

Queensland



CRIMINAL LAW AMENDMENT ACT 1997

Act No. 3 of 1997

Queensland



**CRIMINAL LAW AMENDMENT ACT
1997**

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Queensland



Criminal Law Amendment Act 1997

Act No. 3 of 1997

An Act to amend the criminal law

[Assented to 3 April 1997]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Criminal Law Amendment Act 1997*.

Commencement

2. (1) Section 121¹ commences on the date of assent.
(2) This Act, other than section 121, commences on a day to be fixed by proclamation.

PART 2—AMENDMENT OF CRIMINAL CODE ACT 1899

Act amended

3. This part amends the *Criminal Code Act 1899*.

Amendment of s 6 (Civil remedies)

- 4.(1) Section 6, heading before subsection (2)—
omit.

- (2) Section 6—

insert—

- ‘(1A) A person who suffers loss or injury in, or in connection with, the

¹ Section 121 (Act repealed)

commission of an indictable offence of which the person is found guilty has no right of action against another person for the loss or injury.

‘**(1B)** Subsection (2) applies whether or a not a conviction is recorded for the offence.’.

(3) Section 6(1A) to (2)—

renumber as section 6(2) to (4).

PART 3—AMENDMENT OF CRIMINAL CODE

Code amended

5. This part amends the Criminal Code.

Amendment of s 1 (Construction of terms)

6.(1) Section 1, definitions “**grievous bodily harm**”, “**mail**”, “**mail conveyance**”, “**Post and Telegraph Department**”, “**Postmaster-General**”, “**post office**” and “**telegraph office**”, “**property**”, “**telegram**” and “**thing sent by telegraph**”, “**telegraph**”, and “**thing sent by post**”—
omit.

(2) Section 1—

insert—

“**benefit**” includes property, advantage, service, entertainment, the use of or access to property or facilities, and anything of benefit to a person whether or not it has any inherent or tangible value, purpose or attribute.

“**carnal knowledge**” includes sodomy.

“**document**” includes—

- (a) anything on which there is writing; and
- (b) anything on which there are marks, figures, symbols, codes, perforations or anything else having a meaning for a person

qualified to interpret them; and

(c) a record.

“forge” a document, means make, alter or deal with the document so that the whole of it or a material part of it—

(a) purports to be what, or of an effect that, in fact it is not; or

(b) purports to be made, altered or dealt with by a person who did not make, alter or deal with it or by or for some person who does not, in fact exist; or

(c) purports to be made, altered or dealt with by authority of a person who did not give that authority; or

(d) otherwise purports to be made, altered or dealt with in circumstances in which it was not made, altered or dealt with.

“grievous bodily harm” means—

(a) the loss of a distinct part or an organ of the body; or

(b) serious disfigurement; or

(c) any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health;

whether or not treatment is or could have been available.

“premises” includes—

(a) a building or structure, or part of a building or structure, of any type; and

(b) a group of, 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 a caravan; and

(e) a tent, or a cave; and

(f) premises in which more than 1 person has ownership.

“property” includes—

- (a) every thing animate or inanimate that is capable of being the subject of ownership; and
- (b) money; and
- (c) electrical or other energy, gas and water; and
- (d) a plant; and
- (e) an animal that is—
 - (i) a tame animal, whether or not naturally tame; or
 - (ii) an untamed animal of a type that, if kept, is usually kept confined; or
 - (iii) an untamed animal in a person's possession or being pursued for return to possession after escape; and
- (f) a thing produced by an animal mentioned in paragraph (e); and
- (g) any other property real or personal, legal or equitable, including things in action and other intangible property.

“public officer” means a person other than a judicial officer, whether or not the person is remunerated—

- (a) discharging a duty imposed under an Act or of a public nature; or
- (b) holding office under or employed by the Crown;

and includes, whether or not the person is remunerated—

- (c) a person employed to execute any process of a court; and
- (d) a public service employee; and
- (e) a person appointed or employed under any of the following Acts—
 - (i) the *Police Service Administration Act 1990*;
 - (ii) the *Transport Infrastructure Act 1994*;
 - (iii) the *Law Courts and State Buildings Protective Security Act 1983*; 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.

“record” means any thing or process—

- (a) on or by which information is recorded or stored; or
- (b) by means of which sounds, images, writings, messages or anything else having meaning can be conveyed in any way 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.

“serious disease” means a disease that would, if left untreated, be of such a nature as to—

- (a) cause or be likely to cause any loss of a distinct part or organ of the body; or
- (b) cause or be likely to cause serious disfigurement; or
- (c) endanger or be likely to endanger life, or to cause or be likely to cause permanent injury to health;

whether or not treatment is or could have been available.

“vehicle” includes—

- (a) a motor vehicle, motor cycle, train, aircraft, or vessel; or
- (b) anything else used or to be used to carry persons or goods from place to place.

“woman” includes any female.

“writing” includes any way of representing or reproducing in a visible form any word, inscription, signature or other mark.’.

(3) Section 1, definition **“dwelling house”**, ‘house’—

omit.

(4) Section 1, definition **“have in possession”**, ‘have in’—

omit.

(5) Section 1, definition **“person employed in the public service”**,

‘officers and persons of the Defence Force and’—
omit.

Replacement of s 6 (Carnal knowledge)

7. Section 6—

omit, insert—

‘Carnal knowledge

‘6. If “**carnal knowledge**” is used in defining an offence, the offence, so far as regards that element of it, is complete on penetration to any extent.’.

Amendment of s 10 (Accessories after the fact)

8. Section 10(2) and (3)—

omit.

Insertion of new s 10A

9. After section 10—

insert—

‘Interpretation of ch 2

‘**10A.(1)** Under section 7², a person’s criminal responsibility extends to any offence that, on the evidence admissible against him or her, is either the offence proved against the person who did the act or made the omission that constitutes that offence or any statutory or other alternative to that offence.

‘**(2)** Under section 8³, a person’s criminal responsibility extends to any offence that, on the evidence admissible against him or her, is a probable consequence of the prosecution of a common intention to prosecute an unlawful purpose, regardless of what offence is proved against any other party to the common intention.

‘**(3)** This section does not limit any other provision of this chapter.’.

² Section 7 (Principle offenders)

³ Section 8 (Offenders committed in prosecution of common purpose)

Amendment of s 23 (Intention—motive)

10. Section 23(1), from ‘for an act’—

omit, insert—

‘for—

- (a) an act or omission that occurs independently of the exercise of the person’s will; or
- (b) an event that occurs by accident.

‘**(1A)** However, under subsection (1)(b), the person is not excused from criminal responsibility for death or grievous bodily harm that results to a victim because of a defect, weakness, or abnormality even though the offender does not intend or foresee or cannot reasonably foresee the death or grievous bodily harm.’.

Amendment of s 28 (Intoxication)

11.(1) Section 28(1), ‘the person’s’—

omit, insert—

‘his or her’.

(2) Section 28(2), after ‘who has’—

insert—

‘, to any extent’.

(3) Section 28(2), after ‘offence or not’—

insert—

‘and whether his or her mind is disordered by the intoxication alone or in combination with some other agent.’.

Amendment of s 29 (Immature age)

12. Section 29(2), ‘15’—

omit, insert—

‘14’.

Amendment of s 31 (Justification and excuse—compulsion)

13.(1) Section 31(1)(b), ‘the person’—

omit, insert—

‘he or she’.

(2) Section 31(1)(d)—

omit, insert—

‘(d) when he or she does or omits to do the act in order to save himself or herself or another person from immediate death or grievous bodily harm threatened to be inflicted on him or her or the other person by some person in a position to execute the threats, and believing himself or herself or the other person to be unable otherwise to escape the carrying of the threats into execution.’.

(3) Section 31(2), ‘treason or’—

omit.

Amendment of s 47 (Unlawful oaths to commit certain crimes)

14. Section 47(a), ‘treason or’—

omit.

Amendment of s 75 (Threatening violence)

15.(1) Section 75(1)—

omit, insert—

‘75.(1) Any person who—

- (a) with intent to intimidate or annoy any person, by words or conduct threatens to enter or damage a dwelling or other premises; or
- (b) with intent to alarm any person, discharges loaded firearms or does any other act that is likely to cause any person in the vicinity to fear bodily harm to any person or damage to property

commits a crime.

Maximum penalty—2 years imprisonment.’

(2) Section 75(2), ‘2 years’—

omit, insert—

‘5 years’.

Replacement of s 85 (Obtaining disclosure of secrets relating to defences)

16. Section 85—

omit, insert—

‘Disclosure of official secrets

‘85. A person who is or has been employed as a public officer who unlawfully publishes or communicates any information that comes or came to his or her knowledge, or any document that comes or came into his or her possession, by virtue of the person’s office, and that it is or was his or her duty to keep secret, commits a misdemeanour.

Maximum penalty—2 years imprisonment.’

Amendment of s 87 (Official corruption)

16A. Section 87—

insert—

‘(1A) If the offence is committed by or in relation to a Minister of the Crown, as the holder of public office mentioned in subsection (1), the offender is liable to imprisonment for 14 years, and to be fined at the discretion of the court.’

Insertion of new s 123A

17. After section 123—

insert—

‘Perjury—contradictory statements

‘123A. If, on the trial of a person for perjury, the jury is satisfied that—

- (a) the accused has made 2 statements on oath or under another sanction authorised by law, 1 of which is irreconcilably in conflict with the other; and
- (b) the accused made 1 of the statements knowing it to be false;

but the jury is unable to say which statement was falsely made, the jury may make a special finding to that effect and find the accused guilty of perjury.’.

Amendment of s 148 (Obstructing officers of courts of justice)

18. Section 148(2)—

omit.

Replacement of s 194 (False declarations and statements)

19. Section 194—

omit, insert—

‘False declarations

‘194.(1) A person who makes a declaration that the person knows is false in a material particular, whether or not the person is permitted or required by law to make the declaration, before a person authorised by law to take or receive declarations, commits a misdemeanour.

Maximum penalty—3 years imprisonment.

(2) In this section—

“declaration” includes a statement and an affidavit.’.

Insertion of new s 195A

20. After section 195—

insert—

‘Contradictory statements—false statements or declarations

‘195A. If, on the trial of a person for an offence defined in section 193 or

1944, the jury is satisfied that—

- (a) the accused has made 2 statements or declarations and 1 is irreconcilably in conflict with the other; and
- (b) the accused made 1 of the statements or declarations knowing it to be false;

but the jury is unable to say which statement or declaration was falsely made, the jury may make a special finding to that effect and find the accused guilty of the offence.’.

Replacement of s 208 (Unlawful anal intercourse)

21. Section 208—

omit, insert—

‘Unlawful sodomy

‘208. (1) Any person who—

- (a) sodomises a person under 18 years; or
- (b) permits a male person under 18 years to sodomise him or her; or
- (c) sodomises an intellectually impaired person; or
- (d) permits an intellectually impaired person to sodomise him or her;

commits a crime.

