in schedule 1, part 3 for the thing; or
- (c) 15 years imprisonment in any other case if the dangerous drug is a thing specified in schedule 1, part 1 or 2.

Crime—

- (a) possessing—
  - (i) a high level quantity of schedule 1, part 1 dangerous drug;
  - (ii) a certain quantity of schedule 1, part 1 dangerous drug;
- (b) possessing—
  - (i) a high level quantity of schedule 1, part 1 dangerous drug by a drug dependent person;
  - (ii) a high level quantity of schedule 1, part 2 dangerous drug;
- (c) possessing a schedule 1, part 1 or 2 dangerous drug.

(2) It is a defence to a charge under subsection (1) that the charged person possessed a dangerous drug specified in schedule 1, part 5 for the charged person to prove—

- (a) the dangerous drug was given to the charged person by someone to whom the charged person reasonably believed it had been prescribed by a doctor for the same or a similar condition with which the charged person was suffering when it was given to the charged person; and

- (b) the quantity given was not more than a single dosage prescribed for the other person; and
- (c) it was immediately consumed by the charged person in the other person's presence.

(3) In this section—

**“judge”** means the judge constituting the court before which a person is convicted of a crime against this section.

### **Unlawful possession of a certain thing**

**280.(1)** A person must not possess a thing—

- (a) that the person has used in connection with the commission of a drugs misuse offence; or
- (b) for use in connection with the commission of a drugs misuse offence.

Maximum penalty—15 years imprisonment.

Crime—possessing a thing used, or for use, in connection with the commission of a drugs misuse offence.

(2) A person must not unlawfully possess a thing—

- (a) that the person has used in connection with the administration, consumption or smoking of a dangerous drug; or
- (b) for use in connection with the administration, consumption or smoking of a dangerous drug.

Maximum penalty—2 years imprisonment.

Crime—possessing a thing used, or for use, in connection with the administration, consumption or smoking of a dangerous drug.

(3) Subsection (2) does not apply to the possession of a needle.

(4) A person must not supply a needle to anyone for use in connection with the administration of a dangerous drug, whether the other person is in Queensland or elsewhere.

Maximum penalty—2 years imprisonment.

Crime—supplying a needle to administer a dangerous drug.

(5) Subsection (4) does not apply to the supply of a needle by a doctor, pharmacist or an authorised person.

(6) A person must take reasonable care and precautions with a needle to avoid danger to the life, safety or health of anyone else.

Maximum penalty—2 years imprisonment.

Crime—failing to take reasonable care and precautions with a needle.

(7) A person must dispose of a used needle in the way prescribed under a regulation.

Maximum penalty—2 years imprisonment.

Crime—failure to dispose of a used needle in the prescribed way.

(8) In this section—

“**authorised person**” means a person authorised by the Minister responsible for the administration of the *Health Act 1937*.

“**used needle**” means a needle that has been used to administer a dangerous drug.

### **Permitting place to be used for drugs misuse offence**

**281.** The occupier, or the person concerned in the control or management, of a place must not permit the place to be used to commit a drugs misuse offence.

Maximum penalty—15 years imprisonment.

Crime—permitting a place to be used to commit a drugs misuse offence.

### **Parties to offences committed outside Queensland**

**282.** If—

- (a) a person in Queensland is a party to an act done outside Queensland; and
- (b) the act would be a drugs misuse offence if it were done in Queensland; and
- (c) the act is an offence in the place where it is done;

the person commits a drugs misuse offence as if the act were done in Queensland.

### **Attempt to commit offence against this part**

**283.(1)** A person who attempts to commit an offence against this part is taken to commit the offence attempted.

**(2)** However, if a person is charged summarily with an offence against this part, the person may be summarily convicted of attempting to commit the offence.

### **Protection of informers**

**284.(1)** If an informer supplies information to a police officer about a drugs misuse offence, the informer's identity must be kept confidential at all times.

**(2)** A person must not disclose the name of an informer, or other particular likely to lead to the informer's identification.

Maximum penalty—5 years imprisonment.

Crime—disclosing information likely to identify informer.

**(3)** It is a defence to a charge under subsection (2) for the charged person to prove the disclosure was made in good faith for the protection of the interests of the informer or for the public good.

### **Authorised person permitted to receive and dispose of dangerous drug**

**285.(1)** An authorised person acting in good faith and in the proper discharge of the authorised person's professional duties may receive from anyone a thing the authorised person reasonably believes to be a dangerous drug.

**(2)** However, the authorised person may receive a dangerous drug specified in schedule 1,<sup>42</sup> part 3 only if the authorised person reasonably believes the quantity to be less than the quantity specified in schedule 1,

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<sup>42</sup> Schedule 1 (Drugs misuse)

part 3 for the thing.

(3) The authorised person must immediately dispose of the dangerous drug as prescribed under a regulation.

(4) In this section—

“**authorised person**” means a person authorised by the Minister responsible for the administration of the *Health Act 1937*.

## PART 6—PROSTITUTION

### Definitions for prostitution offences

286. In this part—

“**arrangement**” includes scheme, agreement, understanding, promise and undertaking, whether express or implied.

“**capacity**” means ability or power (whether direct or indirect), and includes ability or power that is exercisable because of, by way of, in breach of, or by revocation of, any of, or any combination of, the following (whether or not they are enforceable)—

- (a) trusts;
- (b) arrangements;
- (c) practices.

“**control**” means the capacity of an entity (the “**first entity**”) to dominate, directly or indirectly, decision-making in relation to the financial and operating policies of another entity so as to enable the other entity to operate with the first entity in pursuing the first entity’s objectives.

“**entity**” means a legal, administrative or fiduciary arrangement, organisational structure, or other party (including a person), having the capacity to deploy scarce resources to achieve objectives.

“**participate**” means aid, control, enable, facilitate or organise.

**Meaning of “prostitution”**

**287.(1)** A person engages in “**prostitution**” if the person engages in a sexual act with anyone else under an arrangement of a commercial character.

(2) It is immaterial whether—

- (a) the arrangement is initiated with the person engaging in the sexual act or anyone else; or
- (b) the pecuniary or other reward under the arrangement is to be received by the person engaging in the sexual act or anyone else.

**Procuring prostitution**

**288.(1)** A person must not—

- (a) procure anyone to engage in prostitution, either in Queensland or elsewhere; or
- (b) procure anyone to—
  - (i) leave Queensland for the purpose of engaging in prostitution elsewhere; or
  - (ii) come to Queensland for the purpose of engaging in prostitution; or
  - (iii) leave the other person’s usual place of residence in Queensland for the purpose of engaging in prostitution, either in Queensland or elsewhere.

Maximum penalty—

- (a) 14 years imprisonment, if the procured person is a child or a person who has an intellectual or psychiatric impairment; or
- (b) 7 years imprisonment, in any other case.

Crime—

- (a) procuring prostitution of a child or a person who has an intellectual or psychiatric impairment;
- (b) procuring prostitution of a person.

(2) In this section—

“**procure**” includes knowingly entice or recruit for sexual exploitation.

### **Knowingly participating in provision of prostitution**

**289.** A person must not knowingly participate, directly or indirectly, in the provision of prostitution by anyone else.

Maximum penalty—

- (a) 14 years imprisonment, if, to the person’s knowledge, the other person is a child or a person who has an intellectual or psychiatric impairment; or
- (b) in any other case—
  - (i) 3 years imprisonment for a first offence; or
  - (ii) 5 years imprisonment for a second offence; or
  - (iii) 7 years imprisonment for a third or subsequent offence.

Crime—

- (a) knowingly participating in the provision of prostitution by a child or a person who has an intellectual or psychiatric impairment;
- (b) knowingly participating in the provision of prostitution.

*Examples of the crime—*

*Example 1—*

A person who knowingly participates in the provision of prostitution by anyone else through a corporation, or other entity, or through another individual.

*Example 2—*

A person who provides financial or other resources to enable the establishment of premises from which prostitution is carried out or coordinated knowing the premises will be so used.

*Example 3—*

A person who franchises a network of prostitutes as if they were operating independently.

*Example 4—*

A person who receives financial or other benefit from anyone else engaging in prostitution in return for procuring clients.



*Example 5—*

Drivers, operators and hirers of vehicles who provide transport, or the means of transport, for prostitutes or clients knowing the transport is assisting prostitution.

*Example 6—*

A person who receives, directs or redirects telephone calls or other forms of messages, or who takes bookings or receives money, knowing that the action is connected with anyone else engaging in prostitution.

*Example 7—*

A person who participates, directly or indirectly, in any service, action or matter to knowingly enable anyone else to engage in prostitution.

**Attending a place being used for unlawful prostitution****290.(1)** A person must not—

- (a) engage in prostitution in a suspect place; or
- (b) be found in a suspect place without reasonable excuse; or
- (c) having been in a suspect place without reasonable excuse, be found leaving the place.

## Maximum penalty—

- (a) 14 years imprisonment, if, to the person's knowledge, a child, or a person who has an intellectual or psychiatric impairment, is in the suspect place at the time of the offence; or
- (b) in any other case—
  - (i) 3 years imprisonment for a first offence; or
  - (ii) 5 years imprisonment for a second offence; or
  - (iii) 7 years imprisonment for a third or subsequent offence.

## Crime—

- (a) attending a place being used for unlawful prostitution and at which a person known to be a child, or a person who has an intellectual or psychiatric impairment, is present;
- (b) attending a place being used for unlawful prostitution.

**(2)** In sentencing a person who is a prostitute or client, the court may, in mitigation of sentence, have regard to evidence of an appropriate sexual

health check undergone by the person within 3 months before the offence.

(3) In this section—

“**suspect place**” means a place reasonably suspected of being used for<sup>43</sup> prostitution by 2 or more prostitutes.

### **Having an interest in premises used for prostitution etc.**

**291.(1)** A person who is an interested person in relation to premises must not knowingly allow the premises to be used for prostitution by 2 or more prostitutes.

Maximum penalty—

- (a) 14 years imprisonment, if, to the person’s knowledge, a child or a person who has an intellectual or psychiatric impairment is in the premises at a time of the offence; or
- (b) in any other case—
  - (i) 3 years imprisonment for a first offence; or
  - (ii) 5 years imprisonment for a second offence; or
  - (iii) 7 years imprisonment for a third or subsequent offence.

Crime—

- (a) allowing premises, at which a person known to be a child or a person who has an intellectual or psychiatric impairment is present, to be used for unlawful prostitution;
- (b) allowing premises to be used for unlawful prostitution.

(2) A person allows premises to be used for prostitution if the person—

- (a) knowingly permits the premises to be used for prostitution; or
- (b) knowing that the premises are being used for prostitution, fails to take every reasonable step to stop that use.

(3) A police officer may serve on a person who is an interested person in relation to premises a written warning to the effect that the premises are being used for prostitution by 2 or more prostitutes.

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<sup>43</sup> Under the definition “for” in the dictionary, for includes for the purpose of.

(4) In a prosecution against the interested person mentioned in subsection (3), or anyone else aware of the warning, for the crime of allowing premises to be used for unlawful prostitution, evidence of the warning and its contents are admissible against the person charged with the crime.

(5) If a person who is an interested person in relation to premises—

- (a) is served with a warning under subsection (3) in relation to the premises; or
- (b) otherwise has reasonable grounds to suspect the premises are being used for prostitution by 2 or more prostitutes;

the person may, by written notice served on an occupier or user of the premises, require the occupier or user to leave the premises within 7 days after the service of the notice and not return.

(6) In this section—

**“interested person”**, in relation to premises, means a person who—

- (a) owns, leases, rents or otherwise has an interest in premises; or
- (b) is entitled to occupy or use premises; or
- (c) controls an entity that—
  - (i) owns, leases, rents or otherwise has an interest in premises; or
  - (ii) is entitled to occupy or use premises.

### **Person must not contravene requirement under s 291**

**292.** A person must not, without reasonable excuse, contravene a requirement made of the person under section 291(5).<sup>44</sup>

*Example of reasonable excuse—*

If the premises concerned were not used for prostitution by 2 or more prostitutes, the person has a reasonable excuse for failing to comply with the requirement.

Maximum penalty—7 years imprisonment.

<sup>44</sup> Section 291 (Having an interest in premises used for prostitution etc.)

Crime—failing to comply with requirement to leave premises used for unlawful prostitution.

### **Permitting a child etc. to be in a place used for prostitution**

**293.** A person must not knowingly cause or permit a child, or a person who has an intellectual or psychiatric impairment, to be in a place used for prostitution by 2 or more prostitutes.

Maximum penalty—14 years imprisonment.

Crime—causing or permitting a child, or a person who has an intellectual or psychiatric impairment, to be at a place used for unlawful prostitution.

## **PART 7—OTHER OFFENCES**

### *Division 1—Abortion*

#### **Attempts to procure abortion**

**294.(1)** A person must not, with intent to procure a female person's miscarriage—

- (a) unlawfully administer to her or cause her to take a poison or other noxious thing; or
- (b) unlawfully use force; or
- (c) unlawfully use other means.

Maximum penalty—14 years imprisonment.

Crime—unlawfully attempting to procure an abortion.

**(2)** It is immaterial whether or not the female is pregnant.

#### **Attempt by female to procure own abortion**

**295.(1)** A female person must not, with intent to procure her own miscarriage—

- (a) unlawfully administer to herself a poison or other noxious thing;  
or
- (b) unlawfully use force; or
- (c) unlawfully use other means; or
- (d) unlawfully permit a thing or means mentioned in paragraph (a),  
(b) or (c) to be administered or used to her.

Maximum penalty—7 years imprisonment.

Crime—unlawfully attempting to procure own abortion.

- (2) It is immaterial whether or not the female is pregnant.

### **Supplying anything to procure abortion**

**296.(1)** A person (the “**first person**”) must not unlawfully supply to, or procure for, anyone else anything the first person knows is intended to be unlawfully used to procure a female person’s miscarriage.

Maximum penalty—3 years imprisonment.

Crime—unlawfully supplying a thing to procure an abortion.

- (2) It is immaterial whether or not the female is pregnant.

## ***Division 2—Corpses***

### **Meaning of “corpse” for division**

**297.** In this division—

“**corpse**” means a dead human body or human remains.

### **Person must perform duty in relation to corpse**

**298.(1)** A person must not unlawfully—

- (a) fail to perform a duty in relation to the burial or other disposal of a corpse imposed on the person by law; or
- (b) fail to perform a duty taken on by the person affecting the burial or other disposal of a corpse.

Maximum penalty—2 years imprisonment.

Crime—failing to perform a duty in relation to a corpse.

(2) For subsection (1)(b), it is immaterial whether or not the duty was taken on for reward.

### **Person must not improperly interfere with corpse**

**299.(1).** A person must not unlawfully, and improperly or indecently, interfere with a corpse.

Maximum penalty—2 years imprisonment.

Crime—interfering improperly or indecently with a corpse.

(2) It is immaterial whether or not the corpse is buried.

### ***Division 3—Common nuisance, common gaming and betting houses and lotteries***

#### **Common nuisance**

**300.** A person must not unlawfully do an act or make an omission in relation to property under the person's control that—

- (a) causes danger to the public's lives, health or safety; or
- (b) causes danger to the public's property or comfort, and physical injury to anyone; or
- (c) obstructs the public in the exercise or enjoyment of a right common to all its members, and causes physical injury to anyone.

Maximum penalty—3 years imprisonment.

Crime—causing a public nuisance.

#### **Keeping a common gaming house**

**301.(1)** A person must not unlawfully keep a common gaming house.

Maximum penalty—3 years imprisonment.

Crime—unlawfully keeping a common gaming house.

(2) A person keeps a common gaming house—

- (a) if the person keeps for gain a place that persons customarily use for playing a game of chance; or
- (b) if the person keeps a place for, or used for, playing in the place a game of chance, or mixed chance and skill, and in the place—
  - (i) a bank is kept by at least 1 of the players exclusively of the others; or
  - (ii) a game, the chances of which are not equally favourable to all the players, is played.

(3) Without limiting the meaning of “**keep**”, a person is taken to keep a place if the person appears, acts or behaves as the person having the care, control or management of the place.

(4) In this section—

“**players**”, of a game, includes—

- (a) the game’s banker; and
- (b) other persons who manage the game, or against whom other players stake, play or bet.

### **Opening etc. a common betting house**

**302.(1)** A person must not unlawfully open, keep or use a common betting house.

Maximum penalty—3 years imprisonment.

Crime—unlawfully opening, keeping or using a common betting house.

(2) Without limiting the meaning of “**keep**”, a person is taken to keep a place if the person appears, acts or behaves as the person having the care, control or management of the place.

(3) In this section—

“**acceptor**”, of a place, means—

- (a) a principal acceptor of the place; or
- (b) anyone procured or employed by a person mentioned in

paragraph (a); or

- (c) the agent of a person mentioned in paragraph (a); or
- (d) a person responsible for the place's care or management; or
- (e) a person who, in some way, conducts the place's business.

**“common betting house”** means a place—

- (a) customarily used to make bets between an acceptor of the place and other persons; or
- (b) used for a principal acceptor of the place, or anyone on the principal acceptor's behalf, paying or receiving in the place money or other property as, or for, consideration—
  - (i) for an assurance, undertaking, promise or agreement to afterwards pay or give money or other property on an event or contingency about a horse race, other race, game, sport or exercise; or
  - (ii) for securing the paying or giving by anyone else of money or other property on an event or contingency mentioned in subparagraph (i).

**“principal acceptor”**, of a place, means the place's owner, occupier or keeper or anyone using the place.

### **Opening etc. place to carry on lottery**

**303.(1)** A person must not unlawfully open, keep or use a place to carry on a lottery

Maximum penalty—3 years imprisonment.

Crime—unlawfully carrying on a lottery.

**(2)** Without limiting the meaning of **“keep”**, a person is taken to keep a place if the person appears, acts or behaves as the person having the control, care or management of the place.

**(3)** In this section—

**“lottery”** means a scheme or device for the sale, gift, disposal or distribution of property depending on, or decided by, lot or chance.



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## CHAPTER 6—PROCEDURE

### PART 1—ARREST

#### Meaning of “arrest without warrant”

**304.(1)** If, for an offence, an Act states that the offender may be arrested without warrant, it means the provisions of the Code about the arrest of offenders or suspected offenders without warrant apply to the offence.

**(2)** If, for an offence, an Act states that the offender cannot be arrested without warrant, it means the provisions of the Code about the arrest of offenders or suspected offenders without warrant do not apply to the offence.

#### Arrest without warrant for all crimes

**305.** Every crime is an offence for which an offender may be arrested without warrant, unless otherwise provided.

#### Power to arrest without warrant

**306.(1)** This section applies to an offence for which an offender may be arrested without warrant generally ( the “**offence**”).

**(2)** A person may arrest anyone without warrant if the person finds the other person committing the offence.

**(3)** A person may arrest anyone without warrant if the person—

(a) finds the other person at night in circumstances giving reasonable grounds for believing the other person is committing the offence; and

(b) believes the other person is committing the offence.

**(4)** A person may arrest anyone without warrant if—

(a) the offence has been committed; and

- (b) the person reasonably believes the other person committed the offence.

(5) The lawfulness of an arrest under subsection (4) is unaffected if the other person is later found not to have committed the offence.

### **Arrest without warrant subject to conditions**

**307.** If, for an offence, an Act states that the offender may be arrested without warrant subject to a condition, including, for example, a condition that only a particular type of person may arrest, section 306<sup>45</sup> applies to the offence subject to the condition.

### **Arrest of persons found committing offences on aircraft**

**308.(1)** A pilot may arrest a person without warrant, if the pilot—

- (a) finds the person committing an offence on the aircraft or relating to the aircraft's use; or
- (b) reasonably believes the person is about to commit, has committed or has attempted to commit an offence on the aircraft or relating to the aircraft's use.

(2) The pilot may use reasonable force to arrest the person.

(3) The person must be placed in a police officer's custody as soon as practicable.

(4) The police officer must release the person unconditionally as soon as practicable after being satisfied that the detention of the person in custody is unnecessary.

(5) In this section—

**“pilot”** means a person on board an aircraft who is in command of the aircraft, and includes a person acting under the pilot's authority.

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<sup>45</sup> Section 306 (Power to arrest without warrant)

**Arrest during attempted escape**

**309.** A person may arrest anyone without warrant, if the person reasonably believes the other person—

- (a) has committed an offence; and
- (b) has escaped from, and is being pursued by, someone who has power to arrest the other person for the offence.

**Arrest of persons offering stolen property**

**310.** A person may arrest anyone without warrant, if—

- (a) the other person offers to sell, pawn, dispose of or give property to the person; and
- (b) the person reasonably believes the property was acquired by the commission of an offence for which an Act states that a person found committing it may be arrested without warrant.

**Arrested person must be brought before court**

**311.** If a person arrests anyone on a charge of an offence, the person must, as soon as reasonably practicable, bring the other person before a Magistrates Court to be dealt with under the law.<sup>46</sup>

**Person arresting to produce authority etc.**

**312.(1)** A person executing any process or warrant must—

- (a) have a copy of it with the person; and
- (b) produce the copy if required.

**(2)** A person arresting anyone (with or without warrant) must, if practicable, give notice of—

- (a) the process or warrant or cause of arrest under or on which the person is acting; and
- (b) if the person is acting under a power given only to a particular

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<sup>46</sup> See section 213 (Delaying to take arrested person before Magistrates Court).

type of officer or person—the fact that the person is of that type.

- (3) A person's failure to comply with subsection (1) or (2)—
- (a) does not make the execution of the process or warrant or the arrest unlawful; but
  - (b) is relevant to the inquiry whether the process or warrant might not have been executed or the arrest made in a reasonable but less forcible way.

## PART 2—PROCEEDINGS GENERALLY

### *Division 1—Jurisdiction of particular types of courts*

#### **Jurisdiction**

**313.** The jurisdiction of courts of justice to try persons charged with offences is stated in the laws about the courts' constitution and jurisdiction, unless the Code or another Act otherwise provides.

### *Division 2—Place of trial*

#### **Place of trial**

**314.(1)** A person charged with committing an indictable offence may be tried in a jurisdiction where an act or event that is an element of the offence takes place.

- (2) A person charged with an indictable offence involving—
- (a) stealing; or
  - (b) dishonestly appropriating property; or
  - (c) bringing stolen goods into Queensland;

may also be tried in a jurisdiction where the person was found with the property in the person's possession.

(3) A person charged with any of the following indictable offences may also be tried in a jurisdiction where the person is arrested or is in custody—

- stealing
- dishonest appropriation
- bringing stolen property into Queensland
- forgery.<sup>47</sup>

(4) A person charged with counselling or procuring the commission of an offence, or with becoming an accessory after the fact to an offence, may also be tried in a jurisdiction where the principal offender may be tried.

(5) A person charged with an offence committed outside Queensland who may lawfully be tried in Queensland may be tried in a jurisdiction where the person is arrested or is in custody.

(6) A person may be tried in a jurisdiction where the person is arrested or in custody if—

- (a) a person is charged with committing an offence for which the person may lawfully be tried in Queensland; and
- (b) it is uncertain where the offence was committed.

(7) A person charged with committing an offence can, with the person's consent, be tried in any jurisdiction.

(8) Subsections (4) to (7) apply to a charge for any offence, whether indictable or otherwise, and do not limit the jurisdiction in which the person may be tried.

### **Persons brought before wrong court**

**315.(1)** A person does not have the right to be acquitted merely because the court before which the person appears on trial on indictment considers the person is not properly triable before the court under section 314.<sup>48</sup>

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<sup>47</sup> Section 156 (Stealing)  
Section 158 (Dishonest appropriation)  
Section 164 (Bringing stolen property into Queensland)  
Section 182 (Forgery)

<sup>48</sup> Section 314 (Place of trial)

(2) The court may, if the person asks that the person be tried before an appropriate court—

- (a) if the person has been placed in charge of a jury—discharge the jury from giving a verdict; and
- (b) direct the person be tried before an appropriate court; and
- (c) remand the person, or release the person under the *Bail Act 1980*, to appear for trial before the other court.

(3) If the person does not make the request—

- (a) the trial must continue; and
- (b) the verdict and judgment have the same effect as if the person were properly triable before the court under section 314.<sup>49</sup>

(4) This section does not affect a person's right to plead to a court's jurisdiction.

### **Change of place of trial**

**316.(1)** If a person has been committed for trial before a court held at a specific place, the person or the State may apply for the trial to be held somewhere else.

(2) The court or a judge of the court, on good cause being shown, may order the trial be held—

- (a) before the same court or another court of competent jurisdiction; and
- (b) at a specified court sitting.

(3) Subsection (1) applies whether or not the person has been granted bail.

(4) If an indictment has been presented against a person in a court held at a place (the "**particular place**"), the person or the State may apply for the trial to be held somewhere else.

(5) The court or a judge of the court may order the trial be held—

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<sup>49</sup> Section 314 (Place of trial)

- (a) at a place other than the particular place; and
- (b) at a specified court sitting.

(6) Unless good cause is shown for not granting an application for a change of the place of trial for an indictable offence, the application must be granted if—

- (a) the person has been committed for trial for another indictable offence at a court held somewhere else or an indictment has been presented in a court held somewhere else charging the person with another offence; and
- (b) the charge for which the application is made and the charge for the offence mentioned in paragraph (a) could have been joined in the same indictment, had the offences been committed at the same place.

(7) When an order is made under this section—

- (a) the effects are the same as if the person had been committed for trial at the specified place and court sittings; and
- (b) if the person has been granted bail—the undertakings about bail are taken to be enlarged to the specified place and court sittings.

(8) A notice given to a person who is required to attend as a witness (the “**witness**”) is also taken to be enlarged to that place and court sittings.

(9) Notice of the time and court sittings must be given to the witness.