Maximum penalty—14 years imprisonment

‘(2) The offender is liable to imprisonment for life if the offence is committed in respect of—

- (a) a child under 12 years; or
- (b) a child, or an intellectually impaired person, who is to the knowledge of the offender—
 - (i) his or her lineal descendant; or
 - (ii) under his or her guardianship or care.

⁴ Section 193 (False statements in statements required to be under oath or solemn declaration) or 194 (False declarations)

‘(3) For an offence defined in subsection (1)(a) or (b) alleged to have been committed in respect of a child who is 12 years or more, it is a defence to prove that the accused person believed, on reasonable grounds, that the person in respect of whom the offence was committed was 18 years or more.

‘(4) It is a defence to a charge of an offence defined in subsection (1)(c) or (d) to prove—

- (a) that the accused person believed on reasonable grounds that the person was not an intellectually impaired person; or
- (b) that the act that was the offence did not, in the circumstances, constitute sexual exploitation of the intellectually impaired person.’.

Amendment of s 209 (Attempt to have unlawful anal intercourse)

22.(1) Section 209, heading—

omit, insert—

‘Attempted sodomy’.

(2) Section 209(1), ‘3 years’—

omit, insert—

‘7 years’.

(3) Section 209(2) to (5)—

omit, insert—

‘(2) The offender is liable to imprisonment for 14 years if the offence is committed in respect of—

- (a) a child under 12 years; or
- (b) a child, or an intellectually impaired person, who is to the knowledge of the offender—
 - (i) his or her lineal descendant; or
 - (ii) under his or her guardianship or care.

‘(3) It is a defence to a charge of attempting to commit an offence defined in section 208(1)(a) or (b) in respect of a child who is 12 years or

more to prove that the accused person believed, on reasonable grounds, that the child was of or above 18 years.

‘(4) It is a defence to a charge of attempting to commit an offence defined in section 208(1)(c) or (d) to prove—

- (a) that the accused person believed on reasonable grounds that the person in respect of whom the offence was committed was not an intellectually impaired person; or
- (b) that the act that was the offence did not, in the circumstances, constitute sexual exploitation of the intellectually impaired person.’.

Amendment of s 210 (Indecent treatment of children under 16)

23.(1) Section 210(2), ‘misdemeanour’—

omit, insert—

‘crime’.

(2) Section 210(2), ‘5 years’—

omit, insert—

‘10 years’.

(3) Section 210(3), ‘10 years’—

omit, insert—

‘14 years’.

(4) Section 210(4), ‘the offender’s’—

omit, insert—

‘his or her’.

(5) Section 210(4), ‘10 years’—

omit, insert—

‘14 years’.

(6) Section 210(6)—

omit.

(7) Section 210(7)—
renumber as section 210(6).

Amendment of s 211 (Carnal knowledge of animal)

24.(1) Section 211, heading—

omit, insert—

‘Bestiality’.

(2) Section 211, after ‘knowledge’—

insert—

‘with or’.

Amendment of s 213 (Householder permitting abuse of children on householder’s premises)

25.(1) Section 213, heading—

omit, insert—

‘Owner etc. permitting abuse of children on premises’.

(2) Section 213(1), ‘the age of 16 years’—

omit, insert—

‘the prescribed age’.

(3) Section 213(2), ‘misdemeanour’—

omit, insert—

‘crime’.

(4) Section 213(2), ‘5 years’—

omit, insert—

‘10 years’.

(5) Section 213(3)(b), ‘10 years’—

omit, insert—

‘14 years’

(6) Section 213(4)—

omit, insert—

‘(4) If the proscribed act is one defined to constitute an offence in section 208⁵ and the child is of or above 12 years, it is a defence to prove that the accused person believed, on reasonable grounds, that the child was of or above 18 years.

‘(5) If the proscribed act is one defined to constitute an offence in section 210 or 215⁶ and the child is of or above 12 years, it is a defence to prove that the accused person believed, on reasonable grounds, that the child was of or above 16 years.

‘(6) In this section—

“**prescribed age**” means—

- (a) for an offence defined in section 208—18 years;
- (b) for an offence defined in section 210 or 215—16 years.’.

Amendment of s 215 (Carnal knowledge of girls under 16)

26.(1) Section 215(2), ‘misdemeanour’—

omit, insert—

‘crime’.

(2) Section 215(2), ‘5 years’—

omit, insert—

‘14 years’.

(3) Section 215(3), ‘10 years’—

omit, insert—

‘14 years’.

(4) Section 215(6) and (7)—

⁵ Section 108 (Unlawful sodomy)

⁶ Section 210 (Indecent treatment of children under 16) or 215 (Carnal knowledge of girls under 16)

omit, insert—

‘(6) In this section—

“**carnal knowledge**” does not include sodomy.’.

Amendment of s 216 (Abuse of intellectually impaired persons)

27.(1) Section 216(1), ‘subsection (3)’—

omit, insert—

‘subsection (3)(a) and (b)’.

(2) Section 216(1), ‘misdemeanour’—

omit, insert—

‘crime’.

(3) Section 216(1), ‘5 years’—

omit, insert—

‘14 years’.

(4) Section 216(2), after ‘subsection (3)’—

insert—

‘(c)’.

(5) Section 216(2), ‘misdemeanour’—

omit, insert—

‘crime’.

(6) Section 216(2), ‘3 years’—

omit, insert—

‘10 years’.

(7) Section 216(3)(b), ‘14 years’—

omit, insert—

‘life’.

(8) Section 216(3)(c), ‘10 years’—

omit, insert—

‘14 years’.

(9) Section 216(3A), ‘10 years’—

omit, insert—

‘14 years’.

(10) Section 216(5) and (6)—

omit, insert—

‘(5) In this section—

“**carnal knowledge**” does not include sodomy.

“**deals with**” includes doing any act that, if done without consent, would constitute an assault.’.

Amendment of s 217 (Procuring young person etc. for carnal knowledge)

28.(1) Section 217(2)—

omit.

(2) Section 217(3), definition “**carnal knowledge**”—

omit.

(3) Section 217(3)—

renumber as section 217(2).

Amendment of s 218 (Procuring sexual acts by coercion etc.)

29.(1) Section 218(1), ‘7 years’—

omit, insert—

‘14 years’.

(2) Section 218(2) and (3)—

omit, insert—

‘(2) In this section—

“**procure**” means knowingly entice or recruit for the purposes of sexual exploitation.’.

Amendment of s 219 (Taking child under 16 for immoral purposes)

30.(1) Section 219, heading, ‘**under 16**’—

omit.

(2) Section 219(1), ‘who is under the age of 16 years’—

omit, insert—

‘ who is under the prescribed age’.

(3) Section 219(2), ‘5 years’—

omit, insert—

‘10 years’.

(4) Section 219(3)(b), ‘10 years’—

omit, insert—

‘14 years’.

(5) Section 219(4)—

omit, insert—

‘**(4)** If the proscribed act is one defined to constitute an offence defined in section 208⁷ and the child is of or above 12 years, it is a defence to prove that the accused person believed, on reasonable grounds, the child was of or above 18 years.

‘**(5)** If the proscribed act is one defined to constitute an offence defined in section 210 or 215⁸ and the child is of or above 12 years, it is a defence to prove that the accused person believed, on reasonable grounds, the child was of or above 16 years.

‘**(6)** In this section (1)—

“**prescribed age**” means—

⁷ Section 208 (Unlawful sodomy)

⁸ Section 210 (Indecent treatment of children under 16) or 215 (Carnal knowledge of girls under 16)

- (a) for an offence defined in section 208—18 years;
- (b) for an offence defined in section 210 or 215—16 years.’.

Replacement of s 221 (Conspiracy to defile)

31. Section 221—

omit, insert—

‘Conspiracy to defile

‘**221.** Any person who conspires with another to induce any person, by any false pretence or other fraudulent means, to permit any person to have unlawful carnal knowledge with or of him or her commits a crime.

Maximum penalty—10 years imprisonment.’.

Replacement of s 222 (Incest by man)

32. Section 222—

omit, insert—

‘Incest

‘**222.(1)** Any person who—

- (a) has carnal knowledge with or of the person’s offspring or other lineal descendant, or sibling, parent, grandparent, uncle, aunt, nephew or niece; and
- (b) knows that the other person bears that relationship to him or her, or some relationship of that type to him or her;

commits a crime.

Maximum penalty—imprisonment for life.

‘**(2)** Any person who attempts to commit the crime of incest is liable to imprisonment for 10 years.

‘**(3)** It is immaterial that the act or attempted act of carnal knowledge happened with the consent of either person.

‘**(4)** It is a defence to a charge under this section to prove that the accused person was, at the time when the act or attempted act of carnal knowledge

happened, acting under the coercion of the other person.

‘(5) A reference in this section to an offspring or other lineal descendant, or a sibling or a parent includes a relationship of that type that is a half, adoptive or step relationship.

‘(6) For subsection (5), a reference to a step relationship includes a ~~relationship corresponding to a relationship arising from a relationship or a legal arrangement.~~

‘(7) Also, for subsection (5), a reference to a step relationship does not include a step relationship that first arose after the relevant persons became adults.

‘(8) This section does not apply to carnal knowledge between persons who are lawfully married or entitled to be lawfully married.’.

Amendment of s 229B (Maintaining a sexual relationship with a child under 16)

33.(1) Section 229B, heading, ‘**under 16**’—

omit.

(2) Section 229B(1), ‘the age of 16 years’—

omit, insert—

‘the prescribed age’.

(3) Section 229B(1), ‘7 years’—

omit, insert—

‘14 years’.

(4) Section 229B(1A), ‘offender’, first mention—

omit, insert—

‘accused person’.

(5) Section 229B(1A), ‘the offender maintained’—

omit, insert—

‘he or she maintained’.

(6) Section 229B(1B)—

omit.

(7) Section 229B(1D)—

omit, insert—

(1D) If—

- (a) the offence of a sexual nature mentioned in subsection (2) is alleged to have been committed in respect of a child of or above 12 years; and
- (b) the offence is defined under section 208 or 209⁹;

it is a defence to prove that the accused person believed throughout the relationship, on reasonable grounds, that the child was of or above 18 years.

(1E) If—

- (a) the offence of a sexual nature mentioned in subsection (2) is alleged to have been committed in respect of a child of or above 12 years; and
- (b) the offence is one other than one defined under section 208 or 209;

it is a defence to prove that the accused person believed throughout the relationship, on reasonable grounds, that the child was of or above 16 years.’.

(8) Section 229B(2), ‘subsection (1)’—

omit, insert—

‘this section’.

(9) Section 229B(2), ‘committed by the person’—

omit, insert—

‘committed by him or her’.

(10) Section 229B(2), ‘and the person’—

omit, insert—

‘and he or she’.

⁹ Section 208 (Unlawful sodomy) or 209 (Attempted sodomy)

(11) Section 229B(3), ‘subsection (1)’—

omit, insert—

‘this section’.

(12) Section 229B(1A) to (3)—

renumber as section 229B(2) to (8).

(13) Section 229B—

insert—

‘(9) In this section—

“prescribed age” means—

- (a) to the extent that the relationship involves an act defined to constitute an offence in section 208 or 209—18 years; or
- (b) to the extent that the relationship involves any other act defined to constitute an offence of a sexual nature—16 years.’.

Amendment of s 229G (Procuring prostitution)

34.(1) Section 229G(3)—

omit.

(2) Section 229G(4)—

renumber as section 229G(3).

Amendment of s 233 (Betting houses)

35. Section 233(1B)—

omit.

Replacement of s 267 (Defence of dwelling)

36. Section 267—

omit, insert—

‘Defence of dwelling

‘**267.** It is lawful for a person who is in peaceable possession of a dwelling, and any person lawfully assisting him or her or acting by his or her authority, to use force to prevent or repel another person from unlawfully entering or remaining in the dwelling, if the person using the force believes on reasonable grounds—

- (a) the other person is attempting to enter or to remain in the dwelling with intent to commit an indictable offence in the dwelling; and
- (b) it is necessary to use that force.’.

Amendment of s 274 (Defence of moveable property against trespassers)

37.(1) Section 274, after ‘and for any person’—

insert—

‘lawfully assisting him or her or’.

(2) Section 274, ‘the person’s’—

omit, insert—

‘his or her’.

(3) Section 274, after ‘does not do’—

insert—

‘grievous’.

Amendment of s 275 (Defence of moveable property with claim of right)

38.(1) Section 275, after ‘and for any person’—

insert—

‘lawfully assisting him or her or’.

(2) Section 275, ‘the person’s’, first mention—

omit, insert—

‘his or her’.

(3) Section 275, ‘the person’, 2nd mention—

omit, insert—

‘he or she’.

(4) Section 275, after ‘does not do’—

insert—

‘grievous’.

Amendment of s 276 (Defence of moveable property without claim of right)

39.(1) Section 276, ‘from a’—

omit, insert—

‘from another’.

(2) Section 276, ‘resists the person’—

omit, insert—

‘resists him or her’.

(3) Section 276, ‘force’—

omit, insert—

‘the force that is reasonably necessary’.

(4) Section 276, ‘the person does not do’—

omit, insert—

‘he or she does not do grievous’.

Amendment of s 277 (Defence of premises against trespassers—removal of disorderly persons)

40.(1) Section 277(1), after ‘and for any person’—

insert—

‘lawfully assisting him or her or’.

(2) Section 277(1), ‘the person’s’—

omit, insert—

‘his or her’.

(3) Section 277(1), ‘the person does not do’—

omit, insert—

‘he or she does not do grievous’.

(4) Section 277(2), ‘the person’s’—

omit, insert—

‘his or her’.

(5) Section 277(2), ‘force’—

omit, insert—

‘the force that is reasonably necessary’.

(6) Section 277(2), from ‘the person does not do’—

omit, insert—

‘he or she does not do the person grievous bodily harm’.

Amendment of s 278 (Defence of possession of real property or vessel with claim of right)

41.(1) Section 278, after ‘and for any person’—

insert—

‘lawfully assisting him or her or’.

(2) Section 278, ‘the person’s’—

omit, insert—

‘his or her’.

(3) Section 278, ‘the person does not do’—

omit, insert—

‘he or she does not do grievous’.

Amendment of s 279 (Exercise of right of way or easement)

42.(1) Section 279, ‘the person’s’, first mention—

omit.

(2) Section 279, after ‘and for any person’—

insert—

‘lawfully assisting him or her or’.

(3) Section 279, ‘the person’s’, 2nd mention—

omit, insert—

‘his or her’.

(4) Section 279, ‘the person does not do the person entering’—

omit, insert—

‘he or she does not do the person entering grievous’.

Amendment of s 280 (Domestic discipline)

43.(1) Section 280, after ‘correction’—

insert—

‘, discipline, management or control’.

(2) Section 280, ‘child, pupil or apprentice’—

omit, insert—

‘child or pupil’.

Amendment of s 281 (Discipline of ship or aircraft)

44.(1) Section 281, heading, ‘**ship or aircraft**’—

omit, insert—

‘**vehicle**’.

(2) Section 281, from ‘the master’ to ‘himself or herself’—

omit, insert—

‘a person in charge of a vehicle on a journey’.

(3) Section 281, ‘the person’s’—

omit, insert—

‘his or her’.

(4) Section 281, ‘vessel or aircraft’—

omit, insert—

‘vehicle’.

Replacement of s 286 (Duty of head of family)

45. Section 286—

omit, insert—

‘Duty of person who has care of child

‘286.(1) It is the duty of every person who has care of a child under 16 years to—

- (a) provide the necessaries of life for the child; and
- (b) take the precautions that are reasonable in all the circumstances to avoid danger to the child’s life, health or safety; and
- (c) take the action that is reasonable in all the circumstances to remove the child from any such danger;

and he or she is held to have caused any consequences that result to the life and health of the child because of any omission to perform that duty, whether the child is helpless or not.

‘(2) In this section—

“**person who has care of a child**” includes a parent, foster parent, step parent, guardian or other adult in charge of the child, whether or not the person has lawful custody of the child.’.

Amendment of s 308 (Written threats to murder)

46.(1) Section 308, heading—

omit, insert—

‘**Threats to murder in document**’.

(2) Section 308, ‘writing’—

omit, insert—

‘document’.

Amendment of s 313 (Killing unborn child)

47.(1) Section 313, ‘woman’—

omit, insert—

‘female’.

(2) Section 313—

insert—

‘(2) Any person who unlawfully assaults a female pregnant with a child and destroys the life of, or does grievous bodily harm to, or transmits a serious disease to, the child before its birth, commits a crime.

Maximum penalty—imprisonment for life.’.

Amendment of s 317 (Acts intended to cause grievous bodily harm or prevent apprehension)

48.(1) Section 317, heading, ‘**or prevent apprehension**’—

omit, insert—

‘**and other malicious acts**’.

(2) Section 317(c) to (g)—

renumber as section 317(g) to (k)

(3) Section 317, words before paragraph (g), as renumbered—

omit, insert—

‘**317.** Any person who, with intent—

(a) to maim, disfigure or disable, any person; or

(b) to do some grievous bodily harm or transmit a serious disease to any person; or

(c) to resist or prevent the lawful arrest or detention of any person; or

- (d) to resist or prevent a public officer from acting in accordance with lawful authority—

either—

- (e) in any way unlawfully wounds, does grievous bodily harm, or transmits a serious disease to, any person; or
- (f) unlawfully strikes, or attempts in any way to strike, any person with any kind of projectile or anything else capable of achieving the intention; or’.

Amendment of s 317A (Taking or sending dangerous goods on aircraft)

49.(1) Section 317A, heading—

omit, insert—

‘Carrying or sending dangerous goods in a vehicle’.

(2) Section 317A(1), ‘on board an aircraft’—

omit, insert—

‘in or on a vehicle’.

(3) Section 317A(1)(c), ‘the person’s’—

omit, insert—

‘his or her’.

(4) Section 317A(1), ‘7 years’—

omit, insert—

‘14 years’.

(5) Section 317A(2), from ‘that the act’ to ‘concerned or’—

omit.

(6) Section 317A(3), definition “**dangerous goods**”, paragraph (b)—

omit, insert—

- ‘(b) an explosive or noxious substance, acid or other thing of a dangerous or destructive nature that because of its nature or

condition may endanger the safety of a vehicle, a person in, on or in the vicinity of the vehicle.’.

Replacement of s 318 (Preventing escape from wreck)

50.(1) Section 318—

omit, insert—

‘Obstructing rescue or escape from unsafe premises

‘318.(1) Any person who unlawfully obstructs anyone in the other person’s efforts to save the life of someone who is in, or escaping from, dangerous, destroyed or other unsafe premises commits a crime.

Maximum penalty—imprisonment for life.

(2) In this section—

“obstruct” includes hinder and attempt to obstruct’.

Insertion of new s 320A

51. After section 320—

insert—

‘Torture

‘320A.(1) A person who tortures another person commits a crime.

Maximum penalty—14 years imprisonment.

(2) In this section—

“torture” means the intentional infliction of severe pain or suffering on a person by an act or series of acts done on 1 or more than 1 occasion.

“pain or suffering” includes physical, mental, psychological or emotional pain or suffering, whether temporary or permanent.’.

Amendment of s 321 (Attempting to injure by explosive substances)

52.(1) Section 321, heading, after **‘explosive’**—

insert—

‘or noxious’.

(2) Section 321, after ‘explosive’—

insert—

‘or noxious’.

Insertion of new s 321A

53. After section 321—

insert—

‘Bomb hoaxes

‘321A.(1) Any person who—

- (a) places an article or substance in any place; or
- (b) sends an article or substance in any way;

with the intention of inducing in another person a belief that the article or substance is likely to explode, ignite, or discharge a dangerous or noxious substance, commits a crime.

Maximum penalty—7 years imprisonment.

‘(2) Any person who, in Queensland or elsewhere, makes a statement or conveys information to another person that he or she knows or believes to be false, with the intention of inducing in that person or another person a belief that an explosive or noxious substance, acid or other thing of a dangerous or destructive nature is present in a place in Queensland, commits a crime.

Maximum penalty—5 years imprisonment.

‘(3) Subsections (1) and (2) apply whether or not the accused had any particular person in mind as the person in whom he or she intended to induce the belief mentioned in the subsections.’.

Amendment of s 326 (Endangering life of children by exposure)

54.(1) Section 326, ‘2 years’—

omit, insert—

‘7 years’.

(2) Section 326, ‘misdemeanour’—

omit, insert—

‘crime’.

Amendment of s 328A (Dangerous driving of a motor vehicle)

55.(1) Section 328A, heading—

omit, insert—

‘Dangerous operation of a vehicle’.

(2) Section 328A(1)—

omit, insert—

‘**328A.(1)** A person who operates, or in any way interferes with the operation of, a vehicle dangerously in any place commits a misdemeanour.

Maximum penalty—200 penalty units or 3 years imprisonment.’.

(2) Section 328A(2)(b), ‘under this section’—

omit, insert—

‘of an offence against this section’.

(3) Section 328A(2), all words after ‘the person’—

omit, insert—

‘commits a crime.’.

(4) Section 328A(2), at the end—

insert—

‘Maximum penalty—400 penalty units or 5 years imprisonment’.