***Division 3—Committal proceedings and other summary proceedings  
before magistrates courts***

### **Committal proceedings**

**317.** The practice and procedure for committal proceedings and the committal of persons for trial are stated in the *Justices Act 1886*, unless an Act otherwise provides.

### **Summary proceedings**

**318.(1)** The *Justices Act 1886* states the procedures for—

- (a) the prosecution of offenders to obtain summary convictions for indictable offences; and
  - (b) enforcing the summary convictions; and
  - (c) enforcing orders made by a magistrates court on the prosecutions.
- (2) However, subsection (1) applies subject to the Code or another Act.

### **Time limitation of 2 years for summary prosecution**

**319.(1)** A prosecution for an indictable offence to obtain a summary conviction must start within 2 years after the offence is committed, unless otherwise expressly provided.

(2) However, a person charged with an indictable offence may consent to proceedings for the offence being dealt with summarily even if it is more than 2 years after the offence was committed.

### **When a charge for an indictable offence may be decided summarily**

**320.(1)** This section applies if a person appears before a Magistrates Court charged with—

- (a) an indictable offence punishable on conviction on indictment by not more than 7 years imprisonment; or
- (b) burglary; or
- (c) unlawful use or possession of a vehicle;<sup>50</sup> or
- (d) receiving tainted property; or
- (e) a drugs misuse offence punishable on conviction on indictment by not more than 15 years imprisonment.

(2) The court may decide the charge summarily.

(3) The court must consider all relevant circumstances in deciding whether to decide the charge summarily, including, for example—

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<sup>50</sup> Under the *Acts Interpretation Act 1954*, section 35F (Reference to brief description of offence or circumstance of aggravation), the reference to burglary and unlawful use or possession of a vehicle includes a reference to any circumstance of aggravation.



- (a) whether or not the charged person wants the charge to be decided summarily; and
- (b) the nature and seriousness of the offence and whether the court can adequately deal with it; and
- (c) the effect on the person if the person is convicted, including, for example—
  - (i) the penalty that may be imposed; and
  - (ii) any detriment to the person's reputation or employment prospects; and
- (d) whether or not the prosecution wants the charge to be decided summarily; and
- (e) whether the person is represented before the court by a legal practitioner.

(4) In exercising its discretion under subsection (2), the court must take into account that it should ordinarily decide summarily a charge—

- (a) about property with a value of not more than 84 penalty units; and
- (b) not involving proof of actual violence, or a threat of actual violence, to anyone.

(5) If the court decides to decide the charge summarily, the court must—

- (a) write down the charge and read it to the person; and
- (b) ask the person whether the person is guilty or not guilty as charged; and
- (c) decide the charge summarily.

(6) To decide the charge summarily, the court must use the same procedure it uses to decide charges for simple offences under the *Justices Act 1886*.

(7) However, subsection (6) applies subject to any provision of this Code applied to a charge for an indictable offence dealt with summarily.

(8) On conviction, the person is liable to a maximum penalty of the lesser of the following—

- (a) the maximum penalty that could have been imposed if the person had been convicted on indictment;

(b) 2 years imprisonment.

(9) A Magistrates Court may start to summarily decide the charge even if more than 2 years have passed since the offence was committed.

(10) A Magistrates Court may, at any time before the court imposes a sentence, decide not to summarily decide the charge.

(11) A decision under subsection (2) is a decision of law.

(12) If the person is summarily convicted of the charge, the person may appeal to the Court of Appeal under section 421(a)<sup>51</sup> on the ground that the Magistrates Court should not have decided the charge summarily.

### **Change to committal proceedings during summary proceedings**

**321.(1)** This section applies if, during proceedings before a Magistrates Court to decide summarily a charge against a person of an indictable offence, the court decides the charge is not one that should be decided summarily.

(2) The court must stop treating the proceedings as proceedings to decide the charge summarily and start treating them as committal proceedings.

(3) For the committal proceedings—

- (a) the person's plea at the start of the hearing must be disregarded; and
- (b) the evidence already presented by the prosecution is evidence in the committal proceedings; and
- (c) at the person's election, the evidence already presented by the person is evidence in the committal proceedings.

(4) The *Justices Act 1886*, section 104,<sup>52</sup> must be complied with for the committal proceedings.

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<sup>51</sup> Section 421 (Right of convicted person to appeal)

<sup>52</sup> *Justices Act 1886*, section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)

**Effect of summary conviction of indictable offences**

**322.** If a person is summarily convicted of an indictable offence, the conviction is taken to be a conviction for only a simple offence.

***Division 4—Simple offence charges dealt with in Supreme Court or a District Court*****Supreme Court and a District Court may decide summary offences**

**323.(1)** This section applies to a person appearing before the Supreme Court or a District Court on a charge of an indictable offence.

**(2)** The court may summarily decide a relevant summary charge if—

- (a) the prosecution applies to the court to hear the summary charge; and
- (b) the person—
  - (i) consents to the court deciding the summary charge; and
  - (ii) informs the court that a plea of guilty will be entered on the summary charge; and
- (c) the court grants the prosecution's application; and
- (d) the prosecution files a complaint under the *Justices Act 1886* for the charge in the court.

**(3)** If a plea of not guilty is entered on the relevant summary charge, the court must direct the charge be heard by a Magistrates Court.

**(4)** If the summary charge is heard by the court, the court may make any order on conviction that a Magistrates Court can make on a similar conviction.

**(5)** The power under which the court's rules are made includes the power to make rules for the practice and procedure for summarily hearing and deciding relevant summary charges.

**(6)** A relevant summary charge may be filed at any time.

**(7)** This section applies despite a provision of the Code or another Act.

**(8)** In this section—

“**court**” means the Supreme Court or a District Court mentioned in subsection (1).

“**relevant summary charge**” means a charge of a simple offence that, had the offence been an indictable offence, could have been included as a count in an indictment with the indictable offence mentioned in subsection (1).

## **PART 3—INDICTMENTS**

### *Division 1—Application of part*

#### **Application of divisions 3 and 4 to charges dealt with on indictment or summarily**

**324.** Divisions 3 and 4 apply to a charge for an indictable offence whether the charge is dealt with on indictment or summarily.

### *Division 2—Indictments generally*

#### **Nature of indictment**

**325.(1)** When it is intended to put a person on trial in the Supreme Court or a District Court for an indictable offence for which the person has been committed for trial, the charge must be put into writing in a document called an indictment.

(2) The indictment must be signed and presented to the court by—

(a) a State law officer; or

(b) anyone else appointed by the Governor in Council.

(3) The Governor in Council may delegate the appointment power in subsection (2)(b) to the Director of Public Prosecutions.

(4) The person who signs an indictment need not be the same person who presents or prosecutes on the indictment.

(5) An indictment is not affected because the person who signed the indictment stops holding an appointment under which the indictment was signed.

### **Presenting of indictment**

**326.(1)** A State law officer may present an indictment in the Supreme Court or a District Court against a person for a charge of an indictable offence that is within the court's jurisdiction to try, whether or not the person has been committed for trial.

(2) A person authorised to present indictments in a court may present an indictment in the court against anyone for a charge of an indictable offence that is within the court's jurisdiction to try, whether or not the person has been committed for trial.

### **Form of indictment**

**327.(1)** An indictment must contain a statement of the offence charged.

(2) If more than 1 offence is charged in a particular indictment, each offence must be set out in a separate paragraph called a count and numbered consecutively.

(3) If a circumstance of aggravation is intended to be relied on, it must be charged in the indictment.

(4) The following formal details are also to be included—

- (a) the name of the court in which the indictment is presented;
- (b) the place of trial;
- (c) the provision of the Act defining the offence charged.

### **Formal defects in indictment**

**328.(1)** An objection to an indictment for a formal defect apparent on its face must be taken by application to set aside the indictment before the jury is sworn.

(2) An indictment is not open to objection because—

- (a) it describes a person by a name of office or other description

instead of by the person's proper name; or

- (b) it does not state the time when the offence was committed, unless the time is an element of the offence; or
- (c) it imperfectly states the time when the offence was committed; or
- (d) it states the offence was committed on an impossible day, or on a day that never happened or has not yet happened.

(3) An indictment cannot be set aside because of a formal defect that would not cause surprise or uncertainty to the person charged on the indictment as to the nature of the charge.

### **Amendment of indictment generally**

**329.(1)** A court may order an indictment before the court to be amended—

- (a) on application by the State; or
- (b) on its own initiative; or
- (c) under another provision of an Act.

(2) The indictment is to be amended under the order.

(3) The trial on the indictment as amended must then continue as if the indictment had been originally in its amended form.

(4) The trial on the indictment has the same effect as if the indictment had been originally in its amended form.

(5) If a formal record of the case is needed, the record must state the amended indictment without notice of the amendment.

(6) The court may make the order at any time before, or at any stage of, the trial on the indictment, or, if special reason is shown, after verdict.

(7) A new count may be added to an indictment under subsection (1).

(8) The court cannot make the order if the amendment would be unjust to the person charged on the indictment.

(9) The court may adjourn the trial after making the order.

**Particulars**

**330.(1)** This section applies to a court before which a person is charged on indictment or crime complaint.

(2) If it considers it appropriate, the court—

- (a) may order particulars to be given to the person of anything claimed in an indictment; and
- (b) may adjourn the trial after making the order.

(3) The court may permit the State to amend the particulars on the terms it may consider just.

**Withdrawal of charge**

**331.(1)** A State law officer, or a person authorised to present indictments in the court, may inform a court in writing that the State will not—

- (a) present an indictment against a person committed for trial before the court; or
- (b) proceed further on an indictment pending in the court against a person.

(2) The person is then discharged from further proceedings on the indictment or committal.

(3) However, the State is not stopped from again starting a proceeding against the person for the offence.

**Stay of vexatious or oppressive proceedings**

**332.** A court may order a vexatious or oppressive proceeding for an indictable offence to be stayed.

**Arrest of person charged on indictment**

**333.(1)** This section applies if an indictment has been presented in a court against a person who—

- (a) is not in custody and has not been—
  - (i) committed for trial on the indictment; or

- (ii) released under the *Bail Act 1980* to attend to be tried on the indictment; or
  - (b) does not appear to be tried on the indictment.
- (2) A judge of the court may sign and issue a warrant to arrest the person and bring the person before a Magistrates Court.
- (3) The Magistrates Court before which the person is brought may—
- (a) commit the person to prison until the person can be tried on the indictment; or
  - (b) if appropriate, release the person under the *Bail Act 1980* to attend to be tried on the indictment.

### *Division 3—Statement of a charge*

#### **General rules about statement of charge for indictable offence**

- 334.(1)** This section applies to the charging of an indictable offence.
- (2) The statement of a charge must contain particulars that give reasonable information about the nature of the charge.
- (3) An offence may be described in ordinary language without the use of technical terms.
- (4) It is sufficient to describe an offence in the words of the Act defining it.
- (5) A description of an offence is not defective only because an element of the offence is not stated.
- (6) Anything may be described by any name by which it is usually known.
- (7) A person may be described in any way that reasonably identifies the person, and if the person is unknown, as an unknown person.
- (8) A document may be described by its effect without setting out a copy of all or part of it.
- (9) Money may be described as money without specifying a particular form of money.



(10) If it is necessary to mention co-owners of property, it is sufficient to identify 1 and only mention that there was another owner.

(11) If particular ownership of property must be proved and it is uncertain who of more than 1 person was the owner, it is sufficient to claim and prove that 1 of them owned the property without proving who was the owner.

(12) It is unnecessary to state the ownership or value of anything mentioned in a charge unless the ownership or value is an element of the offence or circumstance of aggravation.

(13) It is unnecessary to state the way or instrument by which an act is done, unless the way or instrument is an element of the offence or circumstance of aggravation.

(14) It is unnecessary to state any particulars about a person, thing, or issue that need not be proved.

### **Statement of charge for particular indictable offences**

**335.(1)** This section applies to the charging of an indictable offence.

(2) A statement in a charge against a person that the person committed an offence involving property can be proved by evidence that the person obtained or dealt with anything included in the term 'property', or part of its value, in a way that is the offence, even if it—

- (a) was given to the person so that some part of its value would be returned to the person who gave it or given to anyone else; and
- (b) then has been so returned or given.

(3) For an offence about property of a corporation authorised to sue and be sued in a person's name, the property may be claimed to be the person's property.

(4) For an offence about property that under an Act is taken to be the property of an officer of an entity, the property may be claimed to be the property of the officer by the officer's name of office without identifying a particular person.

(5) For an offence relating to a testamentary instrument, it is unnecessary to claim the instrument is a person's property.

**(6)** For an offence about a thing—

- (a) fixed in a square, street, cemetery or a place dedicated to public use or ornament; or
- (b) in or taken from a public office;

it is unnecessary to claim or prove the thing is a particular person's property.

**(7)** For an offence about a document that is evidence of an interest in land, the document may be described as being evidence of the title of the person or 1 of the persons with an interest in the land, with the land described in a way adequate to identify it.

**(8)** For an offence of stealing or dishonestly appropriating property leased to the charged person, the chattel or fixture may be described as the lessor's property.

**(9)** For the crime of fraud or attempting to commit, or to procure the commission of, the crime of fraud, it is unnecessary to state the owner of any property that may be the subject matter of the offence.

**(10)** For a charge against a person who is a public officer for an offence committed in relation to a thing that came into the person's possession because of the person's appointment or employment, the thing may be described as the property of the entity that appointed or employed the person.

**(11)** For an offence about—

- (a) giving false testimony; or
- (b) making a false statement; or
- (c) seeking the giving of false testimony or making a false statement;

it is unnecessary to state the words of the testimony or statement, but is enough to state the effect of the testimony or statement, or as much of the effect as is material.

**(12)** For an offence about giving false testimony or seeking the giving of false testimony, it is unnecessary to allege the jurisdiction of the tribunal before which the false testimony was given, or intended or proposed to be given.

**(13)** For an offence that involves dishonesty, it is unnecessary to state the

details of the dishonesty.

(14) For an offence relating to a person who has an intellectual or psychiatric impairment the person may be described in that way without specifying the impairment.

### **Statement of previous conviction**

**336.** In a charge for an indictable offence charged to have been committed after a conviction for another offence, it is enough to state—

- (a) the substantial effect of the previous charge; and
- (b) the conviction for the previous charge; and
- (c) the time and place of the conviction.

### ***Division 4—Joinder***

#### **Joinder of charges generally**

**337.(1)** Subject to any Act, an indictment or crime complaint must not charge more than 1 offence.

(2) Charges for more than 1 offence may be joined in the same indictment or crime complaint against the same person if the charges—

- (a) are founded on the same facts; or
- (b) are, or form part of, a series of offences—
  - (i) of the same or similar character; or
  - (ii) committed in the prosecution of a single purpose.

(3) If an indictment or crime complaint contains more than 1 charge, the indictment or complaint need not state the connection between the offences charged.

#### **Particular cases of charging more than 1 offence as a single offence**

**338.(1)** On a single charge in an indictment or crime complaint charging

a person with the offence of assault,<sup>53</sup> the person may be prosecuted for a series of assaults committed against the same person that form part of one overall incident.

(2) On a single charge in an indictment or crime complaint charging a person with the offence of stealing, dishonest appropriation or fraud, the person may be prosecuted for a number of offences of stealing, dishonest appropriation or fraud committed against the property of the same person over a period of time, even if it is impossible to identify each time the stealing, dishonest appropriation or fraud happened.

(3) On a single charge in an indictment or crime complaint charging a person with the offence of dishonest appropriation or fraud, the person may be prosecuted for a number of acts of dishonest appropriation or acts of fraud committed over a period of time, even if—

- (a) the acts were done against the property of different persons; or
- (b) the property came into the person's possession at different times and subject to different trusts, directions, conditions or duties to account; or
- (c) it is impossible to identify each time the acts happened.

(4) A charge under subsection (2) or (3) may charge the property affected by the offence as a total amount or single list.

(5) This section does not limit the occasions—

- (a) when more than 1 act, each of which could be charged as a separate charge, may be included in a single charge;
- (b) when more than 1 act, all of which may be charged as a single charge, may each be charged as separate charges.

### **Joinder of offences and persons about entering or being in premises with intent**

**339.(1)** Any 2 or more of the following charges may be joined in the same indictment or crime complaint—

- (a) burglary;

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<sup>53</sup> See section 114 (Assault).

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- (b) committing the crime the person is claimed, for the burglary mentioned in paragraph (a), to have intended to commit, or to have committed, on entering or being in a place;
  - (c) if the crime mentioned in paragraph (b) is stealing or dishonest appropriation—receiving tainted property the subject of the crime.
- (2) On an indictment or complaint mentioned in subsection (1)—
- (a) for an indictment or complaint against 1 person—the person may, according to the evidence, be convicted of an offence mentioned in subsection (1)(a), (b) or (c); or
  - (b) for an indictment or complaint against 2 or more persons—
    - (i) all or any of them may, according to the evidence, be convicted of an offence mentioned in subsection (1)(a), (b) or (c); or
    - (ii) 1 or more of them may, according to the evidence, be convicted of 1 of the offences and another or others of them may be convicted of another of the offences or of 1 or the other of the other offences.
- (3) However, if the jury, or Magistrates Court—
- (a) find specially that a charged person committed 1 or more of the offences mentioned in subsections (1)(a), (b) and (c); but
  - (b) cannot say which of the offences was committed by the person;
- the trial judge or Magistrates Court must enter a conviction against the person for the offence for which the least or the lesser punishment is provided.

**Joinder of offence of maintaining a sexual relationship with a child under 16 with another sexual offence**

**340.(1)** A person may be charged in a single indictment or crime complaint with—

- (a) maintaining an unlawful sexual relationship with a child under 16<sup>54</sup> (the “**relationship offence**”); and

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<sup>54</sup> See section 230 (Maintaining a sexual relationship with a child under 16).

- (b) any other offence of a sexual nature claimed to have been committed by the person during the relevant relationship in the relationship offence.

(2) The person may be convicted of, and punished for, all the offences charged.

(3) However, if the person is sentenced to imprisonment for the relationship offence and another offence charged in the indictment or complaint, an order may not be made directing a sentence to take effect from the end of imprisonment for the other.

### **Joinder of charged persons**

**341.(1)** A number of persons charged with committing different or separate indictable offences may be charged in the same indictment or crime complaint, and tried together if the offences arise—

- (a) substantially out of the same facts; or
- (b) out of closely related facts so that a substantial part of the facts is relevant to all the charges.

(2) A number of persons charged with receiving, although at different times, property that has been obtained by—

- (a) a crime; or
- (b) an act that if it had been done in Queensland would be a crime and that is an offence under the laws in force in the place where it was done;

may be charged with substantive offences in the same indictment or crime complaint, and tried together, even if the person who obtained the property is not included in the same indictment or complaint, or is not amenable to justice.

(3) This section is not limited by section 337.<sup>55</sup>

(4) This section applies even if—

- (a) more than 1 offence is charged in the indictment or complaint against a particular person; or

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<sup>55</sup> Section 337 (Joinder of charges generally)

- (b) all the persons charged on the indictment or complaint are not charged with the same offences.

### **Joinder of parties and accessories**

**342.(1)** A person who is a party to an offence may be charged in the same indictment or crime complaint, with another party.

(2) A party may—

- (a) be tried together with another party, even if the persons were parties at different times; or
- (b) be tried separately from another party, whether or not any other party has been convicted or is amenable to justice.

(3) In this section—

“**party**” to an offence includes an accessory after the fact to the offence.

## **PART 4—EFFECT OF INDICTMENT OR CRIME COMPLAINT**

### *Division 1—Application*

#### **Application to charges dealt with on indictment or summarily**

**343.(1)** Divisions 2 and 3 apply to a charge for an indictable offence whether the charge is dealt with on indictment or summarily, unless the contrary intention appears.

(2) Nothing in this part, or part 3, division 4, authorises a person charged in summary proceedings with an offence to be summarily dealt with for another offence (the “**second offence**”) if the person could not have been summarily dealt with for the second offence if the person had been charged with the second offence.

**Provisions of divisions 2 and 3 to be read in addition to other provisions of divisions**

**344.** A provision of division 2 or 3 does not limit, and is not limited by, any other provision of the divisions.

**Effect of conviction**

**345.** A person convicted under this part is liable to the same punishment as if the person had been convicted on an indictment or crime complaint charging the person with the offence with which the person is actually convicted.

*Division 2—General***Offences involving circumstances of aggravation**

**346.(1)** On an indictment or crime complaint charging a person with an offence committed with circumstances of aggravation, the person may be convicted of any indictable offence that—

- (a) is proved by the evidence; and
- (b) consists of an act that is an element of the offence charged.

**(2)** The conviction may be with or without any of the circumstances of aggravation charged in the indictment or complaint.

**When evidence shows offence of similar type**

**347.(1)** If, on the trial of a person charged with an indictable offence (the “**first offence**”)—

- (a) the evidence shows the person is guilty of another indictable offence (the “**second offence**”); and
- (b) the first offence is of a type that the person can be convicted of on an indictment or crime complaint charging the person with the second offence;

the person may be convicted of the first offence.



(2) A person so tried is not liable to be later prosecuted for the second offence.

(3) However, a court before which a trial on indictment is held may, if it considers it appropriate—

- (a) discharge the jury from giving a verdict; and
- (b) direct the person to be indicted for the second offence.

(4) The person may then be dealt with as if the person had not been put on trial for the first offence.

### **Charge of procuring commission of offence**

**348.(1)** This section applies if a person is charged on an indictment or crime complaint charging a person with procuring the commission of an offence (the “**procured offence**”).

(2) The person may be convicted of procuring the commission of any other indictable offence of a type that a person can be convicted of on an indictment or crime complaint charging the person with committing the procured offence.

### **Charge of procuring commission of wrongful act**

**349.(1)** This section applies if—

- (a) a person is charged with an indictable offence of procuring anyone to do an act; and
- (b) the charged person would have committed an offence (the “**procured offence**”) if the charged person had done the act.

(2) The charged person may be convicted of procuring the other person to do any other act that—

- (a) is proved by the evidence; and
- (b) is of a type that, had the charged person done the other act, the charged person would have committed an offence of a type that a person can be convicted of on an indictment or crime complaint charging the person with committing the procured offence.

**Conviction for attempt to commit offence on charge of committing offence**

**350.(1)** On an indictment or crime complaint charging a person with an offence, the person may be convicted of attempting to commit—

- (a) the offence; or
- (b) any other offence that the person may be convicted of on the indictment or complaint.

**(2)** On an indictment or crime complaint charging a person with procuring the commission of an offence, the person may be convicted of attempting to procure the commission of—

- (a) the offence (the “**attempted offence**”); or
- (b) any other indictable offence of which a person may be convicted, on an indictment or crime complaint charging the person with committing the attempted offence.

**(3)** On an indictment or crime complaint charging a person with attempting to commit an offence (the “**attempted offence**”), the person may be convicted of attempting to commit any other offence of which a person may be convicted, on an indictment or crime complaint charging the person with committing the attempted offence.

**(4)** On an indictment or crime complaint charging a person with attempting to procure the commission of an offence (the “**attempted offence**”), the person may be convicted of attempting to procure the commission of any other offence of which a person may be convicted on an indictment or crime complaint charging the person with committing the attempted offence.

**(5)** On an indictment or crime complaint charging a person with attempting to procure anyone to do an act that is an offence (the “**attempted offence**”), the person may be convicted of attempting to procure the other person to do any other act—

- (a) that is an offence; and
- (b) of which a person may be convicted on an indictment or crime complaint charging the person with the attempted offence.

**Charge involving specific result or intent**

**351.(1)** On an indictment or crime complaint charging a person with an offence that has as an element the causing of a specific result, the person may be convicted of any indictable offence—

- (a) proved by the evidence; and
- (b) that has as an element an intent to cause the specific result, or a result of a similar but less injurious nature.

**(2)** On an indictment or crime complaint charging a person with an offence that has as an element an intent to cause a specific result, the person may be convicted of any indictable offence—

- (a) proved by the evidence; and
- (b) that has as an element the unlawful causing of the specified result.

***Division 3—Particular offences*****Alternative verdicts on conspiracy charge**

**352.** On an indictment or crime complaint charging a person with conspiring to commit an offence, the person may be convicted of committing or attempting to commit the offence it is claimed was intended to be committed under the conspiracy, if it is proved the offence was actually committed or attempted.

**Alternative verdict of being an accessory after the fact on charge of committing an offence**

**353.** On an indictment or crime complaint charging a person with committing an offence, the person may be convicted of becoming an accessory after the fact to the offence, if it is proved the person became an accessory after the fact to the offence.

**Indictment containing count of murder or unlawful killing**

**354.(1)** On an indictment against a person containing a count of

murder,<sup>56</sup> the person—

- (a) may be convicted, on the count, of unlawful killing<sup>57</sup> if that crime is proved by the evidence; but
- (b) cannot, on the count, be convicted of any other offence, other than that with which the person is charged, unless otherwise expressly provided.

(2) On an indictment against a person containing a count of unlawful killing, the person, on the count, cannot be convicted of any other offence, other than that with which the person is charged, unless otherwise expressly provided.

### **Charge of child homicide**

**355.(1)** This section applies to an indictment charging a person with murder<sup>58</sup> or unlawful killing,<sup>59</sup> if it is proved that the person who was killed was a recently born child.

(2) The person may be convicted of either of the following offences proved by the evidence—

- killing an unborn child
- trying to hide a child's birth.<sup>60</sup>

### **Charge of offence of a sexual nature**

**356.(1)** On an indictment charging a person with rape,<sup>61</sup> the person may be convicted of any of the following offences, if proved by the evidence—

- indecent assault
- procuring an act of gross indecency

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<sup>56</sup> See section 94 (What is “murder”).

<sup>57</sup> See section 96 (Manslaughter).

<sup>58</sup> See section 94 (What is “murder”).

<sup>59</sup> See section 96 (Manslaughter).

<sup>60</sup> See sections 109 (Killing an unborn child) and 110 (Hiding the birth of a child).

<sup>61</sup> See section 116 (Rape).

- indecently dealing with a child under 16, if the indecent dealing involves the doing of a sexual act
- having unlawful vaginal intercourse with a female under 16
- having, or attempting to have, unlawful sexual intercourse with a person who has an intellectual or psychiatric impairment
- indecently dealing with a person who has an intellectual or psychiatric impairment, if the indecent dealing involves the doing of a sexual act
- procuring a child for sexual intercourse
- procuring a person who has an intellectual or psychiatric impairment for sexual intercourse
- unlawfully procuring a person to engage in a sexual act
- drugging a person to allow a sexual act to be engaged in
- having anal intercourse with a child.<sup>62</sup>

(2) On an indictment charging a person with attempting to commit rape, the person may be convicted of any of the following offences, if proved by the evidence—

- indecent assault
- procuring an act of gross indecency
- indecently dealing with a child under 16, if the indecent dealing involves the doing of a sexual act
- attempting to have unlawful vaginal intercourse with a female under 16
- attempting to have unlawful sexual intercourse with a person who

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<sup>62</sup> See sections 117 (Sexual assault), 118 (Procuring act of gross indecency), 226 (Indecently dealing with child under 16), 227 (Vaginal intercourse with female under 16), 233 (Unlawful sexual intercourse with a person who has an intellectual or psychiatric impairment), 234 (Indecently dealing with a person who has an intellectual or psychiatric impairment), 235 (Procuring a child for sexual intercourse), 236 (Procuring a person who has an intellectual or psychiatric impairment for sexual intercourse), 237 (Procuring sexual acts by deception or coercion), 238 (Drugging person to allow sexual act to be engaged in) and 243 (Anal intercourse with a child).

has an intellectual or psychiatric impairment

- indecently dealing with a person who has an intellectual or psychiatric impairment, if the indecent dealing involves the doing of a sexual act.<sup>63</sup>

(3) On an indictment or crime complaint charging a person with having unlawful vaginal intercourse with a female under 16,<sup>64</sup> the person may be convicted of any of the following offences, if proved by the evidence—

- indecently dealing with a child under 16, if the indecent dealing involves the doing of a sexual act
- unlawfully procuring a person to engage in a sexual act
- drugging a person to allow a sexual act to be engaged in.<sup>65</sup>

(4) On an indictment charging a person with having unlawful vaginal intercourse with a female under 16,<sup>66</sup> the person may be convicted of any of the following offences, if proved by the evidence—

- procuring a child for sexual intercourse
- procuring a person who has an intellectual or psychiatric impairment for sexual intercourse.<sup>67</sup>

(5) On an indictment or crime complaint charging a person with indecent assault,<sup>68</sup> the person may be convicted of the crime of indecently dealing with a child under 16,<sup>69</sup> if the indecent dealing involves the doing of a

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<sup>63</sup> See sections 117 (Sexual assault), 118 (Procuring act of gross indecency), 226 (Indecently dealing with child under 16), 227 (Vaginal intercourse with female under 16), 233 (Unlawful sexual intercourse with a person who has an intellectual or psychiatric impairment) and 234 (Indecently dealing with a person who has an intellectual or psychiatric impairment).

<sup>64</sup> See section 227 (Vaginal intercourse with female under 16).

<sup>65</sup> See sections 226 (Indecently dealing with child under 16), 237 (Procuring sexual acts by deception or coercion) and 238 (Drugging person to allow sexual act to be engaged in).

<sup>66</sup> See section 227 (Vaginal intercourse with female under 16).

<sup>67</sup> See sections 235 (Procuring a child for sexual intercourse) and 236 (Procuring a person who has an intellectual or psychiatric impairment for sexual intercourse)

<sup>68</sup> See section 117 (Sexual assault).

<sup>69</sup> See section 226 (Indecently dealing with child under 16).

sexual act and the crime is proved by the evidence.

(6) On an indictment charging a person with the crime of incest with female or incest with male<sup>70</sup> or attempting to commit the crime, the person may be convicted of indecently dealing with a child under 16,<sup>71</sup> if—

- (a) the crime of indecently dealing with a child under 16 is proved by the evidence; and
- (b) the indecent dealing involves the doing of a sexual act.

(7) A person convicted of an offence under this section may be convicted of the offence with any circumstance of aggravation proved by the evidence.

### **Additional power to convict for dangerous operation of a vehicle**

**357.(1)** On an indictment or crime complaint charging a person with an offence connected with or arising from the operation of a vehicle by the person (other than an offence against section 134<sup>72</sup>), the person may be convicted of an offence against section 134 if the offence is proved by the evidence.

(2) This section applies even if the person is charged on indictment with murder<sup>73</sup> or unlawful killing.<sup>74</sup>

### **Stealing, dishonest appropriation and fraud**

**358.(1)** This section applies to an indictment or crime complaint charging a person with any of the following offences—

- (a) stealing;
- (b) dishonest appropriation;
- (c) fraud;

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<sup>70</sup> See sections 244 (Incest with female) and 245 (Incest with male).

<sup>71</sup> See section 226 (Indecently dealing with child under 16).

<sup>72</sup> Section 134 (Dangerous operation of a vehicle)

<sup>73</sup> See section 95 (Murder).

<sup>74</sup> See section 96 (Manslaughter).

(d) procuring another person to commit an offence mentioned in paragraphs (a) to (c).

(2) The person may be convicted of any of the other offences mentioned in subsection (1) if the other offence is proved by the evidence to have been committed in relation to the same property.

### **Indictment for joint receiving**

**359.(1)** This section applies to a trial on an indictment or crime complaint charging 2 or more persons jointly with an offence when the receiving of property is an element.

(2) If the evidence proves 1 or more persons separately received any part of the property in circumstances constituting an offence, the 1 or more persons may be convicted of the offence proved by the evidence.

### **Charge of damage to property**

**360.(1)** This section applies if a person is charged on an indictment or crime complaint with an offence that has as an element the wilful and unlawful doing of specific damage to property.

(2) The person may be convicted of wilfully and unlawfully damaging property to a lesser degree than that charged.

## **PART 5—TRIAL PROCEEDINGS GENERALLY**

### *Division 1—Directions and rulings before trial*

#### **Directions and rulings before trial**

**361.(1)** This section applies if the State intends to bring a person to trial on indictment for an indictable offence.

(2) To help a speedy disposition of the trial—

(a) a party may apply to a judge for a direction or ruling; or



(b) a judge, on the judge's own initiative, may direct the parties to attend before the judge for a direction or ruling.

(3) Without limiting subsection (2), 1 or more of the following directions or rulings may be given, that is, directions or rulings—

- (a) about the setting aside of an indictment;
- (b) about the joinder of charges;
- (c) requiring the accused person to be given a statement proof of evidence or other information;
- (d) for arrangements instead of a committal proceeding;
- (e) to encourage the parties to narrow the issues;
- (f) to note admissions and issues the parties agree are relevant to the trial;
- (g) to decide issues of law including the admissibility of evidence;
- (h) for an administrative arrangement to help the trial.

(4) The parties are bound at the trial by a direction or ruling unless the trial judge directs otherwise for special reasons.

(5) A direction or ruling is not subject to an interlocutory appeal, but may be the subject of an appeal after the trial has been heard as if given in the trial.

(6) In this section—

**“judge”** means—

- (a) if a trial is intended to take place in the Supreme Court—any Supreme Court judge; or
- (b) if a trial is intended to take place in a District Court—any judge of District Courts.

### *Division 2—Separate trials*

#### **Application to charges dealt with on indictment or summarily**

**362.** This division applies to a charge for an indictable offence whether the charge is dealt with on indictment or summarily.

**Separate trials when 2 or more charges against the same person**

**363.(1)** Before or during a person's trial on indictment or crime complaint, the trial court may order a separate trial of any charge in the indictment or crime complaint if it considers—

- (a) the person may be prejudiced or embarrassed in the person's defence because there is more than 1 offence charged in the indictment or crime complaint; or
- (b) that for another reason it is desirable to direct the person should be tried separately for an offence charged in an indictment or crime complaint.

(2) The court may discharge a jury sworn from giving a verdict on the count directed to be tried separately.

(3) The procedure on the separate trial of a charge is the same as if the charge had been set out in a separate indictment or crime complaint.

(4) The court may—

- (a) adjourn a separate trial; and
- (b) remand the charged person; and
- (c) make any order about bail, the enlargement of notices to witnesses or otherwise it considers appropriate.

(5) In this section—

**“adjourn a separate trial”** includes postpone a separate trial if the person to be tried has not been called on to plead to a charge in the indictment.

**Separate trial for real chance of complainant's concoction**

**364.(1)** This section applies if, on a trial of a person charged on indictment or crime complaint, the prosecution intends to present as similar fact evidence on each of more than 1 charge the evidence of different complainants for the charges.

(2) The possibility of concoction between the complainants is not a reason for ordering a separate trial for any charge unless the court is satisfied there is a real chance the concoction has happened.

(3) It is immaterial that in a particular trial complainants for more than 1 charge may also be complainants for a single charge.

### **Separate trials**

**365.** If 2 or more persons are charged in the same indictment, whether with the same offence or with different offences, the court may, during the trial, on the application of any of the persons—

- (a) direct the trial of the persons or any of them be held separately from the trial of the other or others of them; and
- (b) if a jury has been sworn—discharge the jury from giving a verdict about any of the persons.

### ***Division 3—Bringing on trial and ordering adjournment***

### **Right to be tried**

**366.(1)** This section applies to a person who has been committed for trial before a court for an indictable offence.

(2) The person may apply, during a sittings of the court held after the person's committal, to the court to be brought to trial.

(3) The application may be oral or written.

(4) The application—

- (a) must be dealt with in open court; and
- (b) if the application is written—may be dealt with in the applicant's absence.

(5) If a person has applied under subsection (2) and is then not brought to trial by the last day of the court's sittings following the sittings when the person applied, the person has the right to be discharged from the effect of the committal.

(6) If an indictment is not presented against the person during the sittings of the court to which the person was committed for trial, the court must, on application made for the person on the last day of the sittings, release the

person under the *Bail Act 1980* unless it appears from evidence on oath that some material evidence for the State could not be produced at the sittings.

### **Accelerating trial of a person not under committal**

**367.(1)** This section applies if an indictment for an offence is presented in a court against a person who has not been committed for trial on the offence.

**(2)** On the person's application, the court may order the person's trial to be brought on if it considers there has been undue delay.

### **Adjournment of trial**

**368.(1)** The court to which a person has been committed or remanded for trial on indictment or before which an indictment is or has been presented may, if it considers it appropriate—

- (a) adjourn the trial; and
- (b) for the period of the adjournment—remand the person in custody or release the person under the *Bail Act 1980*.

**(2)** A trial may be adjourned whether or not—

- (a) the person is present; or
- (b) the person has been called on to plead to the indictment; or
- (c) a jury has been sworn; or
- (d) evidence has been given.

**(3)** The State must, when an application for an adjournment is to be made in the absence of a person who is to be tried on indictment and is being held in a prison or detention centre, give the person written notice—

- (a) that the application is to be made; and
- (b) of the nature, date, time and place of the application; and
- (c) that the person may give the court a written statement about the application; and
- (d) that the person may be represented by a lawyer on the hearing of the application.

(4) In this section—

“**adjourn the trial**” includes postpone the trial if the person to be tried on indictment has not been called on to plead to the indictment.

### **Directions about trial on adjournment**

**369.(1)** If the trial of a person charged or to be charged with an offence on indictment is adjourned, the court in open court may direct the trial to be held—

- (a) at a later sittings of the same court; or
- (b) before another court of competent jurisdiction.

(2) If the court makes a direction under subsection (1)(a), it must at the same time decide the sittings to which the trial is adjourned.

(3) If the court makes a direction under subsection (1)(b)—

- (a) the court’s appropriate officer must give the indictment and other proceedings to the appropriate officer of the court to which the person is remanded (the “**new court**”); and
- (b) the new court has the same jurisdiction to try the person as if the person had been committed originally to be tried before it.

### **Enlargement of notice to witness on adjournment of trial**

**370.(1)** If the trial of a person charged or to be charged with an offence on indictment is adjourned, the court may enlarge the notice given to a witness.

(2) If a notice is enlarged, the witness must attend to give evidence at the court sittings and place to which the trial is adjourned in the same way as if the witness had been given a fresh notice.

### ***Division 4—Applications by charged person about indictment***

#### **Delivery of copy of indictment**

**371.** If an indictment is presented against a person, the court must, on the

person's application, order a copy of the indictment to be delivered to the person without fee.

### **Application to set aside indictment**

**372.(1)** A person charged on indictment may, before pleading, apply to the court to set aside the indictment because it—

- (a) does not disclose an offence; or
- (b) is calculated to prejudice or embarrass the person in the person's defence to the charge; or
- (c) is formally defective.

**(2)** On the application, the court may—

- (a) set aside the indictment; or
- (b) order the indictment to be amended in the way the court considers appropriate; or
- (c) refuse the application.

### **Wrong name**

**373.** If a person charged on indictment claims to have been wrongly named in the indictment, the court, on being satisfied by affidavit or otherwise of the claim, may order the indictment to be amended.

## *Division 5—Pleas*

### **Charged person to be called on to plead to indictment**

**374.(1)** At the time appointed for a person's trial on indictment, the person must be—

- (a) informed in open court of the offence with which the person is charged in the indictment; and
- (b) called on to plead to the indictment by indicating whether the person is guilty or not guilty of the charge.

(2) If the indictment contains more than 1 count, a plea to more than 1 count may be taken with the person's consent on the basis that the plea to 1 count will be treated as a plea to another similar count.

*Example—*

A person charged on indictment with 10 counts of dishonest appropriation may agree to plead guilty to all the counts by having the person's plea of guilty to the first count taken as a plea of guilty to all the counts.

(3) When the person is called on to plead to the charge—

- (a) the trial on a charge is taken to begin; and
- (b) the person is taken to be brought to trial on the charge.

## **Pleas**

**375.(1)** A person charged on indictment must plead to the indictment unless the person—

- (a) applies to set aside the indictment; or
- (b) applies for a separate trial of a count on the indictment.

(2) If the person pleads, the person may plead either that—

- (a) the person is guilty of—
  - (i) the offence charged in the indictment; or
  - (ii) with the State's consent, any other offence of which the person might be convicted on the indictment; or
- (b) the person is not guilty; or
- (c) the person has already been tried and convicted or acquitted—
  - (i) on a charge on which the person could have been convicted of the offence with which the person is charged; or
  - (ii) of an offence of which the person could be convicted on the indictment; or
- (d) the person has already been tried and convicted or acquitted of an offence committed or claimed to be committed in circumstances that prevent the person being tried for the offence charged in the indictment; or

- (e) the person has been pardoned for the offence charged in the indictment; or
- (f) the court has no jurisdiction to try the person for the offence.

(3) Two or more pleas may be pleaded together, but the plea of guilty cannot be pleaded with another plea to the same charge.

### **Person committed for sentence**

**376.(1)** If a person has been committed by a Magistrates Court for sentence on indictment, the person—

- (a) must be called on to plead to the indictment in the same way as other persons; and
- (b) may plead that the person is guilty of—
  - (i) the offence charged in the indictment; or
  - (ii) with the State's consent, another offence of which the person can be convicted on the indictment.

(2) Even though the person pleads not guilty, the court, if satisfied the person admitted before the Magistrates Court that the person was guilty of the offence charged in the indictment, must order a plea of guilty to be entered.

(3) The plea has the same effect as if it had been actually pleaded.

(4) Whether the person pleads guilty or not guilty, the court may order a plea of not guilty to be entered if the court considers, on examining the record of proceedings before the Magistrates Court or after hearing evidence—

- (a) that the person has not committed the offence charged in the indictment or another offence of which the person can be convicted on the indictment; or
- (b) that the admission of guilt made before the Magistrates Court was made under a material misunderstanding about the nature of the charge or admission.



(5) A person who has been committed for sentence on indictment may plead any of the other pleas mentioned in section 375.<sup>75</sup>

### **Plea entered for person by court**

**377.(1)** If, when called to plead to an indictment or crime complaint, the person charged on the indictment does not plead or answer directly to the indictment, the court may, if it considers it appropriate, order a plea of not guilty to be entered for the person.

(2) The plea has the same effect as if it had been actually pleaded.

### **Plea of previous conviction or acquittal**

**378.(1)** In a plea to an indictment that the charged person has already been convicted or acquitted, it is enough to state that the person has been lawfully convicted or acquitted of—

- (a) the offence charged in the indictment; or
- (b) the other offence of which the person claims the person has been convicted or acquitted and to describe the offence by a term by which it is commonly known.

(2) This section also applies to a summary proceeding for an indictable offence and, for applying this section, a reference to an indictment includes a reference to a crime complaint.

### **Trial on plea to the jurisdiction or plea of former conviction or acquittal**

**379.(1)** On a plea to the court's jurisdiction or a plea of former conviction or acquittal, the court must satisfy itself, in the way and on the evidence it considers appropriate, whether or not the plea is made out.

(2) An issue under subsection (1) is an issue of law.

(3) This section also applies to a summary proceeding for an indictable offence.

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<sup>75</sup> Section 375 (Pleas)

**Charged person incapable of understanding trial proceedings**

**380.(1)** This section applies if, when a person charged on indictment is called on to plead to the indictment, it appears for any reason to be uncertain whether the person is capable of understanding the proceedings at the trial so as to be able to make a proper defence.

(2) A jury of 12 persons chosen from the panel of jurors must be empanelled immediately and sworn to find whether or not the person is so capable.

(3) If the jury find the person is capable of understanding the proceedings, the trial must continue as in other cases.

(4) If the jury find the person is incapable of understanding the proceedings it must say whether it is because the person is of unsound mind or because of some other stated reason.

(5) A finding under subsection (4) must be recorded.

(6) The court may order the person incapable of understanding the proceedings—

- (a) to be discharged; or
- (b) to be kept in custody in the place and the way the court considers appropriate, until the person can be dealt with under the law.

(7) A person found to be incapable of understanding the proceedings at the trial may be again indicted and tried for the offence.

(8) This section also applies to a summary proceeding for an indictable offence and, for applying this section, a reference to an indictment includes a reference to a crime complaint.

***Division 6—Corporation as charged person*****Presence in court and plea when a corporation is charged**

**381.(1)** When an indictment is presented against a corporation, the corporation may—

- (a) be present in court by its representative; and
- (b) enter a written plea by its representative.

(2) The plea entered by the representative is taken to be a plea entered by the corporation.

(3) The court must order a plea of not guilty to be entered for the corporation if the corporation—

- (a) is not present in court by its representative; or
- (b) though it is present in court by its representative, does not enter a written plea by its representative.

(4) The plea entered by the court has the same effect as if it had been actually pleaded, and the trial of the corporation may continue on that basis.

(5) A requirement that, during a person's trial, a thing be done in the person's presence or read by, said to or asked of, the person, for a corporation present in court by its representative, is taken to be a requirement that the thing be done in the representative's presence or read by, said to or asked of, the representative.

(6) If the corporation is not present in court by its representative, it is not necessary for the thing to be done, read, said or asked.

(7) If, for a person's trial, a thing is required to be done or said by the person personally, it may, for a corporation present in court by its representative, be done or said by the representative.

(8) A thing done or said by the representative is taken to be done or said by the corporation.

(9) Subsection (7) does not limit subsection (1) or (2) or section 383.<sup>76</sup>

(10) A representative need not be appointed under the corporation's seal.

(11) A written statement that—

- (a) purports to be signed by the corporation's managing director or someone else responsible for controlling or managing the corporation; and
- (b) states that a named person has been appointed as the corporation's representative for this section;

is admissible without further proof as evidence that the person has been

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<sup>76</sup> Section 383 (Presence of charged person)

appointed.

(12) In this section—

“**representative**” means a person appointed by a corporation to represent it for this section.

### *Division 7—Appearances and fair conduct*

#### **Defence in person or by a lawyer**

**382.(1)** A person charged with an offence has the right to defend himself or herself or be represented by a lawyer at the person’s trial.

(2) This section also applies to a summary proceeding for an indictable offence.

#### **Presence of charged person**

**383.(1)** The trial of a person charged on indictment must take place in the person’s presence, unless an Act otherwise provides.

(2) However, if the person behaves in or outside court in a way that makes it impracticable to continue the trial in the person’s presence, the court may order the person to be removed and the trial to continue in the person’s absence.

(3) The order may be suspended and renewed as necessary during the trial.

(4) Also, a court may permit a person charged before it on indictment to be absent during all or part of the trial if—

- (a) an application for permission to be absent is made by or for the person; and
- (b) the court is satisfied that the trial may be fairly conducted during the permitted absence.

(5) The court may make an order under subsection (4) on conditions it may consider appropriate.

(6) If a person charged on indictment is absent during the person’s trial on the indictment without the court’s permission, the court—

- (a) may order the trial to proceed in the person's absence if it is satisfied that this would be in the interests of justice; and
- (b) may order a warrant to be issued to arrest the person and bring the person before the court as soon as practicable.

(7) This section also applies to a summary proceeding for an indictable offence and, for applying the section, a reference to an indictment includes a reference to a crime complaint.

### **Orders for fair conduct of trial**

**384.(1)** A judge presiding at a person's trial on indictment may give any order the judge considers necessary for the fair conduct of a trial to the person, a witness or anyone summoned to be a witness.

*Example—*

A judge may order a witness to remove head wear or glasses to allow the jury to see the witness's face properly.

(2) Subsection (1) also applies to a summary proceeding for an indictable offence, and, for applying the subsection, a reference to a judge is a reference to a magistrate.

## ***Division 8—Trial of issues***

### **Trial by jury**

**385.(1)** This section applies if a person charged on indictment enters a plea other than any of the following pleas—

- (a) a plea of guilty;
- (b) a plea to the court's jurisdiction;
- (c) a plea of previous conviction or acquittal.

(2) The person—

- (a) is taken to have demanded that the issues raised by the plea be tried by a jury; and
- (b) has the right to have the issues tried by a jury.

**Jury Act 1995**

**386.** The *Jury Act 1995* states the law about the following—

- (a) the obligation to perform jury service;
- (b) organisation of juries generally;
- (c) the selection of a jury;
- (d) arrangements for a jury during a trial;
- (e) juror's remuneration and allowances.

**Evidence in defence**

**387.(1)** At the close of the evidence for the prosecution in a person's trial, the court's appropriate officer must—

- (a) advise the person of the person's right to elect to remain silent or to present evidence in the person's defence; and
- (b) ask the person whether the person intends to present evidence in the person's defence.

**(2)** This section also applies to a summary proceeding for an indictable offence.

**Addresses by parties**

**388.(1)** Before evidence is given at a trial, the prosecutor may address the jury to state the prosecution's case.

**(2)** If, after all the evidence for the prosecution has been given, evidence is not then given for the person being tried, the prosecutor may address the jury to sum up the prosecution's case.

**(3)** If, after all the evidence for the prosecution has been given, evidence is to be given for the person being tried, the person or the person's lawyer may address the jury to state the person's case.

**(4)** If evidence is to be given for more than 1 person being tried, each person or the person's lawyer may address the jury under subsection (3) just before the evidence is given for the person.

**(5)** After all the evidence has been given for a person being tried, or if

evidence is given for more than 1 person being tried, after all the evidence has been given for all of them, the prosecutor may address the jury to sum up the prosecution's case.

(6) After the prosecutor has summed up the prosecution's case, the person being tried or the person's lawyer may address the jury to sum up the person's case.

(7) If there is more than 1 person being tried, each person or the person's lawyer may address the jury to sum up the person's case in the order established by practice.

(8) However, if anything is asserted in a summing up for a person being tried that is unsupported by the trial evidence, the trial judge may give the prosecutor leave to make a supplementary address to the jury about the assertion.

(9) If there is more than 1 summing up for a person being tried because there is more than 1 of them, the supplementary address must be made at the end of the last summing up.

(10) This section also applies to a summary proceeding for an indictable offence.

### **Summing up by trial judge**

**389.(1)** After the evidence and the addresses under section 388<sup>77</sup> have concluded, the court must instruct the jury about the law relevant to the case, with the observations on the evidence the court considers appropriate.

(2) After the court has instructed the jury, the jury is to consider its verdict.

### **Special verdict**

**390.** The court may require the jury to find a fact specially, if the court considers—

- (a) the issue whether the person being tried ought or ought not to be found guilty of an offence may depend on the fact; or

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<sup>77</sup> Section 388 (Addresses by parties)

- (b) the appropriate punishment to be imposed on conviction may depend on the fact.

### *Division 9—Other provisions*

#### **Procedure on charge of an offence committed after previous conviction**

**391.(1)** A proceeding against a person on an indictment for committing an offence after a previous conviction must be as follows—

- (a) the person must be called on to plead to as much only of the indictment as charges the subsequent offence;
- (b) if the person pleads a plea that raises an issue to be tried by a jury—the jury must be charged to inquire about the subsequent offence only;
- (c) if the person pleads guilty or on trial the person is convicted of the subsequent offence—the person is then, and not before, to be asked whether the person had been previously convicted as claimed in the indictment;
- (d) if the person answers that the person had been previously convicted—the court may then pass sentence on the person;
- (e) if the person denies the person had been previously convicted or will not answer directly to the question—the judge must decide the issue as an issue of law before sentencing the person.

**(2)** Subsection (1) does not mean the prosecution cannot in the trial of the subsequent offence present evidence of the person's previous conviction on an issue about the person's good character.

**(3)** This section also applies to a summary proceeding for an indictable offence and, for applying the section to a summary proceeding—

- (a) a reference to a judge or jury is a reference to the presiding magistrate; and
- (b) a reference to an indictment is a reference to a crime complaint.