(5) Section 328A(4), ‘If the offender’—

omit, insert—

‘A person who operates, or in any way interferes with the operation of, a vehicle dangerously in any place and’.

(7) Section 328A(4), ‘person the offender is liable’—

omit, insert—

‘person commits a crime and is liable’.

(8) Section 328A(4), ‘in which case the offender’—

omit, insert—

‘in which case he or she’.

(9) Section 328A(5)—

omit, insert—

‘(5) In this section—

“operates, or in any way interferes with the operation of, a vehicle dangerously” means operate, or in any way interfere with the operation of, a vehicle at a speed or in a way that is dangerous to the public, having regard to all the circumstances, including—

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

“prescribed offence” means—

- (a) an offence against this section; or
- (b) an offence charged on indictment involving the driving or operation of a vehicle at a speed causing or likely to cause injury to anyone; or
- (c) an offence against the *Traffic Act 1949*, section 16(1),(2), (2A), (2B) or (2D).¹⁰

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

¹⁰ *Traffic Act 1949*, section 16 (Driving etc. whilst under the influence of liquor or drugs or with prescribed concentration of alcohol in blood)

“**the public**” includes passengers in a vehicle whether in a public or private place.’.

Amendment of s 335 (Common assault)

56. Section 335, ‘1 year’—

omit, insert—

‘3 years’.

Amendment of s 336 (Assault with intent to have unlawful anal intercourse)

57.(1) Section 336, heading—

omit, insert—

‘**Assault with intent to commit rape**’.

(2) Section 336, all words from ‘have carnal ’ to ‘intercourse—

omit, insert—

‘commit rape’.

Amendment of s 337 (Indecent assaults)

58.(1) Section 337, heading, ‘**Indecent**’—

omit, insert—

‘**Sexual**’.

(2) Section 337(1), ‘7 years’—

omit, insert—

‘10 years’.

(3) Section 337(1)(a), after ‘another’—

insert—

‘person’.

(4) Section 337(3)—

renumber as section 337(4).

(5) Section 337(2)—

omit, insert—

‘(2) If immediately before, during, or immediately after the offence, the offender is, or pretends to be, armed with a dangerous or offensive weapon, or is in company with another person, the offender is liable to imprisonment for life.

‘(3) If, for an offence defined in subsection (1)(a) or (1)(b)(i), the indecent assault or act of gross indecency consists, completely or partly—

- (a) in penetrating the vagina, vulva, or anus to any extent with an object or a part of the body other than the penis—the offender is liable to imprisonment for life; or
- (b) in bringing into contact any part of the genitalia or the anus with any part of the mouth—the offender is liable to 14 years imprisonment.’.

(6) Section 337(4), as renumbered—

insert—

‘“**procure**” means knowingly entice or recruit for the purposes of sexual exploitation.’.

Amendment of s 339 (Assaults occasioning bodily harm)

59.(1) Section 339(1), ‘misdemeanour’—

omit, insert—

‘crime’.

(2) section 339(1), 3 years’—

omit, insert—

‘7 years’.

(3) Section 339(2)—

omit.

(4) Section 339(3), after ‘offender’—

insert—

‘does bodily harm, and’.

(5) Section 339(3), ‘7 years’—

omit, insert—

‘10 years’.

Amendment of s 340 (Serious assaults)

60.(1) Section 340, ‘misdemeanour’—

omit, insert—

‘crime’.

(2) Section 340, ‘3 years’—

omit, insert—

‘7 years’.

(3) Section 340—

insert—

‘(g) assaults any person who is 60 years or more; or

(h) assaults any person who relies on a guide dog, wheelchair or other remedial device;’.

(4) Section 340, at the end—

insert—

‘*Examples of remedial device for paragraph (h)—*

walking frame, caliper, walking stick and artificial limb.’.

Amendment of s 346 (Assaults in interference with freedom of trade or work)

61.(1) Section 346, all words from ‘is guilty of’—

omit, insert—

‘commits a crime.’.

(2) Section 346, at the end—

insert—

‘Maximum penalty—5 years imprisonment.’.

Amendment of s 347 (Definition of “rape”)

62.(1) Section 347, heading—

omit, insert—

‘Rape’.

(2) Section 347(1), ‘of a female’—

omit, insert—

‘of another person’.

(3) Section 347(1), ‘her’—

omit, insert—

‘that person’s’.

(4) Section 347(1), after ‘of any kind,’—

insert—

‘or by exercise of authority,’.

(5) Section 347, ‘woman’—

insert—

‘female’.

Replacement of s 364 (Desertion of children)

63. Section 364—

omit, insert—

‘Cruelty to children under 16

‘364. A person who, having the lawful care or charge of a child under 16 years, causes suffering to the child by—

(a) failing to provide the child with adequate food, clothing, medical

treatment, accommodation or care when it is available to the person from his or her own resources; or

- (b) failing to take all lawful steps to obtain adequate food, clothing, medical treatment, accommodation or care when it is not available to the person from his or her own resources; or
- (c) deserting the child; or
- (d) leaving the child without means of support;

commits a crime.

Maximum penalty—5 years imprisonment.’.

Amendment of s 390 (Things capable of being stolen)

64. Section 390—

omit, insert—

‘Things capable of being stolen

‘**390.** Anything that is the property of any person is capable of being stolen if it is—

- (a) moveable; or
- (b) capable of being made moveable, even if it is made moveable in order to steal it.’.

Amendment of s 398 (Punishment of stealing)

65.(1) Section 398(1), ‘3 years’—

omit, insert—

‘5 years’.

(2) Section 398(2), ‘3 years’—

omit, insert—

‘5 years’.

(3) Section 398(2), ‘\$200’—

omit, insert—

‘\$1 000’.

(4) Section 398(3)—

omit.

(5) Section 398, punishment in special cases, clause 2—

omit.

(6) Section 398, punishment in special cases, clause 4(b), ‘\$40’—

omit, insert—

‘\$1 000’.

(7) Section 398, punishment in special cases, clause 4(b), ‘house’—

omit.

(8) Section 398, punishment in special cases, clause 4(c), ‘vessel or’—

omit.

(9) Section 398, punishment in special cases, clause 4(d), ‘vessel’—

omit, insert—

‘vehicle’.

(10) Section 398, punishment in special cases, clause 4, ‘7 years’—

omit, insert—

‘10 years’.

(11) Section 398, punishment in special cases, clause 5, ‘7 years’—

omit, insert—

‘10 years’.

(12) Section 398, punishment in special cases, clause 6, ‘7 years’—

omit, insert—

‘10 years’.

(13) Section 398, punishment in special cases, clause 7, ‘7 years’—

omit, insert—

‘10 years’.

(14) Section 398, punishment in special cases, clause 8(d), ‘for such disposition, such power of attorney having been’—

omit, insert—

‘or other authority for the disposition of the property’.

(15) Section 398, punishment in special cases, clause 8, ‘7 years’—

omit, insert—

‘10 years’.

(16) Section 398, punishment in special cases, clause 9, ‘7 years’—

omit, insert—

‘10 years’.

(17) Section 398, punishment in special cases, clause 10, ‘the offender’, 2nd mention—

omit, insert—

‘him or her’.

(18) Section 398, punishment in special cases, clause 10, ‘\$500’—

omit, insert—

‘\$1 000’.

(19) Section 398, punishment in special cases, clause 10, ‘7 years’—

omit, insert—

‘10 years’.

(20) Section 398, punishment in special cases, clause 11, ‘7 years’—

omit, insert—

‘10 years’.

(21) Section 398, punishment in special cases, clause 12, heading, ‘**an aircraft**’—

omit, insert—

‘**a vehicle**’.

(22) Section 398, punishment in special cases, clause 12, ‘an aircraft’—

omit, insert—

‘a vehicle’.

(23) Section 398, punishment in special cases—

insert—

‘Stealing by looting

‘13. If—

- (a) the offence is committed during a natural disaster, civil unrest or an industrial dispute; or
- (b) the thing stolen is left unattended by the death or incapacity of the person in possession of the property;

the offender is liable to imprisonment for 10 years.

‘Stealing firearm for use in another indictable offence

‘14. If—

- (a) the thing stolen is a firearm; and
- (b) the offender steals the firearm intending that it be used by anyone to commit an indictable offence;

the offender is liable to imprisonment for 14 years.

‘Stealing firearm or ammunition

‘15. If the thing stolen is a firearm or ammunition, the offender is liable to imprisonment for 10 years.’.

Amendment of s 408C (Misappropriation of property)

66.(1) Section 408C, words before subsection (2)—

omit, insert—

‘Fraud

‘408C.(1) A person who dishonestly—

- (a) applies to his or her own use or to the use of any person—

- (i) property belonging to another; or
- (ii) property belonging to the person, or which is in the person's possession, either solely or jointly with another person, subject to a trust, direction or condition or on account of any other person; or
- (b) obtains property from any person; or
- (c) induces any person to deliver property to any person; or
- (d) gains a benefit or advantage, pecuniary or otherwise, for any person; or
- (e) causes a detriment, pecuniary or otherwise, to any person; or
- (f) induces any person to do any act which the person is lawfully entitled to abstain from doing; or
- (g) induces any person to abstain from doing any act which that person is lawfully entitled to do; or
- (h) makes off, knowing that payment on the spot is required or expected for any property lawfully supplied or returned or for any service lawfully provided, without having paid and with intent to avoid payment;

commits the crime of fraud.

(2) Section 408C(2), 'misappropriation of property'—

omit, insert—

'fraud'.

(3) Section 408C(2)(a) and (b)—

omit, insert—

- '(a) if the offender is a director or member of the governing body of a corporation, and the victim is the corporation;
- (b) if the offender is an employee of another person, and the victim is the other person;'

(4) Section 408C(2)(c), 'the property dishonestly applied'—

omit, insert—

'any property in relation to which the offence is committed'.

(5) Section 408C(2)(d)—

omit, insert—

‘(d) if the property, or the yield to the offender from the dishonesty, is of a value of \$5 000 or more.’.

(6) Section 408C(3)(a)—

omit, insert—

‘(a) **“property”**, without limiting the definition of property in section 1¹¹, includes credit, service, any benefit or advantage, anything evidencing a right to incur a debt or to recover or receive a benefit, and releases of obligations;’.

(7) Section 408C(3)(b) and (c)—

omit, insert—

‘(b) a person’s act or omission in relation to property may be dishonest even though—

(i) he or she is willing to pay for the property; or

(ii) he or she intends to afterwards restore the property or to make restitution for the property or to afterwards fulfil his or her obligations or to make good any detriment; or

(iii) an owner or other person consents to doing any act or to making any omission; or

(iv) a mistake is made by another person; and

(c) a person’s act or omission in relation to property is not taken to be dishonest, if when the person does the act or makes the omission, he or she does not know to whom the property belongs and believes on reasonable grounds that the owner cannot be discovered by taking reasonable steps, unless the property came into his or her possession or control as trustee or personal representative;’.