### Further pleas

**392.(1)** If the issues raised by a plea (other than the plea of not guilty) have been found against a charged person who has not pleaded the plea of not guilty the person must be called on to plead afresh.

**(2)** This section also applies to a summary proceeding for an indictable offence.

### Plea of guilty during trial

**393.(1)** This section applies if, before the jury returns its verdict, the person being tried informs the court that—

- (a) the person wishes to change the person's plea to one of guilty of the offence charged in the indictment; or
- (b) the person wishes to plead guilty to another offence of which the person might be found guilty on the indictment.

**(2)** The court may direct—

- (a) if subsection (1)(a) applies—the person be again called on in open court—
  - (i) to plead to the indictment; and
  - (ii) to say whether the person is guilty or not guilty of the offence charged; or
- (b) if subsection (1)(b) applies—with the State's consent, the person be called on in open court—
  - (i) to plead to the other offence of which the person might be found guilty on the indictment (the **“other offence”**); and
  - (ii) to say whether the person is guilty or not guilty of the other offence.

**(3)** It is unnecessary for the plea to be taken in the jury's presence.

**(4)** If the person does not plead guilty to the offence charged in the indictment or to the other offence, the trial must continue.

**(5)** If the person pleads guilty to the offence charged in the indictment or to the other offence, the jury must be discharged from giving its verdict for the offence charged in the indictment.

(6) The person's plea of guilty has the same effect as if made by the person when called on at the start of a trial to plead to an indictment charging the person with the offence.

(7) This section also applies to a summary proceeding for an indictable offence and, for this subsection—

- (a) a reference to a jury is a reference to a magistrate; and
- (b) a reference to an indictment is a reference to a crime complaint.

## PART 6—EVIDENCE

### *Division 1—General*

#### **Evidence of authority to start prosecution**

**394.(1)** A statement in an indictment that the prosecution is by the direction of, or with the consent of, a State law officer, or at the request of the government of the Commonwealth or a State, is sufficient evidence of the fact unless the contrary is proved.

(2) In this section—

“**State law officer**” includes a person holding an office of and for the Commonwealth or a State that corresponds to the office of State law officer.

#### **Recording of trial proceedings**

**395.(1)** The proceedings at every trial of a person on indictment must, if practicable, be recorded in shorthand or by a mechanical device or partly in shorthand and partly by a mechanical device.

(2) A copy of a record of all or part of the proceedings (the “**copy**”) may be given to an interested party under the criminal practice rules.

(3) The criminal practice rules may prescribe, for a trial or appeal—

- (a) who is an interested party under subsection (2); and

- (b) the authorisation of the supply of a copy to a person because the person has a sufficient interest in the proceeding and who can give the authorisation.

(4) The Attorney-General may give a copy to a person in the circumstances and on the conditions the Attorney-General considers appropriate.

(5) The supply of a copy under this section or the criminal practice rules does not make the State, a State law officer, the registrar or anyone else responsible for, or associated with, the supply liable in law for the supply.

(6) In this section—

“**mechanical device**” has the meaning given by the *Recording of Evidence Act 1962*.

### **Documents, exhibits etc.**

**396.(1)** A document, exhibit or anything else connected with a proceeding before a trial court, in relation to which a person has the right, or may be authorised, to appeal, must be kept in the court’s custody for the prescribed time.

(2) Subsection (1) is subject to a power prescribed for the conditional release of the document, exhibit or other thing from the trial court’s custody.

## ***Division 2—Evidence about offences***

### **Evidence of blood relationship for particular sexual crimes**

**397.(1)** This section applies to the trial of a person charged with a prescribed crime.

(2) Blood relationship is sufficiently proved by proof that the relationship is reputed to exist.

(3) The charged person is presumed to have had knowledge of the blood relationship when the prescribed crime is claimed to have been committed.

(4) The presumption in subsection (3) continues until the contrary is

proved.

(5) In this section—

**“blood relationship”** means the blood relationship existing between a person charged with a prescribed crime and anyone in relation to whom, or with whom, a prescribed crime is claimed to have been committed.

**“prescribed crime”** means any of the following crimes or a crime of attempting or conspiring to commit any of them—

- (a) indecently dealing with a child under 16 or indecently dealing with a person who has an intellectual or psychiatric impairment, if it is claimed as a circumstance of aggravation that the crime was committed in relation to a person who is the descendant of the person charged;
- (b) anal intercourse with a child, if it is claimed as a circumstance of aggravation that the crime was committed in relation to a child under 16 years who is the descendant of the person charged;
- (c) incest with female;
- (d) incest with male.<sup>78</sup>

### **Evidence on particular charges of stealing or dishonestly appropriating**

**398.(1)** This section applies to the trial of a person charged with—

- (a) dishonestly appropriating property with a circumstance of aggravation mentioned in section 158<sup>79</sup>, penalty, subparagraphs (i) to (v); or
- (b) stealing in breach of a fiduciary duty owed by the person to

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<sup>78</sup> See sections 226 (Indecently dealing with child under 16), 234 (Indecently dealing with a person who has an intellectual or psychiatric impairment), 243 (Anal intercourse with a child), 244 (Incest with female) and 245 (Incest with male).

<sup>79</sup> Section 158 (Dishonest appropriation). The circumstances of aggravation are about dishonestly appropriating property while in the position of corporation director, an employee, a trustee or similar position or while holding property on account of another.

anyone or in a circumstance similar to a circumstance of aggravation mentioned in paragraph (a).

(2) An entry in a book of account kept by the person purporting to indicate the receipt of property is evidence the property purporting to have been received was received by the person.

(3) It is unnecessary to prove the person stole or dishonestly appropriated a specific amount if—

- (a) on an examination of the books of account kept by the person or because of other evidence, there is proof of stealing or dishonestly appropriating property over a period (the “**deficient property**”); and
- (b) there is proof the person stole or dishonestly appropriated the deficient property or part of it.

(4) For this section books of account are also taken to be kept by the person if they are kept under the person’s supervision or if the person is in charge of the books.

### **Evidence of ownership etc. on particular charges of stealing or dishonestly appropriating property**

**399.(1)** This section applies to the trial of a person charged with—

- (a) dishonestly appropriating property with a circumstance of aggravation that the property was in the person’s possession subject to a trust, direction or condition that it be applied to a purpose, or be given to anyone, specified in the terms of the trust, condition or direction; or
- (b) stealing in a circumstance similar to the circumstance of aggravation mentioned in paragraph (a).

(2) In the charge the ownership of, right in, title to, or use or benefit of, the property may be claimed in the name of any of the persons (the “**beneficiaries**”) whose property the charged person came into possession of by stating the beneficiary’s name with the addition of the words ‘and others’.

(3) The charge is sustained as far as the allegation is concerned on proof

that the ownership in the property, or the right in, title to, or use or benefit of, the property, was in any of the beneficiaries without deciding which one.

### **Witness must answer incriminating questions in certain cases**

**400.(1)** A witness in a proceeding for an indictable offence defined in any of the following provisions is not excused from answering a question about the offence on the ground that the answer may incriminate or tend to incriminate the witness—

- chapter 5, part 3, division 1
- section 262
- section 263
- section 264
- section 270.<sup>80</sup>

(2) However, the answer is not admissible against the witness in another proceeding, whether civil or criminal, other than a proceeding for perjury about the answer.

### **Evidence on trials about false testimony**

**401.(1)** On the trial of a person charged with an offence of which the giving of false testimony by anyone at the trial of someone charged with an offence is an element, evidence of the proceeding at the previous trial may be given by a certificate—

- (a) stating the substantial effect of the charge, and the proceedings at the trial; and
- (b) purporting to be signed by the proper officer of the court where the charge was tried.

(2) The certificate need not state the formal parts of the charge.

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<sup>80</sup> Chapter 5 (Matters and public offences), part 3 (Bribery), division 1 (Bribery)  
 Section 262 (Bribing a judicial officer)  
 Section 263 (Giving a bribe in relation to a judicial officer)  
 Section 264 (Seeking a bribe in relation to a judicial officer)  
 Section 270 (Compounding etc. offences)

(3) It is unnecessary to prove the signature or official character of the person who appears to have signed the certificate.

(4) In this section—

“**proper officer**” of a court means the officer who has custody of the court’s records and includes the officer’s deputy.

### **Non-compellability of health service providers on prostitution matters**

**402.(1)** A health services provider may refuse to provide any document or information, or answer any question, in relation to an investigation of, or prosecution for, an offence against chapter 5, part 6,<sup>81</sup> on the ground that it would disclose information gained in providing a health service.

(2) In this section—

“**health service**” means a service genuinely provided to a person for the benefit of human health, and includes services stated in the *Health Rights Commission Act 1991*, schedule 1, part 1.

“**health services provider**” means—

- (a) a registered provider within the meaning of the *Health Rights Commission Act 1991*; or
- (b) anyone else who provides a health service; or
- (c) an employee of a person mentioned in paragraph (a) or (b).

### **Analyst’s certificate for drugs misuse offence**

**403.(1)** This section applies if, in a proceeding for a drugs misuse offence—

- (a) a certificate purporting to be signed by an analyst is produced; and
- (b) the certificate is for an analysis or examination made by the analyst.

(2) Without proof that the person who purported to sign the certificate in fact signed it or that the person who signed the certificate is an analyst, the

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<sup>81</sup> Chapter 5, part 6 (Prostitution)

certificate is evidence of—

- (a) the identity and quantity of the thing analysed; and
- (b) the result of the analysis or examination; and
- (c) the other matters stated in the certificate and relevant to the proceeding.

### **Evidentiary provisions for drugs misuse offences**

**404.(1)** This section applies to a person charged with a drugs misuse offence.

(2) It is unnecessary to particularise the dangerous drug about which the offence is claimed to have been committed.

(3) If the court is satisfied that the thing to which the charge relates was at the material time a dangerous drug, the person is liable to be convicted as charged even if the identity of the dangerous drug to which the charge relates is not proved to the satisfaction of the court hearing the charge.

(4) Proof that a dangerous drug was, at the material time, in a place occupied by the person or in whose control or management the person was concerned is conclusive evidence that the drug was then in the person's possession unless the person shows the person then neither knew nor had reason to suspect the drug was in the place.

(5) The burden of proving an authorisation to do an act lies on the person.

(6) If, on the trial of a charge against a person for having committed an offence against section 277,<sup>82</sup> the person is found specially to have committed the offence in relation to some of the property (the “**guilty property**”), but not all of the property, claimed by the prosecution—

- (a) the person is not entitled to be acquitted only because of the finding; and
- (b) a conviction must be entered for the offence in relation to the guilty property.

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<sup>82</sup> Section 277 (Receiving or possessing property derived from trafficking or supplying dangerous drugs or converted property)



**Evidence that place is being used for prostitution**

**405.(1)** The fact that a place is being used for prostitution in contravention of chapter 5, part 6, may be inferred from—

- (a) evidence of the condition of the place; and
- (b) material found in the place; and
- (c) other relevant factors and circumstances.

**(2)** However, evidence of condoms and other material for safe sex practices is not admissible against an accused person.

**Evidence of gaming**

**406.** If, on the trial of a person charged with an offence, it is necessary to prove a place was kept, used or resorted to for playing a game of chance, or of mixed chance and skill, it is unnecessary to prove that a person found playing a game in the place was playing for money, wager, or stake.

**Dishonesty need not be directed to particular person**

**407.** On a trial of a person charged with an offence of which dishonesty is an element, it is unnecessary to prove that the act that is the offence was done with intent to act dishonestly towards a particular person, unless the provision defining the offence indicates a contrary intention.

**Injury need not be intended for a particular person**

**408.** On a trial of a person charged with an offence of which an intent to kill, do grievous bodily harm or otherwise injure is an element, it is unnecessary to prove an intent to injure a particular person, unless the provision defining the offence indicates a contrary intention.

**PART 7—VERDICTS AND JUDGMENTS**

**Person being tried of unsound mind during trial**

**409.(1)** A person on trial for an indictable offence is presumed to be of sound mind at the time of the trial, unless the contrary is proved.

**(2)** A finding that the person is of unsound mind at the time of trial may be sought by—

- (a) the person; or
- (b) the prosecution.

**(3)** Also, the issue of the person's soundness of mind at the time of trial may be raised on the trial judge's own initiative if the person appears to the trial judge to be of unsound mind at the time of trial.

**(4)** If it is claimed or appears the person is of unsound mind at the time of trial the jury must be charged to consider the issue.

**(5)** The onus of proving that the person is of unsound mind—

- (a) if a finding that the person is of unsound mind is sought by the person or the prosecution—is on the party seeking the finding; or
- (b) if the issue is raised by the trial judge—is to be as the trial judge directs.

**(6)** If the jury finds the person is not of sound mind—

- (a) the finding must be recorded; and
- (b) the court must order the person be kept in strict custody in the place and in the way the court considers appropriate until the person is dealt with under the *Mental Health Act 1974*.

**(7)** A person found to be of unsound mind may be again charged and tried for the offence.

**Acquittal because of unsoundness of mind**

**410.(1)** This section applies if, on the trial of a person charged with an indictable offence, it is claimed or appears the person was not of sound mind when the act claimed to constitute the offence was done.

**(2)** If the jury finds the person is not guilty, the jury must be required—

- (a) to find specially whether the person was of unsound mind at the

time when the act was done; and

- (b) to say whether the person is acquitted by it because of the unsoundness of mind.

(3) If the jury—

- (a) find the person was of unsound mind when the act was done; and
- (b) say the person is acquitted by it because of the unsoundness of mind;

the court must order the person be kept in strict custody, in the place and way the court considers appropriate, until the person is dealt with under the *Mental Health Act 1974*.

(4) The Governor may order the safe custody of the person during the Governor's pleasure, in the place and way the Governor in Council considers appropriate.

### **Discharge of person acquitted**

**411.** If the jury find a person is not guilty of a charge, or give another verdict that shows the person is not liable to punishment for a charge, the person must be discharged from the charge.

### **Convicted person to be called on before sentence**

**412.(1)** This section applies if on a person's trial on an indictable offence, the person—

- (a) pleads guilty to an offence; or
- (b) is found guilty of any offence.

(2) The appropriate officer of the trial court must ask the person whether the person has anything to say why the court should not go ahead immediately and hear anything that has to be said about the person's sentence.

(3) However, a failure to ask the person does not invalidate the judgment.

(4) The court must sentence the person.

**Attorney-General may apply for resentence after reductions if promised cooperation does not eventuate**

**413.(1)** If a sentence is reduced by the court imposing the sentence because the convicted person has undertaken to co-operate with law enforcement agencies in a proceeding about an offence, including a confiscation proceeding, the court must state—

- (a) the sentence is being reduced because of the undertaking; and
- (b) the sentence it would have imposed but for the reduction.

**(2)** If the person, without reasonable excuse, does not then co-operate under the undertaking, the Attorney-General may apply to the sentencing court to resentence the person.

**(3)** The Attorney-General may only start the application while the convicted person is under sentence.

**(4)** On the application, the sentencing court—

- (a) if satisfied the person has completely failed to co-operate—must substitute the sentence that would have been imposed, apart from the reduction, for the reduced sentence; or
- (b) if satisfied the person has partly failed to co-operate—may substitute, for the reduced sentence, a sentence it considers appropriate, though not more than the sentence that would have been imposed apart from the reduction.

**(5)** In this section—

**“confiscation proceeding”** means a proceeding for a forfeiture order, pecuniary penalty order or restraining order under the *Crimes (Confiscation) Act 1989*.

**“sentencing court”** means the court mentioned in subsection (2) or a court of like jurisdiction.

**Certain sentencing proceedings may be held in chambers**

**414.(1)** A court before which a person is convicted of a drugs misuse offence may, with the consent of the prosecution and the person, adjourn the proceeding to chambers to decide the sentence.

**(2)** An application to adjourn the proceeding to chambers may be made

in chambers.

(3) The chamber proceeding must be as prescribed by rules of court or, if no procedure is prescribed, as the court directs.

(4) The chamber proceedings must be heard in chambers in the presence of persons the court allows and no one else.

(5) The court may receive and act on the information it considers appropriate.

(6) No transcript must be made of the chamber proceeding unless directed by the court.

(7) A notice or report about the chamber proceeding must not be published.

(8) A record of the chamber proceeding, other than the order of the sentence to be imposed, must not be available for search by a person other than by order of—

- (a) the court; or
- (b) in the absence or incapacity of the judicial officer who constituted the court—another judicial officer of the same type of court; or
- (c) the Court of Appeal, for a proceeding under part 9.

### **Application of part generally to indictable offences**

**415.(1)** This part applies to proceedings for indictable offences, whether held summarily or on indictment.

(2) In the application of this part to a summary proceeding—

- (a) a reference to a jury is a reference to the presiding magistrate; and
- (b) a reference to a trial judge charging a jury is a reference to the presiding magistrate appropriately directing himself or herself about the relevant issue.

## **PART 8—OTHER TRIAL PROVISIONS**

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*Division 1—Prohibition on publication of proceedings***Power to prohibit publication of drugs misuse offence proceedings**

**416.(1)** This section applies to—

- (a) a judge of the court to which a person has been committed for trial or sentence for a drugs misuse offence or before which an indictment for a drugs misuse offence has been presented; and
- (b) a magistrate summarily hearing and deciding a proceeding for a drugs misuse offence, including a committal proceeding.

**(2)** The judge or magistrate may make an order prohibiting, indefinitely or for a specified time, the publication of—

- (a) all or part of the proceeding for the drugs misuse offence; and
- (b) the name and address of a witness.

**(3)** An application for an order may be made in chambers only in the presence of persons the judge or magistrate allows.

**(4)** On the hearing of the application the judge or magistrate or may receive and act on information the judge or magistrate considers appropriate.

**(5)** When considering the application regard must be had to—

- (a) the safety of anyone; and
- (b) the extent to which the detection of similar offences may be affected; and
- (c) the need to guarantee the confidentiality of information given by an informer.

**(6)** This section is in addition to, and not in substitution for, the *Children's Services Act 1965*, section 138<sup>83</sup> and the *Juvenile Justice Act 1992*, section 62.<sup>84</sup>

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<sup>83</sup> *Children's Services Act 1965*, section 138 (Restrictions on reporting proceeding concerning child)

<sup>84</sup> *Juvenile Justice Act 1992*, section 62 (Publication prohibited)

*Division 2—Certificate of discharge***Certificate of discharge for s 290 crime**

**417.(1)** At any time before being found guilty of the crime, a charged person may apply to the court for—

- (a) the issue of the certificate of discharge mentioned in subsection (5) in relation to the crime; and
- (b) an order prohibiting publication of identifying matter in relation to the charged person if the certificate is granted.

(2) The application may be heard in court or chambers.

(3) If the charged person has been charged on indictment, the application is to be heard and determined by a judge sitting without a jury.

(4) On making the application the charged person must give evidence, and may be cross-examined, in relation to all matters relevant to—

- (a) the commission of the crime by the charged person; and
- (b) the commission, by any other person, of an offence against the Code in relation to the place.

(5) If the court is satisfied that the evidence is a full and true disclosure by the charged person of all material particulars within the person's knowledge relevant to the application, the court must immediately give the person a certificate stating that the person is discharged on the crime.

(6) The charged person cannot afterwards be convicted or further prosecuted for the crime.

(7) If the court grants an application under subsection (1)(b), the court may make an order prohibiting the publishing of any identifying matter about the charged person either indefinitely or until further order.

(8) A police officer or anyone else may serve a copy of the order on anyone.

(9) In this section—

**“charged person”** means a person charged with the crime.

**“crime”** means the crime of attending a place being used for unlawful

prostitution.<sup>85</sup>

**“identifying matter”** means—

- (a) the name, address, place of employment or another particular of the charged person or anyone else that is likely to lead to the identification of the charged person; or
- (b) a photograph, picture, videotape or other visual representation of the charged person or anyone else that is likely to lead to the identification of the charged person.

**“publishing”** means publishing in Queensland or elsewhere by way of television, newspaper, radio or another form of communication.

**“the court”** means a court before which is brought a charge against a charged person for the crime, and includes a justice conducting an examination of witnesses in relation to that crime charged against a charged person.

### *Division 3—Order for delivery of property*

#### **Orders for delivery of certain property**

**418.(1)** If property has come into the custody or possession of a police officer or a court in connection with a charge, the court, at the trial’s end and on the prosecutor’s application, may—

- (a) order the property to be delivered to the person appearing to the court to be the person lawfully having the right to the property (the **“owner”**); or
- (b) if the owner cannot be identified—make an order about the property the court considers appropriate.

**(2)** An order does not bar a person’s right to recover the property by action from the person to whom it is given under the order.

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<sup>85</sup> See section 290 (Attending a place being used for unlawful prostitution).



## PART 9—COURT OF APPEAL PROCEEDINGS

### *Division 1—Preliminary*

#### Definitions

**419.** In this part—

**“appellant”** includes a person who has been convicted and wants to appeal under this part.

**“convicted person”** means the person whose conviction or sentence is the subject of an appeal, application for leave to appeal, reservation or reference under this part.

**“indictable offence”** includes an indictable offence dealt with summarily.

**“jury”**, for an indictable offence dealt with summarily, means the judicial officer presiding over the court of summary jurisdiction.

**“notice of appeal”** includes notice of application for leave to appeal.

**“registrar”** means the registrar of the Court of Appeal.

**“sentence”** includes an order made by the trial court on conviction of a person about the person or the person’s property, whether or not—

- (a) the person is adversely affected by the order; or
- (b) the order is made instead of passing sentence.

**“trial court”** means a court whose finding, sentence or other decision is the subject of an appeal, application for leave to appeal, reservation or reference under this part.

**“trial judge”** for an appeal means—

- (a) for a trial on indictment—the Supreme Court judge or District Court judge presiding over the trial court; or
- (b) for a summary trial—the judicial officer presiding over the trial court.

**Acquittal because of unsoundness of mind**

**420.** For this part, if a person is acquitted on the ground of unsoundness of mind when the person did not have the onus of proving unsoundness of mind—

- (a) the person is taken to be a person convicted; and
- (b) an order to keep the person in custody is taken to be a sentence.

***Division 2—Appeal by convicted person*****Right of convicted person to appeal**

**421.** A person convicted of an indictable offence may appeal to the Court of Appeal—

- (a) against the person's conviction on a ground involving only an issue of law; and
- (b) if the person has the Court's leave or the certificate of the trial judge that it is an appropriate case for appeal—against the person's conviction on a ground involving—
  - (i) only an issue of fact; or
  - (ii) an issue of mixed law and fact; or
  - (iii) another ground that appears to the Court to be a sufficient ground of appeal; and
- (c) if the person has the Court's leave—against the sentence passed on the person's conviction.

**Other appeals by convicted person from summary convictions excluded**

**422.** Rights under this part given to a person convicted summarily of an indictable offence are given to the exclusion of any other right of appeal under the *Justices Act 1886* given to persons dissatisfied by summary convictions and sentences passed on summary convictions.

**Decision on appeal by convicted person in ordinary cases**

**423.(1)** The Court of Appeal, on an appeal against conviction, must allow the appeal if it considers—

- (a) the jury's verdict should be set aside because it is unreasonable; or
- (b) the jury's verdict should be set aside because it cannot be supported having regard to the evidence; or
- (c) the trial court's judgment should be set aside because of a wrong decision on an issue of law; or
- (d) the trial court's judgment should be set aside because of a miscarriage of justice.

**(2)** The Court must otherwise dismiss the appeal.

**(3)** The Court may dismiss the appeal, even if it considers the point raised by the appeal might be decided in the appellant's favour, if it considers no substantial miscarriage of justice has actually happened.

**(4)** Subject to sections 424 and 425,<sup>86</sup> if the Court allows an appeal against conviction, it must—

- (a) set aside the conviction; and
- (b) direct a judgment and verdict of acquittal to be entered.

**(5)** On an appeal against sentence, the Court must—

- (a) if it considers another sentence (whether more or less severe) is warranted in law—set aside the sentence and substitute another sentence it considers is appropriate; or
- (b) dismiss the appeal in any other case.

**Powers of Court on appeals by convicted person in special cases**

**424.(1)** If the Court of Appeal considers an appellant, though not properly convicted on a charge or part of an indictment or crime complaint, has been properly convicted on another charge or part of the indictment or

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<sup>86</sup> Sections 424 (Powers of Court on appeals by convicted person in special cases) and 425 (Power to grant new trial)

crime complaint, the Court may—

- (a) confirm the sentence passed at the trial; or
- (b) substitute another sentence (whether more or less severe) it considers is appropriate and warranted in law by the conviction on the other charge or part of the indictment or crime complaint.

**(2)** If—

- (a) an appellant has been convicted of an offence; and
- (b) the jury could on the indictment or crime complaint have found the appellant guilty of another offence; and
- (c) on the jury's finding the Court considers the jury must have been satisfied of facts that proved the appellant guilty of the other offence;

the Court may, instead of allowing or dismissing the appeal—

- (d) substitute, for the verdict found by the jury, a verdict of guilty of the other offence; and
- (e) substitute another sentence (other than a more severe sentence) for the sentence passed at the trial that is warranted in law for the other offence.

**(3)** If—

- (a) on the appellant's conviction the jury found a special verdict; and
- (b) the Court considers a wrong conclusion has been arrived at by the trial court on the effect of the verdict;

the Court may, instead of allowing the appeal—

- (c) order the conclusion the Court considers to be required in law by the verdict to be recorded; and
- (d) substitute another sentence (whether more or less severe) for the sentence passed at the trial that is warranted in law.

**(4)** If the Court considers that, although the appellant did the act charged against the appellant, the appellant was not of sound mind when the act was done so as not to be responsible for the act under law, the Court may—

- (a) set aside the sentence passed at the trial; and

- (b) order the appellant to be kept in strict custody in the same way as if a jury had specially found the fact under section 410.<sup>87</sup>

### **Power to grant new trial**

**425.** On an appeal against a conviction, the Court of Appeal may, either of its own initiative or on the appellant's application, order a new trial in the way it considers appropriate, if it considers—

- (a) a miscarriage of justice has happened; and
- (b) having regard to all the circumstances, the miscarriage of justice can be more adequately remedied by an order for a new trial than by another order the Court may make.

### **Appellant may be present**

**426.(1)** An appellant, even though in custody, may be present at the hearing of the appellant's appeal, with the leave of the Court of Appeal.

**(2)** The Court's power to pass a sentence may be exercised even if the appellant is not present.

### **Written appeals allowed**

**427.** An appellant may present the appellant's case and argument to the Court of Appeal in writing.

## ***Division 3—Proceedings started by Attorney-General***

### **Attorney-General may appeal against a sentence for an indictable offence**

**428.(1)** The Attorney-General may appeal to the Court of Appeal against a sentence passed by a court for an indictable offence.

**(2)** On an appeal by the Attorney-General against a sentence, the Court

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<sup>87</sup> Section 410 (Acquittal because of unsoundness of mind)

may, in its unfettered discretion, vary the sentence and impose a sentence the court considers appropriate.

### **Attorney-General may refer an issue of law**

**429.(1)** The Attorney-General may refer an issue of law that arose at the trial of a person about a charge contained in an indictment to the Court of Appeal, for its consideration and opinion, if the person has been—

- (a) acquitted of the charge; or
- (b) discharged on the charge after the prosecutor, because of the trial court's decision on the issue of law, informed the court the State would not continue further on the indictment in relation to the charge.

**(2)** The Attorney-General may refer an issue of law that arose at the summary trial of a charge of an indictable offence to the Court, for its consideration and opinion, if the person charged has been—

- (a) acquitted of the charge; or
- (b) discharged on the charge after the prosecutor, because of the trial court's decision on the issue of law, informed the court the prosecution would not continue further on the charge in the proceeding before the court.

**(3)** Notice of the reference must be given to the person acquitted or discharged.

**(4)** On the reference, the Court must hear argument—

- (a) by the Attorney-General or by a lawyer for the Attorney-General; and
- (b) with the leave of the Court, by the person acquitted or discharged or by a lawyer for the person.

**(5)** The Court must then consider the issue referred and give the Attorney-General its opinion.

**(6)** If the reference relates to a trial in which the person tried has been acquitted, the reference does not affect the trial or the person's acquittal.

**(7)** In this section—

“**discharged**” includes the dismissal or striking out of a charge at a summary trial.

### **Attorney-General may appeal against order staying a charge for an indictable offence**

**430.(1)** The Attorney-General may appeal to the Court of Appeal against an order of a court staying a charge for an indictable offence.

(2) On appeal, the Court may set aside or confirm the order.

### *Division 4—Time limitation on start of proceedings*

#### **Time to appeal**

**431.(1)** A convicted person who wants to appeal to the Court of Appeal, or to obtain the Court’s leave to appeal from a conviction or sentence, must give notice of appeal or notice of application for leave to appeal—

- (a) in the way prescribed by the criminal practice rules; and
- (b) within 28 days after the conviction or sentence.

(2) An appeal to the Court by the Attorney-General against a sentence must be made within 28 days after the sentence.

(3) An appeal to the Court by the Attorney-General against an order staying a charge of an indictable offence must be made within 28 days after the order.

(4) The Court may, at any time, extend the time limits imposed by subsections (1) to (3).

### *Division 5—Custody, imprisonment and detention*

#### **Appellant’s custody, imprisonment and detention**

**432.(1)** Pending the decision on an appeal brought by a convicted person who has been sentenced to imprisonment or detention and not released under the *Bail Act 1980*, the appellant must be treated in the way directed

under the law about prisons or detention centres.

(2) The period while an appellant, pending the decision—

- (a) is released under the *Bail Act 1980*; or
- (b) if the appellant is in custody in a prison—is specially treated as an appellant under the law about prisons;

does not count as part of imprisonment or detention under the appellant's sentence.

(3) Imprisonment or detention mentioned in subsection (2), whether the appellant's sentence was passed by the trial court or by the Court of Appeal—

- (a) if the appellant is in custody—resumes when the appeal is decided; or
- (b) if the appellant is not in custody—starts when the appellant enters prison or a detention centre under the sentence.

(4) Provision must be made under the law about prisons and detention centres for the way—

- (a) an appellant kept in custody is to be brought to a place where the appellant is permitted to be present, or is ordered to be taken, under this part; and
- (b) an appellant is to be kept in custody while away from a prison or detention centre under this part.

(5) An appellant in custody under a law made under subsection (4)(b) is taken to be in legal custody.

(6) Subsections (7) and (8) apply if the Court imposes a new sentence on an appeal by the Attorney-General against sentence.

(7) If the new sentence differs from the sentence passed by the trial court by imposing imprisonment or detention, the imprisonment or detention starts—

- (a) for a respondent already held in prison or a detention centre because of another matter—when the appeal is decided; or
- (b) otherwise—when the person enters prison or a detention centre under the Court's decision.



(8) If the new sentence effectively varies a term of imprisonment or period of detention imposed by the trial court, a part of the sentence already served by the person must be taken into account in fixing the new sentence.

(9) Subsections (2), (3), (6), (7) and (8) apply subject to any contrary order the Court may make on a particular appeal.

### *Division 6—Suspension of other orders*

#### **Revesting and restitution of property on conviction**

**433.(1)** The operation of—

- (a) an order for the restitution of property, or the payment of compensation, made by the trial court; and
- (b) the provisions of a civil law<sup>88</sup> about the revesting of the property in stolen goods on conviction;

is suspended, unless the trial court directs to the contrary if it considers the title to the property is not in dispute.

(2) The operation is suspended until—

- (a) the end of the time allowed for applying for leave to appeal to, or for appealing to, the Court of Appeal; or
- (b) if notice of appeal is given within the time for appealing—the decision on the appeal or refusal of the application for leave to appeal; or
- (c) if the appeal is by the Attorney-General against sentence within the time for appealing—the decision on the appeal.

(3) If the operation is suspended until the decision on the appeal and the conviction is set aside on appeal, the order or provisions do not take effect except by the Court's order.

(4) The Court may set aside or change an order, even though the conviction is not set aside.

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<sup>88</sup> See the *Sale of Goods Act 1896*, section 26(1) under which stolen goods revest in the owner, or the owner's personal representative when the offender is convicted, despite intermediate dealings.

(5) When an issue arises before the Court about the operation or suspension of the operation of an order or provisions, the following persons may appear before the Court to make submissions about the issue—

- (a) the person in whose favour the order is made;
- (b) the person benefiting from the operation of the provisions;
- (c) the person's lawyer.

(6) This section applies subject to the *Penalties and Sentences Act 1992*, section 134.<sup>89</sup>

(7) Subsection (5) applies subject to section 409.<sup>90</sup>

(8) In this section—

“**trial court**” includes a court from whose finding, sentence or another decision a person is entitled to appeal or apply for leave to appeal to the Court of Appeal under this part.

### *Division 7—Other powers of Court of Appeal*

#### **General power to make orders on sentence**

**434.** The power of the Court of Appeal to pass a sentence includes power to make any order the trial court could have made on sentence.

#### **Powers assisting the Court**

**435.(1)** The Court of Appeal may, if it considers it necessary or desirable in the interests of justice—

- (a) order the production of a document, exhibit or other thing connected with the proceedings; or
- (b) order a person, who would have been a compellable witness at the trial (whether or not the person was called at the trial) to attend and be examined before—

<sup>89</sup> *Penalties and Sentences Act*, section 134 (Requirements of order have effect despite appeal)

<sup>90</sup> Section 409 (Appellant may be present)

- (i) the Court; or
  - (ii) a judge or officer of the Court; or
  - (iii) a justice or other person appointed by the Court;
- and admit the deposition taken as evidence; or
- (c) receive the evidence, if tendered, of a witness (including the appellant) who is a competent but not a compellable witness; or
  - (d) if an issue to be decided on the appeal involves prolonged examination of documents or accounts, or a scientific or local investigation, the Court considers cannot be conveniently conducted before the Court—
    - (i) refer the issue for inquiry and report to a commissioner appointed by the Court; and
    - (ii) act on the report as far as the Court considers appropriate; or
  - (e) appoint a person with special expert knowledge to act as assessor to the Court if the Court considers the special knowledge is needed to decide the case; or
  - (f) exercise, in relation to the Court's proceedings, any other powers that may be exercised by the Supreme Court on appeals or applications in civil matters; or
  - (g) issue a warrant or other process necessary for enforcing the Court's orders or sentences.

(2) However, a sentence cannot be increased because of evidence that was not given at the trial.

(3) Subject to this part, the criminal practice rules may provide that an application under subsection (1)(a), (b), (d), or (e) may be decided by a judge of the Court.

***Division 8—Miscellaneous provisions about appeals to the Court of Appeal***

**Costs of appeal**

**436.(1)** Costs are not allowed, on either side, on the hearing or decision of an appeal or proceedings preliminary or incidental to an appeal.

**(2)** Subject to appropriation by Parliament, the following expenses must be paid out of the Consolidated Fund up to an amount allowed by the registrar—

- (a) the expenses of an assessor appointed;
- (b) the expenses of a witness attending on the Court's order or examined;
- (c) the expenses of and incidental to an examination or reference;
- (d) the expenses of an appellant's appearance on the hearing of the appeal or proceedings preliminary or incidental to the appeal.

**(3)** However, the registrar's decision may be reviewed by the Court or a judge of the Court.

**(4)** A regulation may make provision about rates of payment that may be made under subsection (2).

**(5)** Subsections (2) and (3) apply subject to the regulations.

**Registrar's duties**

**437.(1)** The registrar must give the necessary forms and instructions about a notice of appeal to—

- (a) anyone who demands them; and
- (b) an officer of a court, general manager of a prison or other officer or person the registrar considers appropriate.

**(2)** The general manager of a prison or person in charge of a detention centre must—

- (a) put the forms and instructions at the disposal of prisoners or detainees wanting to appeal or to apply for leave to appeal; and
- (b) send a notice of appeal given by a prisoner or detainee who is in the general manager's or person's custody to the registrar.

**(3)** After a notice of appeal is given to the registrar, the registrar must—

- (a) take all necessary steps for obtaining a hearing of the appeal or application for leave to appeal; and
- (b) obtain and put before the Court (in appropriate form) all documents, exhibits and other things about the proceedings in the trial court that appear necessary to decide the appeal or application.

### **Registrar may act on frivolous or vexatious appeal**

**438.(1)** If the registrar considers a notice of appeal against a conviction or sentence does not show a substantial ground of appeal, the registrar may refer the appeal to the Court for summary decision.

(2) The Court, if it considers the application for leave to appeal or the appeal frivolous or vexatious, may refuse leave to appeal or dismiss the appeal summarily without calling on a person to attend the hearing.

### **Trial record to be given to registrar**

**439.** On a notice of appeal, a record of all or part of the proceedings must, if the registrar asks, be given to the registrar for the use of the Court or a judge of the Court.

### **Judge's notes to be furnished on appeal if needed**

**440.** The trial judge must give the trial judge's notes of the trial to the registrar if—

- (a) there is an appeal or application to appeal; and
- (b) a record of the trial proceedings was not made by shorthand notes or a mechanical device.

## ***Division 9—Appeals from the Court of Appeal***

### **Appeals from the Court's decisions**

**441.(1)** This section applies if—

- (a) an appeal to the Court of Appeal is allowed; and
- (b) the appellant has the right to have the conviction against the appellant set aside by the Court's order.

(2) The Court may, on the State's application before the appellant's release, either by the same or a separate order, direct the execution of the order setting aside the appellant's conviction be stayed for a time (not more than 7 days) it considers appropriate.

(3) The Court or a judge of the Court is to make the order the Court or judge considers appropriate for—

- (a) the appellant's detention; or
- (b) the appellant's return to any former custody; or
- (c) granting bail to the appellant;

during the stay.

(4) The Court or a judge of the Court may, on a State law officer's application, make the order the Court or judge considers appropriate for—

- (a) the appellant's detention; or
- (b) granting bail to the appellant;

pending the hearing of an appeal to the High Court of Australia.

(5) The Court or judge may change or revoke an order made under subsection (3).

(6) On the application of an appellant dissatisfied by a failure to diligently prosecute the appeal, the Court or a judge of the Court may order—

- (a) the immediate execution of the Court's original order setting aside the conviction; and
- (b) the appellant's immediate release; and
- (c) award the appellant compensation the Court or judge considers just.

**Reservation of an issue of law**

**442.(1)** In special circumstances, a judge of a court before which a person appears on trial on indictment may reserve an issue of law resulting from the trial for the consideration of the Court of Appeal.

**(2)** The reservation may be made—

- (a) on application by the person made before verdict; or
- (b) on the initiative of the judge of the trial court made before or after verdict.

**(3)** If a reservation is made at a trial and then the person is convicted, the trial court may—

- (a) sentence the person and stay the execution of the sentence until the reserved issue is decided; or
- (b) postpone the sentencing of the person until the reserved issue is decided.

**(4)** The trial court may, pending the decision on the reserved issue—

- (a) commit a person mentioned in subsection (3) to prison; or
- (b) release the person under the *Bail Act 1980*.

**(5)** If a trial court reserves an issue of law for the Court's consideration, the judge of the trial court must state and sign a case setting out—

- (a) the special circumstances; and
- (b) the issue of law.

**(6)** The case must be sent to the Court.

**(7)** The Court must decide the issue reserved as an appeal.

**(8)** The Court may send the case back to be amended or restated if it considers it appropriate to do so.

**(9)** This section does not authorise, before the person is placed in charge of a jury, reservations of issues of law resulting from a proceeding under section 346.<sup>91</sup>

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<sup>91</sup> Section 346 (Directions and rulings before trial)

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## PART 10—PREROGATIVE OF MERCY

### Code does not limit prerogative of mercy

**443.(1)** The Code does not affect the prerogative of mercy.

(2) However, under subsection (4) or (6), the Attorney-General may refer an issue about anyone's conviction or sentence to the Court of Appeal.

(3) The reference may be made—

- (a) on the Attorney-General's own initiative; or
- (b) on petition to the Attorney-General.

(4) The Attorney-General may refer the entire case to the Court.

(5) The case must then be decided by the Court as if it were an appeal by the person convicted or sentenced.

(6) The Attorney-General may refer to the Court a particular point for decision on a petition.

(7) The Court must then consider the point and give the Attorney-General its opinion.

### Conditional release under prerogative of mercy

**444.(1)** In exercising the prerogative of mercy for an offender under sentence of imprisonment, the Governor may state an operational period for the *Penalties and Sentences Act 1992*, section 144(5)<sup>92</sup> as if the Governor were the court that imposed the sentence of imprisonment.

(2) The offender is then liable to be dealt with under the *Penalties and Sentences Act 1992*, part 8<sup>93</sup> as if the court that imposed the sentence had suspended the term of imprisonment and stated the operational period.

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<sup>92</sup> *Penalties and Sentences Act 1992*, section 144(5) (Sentence of imprisonment may be suspended)

<sup>93</sup> *Penalties and Sentences Act 1992*, part 8 (Orders of suspended imprisonment)



**Effect of prerogative of mercy**

**445.(1)** A pardon by the Governor in the exercise of the prerogative of mercy discharges the convicted person from the effects of the conviction.

**(2)** This section applies subject to section 429.<sup>94</sup>

**PART 11—MISCELLANEOUS***Division 1—Search provisions***Search warrant**

**446.(1)** If a justice believes, on complaint made on oath, that there are reasonable grounds for suspecting there is a relevant thing in a dwelling house or other place, the justice may issue a warrant directing 1 or more specified police officers, or all police officers, to—

- (a) enter and search the place using reasonable force that may be necessary; and
- (b) seize any relevant thing found and take it before a justice.

**(2)** The warrant must be executed by day unless the justice authorises it to be executed by night.

**(3)** If it appears on the complaint that an offence involving an aircraft's safety has been, or may be, committed on board or in relation to the aircraft, the justice may direct in the warrant that a person in or about to enter the aircraft may be searched.

**(4)** In this section—

**“justice”** means—

- (a) a Supreme Court judge or a District Court judge; or
- (b) a magistrate; or
- (c) a justice of the peace (magistrates court); or

<sup>94</sup> Section 429 (Conditional release under prerogative of mercy)

(d) a justice of the peace (qualified).

**“relevant thing”** means—

- (a) if an offence has been committed, or is suspected on reasonable grounds to have been committed, for which an offender may be arrested with or without warrant—a thing relating to the offence; or
- (b) if there are reasonable grounds for believing a thing by itself, or on scientific examination, may provide evidence about an offence—the thing; or
- (c) if there are reasonable grounds for believing a thing is intended to be used to commit an offence—the thing.

### **Search of aircraft**

**447.(1)** This section applies if the person in charge of an aircraft reasonably suspects that an offence involving the aircraft’s safety has been, is being, is about to be, or may be committed in relation to the aircraft.

**(2)** The person, with the assistance the person considers necessary, may—

- (a) search—
  - (i) the aircraft; or
  - (ii) a person in, or about to enter, the aircraft; or
  - (iii) luggage or freight in, or about to be placed in, the aircraft; or
- (b) seize—
  - (i) property the person reasonably believes will provide evidence of the commission of an offence; or
  - (ii) anything the person reasonably believes is intended to be used to commit an offence.

**(3)** A person may only be searched under this section by a person of the same sex, unless search by a person of the same sex is impractical in the particular circumstances.

**Division 2—Property provisions****Property found on offender on arrest**

**448.(1)** This section applies if—

- (a) a person is arrested on a charge of an offence about property; and
- (b) the property about which the offence is claimed to be committed is found in the person's possession.

**(2)** The person arresting the person may take the property before a Magistrates Court to be dealt with under the law.

**Disposal of property seized**

**449.(1)** If anything is seized under the Code, the person seizing it must take it to a justice as soon as practicable.

**(2)** The justice may direct the thing seized to be kept in custody as specified by the justice, taking reasonable care for its preservation, until the end of an investigation concerning it.

**(3)** If a person is committed for trial—

- (a) for an offence committed about the thing seized; or
- (b) in circumstances in which the thing seized is likely to be evidence at the trial;

the Magistrates Court may order it to be kept for production in evidence at the trial.

**(4)** If no person is committed, the court must order the thing be returned to the person from whom it was seized, unless the court is authorised or required by law to otherwise dispose of it.

**(5)** The *Magistrates Courts Rules 1960* apply for subsection (4).

**(6)** If—

- (a) the thing seized is forged or of a type that a person who has it in the person's possession without lawful authority or excuse commits an offence; and
- (b) a person is convicted of the offence;

the court before whom the person is convicted may order it to be defaced or destroyed.

(7) If the thing seized is of a type that a person who has it in the person's possession, knowing its nature and without lawful authority or excuse, commits an offence, then, as soon as it appears it will not be required or further required in evidence against the person who possessed it, the thing must be dealt with in the way directed by the Attorney-General or a person authorised by the Attorney-General.

(8) In this section—

“**justice**” means—

- (a) a Supreme Court judge or a District Court judge; or
- (b) a magistrate; or
- (c) a justice of the peace (magistrates court); or
- (d) a justice of the peace (qualified).

“**seize**” includes take.

### **Explosives or noxious substances seized from vehicles**

**450.(1)** This section applies if a person seizes, under a warrant under the Code, an explosive or noxious substance found in a vehicle.

(2) The person may use the vehicle and anything in the vehicle to take the seized thing to a safe place of deposit as soon as practicable.

(3) The person may be ordered to pay the vehicle's owner the compensation for its use that a Magistrates Court, on application, considers just.

(4) The *Magistrates Courts Rules 1960* apply for the application.

(5) If the person does not pay the compensation, the compensation may be recovered as a debt in the Magistrates Court.

### ***Division 3—Consent to prosecution***

**Consent of State law officer**

**451.(1)** In this section—

“**proceeding**” includes a committal proceeding.

(2) This section applies if a person cannot be prosecuted for an offence without the consent of a State law officer.

(3) If the proceeding is on complaint and summons or an indictment, the State law officer’s written consent to the proceeding must be given before the summons is issued or the indictment presented.

(4) If the proceeding is started in any other way, the State law officer’s written consent to the proceeding must be given before the proceeding progresses to a hearing and decision.

(5) The issue of whether the State law officer has consented to a prosecution is an issue of law.

***Division 4—Provisions generally helping charged person*****No court fees in criminal cases**

**452.** A fee cannot be taken from a person charged with an indictable offence for a proceeding before a court about the charge or action taken by a justice about the charge.

**Copies of depositions to be allowed to person committed for trial**

**453.** A person who is committed for trial for an indictable offence on a witness’s deposition has the right to be given a copy of the deposition, on demand, from the person who has the lawful custody of the deposition.

**Inspection of depositions at trial**

**454.** A person who is tried for an offence has, at the person’s trial, the right to inspect (free of charge) a deposition, or copy of a deposition, taken against the person and returned into the court where the trial is had.

**Division 5—Confidentiality****Source of information about drugs misuse offence not to be disclosed**

**455.(1)** This section applies if an informer supplies information about the commission of a drugs misuse offence to—

- (a) a police officer; or
- (b) an officer of a law-enforcement agency.

**(2)** In a proceeding (whether or not under this part) a party must not be asked, and if asked must not be compelled, to disclose—

- (a) the name of an informer; or
- (b) another particular that may be likely to lead to the informer's identification; or
- (c) the fact that the party received information from an informer, or supplied information to an informer, about the offence; or
- (d) the nature of the information mentioned in paragraph (c).

**(3)** In this section—

**“law-enforcement agency”** means a law-enforcement agency established under a law of any State or the Commonwealth.

**“party”** means—

- (a) the prosecutor; or
- (b) a person who appears as a witness for the prosecution; or
- (c) a police officer, or officer of a law-enforcement agency, who appears as a witness for the defence.

**Other protection for police officer for drugs misuse offence charges**

**456.** In a proceeding arising from a charge of a drugs misuse offence, a police officer appearing as a prosecutor or witness must not be compelled—

- (a) to produce any reports or documents made or received by the officer in the officer's official capacity or containing confidential information about the offence; or

- (b) to make a statement about the reports, documents or information

### *Division 6—Forms*

#### **Forms for criminal proceedings**

**457.** A form prescribed under the criminal practice rules is taken to be—

- (a) sufficient for the purpose for which it is approved to be used; and  
(b) if used to state an offence or matter, a sufficient statement of the relevant offence or matter.

### *Division 7—Amendments and repeals*

#### **Amendment of Acts—sch 2**

**458.** Schedule 2 amends the Acts mentioned in it.

#### **Consolidation and amendment of certain laws**

**459.(1)** Schedule 3, part 1, division 1<sup>95</sup> amends the *Defamation Act 1889*.

**(2)** Schedule 3, part 1, division 2<sup>96</sup> amends the Criminal Code.

**(3)** Schedule 3, part 2, division 1<sup>97</sup> amends the *Legislative Assembly Act 1867*.

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<sup>95</sup> Schedule 3 (Consolidation and amendment of certain laws), part 1 (Consolidation and amendment of defamation law), division 1 (Amendment of *Defamation Act 1889*)

<sup>96</sup> Schedule 3 (Consolidation and amendment of certain laws), part 1 (Consolidation and amendment of defamation law), division 2 (Amendment of Criminal Code)

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<sup>97</sup> Schedule 3 (Consolidation and amendment of certain laws), part 2 (Amendment of certain laws about the Legislative Assembly), division 1 (Amendment of *Legislative Assembly Act 1867*)

(4) Schedule 3, part 2, division 2<sup>98</sup> amends the Criminal Code.

(5) Schedule 3, part 3, division 1<sup>99</sup> amends the *Constitution (Office of Governor) Act 1987*.

(6) Schedule 3, part 3, division 2<sup>100</sup> amends the Criminal Code.

### Repeal of Acts—sch 4

**460.(1)** The Acts mentioned in schedule 4 are repealed.

(2) The following Acts are laws to which the *Acts Interpretation Act 1954*, section 20A applies—

- Criminal Code Amendment Act 1922
- Criminal Code and the Offenders Probation and Parole Act Amendment Act 1971
- Corrective Services (Consequential Amendments) Act 1988
- Criminal Code and Another Act Amendment Act 1990.