(11) Section 408C(3)(d), ‘part owner’—

omit, insert—

¹¹ Section 1 (Construction of terms)

‘joint or part owner or owner in common’.

(12) Section 408C(3)—

insert—

- ‘(e) **“obtain”** includes to get, gain, receive or acquire in any way; and
- (f) if a person obtains property from any person or induces any person to deliver property to any person it is immaterial in either case whether the owner passes or intends to pass ownership in the property or whether he or she intends to pass ownership in the property to any person.’.

Insertion of new s 408D

67. After section 408C—

insert—

‘Computer hacking and misuse

‘408D.(1) A person who uses a restricted computer without the consent of the computer’s controller commits an offence.

Maximum penalty—2 years imprisonment.

‘(2) If the person causes or intends to cause detriment or damage, or gains or intends to gain a benefit, the person commits a crime and is liable to imprisonment for 5 years.

‘(3) If the person causes a detriment or damage or obtains a benefit for any person to the value of more than \$5 000, or intends to commit an indictable offence, the person commits a crime and is liable to imprisonment for 10 years.

‘(4) It is a defence to a charge under this section to prove that the use of the restricted computer was authorised, justified or excused by law.

‘(5) In this section—

“benefit” includes a benefit obtained by or delivered to any person.

“computer” means all or part of a computer, computer system or computer network and includes, for example, all external devices connected to the computer in any way or capable of communicating with each other as part of a system or network.

“controller” means a person who has a right to control the computer’s use.

“damage” includes—

- (a) damage to any computer hardware or software; and
- (b) for information—any alteration, addition, removal or loss of, or other damage to, information.

“information” includes data, file, document, or computer language or coding.

“detriment” includes any detriment, pecuniary or otherwise, to any person.

“restricted computer” means a computer for which—

- (a) a device, code or a particular sequence of electronic impulses is necessary in order to gain access to or to use the computer; and
- (b) the controller—
 - (i) withholds or takes steps to withhold access to the device, or knowledge of the code or of the sequence or of the way of producing the code or the sequence, from other persons; or
 - (ii) restricts access or takes steps to restrict access to the device or knowledge of the code or of the sequence, or to the way of producing the sequence, to a person or a class of person authorised by the controller.

“use”, of a restricted computer, includes accessing or altering any information stored in, or communicate information directly or indirectly to or from, the restricted computer, or cause a virus to become installed on or to otherwise affect, the computer.’.

Amendment of s 412 (Attempted robbery—accompanied by wounding or in company)

68.(1) Section 412, heading—

omit, insert—

‘Attempted robbery’.

(2) Section 412(3), ‘kind of loaded arms’—

omit, insert—

‘dangerous or offensive weapon, instrument or noxious substance’.

(3) Section 412(3), ‘any person by discharging the loaded arms’—

omit, insert—

‘, or uses other personal violence to, any person by the weapon, instrument or noxious substance’.

Amendment of s 415 (Demanding property, benefit or performance of services with threats)

69.(1) Section 415(1)(a), ‘writing’—

omit, insert—

‘document’.

(2) Section 415(6)—

omit.

Amendment of s 416 (Attempts at extortion by threats)

70.(1) Section 416(1)(c), ‘writing’—

omit, insert—

‘document’.

(2) Section 416(2)(c), ‘have carnal knowledge of any person by anal intercourse’—

omit, insert—

‘commit unlawful sodomy against any person’.

(3) Section 416(2)(d), after ‘rape’—

insert—

‘against any person’.

(4) Section 416(2)(d), ‘woman or girl’—

omit, insert—

‘female’.

Amendment of s 418 (Definitions)

71.(1) Section 418(1), ‘building’, 1st to 3rd mention—

omit, insert—

‘dwelling or any premises’.

(2) Section 418(1), ‘building’, 4th mention—

omit, insert—

‘dwelling or premises’.

(3) Section 418(2), ‘building’—

omit, insert—

‘dwelling or premises’.

(4) Section 418(3), ‘building’—

omit, insert—

‘dwelling or premises’.

(5) Section 418—

insert—

‘**(4)** In this chapter—

“premises” includes—

- (a) a building or structure and a part of a building or structure other than a dwelling; and
- (b) a tent, caravan, or vehicle; and
- (c) any similar place.’.

Replacement of s 419 (Housebreaking—burglary)

72. Section 419—

omit, insert—

‘Burglary

‘419.(1) Any person who enters or is in the dwelling of another with intent to commit an indictable offence in the dwelling commits a crime.

Maximum penalty—14 years imprisonment.

‘(2) If the offender enters the dwelling by means of any break, he or she is liable to imprisonment for life.

‘(3) If—

- (a) the offence is committed in the night; or
- (b) the offender—
 - (i) uses or threatens to use actual violence; or
 - (ii) is or pretends to be armed with a dangerous or offensive weapon, instrument or noxious substance; or
 - (iii) is in company with 1 or more persons; or
 - (iv) damages, or threatens or attempts to damage, any property;

the offender is liable to imprisonment for life.

‘(4) Any person who enters or is in the dwelling of another and commits an indictable offence in the dwelling commits a crime.

Maximum penalty—imprisonment for life.’.

Replacement of s 421 (Breaking into places and committing indictable offences)

73. Section 421—

omit, insert—

‘Entering or being in premises and committing indictable offences

‘**421.(1)** Any person who enters or is in any premises with intent to commit an indictable offence in the premises commits a crime.

Maximum penalty—10 years imprisonment.

‘(2) Any person who enters or is in any premises and commits an indictable offence in the premises commits a crime.

Maximum penalty—14 years imprisonment.

‘(3) If the offender gains entry to the premises by any break and commits an indictable offence in the premises, he or she is liable to imprisonment for life.’.

Amendment of s 425 (Persons found armed etc. with intent to commit an indictable offence)

74.(1) Section 425, heading—

omit, insert—

‘Possession of things used in connection with unlawful entry’.

(2) Section 425(1)(a), after ‘or instrument,’—

insert—

‘or a noxious substance.’.

(3) Section 425(1)(a), ‘house’—

omit, insert—

‘or premises’.

(4) Section 425(1)(b)—

omit, insert—

‘(b) having in his or her possession anything intended for use in or in connection with the commission of an offence defined in section 419 or 421¹².’.

(5) Section 425(1)(f)—

omit.

Replacement of ch 40 hdg

75. Chapter 40, heading—

omit, insert—

‘CHAPTER 40—OTHER FRAUDULENT PRACTICES’.

¹² Section 419 (Burglary) or 421 (Entering or being in premises and committing indictable offences)

Amendment of s 427A (Obtaining property by passing valueless cheques)

76. Section 427A(4)—

omit.

Amendment of s 433 (Receiving stolen property etc.)

77.(1) Section 433(1), ‘knowing’—

omit, insert—

‘and has reason to believe’.

(2) Section 433(2), ‘knowing’—

omit, insert—

‘has reason to believe’.

(3) Section 433—

insert—

‘**(3A)** If the thing received is a firearm or ammunition, the offender is liable to imprisonment for 14 years.

‘**(3B)** If the offender received the thing while acting as a pawnbroker or dealer in second hand goods, under a licence or otherwise, the offender is liable to imprisonment for 14 years.’.

(4) Section 433(5), ‘the accused person’s’—

omit, insert—

‘his or her’.

(5) Section 433(3A) to (5)—

renumber as section 433(4) to (7).

Replacement of s 441 (Fraudulent false accounting)

78. Section 441—

omit, insert—

‘Fraudulent falsification of records

‘441. Any person who with intent to defraud—

- (a) makes a false entry in any record; or
- (b) omits to make an entry in any record; or
- (c) gives any certificate or information that is false in a material particular; or
- (d) in any way falsifies, destroys, alters or damages any record; or
- (e) produces or makes use of any record the person knows is false in a material particular;

commits a crime.

Maximum penalty—10 years imprisonment.’.

Amendment of s 442B (Receipt or solicitation of secret commission by an agent

79.(1) Section 442B(1), at the end—

insert—

‘commits a crime.’.

(2) Section 442B(2)—

renumber as section 442BA.

(3) Section 442BA, as renumbered, ‘is guilty of an offence’—

omit, insert—

‘commits a crime’.

Amendment of s 442D (False or misleading receipt or account)

80. Section 442D, ‘is guilty of an offence’—

omit, insert—

‘commits a crime’.

Amendment of s 442E (Secret commission for advice given)

81.(1) Section 442E(1), ‘an offence’—

omit, insert—

‘a crime’.

(2) Section 442E(2)—

renumber as section 442EA.

(3) Section 442EA, as renumbered, ‘an offence’—

omit, insert—

‘a crime’.

Amendment of s 442F (Secret commission to trustee in return for substituted appointment)

82. Section 442F, ‘is guilty of an offence’—

omit, insert—

‘commits a crime’.

Amendment of s 442G (Liability of director etc. acting without authority)

83. Section 442G, ‘is guilty of an offence’—

omit, insert—

‘commits a crime’.

Amendment of s 442I (Penalty on conviction)

84. Section 442, words before paragraph (b)—

omit, insert—

‘Penalty on conviction

‘**442I.** Any person guilty of a crime against any of the provisions of this chapter is—

- (a) liable, if a corporation, to a penalty of 3 400 penalty units, and if an individual, to 7 years imprisonment; and’.

Amendment of s 458 (Unlawful acts)

85. Section 458(2), after ‘in it’—

insert—

‘, or an interest in it as joint or part owner or owner in common’.

Amendment of s 460 (Damage)

86. Section 460, ‘, or to a writing or inscription,’—

omit.

Amendment of s 469 (Malicious injuries in general)

87.(1) Section 469, heading—

omit, insert—

‘Wilful damage’.

(2) Section 469, from ‘2 years’—

omit, insert—

‘5 years.’.

(3) Section 469, punishment in special cases, clause 1, ‘house’—

omit.

(4) Section 469, punishment in special cases—

insert—

‘Graffiti

‘9.(1) If the property in question is in a public place, or is visible from a public place, and the destruction or damage is caused by—

- (a) spraying, writing, drawing, marking or otherwise applying paint or another marking substance; or
- (b) scratching or etching;

the offender commits a crime and is liable to imprisonment for 5 years.

‘(2) If the offence involves obscene or indecent representations, the offender is liable to imprisonment for 7 years.

‘(3) The court may—

- (a) whether or not it imposes any other penalty for the offence, order the offender to perform community service under the *Penalties and Sentences Act 1992*, part 5, division 2¹³, including for example, removing graffiti from property; and
- (b) whether or not it imposes any penalty for the offence, order the offender to pay compensation to any person under the *Penalties and Sentences Act 1992*, part 3, division 4.¹⁴

‘Educational institutions

‘10.(1) If the property in question is part of a school, education centre, college, university, or another educational institution, the offender commits a crime and is liable to imprisonment for 7 years.

‘(2) The court may—

- (a) whether or not it imposes any other penalty for the offence, order the offender to perform community service work under the *Penalties and Sentences Act 1992*, part 5, division 2 including for example, cleaning or repairing any damaged property that is part of an educational institution; and
- (b) whether or not it imposes any penalty for the offence, order the offender to pay compensation to any person under the *Penalties and Sentences Act 1992*, part 3, division 4.’

¹³ *Penalties and Sentences act 1992*, part 5 (Intermediate orders), division 2 (Community service orders)

¹⁴ Part 3 (Releases, restitution and compensation), division 4 (Orders for restitution and compensation)

Amendment of s 478 (Sending letters threatening to burn or destroy)

88. Section 478, ‘writing’—

omit, insert—

‘document’.

Amendment of s 484 (Definitions)

89.(1) Section 484, definition “**document**”, from ‘includes’ to ‘but’—

omit.

(2) Section 484, definition “writing”—

omit.

Amendment of s 488 (Punishment of forgery in general)

90. (1) Section 488, heading—

omit, insert—

‘Forgery and uttering’.

(2) Section 488, from ‘Any person’ to ‘3 years’—

omit, insert—

‘A person who, with intent to defraud—

(a) forges a document; or

(b) utters a forged document;

commits a crime.

Maximum penalty if no other punishment is provided—3 years imprisonment.

‘(2) Subsection (1) applies whether or not the document is complete and even though it is not, or does not purport to be, binding in law.’.

Amendment of s 494 (Making documents without authority)

91. Section 494, ‘or writing’—

omit.

Insertion of new s 501A

92. After section 501—

insert—

‘Contradictory statements

‘501A. If, on the trial for a person under section 501, the jury is satisfied—

- (a) the accused has made 2 statements and 1 is irreconcilably in conflict with the other; and
- (b) the accused made 1 of the statements knowing it to be false;

but the jury unable to say which statement was falsely made, the jury may make a special finding to that effect and find the accused guilty of the offence.’.

Replacement s 510 (Instruments and materials for forgery)

93. Section 510—

omit, insert—

‘Instruments and materials for forgery

‘510. Any person who unlawfully—

- (a) makes, or starts or prepares to make, a thing with intent to use it to forge a document; or
- (b) possesses a thing with intent to use it to forge a document; or
- (c) uses a thing to forge a document; or
- (d) disposes of a thing that has been used to forge a document;

commits a crime.

Maximum penalty—14 years imprisonment.’.

Amendment of s 514 (Personation in general)

94. Section 514, after ‘living or dead,’—

insert—

‘real or fictitious.’

Amendment of s 535 (Attempts to commit offences)

95. Section 535(2)—

omit.

Insertion of new pt 8, ch 58A

96. Part 8, after chapter 58—

insert—

**‘CHAPTER 58A—INDICTABLE OFFENCES
DEALT WITH SUMMARILY**

‘Charges of indictable offences that must be dealt with summarily on prosecution election

‘552A.(1) This section applies to a charge of any of the following indictable offences—

- (a) an offence against any of the following provisions—
- section 141
 - section 142
 - section 143
 - section 144
 - section 148
 - section 233

- section 340¹⁵;
- (b) any offence involving an assault, not being of a sexual nature or accompanied by an attempt to commit a crime, if the maximum penalty for the offence is not more than 5 years;
- (c) an offence of attempting to commit any of the above offences;
- (d) an offence of counselling or procuring of any of the above offences.

‘(2) A charge of an offence mentioned in subsection (1) must be heard and decided summarily, if the prosecution elects to have the charge heard and decided summarily.

‘(3) This section is subject to section 552D.¹⁶

‘Charges of indictable offences that may be dealt with summarily

‘552B.(1) This section applies to a charge of any of the following indictable offences—

- (a) an offence of stealing, fraud, receiving or other dishonesty, or of making anything moveable with intent to steal it, and the value of the property, benefit or detriment is not more than \$5 000;
- (b) an offence against section 406¹⁷;
- (c) an offence relating to damage to or destruction of property up to the value of \$5 000;
- (d) an offence relating to an animal, skin or carcass or part of an animal, skin or carcass;

¹⁵ Section 141 (Aiding persons to escape from lawful custody), section 142 (Escape by persons in lawful custody), section 143 (Permitting escape), section 144 (Harbouring escaped prisoners etc.), section 148 (Obstructing officers of courts of justice), section 233 (Betting houses), section 340 (Serious assault)

¹⁶ Section 552D (When magistrate must abstain from jurisdiction)

¹⁷ Section 406 (Bringing stolen goods into Queensland)

- (e) an offence against section 419 or 421¹⁸, if—
 - (i) the offence involved stealing or an intent to steal or an intent to destroy or damage property or the damage or destruction of property; and
 - (ii) the offender was not armed or pretending to be armed when the offence was committed; and
 - (iii) the value of any property stolen, damaged or destroyed was not more than \$1 000;
- (f) an offence against section 425¹⁹;
- (g) an offence against section 408A(1)²⁰;
- (h) an offence of a sexual nature without a circumstance of aggravation where the complainant was 14 years of age or over at the time of the alleged offence and the defendant has pleaded guilty;
- (i) an offence involving an assault, if—
 - (i) the assault is—
 - (A) without a circumstance of aggravation; and
 - (B) is not of a sexual nature; and
 - (C) is not an assault mentioned in section 552A; and
 - (ii) the maximum penalty for the offence is not more than 7 years;
- (j) an offence against section 328A(1)²¹;
- (k) an offence of unlawful stalking without a circumstance of aggravation;

¹⁸ Section 419 (Burglary) or 421 (Entering or being in premises and committing indictable offences)

¹⁹ Section 425 (Possession of things used in connection with unlawful entry)

²⁰ Section 408A (Unlawful use or possession of motor vehicles, aircraft or vessels)

²¹ Section 328A (Dangerous operation of a vehicle)

- (l) an offence against chapter 22A;²²
- (m) an offence against chapter 42A;²³
- (n) an offence of attempting to commit any of the above offences;
- (o) an offence of counselling or procuring of any of the above offences.

‘(2) A charge of an offence mentioned in subsection (1)(a) to (e) or a charge of attempting to commit, or of counselling or procuring, any of those offences must be dealt with summarily, unless the defendant informs the court that he or she wants to be tried by a jury.

‘(3) Also, if—

- (a) the defendant admits that he or she is guilty of an offence to which subsection (2) applies; and
- (b) the magistrate considers the offence is of a nature that the defendant may be adequately punished on summary conviction;

the charge must be dealt with summarily under subsection (2) whether or not the value of any property in relation to which the offence was committed is less than the value mentioned in subsection (1)(a) to (e).

‘(4) For subsection (3), it is immaterial that the defendant could be charged with an offence that the magistrate has no jurisdiction to hear and decide because of the value of the property in question.

‘(5) A charge of an offence mentioned in subsection (1)(f) to (m), or a charge of attempting to commit, or of counselling or procuring, any of those offences, must be decided summarily, unless the defendant informs the magistrate that he or she wants to be tried by jury.

‘(6) This section is subject to section 552D.²⁴

‘Summary hearing of indictable offence must be by magistrate

‘552C.(1) The summary hearing and deciding of an indictable offence

²² Chapter 22A (Prostitution)

²³ Chapter 42A (Secret commissions)

²⁴ Section 552D (When magistrate must abstain from jurisdiction)

under this chapter must be by a magistrate.

‘(2) Jurisdiction of a justice who is not a magistrate is limited to taking or making a procedural action or order under the *Justices of the Peace and Commissioners for Declarations Act 1991*.

‘When magistrate must abstain from jurisdiction

‘552D.(1) A magistrate must abstain from dealing summarily with a charge under section 552A or 552B²⁵ if satisfied, at any stage, and after hearing any submissions by the prosecution and defence, that because of the nature or seriousness of the offence or any other relevant consideration the defendant, if convicted, may not be adequately punished on summary conviction.

‘(2) If the magistrate abstains from jurisdiction, the magistrate must proceed to hear and decide the charge as a committal proceeding.

‘Charge may be heard and decided where defendant arrested or served

‘522E. Without limiting the places a charge may be heard summarily under section 552A or 552B, the charge may also be heard and decided at a place appointed for holding magistrates courts within the district in which the accused person was arrested on the charge or served with the summons for the charge under the *Justices Act 1886*.

‘Time for prosecution

‘522F. If a court hears and decides a charge summarily under section 552A or 552B, the court has jurisdiction despite the time that has elapsed from the time when the matter of complaint of the charge arose.

²⁵ Section 552A (Charges of indictable offences that must be dealt with summarily on prosecution election) or 552B (Charges of indictable offences that may be dealt with summarily)

‘Value of property affecting jurisdiction to be decided by magistrate

‘522G. For section 552B²⁶, the value of property or of damage to property is the value as decided by the Magistrates Court.

‘Maximum punishment of indictable offences that are dealt with summarily

‘552H. A person is liable on summary conviction under section 552A²⁷ or 552B to the lesser of the following maximum penalties—

- (a) 100 penalty units or 3 years imprisonment;
- (b) the penalty for the offence had it been dealt with on indictment.

‘Procedure under section 552B

‘552I.(1) This section applies to any charge for an offence to which section 552B applies.

‘(2) If the defendant is not legally represented, the court is required—

- (a) to state the substance of the charge to the defendant; and
- (b) to explain to the defendant that he or she is entitled to be tried by a jury and is not obliged to make any defence; and
- (c) to ask the defendant whether he or she consents to the charge being dealt with summarily.

‘(3) Whether or not the defendant is legally represented, unless the defendant informs the magistrate that he or she desires to be tried by a jury, the court must ask whether the defendant is guilty or not guilty of the offence.

‘(4) If the defendant says ‘guilty’ the court must convict.

‘(5) If the defendant says ‘not guilty’ the court must hear the defence.

‘(6) After the defendant enters a plea, the magistrate must then deal with the charge summarily.

²⁶ Section 552B (Charges of indictable offences that may be dealt with summarily)

²⁷ Section 552A (Charges of indictable offences that must be dealt with summarily on prosecution election)

‘(7) Unless a defendant’s criminal history is admissible in evidence, the magistrate must not have any regard to the defendant’s criminal history—

- (a) before receiving a plea of guilty or making any decision of guilt; or
- (b) for deciding whether the defendant may be adequately punished on summary conviction.

‘Appeals against decision to decide charge summarily

‘552J.(1) This section applies if a person is summarily convicted or sentenced under section 552A or 552B.²⁸

‘(2) The grounds on which the person may appeal include that the magistrate erred by deciding the conviction or sentence summarily.

‘(3) The grounds on which the Attorney-General may appeal against sentence include that the magistrate erred by deciding the sentence summarily.