<sup>98</sup> Schedule 3 (Consolidation and amendment of certain laws), part 2 (Amendment of certain laws about the Legislative Assembly), division 2 (Amendment of Criminal Code)

<sup>99</sup> Schedule 3 (Consolidation and amendment of certain laws), part 3 (Amendment of certain laws about the Government of Queensland), division 1 (Amendment of *Constitution (Office of Governor) Act 1987*)

<sup>100</sup> Schedule 3 (Consolidation and amendment of certain laws), part 3 (Amendment of certain laws about the Government of Queensland), division 2 (Amendment of Criminal Code)



**SCHEDULE 1****DRUGS MISUSE**

chapter 5, part 5

**PART 1**

sections 273, 275, 276, 278 and 279

1. Heroin
2. Cocaine
3. Phencyclidine
4. Lysergide

**PART 2**

sections 273, 275, 276, 278 and 279

1. Acetorphine
2. Acetyldihydrocodeine, except if it is readily extractable and if others contained—
  - (a) in divided preparations containing 100 mg or less of acetyldihydrocodeine per dosage unit; or
  - (b) in undivided preparations containing 2.5% or less of acetyldihydrocodeine
3. Acetylmethadol
4. Acetylmorphines

## SCHEDULE 1 (continued)

5. Alfentanil
6. ~~Alkyloxyphenethylamines~~ Alkyloxyphenethylamines, except if separately specified
7. Alkoxyphenethylamines and alkyl-substituted alkoxyphenethylamines, except if separately specified
8. Allylprodine
9. Alphacetylmethadol
10. Alphameprodine
11. Alphamethadol
12. Alphaprodine
13. Amphetamine
14. Anileridine
15. Barbituric acid and any 5,5 disubstituted derivatives of barbituric acid, whether or not further substituted at position 1 of the ring
16. Benzethidine
17. Benzylmorphine
18. Betacetylmethadol
19. Betameprodine
20. Betamethadol
21. Betaprodine
22. Bezitramide
23. 4-Bromo-2,5-dimethoxyamphetamine
24. Bufotenine
25. Buprenorphine
26. Cannabinoids except tetrahydrocannabinols
27. Cannabis sativa
28. Clonitazene
29. Coca leaf

## SCHEDULE 1 (continued)

- 30.** Codeine, except if it is compounded with 1 or more other medicaments so that it cannot be readily extracted and if it is contained—
- (a) in divided preparations containing 30 mg or less of codeine per dosage unit; or
  - (b) in undivided preparations containing 1% or less of codeine
- 31.** Codeine-N-oxide
- 32.** Codoxime
- 33.** 4-Cyano-2-Dimethylamino-4,4-Diphenylbutane
- 34.** 4-Cyano-1-Methyl-4-Phenylpiperidine
- 35.** Desomorphine
- 36.** Diampromide
- 37.** Diethylthiambutene
- 38.** N,N-Diethyltryptamine
- 39.** Difenoxyin, except in preparations containing 0.5 mg or less of difenoxyin and a quantity of atropine sulphate equivalent to at least 5% of the dose of difenoxyin per dosage unit
- 40.** Dihydrocodeine, except if it is compounded with 1 or more other medicaments so it cannot be readily extracted and if it is contained—
- (a) in divided preparations containing 100 mg or less of dihydrocodeine per dosage unit; or
  - (b) in undivided preparations containing 2.5% or less of dihydrocodeine
- 41.** Dihydromorphine
- 42.** Dimenoxadol
- 43.** Dimepheptanol
- 44.** 2,5-Dimethoxyamphetamine
- 45.** 2,5-Dimethoxy-4-Ethylamphetamine (DOET)
- 46.** 2,5-Dimethoxy-4-Methylamphetamine

## SCHEDULE 1 (continued)

47. Dimethylamino-1,2-Diphenylethane
48. 3 - ( 1 , 2 - D i m e t h y l h e p t y l ) - 1 - H y d r o x y - 7 , 8 , 9 , 1 0 - T e t r a h y d r o - 6 , 6 , 9 - T r i m e t h y l - 6 H - D i b e n z o ( b , d ) P y r a n
49. Dimethylthiambutene
50. N,N-Dimethyltryptamine
51. Dioxaphetyl butyrate
52. Diphenoxylate, except in preparations containing 2.5 mg or less of diphenoxylate and a quantity of atropine sulphate equivalent to at least 1% of the dose of diphenoxylate per dosage unit
53. Dipipanone
54. Drotebanol
55. Ecgonine, its esters and derivatives which are convertible to ecgonine and cocaine
56. Ethylmethylthiambutene
57. Ethylmorphine, except if it is compounded with 1 or more other medicaments so that it cannot be readily extracted and if it is contained—
  - (a) in divided preparations containing 100 mg or less of ethylmorphine per dosage unit; or
  - (b) in undivided preparations containing 2.5% or less of ethylmorphine
58. N-Ethyl-1-Phencyclohexylamine
59. Etonitazine
60. Etorphine
61. Etoxeridine
62. Fenethylline
63. Fentanyl
64. Furethidine

## SCHEDULE 1 (continued)

65. Hydrocodone
66. Hydromorphenol
67. Hydromorphone
68. Hydroxypethidine
69. Isomethadone
70. Ketobemidone
71. Levophenacymorphan
72. Lysergamide and N-alkyl derivatives of lysergamide other than lysergide
73. Lysergic acid
74. Mecloqualone
75. Mescaline (3,4,5-Trimethoxyphenethylamine)
76. Metazocine
77. Methadone
78. Methaqualone
79. 5-Methoxy-3,4-Methylenedioxyamphetamine (MMDA)
80. 3, 4-Methylenedioxymethamphetamine (MDMA)
81. Methylamphetamine
82. Methylodesorphine
83. Methylhydromorphone
84. 3,4-Methylenedioxyamphetamine
85. 2-Methyl-3-Morpholino-1, 1-Diphenylpropane Carboxylic acid
86. Methylphenidate
87. 1-Methyl-4-Phenylpiperidine-4-Carboxylic acid
88. Metopon
89. Moramide

## SCHEDULE 1 (continued)

90. Morpheridine
91. Morphine
92. Morphine methobromide
93. Morphine-N-oxide
94. Myrophine
95. Nabilone
96. Nicocodine, except if it is compounded with 1 or more other medicaments so that it cannot be readily extracted and if it is contained—
  - (a) in divided preparations containing 100 mg or less of nicocodine per dosage unit; or
  - (b) in undivided preparations containing 2.5% or less of nicocodine
97. Nicodicodine, except if it is compounded with 1 or more other medicaments so that it cannot be readily extracted and if it is contained—
  - (a) in divided preparations containing 100 mg or less of nicodicodine per dosage unit; or
  - (b) in undivided preparations containing 2.5% or less of nicodicodine
98. Nicomorphine
99. Noracymethadol
100. Norcodeine, except if it is compounded with 1 or more other medicaments so that it cannot be readily extracted and if it is contained—
  - (a) in divided preparations containing 100 mg or less of norcodeine per dosage unit; or
  - (b) in undivided preparations containing 2.5% or less of norcodeine
101. Norlevorphanol
102. Normethadone
103. Normorphine

## SCHEDULE 1 (continued)

- 104. Norpipanone
- 105. Opium
- 106. Oxycodone
- 107. Oxymorphone
- 108. *Papaver orientale*
- 109. *Papaver setigerum*
- 110. *Papaver somniferum* L. other than the seed that has been made sterile
- 111. Parahexyl
- 112. Paramethoxyamphetamine (PMA)
- 113. Pentazocine
- 114. Pethidine
- 115. Phenadoxone
- 116. Phenampromide
- 117. Phenazocine
- 118. Phendimetrazine
- 119. Phenmetrazine
- 120. Phenomorphan
- 121. Phenoperidine
- 122. 1-(1-Phenylcyclohexyl)pyrrolidine
- 123. 4-Phenylpiperidine-4-Carboxylic acid ethyl ester
- 124. Pholcodine, except if it is compounded with 1 or more other medicaments so that it cannot be readily extracted and if it is contained—
  - (a) in divided preparations containing 100 mg or less of pholcodine per dosage unit; or
  - (b) in undivided preparations containing 2.5% or less of pholcodine
- 125. Piminodine

## SCHEDULE 1 (continued)

- 126. Piritramide
- 127. Proheptazine
- 128. Properidine
- 129. Propiram
- 130. Psilocin
- 131. Psilocybin
- 132. Racemethorphan
- 133. Racemoramide
- 134. Racemorphan
- 135. Sufentanil
- 136. Tetrahydrocannabinols, including their—
  - (a) alkyl homologues, unless separately specified; and
  - (b) corresponding carboxylic acids
- 137. Thebacon
- 138. Thebaine
- 139. 1-(1-(2-thienyl)cyclohexyl)piperidine
- 140. Tilidine
- 141. Trimeperidine
- 142. 3, 4, 5-Trimethoxyamphetamine (TMA)



## SCHEDULE 1 (continued)

**PART 3**

sections 273, 278 and 279

<b>Dangerous drug</b>	<b>Quantity of dangerous drug</b>
1. Amphetamine	2.0 g
2. Barbituric Acid and any 5,5 disubstituted derivatives of barbituric acid whether or not further substituted at position 1 of the ring	50.0 g
3. 4-Bromo-2,5-dimethoxyamphetamine	0.5 g
4. Cannabis sativa	500.0 g or, if the dangerous drug consists of plants the total weight of which is less than 500.0 g, 100 plants
5. Cocaine	2.0 g
6. Codeine	10.0 g
7. N,N-Diethyltryptamine	2.0 g
8. 2,5-Dimethoxy-4-Ethylamphetamine (DOET)	2.0 g
9. 2,5-Dimethoxy-4-Methylamphetamine	2.0 g
10. N,N-Dimethyltryptamine	2.0 g
11. Fenethylamine	2.0 g
12. Fentanyl	0.01 g
13. Heroin	2.0 g

## SCHEDULE 1 (continued)

<b>14.</b> Hydromorphone	2.0 g
<b>15.</b> Lysergide	0.004 g
<b>16.</b> Methadone	2.0 g
<b>17.</b> 5-Methoxy-3,4-Methylenedioxyamphetamine (MMDA)	2.0 g
<b>18.</b> Methylamphetamine	2.0 g
<b>19.</b> 3,4-Methylenedioxymethamphetamine (MDMA)	2.0 g
<b>20.</b> Moramide	2.0 g
<b>21.</b> Morphine	2.0 g
<b>22.</b> Opium	20.0 g
<b>23.</b> Paramethoxyamphetamine (PMA)	2.0 g
<b>24.</b> Pethidine	10.0 g
<b>25.</b> Phencyclidine	0.5 g
<b>26.</b> Psilocin	0.10 g
<b>27.</b> Psilocybin	0.10 g
<b>28.</b> Tetrahydrocannabinols including their—	
(a) alkyl homologues unless separately specified; and	
(b) corresponding carboxylic acids	2.0 g
<b>29.</b> 3,4,5-Trimethoxyamphetamine (TMA)	2.0 g

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SCHEDULE 1 (continued)

**PART 4**

sections 273, 278 and 279

<b>Dangerous drug</b>	<b>Quantity of dangerous drug</b>
1. Heroin	200.0 g
2. Cocaine	200.0 g
3. Phencyclidine	50.0 g
4. Lysergide	0.4 g

**PART 5**

sections 273, 276 and 279

1. Barbituric acid and any 5,5 disubstituted derivatives of barbituric acid, whether or not further substituted at position 1 of the ring
2. Buprenorphine
3. Codeine, except if it is compounded with 1 or more other medicaments so that it cannot be readily extracted and if it is contained—
  - (a) in divided preparations containing 30 mg or less of codeine per dosage unit; or
  - (b) in undivided preparations containing 1% or less of codeine
4. Difenoxin, except in preparations containing 0.5 mg or less of difenoxin and a quantity of atropine sulphate equivalent to at least 5%

## SCHEDULE 1 (continued)

of the dose of difenoxin per dosage unit

5. Dihydrocodeine, except if it is compounded with 1 or more other medicaments so that it cannot be readily extracted and if it is contained—
  - (a) in divided preparations containing 100 mg or less of dihydrocodeine per dosage unit; or
  - (b) in undivided preparations containing 2.5% or less of dihydrocodeine
6. Diphenoxylate, except in preparations containing 2.5 mg or less of diphenoxylate and a quantity of atropine sulphate equivalent to at least 1% of the dose of diphenoxylate per dosage unit
7. Ethylmorphine, except if it is compounded with 1 or more other medicaments so that it cannot be readily extracted and if it is contained—
  - (a) in divided preparations containing 100 mg or less of ethylmorphine per dosage unit; or
  - (b) in undivided preparations containing 2.5% or less of ethylmorphine
8. Hydrocodone
9. Hydromorphone
10. Methadone
11. Methylphenidate
12. Moramide
13. Morphine
14. Nicocodine, except if it is compounded with 1 or more other medicaments so that it cannot be readily extracted and if it is contained—
  - (a) in divided preparations containing 100 mg or less of nicocodine per dosage unit; or
  - (b) in undivided preparations containing 2.5% or less of nicocodine

## SCHEDULE 1 (continued)

15. Nicodicodine, except if it is compounded with 1 or more other medicaments so that it cannot be readily extracted and if it is contained—
  - (a) in divided preparations containing 100 mg or less of nicodicodine per dosage unit; or
  - (b) in undivided preparations containing 2.5% or less of nicodicodine
16. Norcodeine, except if it is compounded with 1 or more other medicaments so that it cannot be readily extracted and if it is contained—
  - (a) in divided preparations containing 100 mg or less of norcodeine per dosage unit; or
  - (b) in undivided preparations containing 2.5% or less of norcodeine
17. Normethadone
18. Oxycodone
19. Pentazocine
20. Pethidine
21. Phenazocine
22. Phendimetrazine
23. Phenmetrazine
24. Pholcodine, except if it is compounded with 1 or more other medicaments so that it cannot be readily extracted and if it is contained—
  - (a) in divided preparations containing 100 mg or less of pholcodine per dosage unit; or
  - (b) in undivided preparations containing 2.5% or less of pholcodine
25. Racemethorphan
26. Racemoramide
27. Racemorphan

## SCHEDULE 2

### AMENDMENT OF ACTS

section 458

#### PART 1

#### ACTS INTERPRETATION ACT 1954

**1. Section 20(4)—**

*renumber* as section 20(5).

**2. Section 20(3)—**

*omit, insert—*

‘(3) If a provision of an Act makes an act or omission an offence, the act or omission is only an offence if committed after the provision commences.

‘(4) If a provision of an Act increases the maximum or minimum penalty, or the penalty, for an offence, the increase applies only to an offence committed after the provision commences.’.

**2. Section 36, definition, ‘ “word” ’—**

*omit.*

**3. Section 36—**

*insert—*

‘ **“charge”**, of an offence, means a charge in any form, including, for example, the following—

- (a) a charge on an arrest;

SCHEDULE 2 (continued)

- (b) a complaint under the *Justices Act 1886*;
- (c) a charge by a court under the *Justices Act 1886*, section 42(1A)<sup>101</sup> or another provision of an Act;
- (d) an indictment.

“**word**” includes any drawing, expression, figure and symbol.’.

**11. Section 46—**

*omit.*

**JUSTICES ACT 1886**

**1. Part 4, division 9—**

*insert—*

**‘Views and inspections**

‘**77A.** In any proceeding, justices may make an inspection or conduct a view.’.

**PART 2**

**ACTS INTERPRETATION ACT 1954**

**1. Section 32AA—**

*renumber* as section 32AB.

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<sup>101</sup> Section 42 (Commencement of proceedings)

## SCHEDULE 2 (continued)

**2. After section 32A—***insert—***‘Definitions generally apply to entire Act****‘32AA.** A definition in or applying to an Act applies to the entire Act.’.**3. After section 35E—***insert—***‘Reference to brief description of offence or circumstance of aggravation****‘35F.(1)** In this section—**“brief description”** means—

- (a) of an offence—the brief description of the offence mentioned in subsection (2)(a); or
- (b) of a circumstance of aggravation—the brief description of the circumstance of aggravation mentioned in subsection (2)(b).

**“described offence”** means an offence mentioned in subsection (2)(a) or (b).**“described circumstance of aggravation”** means a circumstance of aggravation mentioned in subsection (2)(b).**‘(2)** This section applies if, in an Act—

- (a) a provision that creates an offence has set out, after the penalty, a brief description of the offence; or
- (b) a provision that creates an offence with 1 or more circumstances of aggravation has set out, after the penalty, a series of brief descriptions of the offence with and without the circumstance or circumstances of aggravation.

**‘(3)** In an Act, a reference to an offence using the brief description of the offence includes a reference to the described offence with any circumstance of aggravation*Example—*



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 SCHEDULE 2 (continued)

The Criminal Code, section 114<sup>102</sup>—

- makes it an offence to assault anyone
- provides that it is a circumstance of aggravation if the assault is committed with intent to commit a crime
- sets out, after the penalty, a brief description of the crime as ‘assault’.

In the Code or another Act, a reference to the offence of ‘assault’ includes a reference to the offence of assault with intent to commit a crime.

‘(4) Subsection (3) applies even if the brief description does not mention every variation of the described offence or any circumstance of aggravation.

*Example—*

In an Act, a provision creates an offence consisting of the doing of, or an attempt to do, an act. The brief description of the offence does not mention the attempt. In an Act, the brief description of the offence is taken to include a reference to the attempt.

‘(5) In an Act, a reference to a circumstance of aggravation using the brief description of the circumstance of aggravation is taken to be a reference to the described circumstance of aggravation.

‘(6) Subsection (5) applies even if the brief description does not mention every variation of the described circumstance of aggravation.

*Example—*

In an Act, a provision creates an offence that has as a circumstance of aggravation that the offender also did or attempted to do another act. The brief description of the circumstance of aggravation does not mention the attempt. In an Act, the brief description of the circumstance of aggravation is taken to include a reference to the attempt.

‘(7) If a provision provides for a brief description of an offence or circumstance of aggravation created by the provision, the brief description has no effect on the interpretation of the provision.’

#### **4. Section 36, definition, ‘ “indictment” ’—**

*omit.*

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<sup>102</sup> Criminal Code, section 114 (Assault)

## SCHEDULE 2 (continued)

**5. Section 36—***insert—*

‘**“indictment”** has the meaning given by the Criminal Code, section 325.<sup>103</sup>’.

**6. Section 41—***insert—*

‘(2) In deciding whether a penalty is specified at the end of a provision, a brief description of an offence or circumstance of aggravation provided for an offence created by the section is to be disregarded.’.

**7. Section 44(3), ‘another type of proceeding’—***omit, insert—*

‘a proceeding other than a proceeding for an offence’.

**8. Section 44(3) and (4), as amended—***relocate to Justices Act 1886 as section 19(2)<sup>104</sup> and (3).***9. Section 44—***omit.***10. Section 45—***omit.*

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<sup>103</sup> Criminal Code, section 325 (Nature of indictment)

<sup>104</sup> *Justices Act 1886*, section 19 (General provision)

## SCHEDULE 2 (continued)

**EVIDENCE ACT 1977****1. Part 2—***insert—****‘Division 5—Exclusion of confession induced by threat or promise*****‘Exclusion of confession**

**‘21B.(1)** A confession tendered in evidence in a criminal proceeding cannot be received if it has been induced by a threat or promise by anyone in authority.

**‘(2)** A confession made after a threat or promise by anyone in authority is taken to have been induced by the threat or promise unless the contrary is proved.’.

**2. After section 129—***insert—***‘PART 7A—EVIDENCE OF ALIBI****‘Definitions for part**

**‘129A.** In this part—

**“charged person”** means a person on trial on indictment for an offence.

**“evidence in support of an alibi”** means evidence tending to show that, because of the charged person’s presence at a particular place or in a particular area at a particular time, the charged person was not, or was unlikely to have been, at the place where the offence is claimed to have been committed when it is claimed to have been committed.

**“notice of alibi”** means a written notice of the particulars of the alibi.

**“required period”**, for a charged person giving a notice of alibi, means the period of 14 days after the person was committed for trial.

## SCHEDULE 2 (continued)

**‘Requirements for adducing evidence of alibi**

**‘129B.** A charged person may adduce evidence in support of an alibi only if—

- (a) the person has the judge’s leave to adduce the evidence; or
- (b) the person—
  - (i) has given a notice of alibi for the alibi to the Director of Public Prosecutions within the required period; and
  - (ii) if the evidence is to be given by anyone called by the person—has complied with section 129C.

**‘Evidence of alibi given by witness**

**‘129C.(1)** The charged person may call someone to give evidence in support of an alibi only if the person—

- (a) has the judge’s leave to call the other person to give the evidence; or
- (b) has complied with this section.

**‘(2)** Before giving the notice of alibi, the charged person must take all reasonable steps to find out the other person’s name and address.

**‘(3)** If the charged person knows the other person’s name and address when giving the notice of alibi, the notice must include the other person’s name and address.

**‘(4)** If the charged person does not know the other person’s name and address when giving the notice of alibi—

- (a) the notice must include all information the charged person has that may be of material help in finding the other person; and
- (b) the charged person must continue to take all reasonable steps to find out the name and address; and
- (c) if the charged person later finds out the name and address or receives other information that may be of material help in finding the other person—the charged person must immediately give

## SCHEDULE 2 (continued)

written notice of the information to the Director of Public Prosecutions.

‘**(5)** If the charged person is told by the Director of Public Prosecutions that the other person has not been traced by the name given, or found at the address given, the charged person must immediately give to the director written notice of all information the person then has, or that is later received by the person, that may be of material help in finding the other person.

**‘Accused not previously advised of requirements about alibi**

‘**129D.** A judge must not refuse leave under this part if the judge considers the charged person was not, on the person’s committal for trial, informed of this part’s requirements by the person presiding at the committal.

**‘When evidence to disprove an alibi may be tendered**

‘**129E.** Subject to any direction of the judge, evidence tendered to disprove an alibi may be given before or after evidence is given in support of the alibi.

**‘Notice of alibi given by accused’s lawyer**

‘**129F.** A notice of alibi purporting to be given under this part for the charged person by the person’s lawyer is evidence the notice was given with the person’s permission.

**‘PART 7B—EVIDENTIARY MATTERS FOR  
OFFENCES ABOUT ANIMALS****‘Definitions for part**

‘**129G.** In this part—

## SCHEDULE 2 (continued)

**“animal”** means any ass, buffalo, camel, cattle, deer, goat, horse, mule, pig or sheep.

**“identifying part”**, of an animal, means the animal’s hide, skin, marked ear, or another part of the animal that may be used to identify the animal.

**“investigating officer”**, for a charge, means the police officer investigating the charge.

**“photographs”** includes tapes, films and other forms of visual reproduction.

**‘Identification and return of animal for slaughter if ownership not disputed**

**‘129H.(1)** This section applies if—

- (a) an animal connected with a charge of an offence is in the possession, or under the control of, a police officer; and
- (b) ownership of the animal is not disputed; and
- (c) the animal’s owner wants to slaughter the animal, or sell or consign it for slaughter, before it is tendered as an exhibit in connection with the charge; and
- (d) photographs of the animal and of any brand or other mark of identification are available for tendering as exhibits; and
- (e) arrangements are made, between the investigating officer and owner, for an identifying part of the animal to be given to the officer for tendering as an exhibit; and
- (f) a State law officer approves the animal’s return to the owner.

**‘(2)** The arrangements must include an agreement by the owner to ensure the following conditions are complied with—

- (a) the animal must be slaughtered within 14 days after it is returned to the owner, or the animal must be sold or consigned for slaughter;
- (b) within 14 days of the slaughter, the identifying part must be given

## SCHEDULE 2 (continued)

to the investigating officer;

- (c) until the identifying part is given to the officer, the officer's directions about security or preservation of the part must be complied with;
- (d) if the animal is sold or consigned by the owner for slaughter—the owner must require the buyer, as a condition of the sale, or the consignee to ensure that—
  - (i) the animal is slaughtered within 14 days after it is sold or received by the consignee; and
  - (ii) the conditions mentioned in paragraphs (b) and (c) are complied with.

‘(3) If this section applies to the animal, it may be returned to its owner and slaughtered, or sold or consigned for slaughter.

**‘Identification and handing over of animal for slaughter if ownership disputed**

‘129I.(1) This section applies if—

- (a) an animal connected with a charge of an offence is in the possession, or under the control, of a police officer; and
- (b) the ownership of the animal is disputed by at least 2 persons (1 of whom may be the person charged with the offence); and
- (c) all of the persons that the investigating officer is aware are claiming ownership of, or another interest in, the animal (the “**known claimants**”) agree in writing to the animal being slaughtered on their behalf, or sold or consigned on their behalf for slaughter, before it is tendered as an exhibit in connection with the charge; and
- (d) photographs of the animal and of any brand or other mark of identification are available for tendering as exhibits; and
- (e) arrangements are made, between the investigating officer and the known claimants, for an identifying part of the animal to be given to the officer for tendering as an exhibit; and

## SCHEDULE 2 (continued)

- (f) a State law officer approves of the animal being handed over to a person (the “**nominated person**”) nominated in the agreement mentioned in subsection (1)(c).

‘(2) The arrangements must include an agreement by the known claimants to ensure the following conditions are complied with—

- (a) the animal must be slaughtered within 14 days after it is handed over to the nominated person, or the animal must be sold or consigned for slaughter;
- (b) within 14 days of the slaughter, the identifying part must be given to the investigating officer;
- (c) until the identifying part is given to the officer, the officer’s directions about security or preservation of the part must be complied with;
- (d) if the animal is sold or consigned by the known claimants for slaughter—the known claimants must require the buyer, as a condition of the sale, or the consignee to ensure that—
- (i) the animal is slaughtered within 14 days after it is sold or received by the consignee; and
- (ii) the conditions mentioned in paragraphs (b) and (c) are complied with.

‘(3) If this section applies to the animal, it may be handed over to the nominated person and slaughtered, or sold or consigned for slaughter.

**‘Photographs etc. may be tendered in evidence**

‘**129J.(1)** This section applies if, because an animal has been slaughtered under arrangements made under section 129H or 129I,<sup>105</sup> the animal is not tendered as an exhibit in a proceeding in connection with a charge, but—

- (a) the photographs and identifying part of the animal are tendered in the proceeding; or

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<sup>105</sup> ~~Required~~ 29H (Identification and return of animal for slaughter if ownership not Section 129I (Identification and handing over of animal for slaughter)



## SCHEDULE 2 (continued)

- (b) the photographs are tendered in the proceeding and evidence is given in the proceeding showing that, although the arrangements required by the section were made, the identifying part is nevertheless not available for tendering in evidence.

‘(2) Objection may not be taken (or if taken must not be allowed) to any of the photographs or any identifying part being received in evidence as evidence of the following—

- (a) the animal’s existence at the material time;
- (b) for photographs—the animal’s condition at the material time;
- (c) a brand or other mark or feature of identification at the material time for the animal.

**‘When animal must not be returned or handed over**

‘**129K.** A State law officer may not approve the return or handing over of an animal under this part if, in the officer’s opinion—

- (a) its production for tender as an exhibit is, or is likely to be, necessary; or
- (b) in the circumstances, it is desirable that it be produced for tender as an exhibit.