‘(4) On an appeal against sentence relying on a ground that the magistrate erred by proceeding summarily, the court deciding the appeal may, if it decides to vary the sentence, impose the sentence the court considers appropriate up to the maximum sentence that could have been imposed if the matter had been dealt with on indictment.’

Amendment of s 560 (Nature of indictments)

97.(1) Section 560, heading—

omit, insert—

‘Presenting indictments’.

(2) Section 560—

insert—

‘(3) If a person has been committed for trial for an indictable offence that

²⁸ Section 552A (Charges of indictable offences that must be dealt with summarily on prosecution election) or 552B (Charges of indictable offences that may be dealt with summarily)

may be tried in a District Court, the director of public prosecutions or a Crown prosecutor may present the indictment to either the Supreme Court or a District Court.

‘(4) In deciding the court to which the indictment is to be presented, the director of public prosecutions or Crown prosecutor must have regard to—

- (a) the complexity of the case; and
- (b) the seriousness of the alleged offence; and
- (c) any particular importance attaching to the case; and
- (d) any other relevant consideration.’.

Amendment of s 563 (Nolle prosequi)

98.(1) Section 563(1), after ‘indictment’—

insert—

‘, or in relation to any charge contained in any indictment,’.

(2) Section 563(2), after ‘indictment’—

insert—

‘, or in relation to any charge contained in any indictment,’.

(3) Section 563(3), after ‘indictment’—

insert—

‘or charge’.

Amendment of s 566 (Particular indictments)

99.(1) Section 566(1), (4) and (4A)—

omit.

(2) Section 566(5A), ‘any coin or’—

omit.

(3) Section 566(5A), ‘of either’—

omit.

(4) Section 566(5A), ‘such coin or’—

omit, insert—

‘the’.

(5) Section 566(15), ‘subsection (1)’—

omit, insert—

‘section 1’.

(6) Section 566(16), from ‘procuring the delivery’ to ‘money or goods’—

omit, insert—

‘inducing the delivery of anything dishonestly’.

(7) Section 566(17), ‘or trick or device’—

omit.

(8) Section 566(18)—

omit.

Amendment of s 568 (Cases in which several charges may be joined)

100.(1) Section 568(1)—

omit, insert—

‘**568.(1)** In an indictment against a person for stealing property the person may be charged and proceeded against on 1 charge even though—

- (a) the property belongs to the same person or to different persons;
or
- (b) the property was stolen over a space of time; or
- (c) different acts of stealing took place at different times, whether or not the different acts can be identified.’.

(2) Section 568(1A), after ‘the taking’—

insert—

‘, destruction or conversion’.

(3) Section 568(1B), (1C) and (2)—

omit.

(4) Section 568(1A) and (4) to (6)—

renumber as section 568(2) and (6) to (10).

(5) Section 568—

insert—

‘(3) In an indictment against a person for fraud the person may be charged and proceeded against on 1 charge even though—

- (a) any number of specific frauds of the same type has been committed, whether or not each specific act of fraud can be identified; or
- (b) the frauds have extended over any space of time; or
- (c) property applied belongs to different persons, and has come into the possession or control of the accused person at different times and subject to different trusts, directions, conditions, or duties to account; or
- (d) the property, benefit, detriment or inducement belongs to or is caused to different persons.

‘(4) In an indictment against a person for receiving property the person may be charged and proceeded against on 1 charge even though—

- (a) the property belongs to different persons; or
- (b) the property was received over a space of time; or
- (c) different acts of receiving took place at different times, whether or not the different acts can be identified.

‘(5) In an indictment against a person for forgery or uttering the person may be charged and proceeded against on 1 charge even though—

- (a) any number of separate forgeries or utterings has been committed, whether or not the separate acts of forgery or uttering can be identified; or
- (b) the forgeries or utterings have extended over any space of time; or
- (c) there was an intent to defraud one or more than one person.’.

Amendment of s 569 (Accessories)

101. Section 569, after ‘committing an offence,’—

insert—

‘or who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence.’.

Amendment of s 572 (Amendment of indictments)

102.(1) Section 572, after ‘omitted’, first mention—

insert—

‘, or any count that ought to have been included in the indictment has been omitted’.

(2) Section 572—

insert—

‘**(2A)** If the court is satisfied no injustice will be done by amending the indictment, the court may make the order at any time before, or at any stage of, the trial on the indictment, or after verdict.’.

(3) Section 572(2A) to (4)—

renumber as section (3) to (5).

Amendment of s 577 (Charge of homicide of child)

103. Section 577, from ‘woman had recently’—

omit, insert—

‘female had recently been delivered, the accused person may be convicted of an offence defined in section 313 or 314²⁹, if any offence under either of those sections is established by the evidence.’.

Amendment of s 578 (Charge of offence of a sexual nature)

104.(1) Section 578(1), ‘210(1)(a), 215’—

²⁹ Section 313 (Killing unborn child) or 314 (Concealing the birth of children)

omit, insert—

‘208, 209, 210(1), 215, 216’.

(2) Section 578—

insert—

‘(1A) On an indictment charging a person with the crime of unlawful sodomy under any part of section 208³⁰, the person may be convicted of any offence, if established by the evidence, defined in section 209, 210(1), 216, 217, 218 or 337.³¹’.

(3) Section 578(2), from ‘section’—

omit, insert—

‘section 210(1), 217 or 218.’.

(4) Section 578(3), ‘210(1)(a)’—

omit, insert—

‘210(1)’.

(5) Section 578(4), from ‘section’—

omit, insert—

‘section 208, 209, 210(1), 216, 217, 218 or 337.’.

Amendment of s 581 (Stealing, false pretences, and cheating)

105.(1) Section 581, heading—

omit, insert—

‘Offences of dishonesty’.

(2) Section 581(b)—

omit, insert—

³⁰ Section 208 (Unlawful sodomy)

³¹ Section 209 (Attempted sodomy), 210 (Indecent treatment of children under 16), 216 (Abuse of intellectually impaired persons), 217 (Procuring young person etc. for carnal knowledge), 218 (Procuring sexual acts by coercion etc.) or 337 (Sexual assaults)

‘(b) fraud, with or without a circumstance of aggravation;’.

(3) Section 581(d) and (e)—

omit, insert—

‘(d) unlawful use or possession of a vehicle, with or without a circumstance of aggravation;

(e) unlawfully receiving anything under section 433³²;’.

(4) Section 581(f), ‘procuring’—

omit, insert—

‘counselling or procuring’.

Replacement of s 590 (Right to be tried)

106. Section 590—

omit, insert—

‘Bringing accused to trial

‘**590.(1)** Subject to section 561³³, when a person charged with an indictable offence has been committed for trial and it is intended to put the person upon his or her trial for the offence, the director of public prosecutions or a Crown prosecutor must present the indictment no later than 6 months after the date on which the person was committed for trial.

‘(2) If—

- (a) an indictment is not so presented; or
- (b) it becomes apparent that evidence necessary to establish the offence is not going to be available; or
- (c) the accused has absconded and is not likely to be found before the expiry of the period; or
- (d) if for any other reason it is impracticable to present the indictment;

³² Section 433 (Receiving stolen property etc.)

³³ Section 561 (Ex officio informations)

the director of public prosecutions or a Crown prosecutor may apply to the Court at any time before or after the expiry of the period for an extension of time within which to present an indictment.

‘(3) The court hearing the application may, if satisfied that good cause is shown and no miscarriage of justice is likely to result, grant the extension of time the court considers just.

‘(4) If an indictment is not presented before the expiry of the period or any extension of the period, the person is entitled to be discharged from the consequences of his or her committal.’.

Insertion of new s 590B

107. After section 590A—

insert—

‘Advanced notice of expert evidence

‘**590B.(1)** If a party to a trial intends to adduce expert evidence in relation to an issue in the trial, he or she must—

- (a) as soon as practicable—give the other parties to the trial written notice of the name of the expert, and any finding or opinion he or she proposes to adduce; and
- (b) as soon as practicable before the trial date—give the other parties to the proceeding a copy of the expert report on which the finding or opinion is based.

‘(2) The directions judge under section 592A³⁴ or trial judge may fix times for compliance with subsection (1).’.

Insertion of new s 592A

108. After section 592—

insert—

³⁴ Section 592A (Pre-trial directions and rulings)

‘Pre-trial directions and rulings

‘592A.(1) If the Crown has presented an indictment before a court against a person, a party may apply for a direction or ruling, or a judge of the court may on his or her initiative direct the parties to attend before the court for directions or rulings, as to the conduct of the trial.

‘(2) Without limiting subsection (1) a direction or ruling may be given in relation to—

- (a) the quashing or staying of the indictment; or
- (b) the joinder of accused or joinder of charges; or
- (c) the provision of a statement, report, proof of evidence or other information; or
- (d) noting of admissions and issues the parties agree are relevant to the trial or sentence; or
- (e) deciding questions of law including the admissibility of evidence and any step that must be taken if any evidence is not to be admitted; or
- (f) ascertaining whether a defence of insanity or diminished responsibility or any other question of a psychiatric nature is to be raised; or
- (g) the psychiatric or other medical examination of the accused; or
- (h) the exchange of medical, psychiatric and other expert reports; or
- (i) the reference of the accused to the Mental Health Tribunal; or
- (j) the date of trial and directing that a date for trial is not to be fixed until it is known whether the accused proposes to rely on a defence of insanity or diminished responsibility or any other question of a psychiatric nature; or
- (k) the return of subpoenas and notices to Crown witnesses; or
- (l) encouraging the parties to narrow the issues and any other administrative arrangement to assist the speedy disposition of the trial.

‘(3) A direction or ruling is binding unless the trial judge, for special reason, gives leave to re-open the direction or ruling.

‘(4) A direction or ruling must not be subject to interlocutory appeal but may be raised as a ground of appeal against conviction or sentence.’.

Amendment of s 594 (Accused person to be called upon to plead to indictment)

109.(1) Section 594(1), ‘At the time appointed for the trial of an accused person’—

omit, insert—

‘On the presentation of the indictment or at any later time’.

(2) Section 594(1), ‘the person’—

omit, insert—

‘he or she’.

(3) Section 594(2)—

renumber as section 594(3).

(4) Section 594—

insert—

‘(2) If the indictment contains more than one count, a plea to any number of counts may, with the consent of the accused person, be taken at one and the same time on the basis that the plea to one count will be treated as a plea to any number of similar counts on the same indictment.’.

Amendment of s 597A (Separate trials where 2 or more charges against the same person)

110. After section 597A(1)—

insert—

‘(1AA) In considering potential prejudice, embarrassment or other reason for ordering separate trials under this provision in relation to alleged offences of a sexual nature, the court must not have regard to the possibility that similar fact evidence, the probative value of which outweighs its potentially prejudicial effect, may be the result of collusion or suggestion.’.