**‘Identification of animals and return to owner before tender in certain cases**

‘**129L.(1)** This section applies if—

- (a) an animal connected with a charge of an offence is in the possession, or under the control, of a police officer; and
- (b) the ownership of the animal is not disputed; and
- (c) the animal’s owner wants the animal returned before it is tendered as an exhibit in connection with the charge; and
- (d) the owner agrees in writing to produce the animal for tendering as an exhibit when directed to produce it; and

## SCHEDULE 2 (continued)

- (e) a State law officer approves the animal's return to the owner.
- ‘(2) The animal may be returned to its owner if it is first—
- (a) branded or marked by the police officer, or anyone acting under the officer's instructions, to identify it as an animal held as an exhibit; and
  - (b) photographed.

**‘PART 7C—EVIDENTIARY AND RELATED  
MATTERS ABOUT PROCEEDINGS FOR SEXUAL  
OFFENCES**

**‘Definitions for part**

‘129M. In this part—

“**charged person**” means a person charged with committing a sexual offence.

“**committal proceeding**” means a committal proceeding for a sexual offence.

“**complainant**” see section 129N.

“**identifying particular**”, of a person, means—

- (a) the name, address, school, place of employment or another particular of the person or anyone else that is likely to lead to the person's identification; or
- (b) a photograph, picture, videotape or other visual representation of the person or anyone else that is likely to lead to the person's identification.

“**report**” means a written account, or an account broadcast in any way.

“**serious sexual offence**” means any of the following offences, or an offence of attempting to commit any of them—

## SCHEDULE 2 (continued)

- (a) assault, if it is committed with intent to commit rape;
- (b) rape;
- (c) indecent assault;
- (d) procuring an act of gross indecency;
- (e) having unlawful sexual intercourse with a person who has an intellectual or psychiatric impairment;
- (f) indecently dealing with a person who has an intellectual or psychiatric impairment;
- (g) procuring a person who has an intellectual or psychiatric impairment for sexual intercourse;
- (h) unlawfully procuring a person to engage in a sexual act.<sup>106</sup>

**“sexual offence”** means an offence of a sexual nature, and includes a serious sexual offence.

**“trial”** means a trial of a charged person, or a proceeding taken for sentencing a charged person convicted of a sexual offence.

**‘Meaning of “complainant”**

**‘129N.(1)** A **“complainant”** is the person in relation to whom a sexual offence is claimed to have been committed.

**‘(2)** However, a person is not a complainant if the person is—

- (a) at least 17 years when the sexual offence is claimed to have been committed; and
- (b) an accomplice in its commission.

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<sup>106</sup> See the Criminal Code, sections 114 (Assault), 116 (Rape), 117 (Sexual assault), 118 (Procuring act of gross indecency), 233 (Unlawful sexual intercourse with a person who has an intellectual or psychiatric impairment), 234 (Indecently dealing with a person who has an intellectual or psychiatric impairment), 236 (Procuring a person who has an intellectual or psychiatric impairment for sexual intercourse) and 237 (Procuring sexual acts by deception or coercion).

## SCHEDULE 2 (continued)

**‘Special rules of evidence about serious sexual offences**

**‘1290.(1)** This section applies to a committal proceeding or trial for a serious sexual offence.

**‘(2)** The court must not receive evidence of, and must disallow a question about, the complainant’s general reputation about chastity.

**‘(3)** Without the court’s leave—

- (a) the complainant must not be cross-examined about the complainant’s sexual activities with anyone other than the charged person; and
- (b) evidence must not be received about the complainant’s sexual activities with anyone other than the charged person.

**‘(4)** The court may give leave under subsection (3) only if it is satisfied the evidence sought to be elicited or led—

- (a) has substantial relevance to the facts in issue; or
- (b) is appropriate matter for cross-examination about credit.

**‘(5)** Evidence about, or tending to establish, the fact the complainant was accustomed to engage in sexual activities with anyone other than the charged person is not taken to—

- (a) have substantial relevance to the facts in issue only because of an inference it may raise about general disposition; or
- (b) be appropriate matter for cross-examination about credit in the absence of special circumstances because of which it would be likely to materially impair confidence in the reliability of the complainant’s evidence.

**‘(6)** For subsection (5), and without limiting the substantial relevance of other evidence, evidence of an act or event is taken to have substantial relevance to the facts in issue if the act or event—

- (a) is substantially contemporaneous with an offence with which a charged person is charged in the committal proceeding or the trial; or
- (b) is part of a sequence of acts or events that explains the

## SCHEDULE 2 (continued)

circumstances in which the offence was committed.

‘(7) An application for leave under subsection (3) must be—

- (a) made in the absence of the jury (if any) and, if the charged person requires it, in the absence of the complainant; and
- (b) decided after the court has heard the submissions and evidence (sworn or unsworn) the court considers necessary for it to make the decision.

‘(8) It is immaterial whether or not the committal proceeding or trial also relates to a charge of another offence that is not a serious sexual offence against the charged person or another charged person.

**‘Exclusion of public**

‘129P.(1) While a complainant is giving evidence in a committal proceeding or trial, the court must exclude everyone from the place where it is sitting except—

- (a) the complainant’s lawyer; and
- (b) the charged person; and
- (c) the charged person’s lawyer; and
- (d) a State law officer or a person authorised by a State law officer to be present; and
- (e) the prosecutor; and
- (f) a person whose presence is, in the court’s opinion, necessary or desirable for the appropriate conduct of the committal proceeding or trial; and
- (g) a person whose presence will give emotional support to the complainant; and
- (h) if the complainant is under, or apparently under, 17 years—the complainant’s parent or guardian unless the court considers the person’s presence would not be in the complainant’s interest; and
- (i) a person who applies to the court to be present and whose

## SCHEDULE 2 (continued)

presence the court considers—

- (i) would serve an appropriate interest of the person; and
- (ii) would not prejudice the complainant's interests.

‘(2) Subsection (1) does not limit the court's power under an Act or rule of law to exclude a person, including a charged person, from the place where it is sitting.

**‘Publication at large of complainant's identity prohibited**

‘**129Q.(1)** A report made or published about a committal proceeding or trial must not reveal an identifying particular of a complainant in the proceeding or trial, unless the court otherwise orders.

‘(2) The court may make the order only if it has a good and sufficient reason to make it.

‘(3) The order may state—

- (a) the particulars that may be revealed; and
- (b) the extent to which publication of the report is permitted.

**‘Premature publication of charged person's identity prohibited**

‘**129R.(1)** A report made or published about a committal proceeding for a serious sexual offence must not reveal an identifying particular of a charged person in the proceeding, unless the court otherwise orders.

‘(2) The court may make the order only if it has good and sufficient reason to make it.

‘(3) The order may state—

- (a) the particulars that may be revealed; and
- (b) the extent to which publication of the report is permitted.

## SCHEDULE 2 (continued)

**‘Exempted reports**

**‘129S.(1)** Sections 129Q and 129R<sup>107</sup> do not apply to—

- (a) a report made for—
  - (i) a committal proceeding or trial; or
  - (ii) a proceeding on appeal arising from a trial; or
- (b) a report—
  - (i) made verbatim of a judgment or decision given in a trial, or in a proceeding on appeal arising from a trial; and
  - (ii) contained in a recognised series of law reports; or
- (c) a report made to or for an interested department for that department’s purposes.

**‘(2)** Section 129R does not apply to a report about a committal proceeding that reveals an identifying particular of a charged person in the proceeding if—

- (a) the person is committed for trial or sentence on a charge of a sexual offence because of the proceeding; and
- (b) the report—
  - (i) is made after the committal order is made; and
  - (ii) does not reveal an identifying particular of another charged person in the proceeding who is not committed for trial or sentence.

**‘(3)** In this section—

**“interested department”** means—

- (a) the department; or
- (b) the department in which the *Police Service Administration Act 1990* is administered; or

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<sup>107</sup> Sections 129Q (Publication at large of complainant’s identity prohibited) and 129R (Premature publication of accused’s identity prohibited)

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 SCHEDULE 2 (continued)

- (c) the department in which the *Children's Services Act 1965* is administered.

**‘Part provides additional protection**

‘**129T.** Sections 129Q and 129R<sup>108</sup> add to, but do not limit, an Act or rule of law about the protection from identification of witnesses or other persons in a committal proceeding or trial.

**‘Offences**

‘**129U.(1)** A person must not make or publish a report that contravenes section 129Q or 129R.<sup>105</sup>

Maximum penalty—10 penalty units or 6 months imprisonment.

‘**(2)** If a court order permits a report to which section 129Q or 129R applies to be made or published, a person must not make or publish the report in a way that does not comply with the order.

Maximum penalty—10 penalty units or 6 months imprisonment.

‘**(3)** A person must not, by a statement or representation made or published other than in a report about a committal proceeding or a trial, reveal the name, address, school or place of employment of—

- (a) a complainant, at any time; or
- (b) a charged person charged with a serious sexual offence to which the statement or representation relates, before the person is committed for trial or to be sentenced on the charge.

Maximum penalty—10 penalty units or 6 months imprisonment.

‘**(4)** Subsection (3) does not apply if the statement or representation is made or published for an authorised purpose.

‘**(5)** The fact a person commits an offence against subsection (2) does not limit the power of a court to deal with the person for the contempt of

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<sup>108</sup> Sections 129Q (Publication at large of complainant's identity prohibited) and 129R (Premature publication of accused's identity prohibited)



## SCHEDULE 2 (continued)

court evidenced by the offence.

‘(6) In this section—

“authorised purpose” means—

- (a) the investigation of the complaint made by or for a complainant;  
or
- (b) the preparation for, or conduct of, a committal proceeding or trial,  
or a proceeding on appeal arising from a trial.

**‘Charged person may apply for direction that s 129U(3) does not apply**

‘129V.(1) A charged person may, before the start of a committal proceeding or trial for the sexual offence with which the person is charged, apply to a Supreme Court judge for a direction that section 129U(3)<sup>109</sup> does not apply to the charged person or a complainant for the offence.

‘(2) The judge must give the direction if the charged person satisfies the judge that—

- (a) the direction is necessary to induce persons who are likely to be needed as witnesses at the proceeding or trial to come forward;  
and
- (b) the conduct of the charged person’s defence at the proceeding or trial is likely to be substantially prejudiced if the direction is not given.

‘(3) The direction may be given on the terms the judge considers appropriate.

**‘Certain convicted persons may apply for direction that s 129U(3) does not apply**

‘129W.(1) A person who has been convicted of a sexual offence and has given notice of appeal, or of an application for leave to appeal, against the

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<sup>109</sup> Section 129U (Offences)

## SCHEDULE 2 (continued)

conviction to the Court of Appeal may apply to the court or a Supreme Court judge for a direction that section 129U(3)<sup>110</sup> does not apply to the complainant for the offence.

‘(2) The court or judge must give the direction if the applicant satisfies the court or judge that—

- (a) the direction is necessary to obtain evidence to support the appeal; and
- (b) the applicant is likely to suffer substantial injustice if the direction is not given.

‘(3) The direction may be given on terms the court or judge considers appropriate.

**‘Executive officers must ensure corporation does not contravene this part**

‘**129X.(1)** The executive officers of a corporation must ensure that the corporation does not contravene this part.

‘(2) If a corporation commits an offence against a provision of this part, each of the corporation’s executive officers also commit an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty prescribed for the contravention of the provision by an individual.

‘(3) Evidence that a corporation has been convicted of an offence against a provision of this part is evidence each of the corporation’s executive officers committed the offence of failing to ensure the corporation complies with the provision.

‘(4) However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation did not contravene

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<sup>110</sup> Section 129U (Offences)

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SCHEDULE 2 (continued)

the provision; or

- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

‘(5) In this section—

“**convicted**”, of an offence, means that the corporation has been found guilty of the offence, on a plea of guilty or otherwise, whether or not a conviction was recorded.

“**executive officer**”, of a corporation, means—

- (a) a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer; or
- (b) if the offence involves the publication by the corporation of material in a newspaper—the newspaper’s editor.’.

**3. After section 130—**

*insert—*

**‘Corroboration**

‘**130A.(1)** A person may be convicted of an offence on the uncorroborated testimony of 1 witness, whether or not the witness is a complainant, the person’s accomplice or anyone else.

‘(2) On the trial of a person for an offence before a jury, the judge is not required by any rule of law or practice to warn the jury that it is unsafe to convict the person on the uncorroborated testimony of 1 witness.

‘(3) Nothing in subsection (1) or (2) stops a judge from commenting on testimony given in a trial, if the comment is appropriate in the interests of justice.

‘(4) In this section—

“**uncorroborated testimony**” means testimony that is not corroborated in some material particular by other evidence implicating the person.

## SCHEDULE 2 (continued)

**‘Evidence of previous conviction**

**‘130B.(1)** On the trial of a person (the **“charged person”**) charged with an offence claimed to have been committed after a previous conviction, a certificate under subsection (2) is evidence of the conviction on proof of the identity of the person mentioned in the certificate.

**‘(2)** A certificate is sufficient for subsection (1) if it—

- (a) states the substance and effect only of the indictment, verdict and judgment, or of the complaint and conviction; and
- (b) purports to be signed by the proper officer of the court where the charged person was first convicted.

**‘(3)** If the previous conviction was a summary conviction, the conviction is presumed not to have been appealed against unless it is shown otherwise.

**‘(4)** The certificate need not state the formal parts of—

- (a) the indictment, verdict and judgment; or
- (b) the complaint and conviction.

**‘(5)** It is unnecessary to prove the signature or official character of the person who appears to have signed the certificate.

**‘(6)** In this section—

**“proper officer”**, of a court, means the officer who has custody of the court’s records, and includes the officer’s deputy.

**‘Admissions by charged person and State in criminal trials**

**‘130C.(1)** On the trial of a person for an indictable offence—

- (a) the person may admit a fact claimed against the person; and
- (b) the person may also make the admission by his or her lawyer; and
- (c) if the person agrees, the State may, by its lawyer, admit a fact relevant to the trial.

**‘(2)** The admission is sufficient evidence of the fact without other evidence.

## SCHEDULE 2 (continued)

‘(3) In this section—

“**trial**”, of a person for an indictable offence, includes summary proceedings for the indictable offence.

**‘Evidence of lawful custody**

‘**130D.(1)** Evidence given by a person authorised by the Corrective Services Commission to give the evidence that a person is, or on a particular day was, in lawful custody must be admitted as evidence of the custody.

‘(2) A document purporting to be a certificate signed by a person authorised by the commission to sign the certificate stating that a person is, or on a particular day was, in lawful custody is, on its production, evidence of the custody.’.

**4. Section 132—**

*omit, insert—*

**‘Evidence of domestic violence**

‘**132.(1)** This section applies to a criminal proceeding against a person for an offence defined in the Criminal Code, chapter 2, part 1 or 2.<sup>111</sup>

(2) Relevant evidence of the history of the domestic relationship between the person and the person against whom the offence was committed is admissible in evidence in the proceeding.

**‘Inadmissibility of similar fact evidence**

‘**132A. (1)** In a criminal proceeding, similar fact evidence from different complainants is inadmissible if there is a real chance the evidence is concocted.

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<sup>111</sup> Criminal Code, chapter 2 (Personal offences), part 1 (Homicide and associated offences) or 2 (Grievous bodily harm and assault)

SCHEDULE 2 (continued)

‘(2) The mere possibility that the complainants concocted the evidence does not make the evidence inadmissible.’.

**5. After section 135—**

*insert—*

**‘Numbering and renumbering of Act**

‘**136.** In the next reprint of this Act produced under the *Reprints Act 1992*, section 43 of that Act must be used to number and renumber the provisions of this Act occurring after section 129.’.

**JUVENILE JUSTICE ACT 1992**

**1. Section 8(2)—**

*omit, insert—*

‘(2) An offence is not a serious offence if it is of a type that, if committed by an adult, may be dealt with summarily under the Criminal Code, section 320.<sup>112</sup>’.

**SECURITY PROVIDERS ACT 1993**

**1. Section 3, definition “disqualifying offence”, paragraph (b)—**

*omit.*

**2. Section 3, definition “disqualifying offence, paragraph (c)—**

*renumber as paragraph (b).*

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<sup>112</sup> Criminal Code, section 320 (When a charge for an indictable offences may be decided summarily)

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 SCHEDULE 2 (continued)
**3. After section 57—***insert—***‘Liability to be disqualified for offences is unaffected by enactment of new Criminal Code**

‘**57A.(1)** A person’s liability to be disqualified under section 11(5) for an offence under the *Drugs Misuse Act 1986*, or an offence against a provision of the Criminal Code mentioned in the schedule as it existed immediately before the commencement of this section, is not affected by the repeal of that Criminal Code.

‘**(2)** This section is a law to which the *Acts Interpretation Act 1954*, section 20A<sup>113</sup> applies.’.

**4. Schedule—***omit, insert—***‘SCHEDULE****DISQUALIFYING OFFENCE PROVISIONS UNDER  
THE CRIMINAL CODE**

section 3

1. Section 44 (Conspiracy to commit an offence)
2. Section 95 (Murder)
3. Section 96 (Manslaughter)
4. Section 104 (Attempt to murder)
5. Section 105 (Accessory after the fact to murder)

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<sup>113</sup> *Acts Interpretation Act 1954*, section 20A (Repeal does not end saving, transitional or validating effect etc.)

## SCHEDULE 2 (continued)

6. Section 106 (Documented threats to murder)
7. Section 107 (Conspiracy to murder)
8. Section 111 (Grievous bodily harm)
9. Section 114 (Assault)
10. Section 115 (Assault of crew member in aircraft)
11. Section 116 (Rape)
12. Section 117 (Sexual assault)
13. Section 118 (Procuring act of gross indecency)
14. Section 120 (Kidnapping for ransom)
15. Section 122 (Kidnapping)
16. Section 124 (Deprivation of liberty)
17. Section 129 (Unlawful custody of mental patient)
18. Section 131 (Threats)
19. Section 133 (Unlawful stalking)
20. Section 136 (Putting destructive thing in vehicle etc.)
21. Section 137 (Endangering persons on a vehicle)
22. Section 138 (Disabling or stupefying with intent to commit a crime)
23. Section 139 (Acts intended to cause serious harm or stop arrest or detention)
24. Section 140 (Placing explosive or noxious substance with intent)
25. Section 141 (Placing explosive substance)
26. Section 142 (Setting traps)
27. Section 143 (Permitting traps to remain)
28. Section 145 (Obstructing rescue or escape from unsafe premises)
29. Section 146 (Administering poison with intent to harm)
30. Section 156 (Stealing)
31. Section 158 (Dishonest appropriation)



## SCHEDULE 2 (continued)

- 32. Section 163 (Making property moveable with intent)
- 33. Section 164 (Bringing stolen property into Queensland)
- 34. Section 165 (Receiving tainted property)
- 35. Section 166 (Taking reward for recovery of tainted property)
- 36. Section 167 (Robbery)
- 37. Section 168 (Attempted robbery)
- 38. Section 169 (Extortion)
- 39. Section 170 (Burglary)
- 40. Section 171 (Unlawful use or possession of vehicle)
- 41. Section 172 (Unlawfully taking control of aircraft)
- 42. Section 180 (Tampering with documents)
- 43. Section 182 (Forgery)
- 44. Section 183 (Dealing with things used for forgery)
- 45. Section 184 (Fraud)
- 46. Section 185 (Impersonation)
- 47. Section 186 (Unlawful acknowledgment)
- 48. Section 187 (Gaining or giving unauthorised status)
- 49. Section 190 (Unlawful damage)
- 50. Section 191 (Danger by placing explosive or noxious substance)
- 51. Section 192 (Damaging mines)
- 52. Chapter 5 (Other offences against the public interest), part 1 (Sexual offences)
- 53. Section 275 (Trafficking in a dangerous drug)
- 54. Section 276 (Supplying a dangerous drug)
- 55. Section 277 (Receiving or possessing property derived from trafficking in a dangerous drug)
- 56. Section 278 (Producing a dangerous drug)
- 57. Section 279 (Possessing a dangerous drug)

## SCHEDULE 2 (continued)

- 58. Section 280 (Unlawful possession of a certain thing)
- 59. Section 281 (Permitting place to be used for drugs misuse offence)
- 60. Section 282 (Parties to offences committed outside Queensland)
- 61. Section 283 (Attempt to commit offence against this part)'.

**TRANSPORT OPERATIONS (PASSENGER  
TRANSPORT) ACT 1994**

**1. Schedule 1—**

*omit, insert—*

**‘SCHEDULE 1**

**‘DISQUALIFYING OFFENCES—PROVISIONS OF  
THE CRIMINAL CODE**

dictionary, def “disqualifying offence”

- 1. Section 95 (Murder)
- 2. Section 96 (Manslaughter)
- 3. Section 104 (Attempt to murder)
- 4. Section 105 (Accessory after the fact to murder)
- 5. Section 106 (Documented threats to murder)
- 6. Section 107 (Conspiring to murder)
- 7. Section 108 (Aiding suicide)
- 8. Section 109 (Killing an unborn child)

## SCHEDULE 2 (continued)

9. Section 110 (Hiding the birth of a child)
10. Section 111 (Grievous bodily harm)
11. Section 114 (Assault)
12. Section 115 (Assault of crew member in aircraft)
13. Section 116 (Rape)
14. Section 117 (Sexual assault)
15. Section 118 (Procuring act of gross indecency)
16. Section 120 (Kidnapping for ransom)
17. Section 122 (Kidnapping)
18. Section 124 (Deprivation of liberty)
19. Section 126 (Child stealing)
20. Section 127 (Harbouring stolen child)
21. Section 128 (Abduction of child under 16)
22. Section 129 (Unlawful custody of mental patient)
23. Section 131 (Threats)
24. Section 133 (Unlawful stalking)
25. Section 134 (Dangerous operation of a vehicle)
26. Section 135 (Contravening Act about commercial vehicles)
27. Section 136 (Putting destructive thing in vehicle etc.)
28. Section 137 (Endangering persons on a vehicle)
29. Section 138 (Disabling or stupefying with intent to commit a crime)
30. Section 139 (Acts intended to cause serious harm or stop arrest or
31. Section 140 (Placing exposure or noxious substance with intent)
32. Section 141 (Placing explosive substance)
33. Section 142 (Setting traps)
34. Section 143 (Permitting traps to remain)

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 SCHEDULE 2 (continued)

- 35. Section 144 (Acts causing bodily harm)
- 36. Section 145 (Obstructing rescue or escape from unsafe premises)
- 37. Section 146 (Administering poison with intent to harm)
- ~~38. Chapter 2 (Personal offences), part 4 (Offences causing danger to life, health or property)~~
- 39. Section 156 (Stealing)
- 40. Section 158 (Dishonest appropriation)
- ~~41. Section 163 (Making property moveable with intent to steal or dishonestly appropriate)~~
- ~~42. Chapter 3 (Property offences), part 1 (Offences involving dishonest appropriation and associated offences), division 3 (Offences about property derived from other offences)~~
- ~~43. Chapter 3 (Property offences), division 3 (Offences about property derived from other offences), part 1 (Offences involving dishonest appropriation and associated offences)~~
- 44. Section 171 (Unlawful use or possession of vehicle)
- 45. Section 172 (Unlawfully taking control of aircraft)
- 46. Section 180 (Tampering with documents)
- 47. Section 184 (Fraud)
- 48. Section 185 (Impersonation)
- 49. Section 186 (Unlawful acknowledgment)
- 50. Section 187 (Gaining or giving unauthorised status)
- 51. Section 190 (Unlawful damage)
- 52. Section 191 (Danger by placing explosive or noxious substance)
- 53. Section 192 (Damaging mines)
- 54. Chapter 5 (Other public interest offences), part 1 (Sexual offences)
- 55. Section 275 (Trafficking in a dangerous drug)
- 56. Section 276 (Supplying a dangerous drug)
- ~~57. Section 277 (Receiving or possessing property derived from trafficking in a dangerous drug)~~
- 58. Section 278 (Producing a dangerous drug)
- 59. Section 279 (Possessing a dangerous drug)

## SCHEDULE 2 (continued)

- 60.** Section 280 (Unlawful possession of a certain thing)
- 61.** Section 281 (Permitting place to be used for drugs misuse offence)
- 62.** Section 284 (Protection of informers)'. .
- 2. Schedule 5, definition “disqualifying offence”, paragraph (b)—**  
*omit.*
- 3. Schedule 5, definition “disqualifying offence”, paragraphs (c) to (e)—**  
*renumber* as paragraphs (b) to (d).

**SCHEDULE 3****CONSOLIDATION AND AMENDMENT OF CERTAIN  
LAWS**

section 459

**PART 1—CONSOLIDATION AND AMENDMENT OF  
DEFAMATION LAW***Division 1—Amendment of Defamation Act 1889***1. Section 1—***omit, insert—***‘PART 1—PRELIMINARY****‘Short title****‘1. This Act may be cited as the *Defamation Act 1889*.****‘PART 2—INTERPRETATION’.****2. Before section 9—***insert—***‘PART 3—PUBLICATION OF DEFAMATORY  
MATTER’.**

SCHEDULE 3 (continued)

**3. Section 9—**

*renumber* as section 8.

**4. After section 9—**

*insert—*

**‘PART 4—PROTECTION**

**‘PART 5—QUESTIONS OF FACT AND LAW’.**

**5. Heading before section 20—**

*omit, insert—*

**‘PART 6—ORAL DEFAMATION’.**

**6. Section 20, after ‘defamation’—**

*insert—*

‘, or a prosecution for publishing defamatory matter.’

**7. Heading before section 21—**

*omit, insert—*

**‘PART 7—PROVISIONS APPLYING TO ACTIONS  
FOR DEFAMATION’.**

**8. Sections 34 to 36—**

*renumber* as sections 25 to 27.

SCHEDULE 3 (continued)

**9. Heading before section 38—**

*omit.*

**10. Section 38—**

*renumber* as section 28.

**11. Headings before section 40 and after section 41—**

*omit.*

**12. Sections 40 and 41—**

*omit.*

**13. Section 43—**

*renumber* as section 29.

**14. After section 43—**

*insert—*

**‘PART 8—PROVISIONS APPLYING TO  
PROSECUTIONS FOR DEFAMATION’.**

**15. Section 44 and heading before section 44—**

*omit, insert—*

**‘Proceedings for offences**

**‘39. An offence against this Act is a summary offence.**



## SCHEDULE 3 (continued)

**‘PART 9—SAVINGS PROVISION****‘Saving of previous defences**

**‘40.(1)** In this section—

**“Criminal Code 1899”** means the Criminal Code set out in the *Criminal Code Act 1899*, schedule 1.

**‘(2)** The relocation of provisions of the Criminal Code 1899 to this Act did not have the effect of abolishing any defence a person may have had in a civil proceeding for defamation if the relocation had not happened, even though the Criminal Code 1899 is later repealed.

**‘(3)** This section applies whether the defamation is claimed to have happened before or after the relocation or repeal.’.

**16. Section 46—**

*relocate*, in part 1, as section 2.

***Division 2—Amendment of Criminal Code*****1. Chapter 35, heading—**

*omit.*

**2. Section 365—**

*omit.*

**3. Section 366—**

*relocate* to *Defamation Act 1889*, in part 2, as section 4.

## SCHEDULE 3 (continued)

**4. Sections 367—**

*relocate to Defamation Act 1889, in part 5, as section 18.*

**5. Sections 368 and 369—**

*relocate to Defamation Act 1889, in part 2, as sections 5 and 6.*

**6. Section 370—**

*relocate to Defamation Act 1889, in part 3, as section 7.*

**7. Sections 371—**

*omit.*

**8. Sections 372, 373 and 374(1)(d), ‘Her Majesty’—**

*omit, insert—*

*‘the Government’.*

**9. Section 375(1)(a), ‘section 374’—**

*omit, insert—*

*‘section 15’.*

**10. Sections 372 to 378, as amended—**

*relocate to Defamation Act 1889, in part 4, as sections 11 to 17.*

**11. Section 379—**

*relocate to Defamation Act 1889, in part 5, as section 19.*

## SCHEDULE 3 (continued)

**12. Section 380(1), words after ‘concerning’—**

*omit, insert—*

‘someone else commits an offence.

Maximum penalty—

- (a) 2 years imprisonment or 20 penalty units, if the person knows the defamatory matter is false; or
- (b) 1 years imprisonment or 10 penalty units, in any other case.’.

**13. Section 380(2)—**

*omit.*

**14. Section 381, words after ‘such member or members,’—**

*omit, insert—*

‘commits an offence.

Maximum penalty—2 years imprisonment or 20 penalty units.’.

**15. Sections 380 and 381, as amended—**

*relocate to Defamation Act 1889, in part 3, sections 9 and 10.*

**16. Sections 382 and 383—**

*omit.*

**17. Sections 384 to 389—**

*relocate to Defamation Act 1889, in part 8, as sections 30 to 35.*

**18. Section 640—**

*relocate to Defamation Act 1889, in part 8, as section 36.*

SCHEDULE 3 (continued)

**19. Section 661(1), ‘indicted and’—**

*omit.*

**20. Section 661(2), ‘Crown’—**

*omit, insert—*  
*‘prosecution’.*

**21. Section 661, as amended—**

*relocate to Defamation Act 1889, in part 8, as section 37.*

**22. Chapter 66, heading—**

*omit.*

**23. Section 667—**

*relocate to Defamation Act 1889, in part 8, as section 38.*

**PART 2—AMENDMENT OF CERTAIN LAWS ABOUT  
THE LEGISLATIVE ASSEMBLY**

*Division 1—Amendment of Legislative Assembly Act 1867*

**1. Heading before section 1—**

*omit.*

SCHEDULE 3 (continued)

**2. Section 1—**

*omit, insert—*

**‘PART 1—PRELIMINARY**

**‘Short title**

**‘1.** This Act may be cited as the *Legislative Assembly Act 1867*.

**‘Definitions**

**‘1AA.** In this Act—

**“Assembly”** means the Legislative Assembly of Queensland.

**“election”** means the election of any member of the Assembly.

**3. Heading after section 1—**

*omit, insert—*

**‘PART 2—COMPOSITION OF THE ASSEMBLY’.**

**4. Heading after section 1B—**

*omit.*

**5. Heading before section 7—**

*omit, insert—*

**‘PART 3—DISQUALIFICATION AND  
RESIGNATION’.**

**6. After section 7—**

*insert—*

## SCHEDULE 3 (continued)

**‘Disqualification for certain offences**

**‘7AA.** If a member of the Assembly is convicted of an offence against the Criminal Code, chapter 5, part 3, division 1<sup>114</sup> committed in relation to a member or public officer, the member is not entitled to be elected, or to sit or vote, as a member within 14 years after the day of conviction.

**‘(2)** If a person is convicted of an offence against the Criminal Code, section 196,<sup>115</sup> committed in relation to an election, the person is not entitled to be elected, or to sit or vote, as a member within 3 years after the day of the conviction.’.

**7. Heading before section 12—**

*omit, insert—*

**‘PART 4—SPEAKER, QUORUM AND COMPETENCY  
OF ASSEMBLY’.****8. After section 18—**

*insert—*

**‘PART 5—OFFENCES AGAINST LEGISLATIVE  
POWER’.****9. Section 37 and heading before section 37—**

*omit.*

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<sup>114</sup> Criminal Code, chapter 5 (Other public interest offences), part 3 (Bribery), division 1 (Bribery of agents, MLAs and public officers)

<sup>115</sup> Criminal Code, section 196 (Unlawfully interfering with an election)

SCHEDULE 3 (continued)

*Division 2—Amendment of Criminal Code*

**1. Section 55(1), ‘Legislative’—**

*omit.*

**2. Section 55(1), ‘misdemeanour’—**

*omit, insert—*

‘crime’.

**3. Section 55(2)—**

*omit.*

**4. Section 55, as amended—**

*relocate to Legislative Assembly Act 1867, in part 5, as section 19.*

**5. Section 56(1), ‘Legislative’—**

*omit.*

**6. Section 56(1), ‘misdemeanour’—**

*omit, insert—*

‘crime’.

**7. Section 56(2)—**

*omit.*

**8. Section 56, as amended—**

*relocate to Legislative Assembly Act 1867, in part 5, as section 20.*

SCHEDULE 3 (continued)

**9. Section 56B—**

*relocate to Legislative Assembly Act 1867, in part 5, as section 21.*

**10. Section 57(1), ‘Legislative’—**

*omit.*

**11. Section 57(2) and (3)—**

*omit.*

**12. Section 57, as amended—**

*relocate to Legislative Assembly Act 1867, in part 5, as section 22.*

**13. Section 58, ‘Legislative’—**

*omit.*

**14. Section 58, ‘misdemeanour’—**

*omit, insert—*

*‘crime’.*

**15. Section 58, as amended—**

*relocate to Legislative Assembly Act 1867, in part 5, as section 23.*



## SCHEDULE 3 (continued)

**PART 3—AMENDMENT OF CERTAIN LAWS ABOUT  
THE GOVERNMENT OF QUEENSLAND***Division 1—Amendment of Constitution (Office of Governor) Act 1987***1. After section 13—***insert—***‘PART 3—OFFENCES’.***Division 2—Amendment of Criminal Code***1. Section 54(1), ‘misdemeanour’—***omit, insert—**‘crime’.***2. Section 54(2)—***omit.***3. Section 54, as amended—***relocate to Constitution (Office of Governor) Act 1987, in part 3, as section 14.*

**SCHEDULE 4****REPEALED ACTS**

section 449

- Corrective Services (Consequential Amendments) Act 1988 No. 88
- Criminal Code Act 1899 63 Vic No. 9
- Criminal Code Amendment Act 1922 13 Geo 5 No. 2
- Criminal Code Amendment Act 1922 (No. 2) 13 Geo 5 No. 26
- Criminal Code Amendment Act 1968 No. 44
- Criminal Code and Another Act Amendment Act 1990 No. 93
- Criminal Code and the Offenders Probation and Parole Act Amendment Act 1971 No. 41
- Criminal Law Amendment Act 1892 56 Vic No. 3
- Criminal Law Amendment Act 1894 58 Vic No. 23
- Criminal Law (Sexual Offences) Act 1978 No. 28
- Drugs Misuse Act 1986 No. 36
- Justices Act and the Criminal Code Amendment Act 1977 No. 13

**SCHEDULE 5****DICTIONARY**

section 3

**“accessory after the fact”** to an offence see section 46.

**“act”** includes omission.

**“address”** means current place of residence.

**“agent”**, for chapter 5, part 3, division 1,<sup>116</sup> see section 257.

**“aircraft”**—

1. An “aircraft” includes a machine, glider or apparatus designed to fly by gaining support from the atmosphere.
2. It is immaterial whether the aircraft is incapable of use because of a mechanical or other defect or because a part has been removed.

**“analyst”** means a person appointed by the Minister by gazette notice to be an analyst.

**“animal”** includes any living creature other than a human being.

**“appropriation”** see section 157.

**“arrangement”**, for chapter 5, part 6,<sup>117</sup> see section 286.

**“arrest without warrant”** see section 304.

**“assault”** see section 113.

**“at”** a place includes in the place.

**“attempt”** to commit an offence see section 34.

**“benefit”** see section 176.

**“boat”** means any type of ship or other vessel used in navigation by water

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<sup>116</sup> Chapter 5 (Other public interest offences), part 3 (Bribery), division 1 (Bribery of agents, MLAs and public officers)

<sup>117</sup> Chapter 5 (Other public interest offences), part 6 (Prostitution)

## SCHEDULE 5 (continued)

or for another purpose in water, and includes a ship or other vessel of whatever size and however it is propelled or moved.

*Examples—*

1. A barge, lighter or other floating vessel.
2. A hovercraft or other surface effect craft.

**“bodily harm”** means a bodily injury interfering with a person’s health or comfort.

**“capacity”**, for chapter 5, part 6,<sup>118</sup> see section 286.

**“cause”** means cause directly or indirectly.

**“child”** means a person under 18 years.

**“circumstance of aggravation”**, for an offence, means a circumstance making an offender liable to a greater punishment than if the offence were committed without the circumstance.

**“Code”** means the Criminal Code.

**“committal for trial”** includes committal for sentence.

**“community corrections centre”** means a community corrections centre under the *Corrective Services Act 1988*.

**“consent”**—

1. “Consent” means consent freely and voluntarily given by a person with the cognitive capacity to give the consent.
2. Without limiting subsection (1), consent is freely and voluntarily given if it is not obtained—
  - (a) by force, threat, intimidation or deception; or
  - (b) by exercise of authority.

**“conspiracy”** see section 38.

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<sup>118</sup> Chapter 5 (Other public interest offences), part 6 (Prostitution)

## SCHEDULE 5 (continued)

**“control”**—

- (a) for chapter 5, part 6<sup>119</sup>—see section 286; or
- (b) for another provision—means direct or indirect control.

**“controller”**, of a computer, see section 174.

**“conviction”** means a finding of guilt, or the acceptance of a plea of guilty, by a court.

**“corpse”**, for chapter 5, part 7, division 2,<sup>120</sup> see section 297.

**“correctional institution”** means a community corrections centre, detention centre or prison.

**“count”**, for an indictment, see section 327(2).

**“crime”** see section 24.

**“crime complaint”** means—

- (a) a complaint under the *Justices Act 1886* for an indictable offence; or
- (b) a charge of an indictable offence in any other form other than an indictment.

**“criminal offence”** see section 23(2).

**“criminally responsible”** means liable to punishment for an offence.

**“criminal practice rules”** means the rules of court made under the *Supreme Court of Queensland Act 1991* about practice and procedure in the criminal jurisdiction of the Supreme Court, other courts and justices.

**“damage”**, to property, see section 189.

**“dangerous drug”**, see section 273.

**“decide”** includes hear and decide.

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<sup>119</sup> Chapter 5 (Other public interest offences), part 6 (Prostitution)

<sup>120</sup> Chapter 5 (Other public interest offences), part 7 (Other offences), division 2 (Corpses)

## SCHEDULE 5 (continued)

**“deprivation of liberty”** see section 123.

**“derived”** means derived directly or indirectly.

**“descendant”** does not include—

- (a) for an Aborigine—a person who is a descendant merely because of Aboriginal tradition; or
- (b) for a Torres Strait Islander—a person who is a descendant merely because of Island custom.

**“destroy”** animate property means kill.

**“detention centre”** means a detention centre under the *Juvenile Justice Act 1992*.

**“detriment”** see section 178.

**“director”**, of a corporation, includes a member of the corporation’s governing body.

**“doing”** an act includes making an omission.

**“drug dependent person”** see section 274.

**“drugs misuse offence”** means an offence against chapter 5, part 5,<sup>121</sup> or an attempt or conspiracy to commit an offence against the part.

**“dwelling house”**—

1. A “dwelling house” includes a building or other structure, or part of a building or other structure, kept by the owner or occupier (the **“owner”**) as a residence for the owner, a member of the owner’s family or an employee of the owner.
2. In deciding whether a building or other structure is a dwelling house, it is immaterial that the building or other structure is from time to time uninhabited.
3. A building or other structure adjacent to, and occupied with, a dwelling house is part of the dwelling house if it is connected to the dwelling house, whether directly or by a covered and enclosed

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<sup>121</sup> Chapter 5 (Other public interest offences), part 5 (Drug misuse offences)

## SCHEDULE 5 (continued)

passage leading from the one to the other, but not otherwise.

**“educational institution”** means a preschool centre, primary school, secondary school, or special school, (including a non-State school) within the meaning of the *Education (General Provisions) Act 1989* or a similar institution, but does not include an educational institution only conducting tertiary or adult education.

**“employee”** includes the following—

- (a) a person employed for any purpose as, or in the capacity of, an employee;
- (b) a person only employed temporarily;
- (c) an employee who is also employed by anyone else;
- (d) a person employed to collect, receive or pay money;
- (e) a person employed as, or in the capacity of, a commission agent to collect or pay money or in a similar capacity, even if the person has no authority to receive money or other property on the employer’s account.

**“enter”** a boat or aircraft includes board the boat or aircraft.

**“entity”**, for chapter 5, part 6,<sup>122</sup> see section 286.

**“explosive substance”** includes a gas that could explode because of the extent to which it is compressed.

**“firearm”** has the meaning given by the *Weapons Act 1990*.

**“for”** includes for the purpose of.

**“forgery”** see section 181.

**“general manager”**, of a prison, has the meaning given by the *Corrective Services Act 1988*.

**“grievous bodily harm”** means—

- (a) bodily injury of a nature—

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<sup>122</sup> Chapter 5 (Other public interest offences), part 6 (Prostitution)

## SCHEDULE 5 (continued)

- (i) endangering, or likely to endanger, life; or
  - (ii) causing, or likely to cause, permanent injury to health; or
- (b) serious disfigurement.

**“guilty intent”**—

- (a) for chapter 2, part 3, division 2<sup>123</sup>—see section 125; or
- (b) for chapter 2, part 3, division 3<sup>124</sup>—see section 130.

**“in”** high seas or waters, premises, a vehicle or other place includes on, or at the place.

**“indictable offence”** see sections 24 and 27.

**“indictment”** see section 325(1).

**“industrial dispute”** has the meaning given by the *Industrial Relations Act 1990*.

**“insert”** includes insert to any extent.

**“intellectual or psychiatric impairment”**, for a person, means a disability—

- (a) attributable to intellectual, psychiatric, cognitive or neurological impairment; and
- (b) resulting in—
  - (i) a substantial reduction of the person’s capacity for communication, social interaction or learning; and
  - (ii) the person needing support.

**“judicial officer”** includes an arbitrator or umpire, and a member of a tribunal established under an Act to perform judicial functions or judicial functions and other functions.

**“judicial proceeding”** includes a proceeding in which evidence may be

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<sup>123</sup> Chapter 2 (Personal offences), part 3 (Interfering with liberty), division 2 (Children and mental patients)

<sup>124</sup> Chapter 2 (Personal offences), part 3 (Interfering with liberty), division 3 (Threats)



## SCHEDULE 5 (continued)

taken on oath.

**“kidnapping”** see section 121.

**“kidnapping for ransom”** see section 119.

**“kill”** see section 97.

**“lawyer”**, of a person, includes a person who has the right to act as the person’s advocate.

**“mine”** includes part of a mine.

**“MLA”**, for chapter 5, part 3, division 1,<sup>125</sup> see section 257.

**“money”** includes bank notes, bank drafts, cheques, payment orders and any other orders, warrants, authorities, or requests, for the payment of money.

**“motor vehicle”**—

1. A “motor vehicle” includes—
  - (a) a machine or apparatus designed for propulsion completely or partly by petrol, diesel, oil, LPG, or other motor spirit, oil or gas, electricity, steam or other mechanical power; and
  - (b) a motorcycle; and
  - (c) a caravan, caravan trailer or other trailer designed to be attached to a motor vehicle.
2. It is immaterial whether the motor vehicle is incapable of use because of a mechanical or other defect or because a part has been removed.

**“murder”** see section 94.

**“needle”** means a hypodermic syringe or needle.

**“night”** means the period between 9 p.m. and 6 a.m.

**“obstruct”** includes—

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<sup>125</sup> Chapter 5 (Other public interest offences), part 3 (Bribery), division 1 (Bribery of agents, MLAs and public officers)

## SCHEDULE 5 (continued)

- (a) in any case—hinder, resist and stop; and
- (b) for the course of justice—pervert and defeat.

**“obtain”** land includes occupy land, or acquire the capacity to occupy land.

**“offence”** see section 22.

**“operating”** a vehicle includes being in charge of a vehicle.

**“ordinary person”** see section 85.

**“owner”** of property includes—

- (a) an association of persons that can own property; and
- (b) for chapter 3, part 1<sup>126</sup>—see section 152.

**“participate”**, for chapter 5, part 6,<sup>127</sup> see section 286.

**“party”** to an offence see section 30.

**“penis”** includes a surgically constructed penis, whether provided for a male or female.

**“permitted”** under a legal process or otherwise under the law includes required under the process or law.

**“person in charge”**, of a vehicle, includes the following—

- (a) for an aircraft—the pilot;
- (b) for a boat—the master;
- (c) for another vehicle—the driver.

**“pharmacist”** means a person registered as a pharmacist under the *Pharmacy Act 1976*.

**“place”** includes—

- (a) premises; and
- (b) vacant land; and

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<sup>126</sup> Chapter 3 (Property offences, dishonesty offences and associated offences), part 1 (Stealing, dishonest appropriation and associated offences)

<sup>127</sup> Chapter 5 (Other public interest offences), part 6 (Prostitution)

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 SCHEDULE 5 (continued)

- (c) a place in Queensland waters; and
- (d) a place held under 2 or more titles or owners.

**“police officer”**, for chapter 5, part 3,<sup>128</sup> includes a person mentioned in the *National Crime Authority Act 1984* (Cwlth), section 49<sup>129</sup> whose services are made available to the National Crime Authority, but does not include a special constable under the *Police Service Administration Act 1990*.

**“possess”** a thing, for a person, includes have under control anywhere—

- (a) whether for the use or benefit of the person or of anyone else; and
- (b) although anyone else has the actual possession or custody of the thing.

**“premises”** includes—

- (a) a building or structure, or part of a building or structure, of any type; and
- (b) a group of buildings or structures, or part of a group of buildings or structures, of any type; and
- (c) the land or water where a building or structure, or a group of buildings or structures is, situated; and
- (d) a vehicle or caravan; and
- (e) a tent or cave; and
- (f) premises held under 2 or more titles or owners.

**“prerogative of mercy”** means the royal prerogative of mercy.

**“prescribed person”**, for chapter 5, part 3, division 1,<sup>130</sup> see section 257.

**“prison”** means a prison under the *Corrective Services Act 1988*.

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<sup>128</sup> Chapter 5 (Other public interest offences), part 5 (Drug misuse offences)

<sup>129</sup> *National Crime Authority Act 1984* (Cwlth), section 49 (Staff to be seconded to Authority)

<sup>130</sup> Chapter 5 (Other public interest offences), part 3 (Bribery), division 1 (Bribery of agents, MLAs and public officers)

## SCHEDULE 5 (continued)

**“property”**—

- (a) for chapter 2, part 3, division 4<sup>131</sup>—see section 132(2); or
- (b) for chapter 3, part 1<sup>132</sup>—see section 151.

**“prostitution”** see section 287.**“provocation”** see section 84.**“public officer”** means a person, other than a judicial officer—

- (a) discharging a duty imposed under an Act or of a public nature; or
- (b) holding office under or employed by the State, whether or not for remuneration;

and includes—

- (c) a person employed to execute any process of a court; and
- (d) an officer of the public service; and
- (e) a person holding an office under either of the following Acts—
  - (i) the *Police Service Administration Act 1990*;
  - (ii) the *Transport Infrastructure Act 1994*; and
- (f) a member, officer, or employee of an authority, board, corporation, commission, local government, council, committee or other similar body established for a public purpose under an Act.

**“punishment”** includes—

- (a) a sentence within the meaning of the *Penalties and Sentences Act 1992*, section 4<sup>133</sup>; and
- (b) a sentence order within the meaning of the *Juvenile Justice Act*

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<sup>131</sup> Chapter 2 (Personal offences), part 3 (Interfering with liberty), division 4 (Unlawful stalking)

<sup>132</sup> Chapter 3 (Property offences, dishonesty offences and associated offences), part 1 (Stealing, dishonest appropriation and associated offences)

<sup>133</sup> *Penalties and Sentences Act 1992*, section 4 (Definitions)

## SCHEDULE 5 (continued)

1992, section 5.<sup>134</sup>

**“reasonable”** see section 83.

**“record”** means a thing or process—

- (a) on or by which information is recorded, stored or transported; or
- (b) by means of which a meaning can be conveyed in a visible or recoverable form;

even if the use or assistance of some electronic, electrical, mechanical, chemical or other device or process is required to recover or convey the information or meaning.

**“regulatory offence”** see section 26.

**“restricted computer”** see section 173.

**“road”** means—

- (a) an area of land dedicated to public use as a road; or
- (b) an area that is open to or used by the public and is developed for, or has as 1 of its main uses, the driving or riding of motor vehicles; or
- (c) a bridge, culvert, ferry, ford, tunnel or viaduct; or
- (d) a pedestrian or bicycle path; or
- (e) a part of an area, bridge, culvert, ferry, ford, tunnel, viaduct or path mentioned in paragraphs (a) to (d).

**“seditious intention”** see section 193.

**“serious disease”** means a disease of a nature—

- (a) endangering, or likely to endanger, life; or
- (b) causing, or likely to cause, permanent injury to health; or
- (c) causing serious disfigurement.

**“sexual act”**—

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<sup>134</sup> *Penalties and Sentences Act 1992*, section 5 (Definitions)

## SCHEDULE 5 (continued)

1. A person engages in a “sexual act” if the person—
  - (a) allows a sexual act to be done to the person’s body; or
  - (b) does a sexual act to the person’s own body or the body of anyone else; or
  - (c) otherwise engages in an act of an indecent nature with anyone else.
2. Item 1—
  - (a) applies equally to males and females; and
  - (b) is not limited to sexual intercourse, or other acts involving physical contact.

**“sexual intercourse”**—

1. Sexual intercourse means vaginal intercourse or anal intercourse.
2. If a person’s penis is inserted into anyone’s vulva or vagina, each person is taken to be having vaginal intercourse with the other.
3. If a person’s penis is inserted into anyone’s anus, each person is taken to be having anal intercourse with the other.
4. Vaginal intercourse is complete on penile penetration of the vulva or vagina.
5. Anal intercourse is complete on penile penetration of the anus.

**“simple offence”** see section 25.

**“State law officer”** means the Attorney-General or Director of Public Prosecutions.

**“stealing”** see section 155.

**“stop”** includes prevent.

**“structure”** includes anything built or constructed, whether or not attached to land.

**“summary offence”** see section 28.

**“summary proceeding”** see section 28.

**“take”** a person includes the following—

## SCHEDULE 5 (continued)

(a) entice away;

(b) detain.

**“to gain a benefit”** see section 177.

**“to cause a detriment”** see section 179.

**“trial”** includes a proceeding in which a person is to be sentenced.

**“tribunal”** includes court, board, commission or committee.

**“unlawful”** damage to property see section 188.

**“unlawful”** means not authorised, justified or excused by law.

**“unlawful stalking”** see section 132.

**“vagina”** includes a surgically constructed vagina, whether provided for a male or female.

**“valuable security”** includes a document that is a person’s property, and is evidence of the ownership of property or of the right to recover or receive property.

**“vehicle”** means—

(a) a motor vehicle, bicycle, aircraft, train, boat, water ski or surf board; or

(b) anything else used or to be used to carry persons or goods from place to place.

**“violence”**—

(a) for chapter 5, part 2, division 1 <sup>135</sup>—see section 248;

(b) for chapter 5, part 2, division 2 <sup>136</sup>—see section 250.

**“vulva”** means the external female genitalia, that is, the 2 pairs of labia and

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<sup>135</sup> Chapter 5 (Other public interest offences), part 2 (Breaches of the peace), division 1 (Riot)

<sup>136</sup> Chapter 5 (Other public interest offences), part 2 (Breaches of the peace), division 2 (Affray)

## SCHEDULE 5 (continued)

the cleft between them,<sup>137</sup> and includes a surgically constructed vulva, whether provided for a male or female.

**“weapon”** has the same meaning as in the *Weapons Act 1990*.

**“wilfully”** means deliberately or recklessly.

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<sup>137</sup> From the Macquarie Dictionary, second edition.