Amendment of s 604 (Trial by jury)

111.(1) Section 604, ‘If’—

omit, insert—

‘Subject to subsection (2), if’.

(2) Section 604, after ‘plea of guilty’—

insert—

‘, a plea of autrefois acquit or autrefois convict’.

(3) Section 604—

insert—

‘(2) Issues raised by a plea of autrefois acquit or autrefois convict must be tried by the court.’.

Amendment of s 631A (Plea of guilty during trial)

112.(1) Section 631A(1), ‘the person’—

omit, insert—

‘he or she’.

(2) Section 631A(1)(a), ‘the person’s’—

omit, insert—

‘his or her’.

(3) Section 631A(1)(c), ‘and in the presence of the jury’—

omit.

(4) Section 631A(1)(d), ‘and in the presence of the jury’—

omit.

(5) Section 631A—

insert—

‘(1A) It is not necessary for the plea to be taken in the jury’s presence.’.

(6) Section 631A(4), ‘the person’—

omit, insert—

‘him or her’.

Replacement of s 632 (Accomplices)

113. Section 632—

omit, insert—

‘Corroboration

‘**632.(1)** A person may be convicted of an offence on the uncorroborated testimony of 1 witness, unless this Code expressly provides to the contrary.’³⁵

‘**(2)** On the trial of a person for an offence, a judge is not required by any rule of law or practice to warn the jury that it is unsafe to convict the accused on the uncorroborated testimony of 1 witness.

‘**(3)** Subsection (1) or (2) does not prevent a judge from making a comment on the evidence given in the trial that it is appropriate to make in the interests of justice, but the judge must not warn or suggest in any way to the jury that the law regards any class of complainants as unreliable witnesses.’.

Amendment of s 636 (Evidence of blood relationship)

114. Section 636(1), definition “**prescribed offence**”, ‘or 223’—

omit.

Amendment of s 639 (Evidence on charges of offences against customs laws)

115.(1) Section 639, heading—

omit, insert—

³⁵ See section 52 (Sedition), section 57 (False evidence before Parliament, section 117 (False claims), section 125 (Evidence on charge of perjury) and section 195(Evidence).

‘Averments about public officers and public service officers or employees’.

(2) Section 639, from ‘particular time an’ to ‘smuggling, is’—
omit, insert—

‘particular time a public officer or public service officer or employee is’.

(3) Section 639, from ‘was an officer’ to ‘smuggling, at’—
omit, insert—

‘was a public officer or public service officer or employee at’.

Amendment of s 643 (Intention to defraud)

116.(1) Section 643, heading—
omit, insert—

‘Intention to injure, deceive or defraud’.

Insertion of new s 644A

117. Chapter 63, after section 644—
insert—

‘Witness giving incriminating answers

‘644A.(1) A person who is called as a witness in any proceeding for an offence against section 59, 60, 87, 103, 118, 120, 121, 122, 127 or 133³⁶, must not be excused from answering any question relating to the offence on the ground that the answer to the question may incriminate or tend to incriminate himself or herself.

‘(2) An answer to a question in a proceeding to which this section applies is not admissible in evidence against the person giving the answer other

³⁶ Section 59 (Member of Parliament receiving bribes), 60 (Bribery of member of Parliament), 87 (Official corruption), 103 (Bribery), 118 (Bargaining for offices in public service), 120 (Judicial corruption), 121 (Official corruption not judicial but relating to offences), 122 (Corrupting or threatening jurors), 127 (Corruption of witnesses) or 133 (Compounding crimes)

than in the proceeding or in a prosecution for perjury in respect of the answer.’.

Insertion of new s 651

118. After section 650—

insert—

‘Supreme Court and District Court may decide summary offences

‘**651.(1)** If an indictment has been presented against a person before the Supreme Court or a District Court (the “**court**”), the court may also, subject to subsection (2), hear and decide summarily any charge of a summary offence that has been laid against the person.

‘**(2)** The court must not hear and decide the summary offence unless—

- (a) the court considers it appropriate to do so; and
- (b) the accused person is represented by a legal practitioner; and
- (c) the Crown and the accused consent to the court so doing; and
- (d) the accused person states his or her intention of entering a plea of guilty to the charge; and
- (e) the complaint or bench charge sheet for the offence is before the court, whether or not returnable before another court.

‘**(3)** Subject to this section, the practices of the court and the express provisions of this Code relating to taking a plea on an indictment apply to the taking of a plea to the charge in a complaint or bench charge sheet.

‘**(4)** On convicting the person of the summary offence, the court may make any orders in relation to the conviction a magistrates court may make.

‘**(5)** The power to make rules for the court extends to the making of rules in relation to the practice and procedure to be applied in the hearing and decision summarily of summary offences by the court.

‘**(6)** If—

- (a) the person charged with the summary offence states his or her intention of entering a plea of guilty to the charge; but
- (b) subsequently states an intention of entering a plea of not guilty to

the charge or enters a plea of not guilty to the charge;
the court must direct that the charge be heard by a magistrates court and order that the registrar send the relevant court record to the registrar of the relevant magistrates court.

‘Proceedings to transmit summary charge

‘652.(1) A charge for a summary offence may be transmitted to the registry of the Supreme Court or a District Court for the purpose of the charge being dealt with under section 651 at any time despite any limitation in any Act as to the time for commencing proceedings for a summary offence.

‘(2) If a person charged with committing a summary offence wishes to have the offence heard and decided under section 651, he or she must make written application to the registrar of the relevant magistrates court to transmit the relevant complaint or bench charge sheet to the registrar of the Supreme Court or District Court.

‘(3) An application under subsection (2) must be a written statement signed by the applicant containing at least—

- (a) a declaration by that person under the *Oaths Act 1867*; and
- (b) the following information—
 - (i) the charge to be transmitted;
 - (ii) the defendant’s intention to plead guilty to the offence charged;
 - (iii) that the defendant wishes to have the charge transferred to the Supreme Court or District Court for no other reason than to plead guilty to the charge.

‘(4) On being satisfied that the application fulfils the requirements of this section the registrar of the relevant magistrates court must transmit, by any secure and expeditious means, the relevant complaint or bench charge sheet or copy to the registrar of the Supreme Court or District Court.

‘(5) On the final decision of the transmitted charge by the Supreme Court or District Court, the registrar of the relevant court must, within 1 calendar month, notify the result of the decision to the registrar of the relevant

magistrates court and no further appearance is required in that court by any party to the proceeding.’.

Amendment of s 669A (Appeal by Attorney-General)

119.(1) Section 669A—

insert—

‘**(1A)** The Attorney-General may appeal to the court against an order staying proceedings or further proceedings on an indictment.’.

(2) Section 669A(2), after ‘if’—

insert—

‘the person charged has been’.

(3) Section 669A(2)(a) and (b), ‘the person has been’—

omit.

(4) Section 669A(2)—

insert—

‘(c) convicted, following a determination of the court of trial on that point of law—

- (i) of a charge other than the charge that was under consideration when the point of law arose; or
- (ii) of the same charge with or without a circumstance of aggravation.’.

(5) Section 669A(2A)—

insert—

‘(c) convicted, following a determination of the court of trial on that point of law—

- (i) of a charge other than the charge that was under consideration when the point of law arose; or
- (ii) of the same charge with or without a circumstance of aggravation.’.

(6) Section 669A(4)(b)—

omit, insert—

‘(b) if the person so desires, by the person acquitted or discharged or by counsel on his or her behalf;’.

(7) Section 669A(5), after ‘acquitted’—

insert—

‘or convicted’.

(8) Section 669A(5), after ‘acquittal’—

insert—

‘or conviction’.

Provisions repealed

120. Each provision specified in schedule 1 is repealed.

PART 4—OTHER ACTS REPEALED OR AMENDED

Act repealed

121. The Criminal Code 1995 is repealed.

Other Acts amended

122. Schedule 2 amends the Acts mentioned in it.

SCHEDULE 1**PROVISIONS OF CRIMINAL CODE REPEALED**

section 120

Section 32 (Compulsion of husband)

Section 33 (No conspiracy between husband and wife alone)

Section 35 (Liability of husband and wife for offences committed by either with respect to the other's property)

Chapter 6 (Treason and other offences against the Sovereign's person and authority)

Section 50 (Effect of prosecution)

Section 53 (Defamation of foreign princes)

Section 67 (Smuggling or rescuing goods under arms)

Section 68 (Smuggling under arms or in disguise)

Section 76 (Assembling for the purpose of smuggling)

Section 84 (Disclosure of secrets relating to defences by public officers)

Section 86 (Disclosure of other official secrets)

Section 145C (Summary proceedings)

Chapter 18 (Offences relating to the coin)

Chapter 19 (Offences relating to posts and telegraphs)

Section 196 (Shooting at customs boats or officers)

Section 197 (Resisting officers engaged in preventing smuggling)

Section 198 (Resisting customs officers)

Section 223 (Incest by adult female)

Section 229A (Indictable offences against morality that may be dealt with summarily)

SCHEDULE 1 (continued)

- Section 229P (Summary proceedings)
- Section 237 (False information as to health of foreign ships)
- Section 244 (Fraudulent destruction or removal of goods liable to duty)
- Chapter 31 (Assaults punishable on summary conviction), heading
- Section 341 (Jurisdiction of justices)
- Section 342 (Some assaults not to be so dealt with)
- Section 343A (Assaults occasioning bodily harm)
- Section 344 (Aggravated assaults)
- Section 359B (Summary proceedings for unlawful stalking)
- Section 408B (Indictable offences relating to user or possession of motor vehicles, aircraft or vessels that may be dealt with summarily)
- Section 420 (Entering dwelling house with intent to commit an indictable offence)
- Section 422 (Breaking into places with intent to commit indictable offences)
- Section 425A (Definitions for purposes of Chapter)
- Section 426 (Definition)
- Section 427 (Obtaining goods or credit by false pretence or wilfully false promise)
- Section 428 (Obtaining execution of valuable security by a false pretence or wilfully false promise)
- Section 429 (Cheating)
- Section 442H (Offences)
- Chapter 43 (Summary conviction for stealing and like indictable offences)
- Section 449 (Time for prosecution)
- Chapter 47 (Summary conviction for certain offences)
- Section 485 (Further definitions)
- Section 486 (Definition of forgery)

SCHEDULE 1 (continued)

Section 487 (Certain matters immaterial)

Section 489 (Uttering false documents and counterfeit seals)

Section 490 (Uttering cancelled or exhausted documents)

Section 491 (Uttering cancelled stamps)

Section 505 (Sending false telegrams)

Section 511 (Counterfeit stamps)

Section 512 (Paper for postal purposes)

Section 513 (Paper and dies for postage stamps)

Chapter 53 (Fraudulent debtors)

Section 531 (Concealment by officers of companies on reduction of capital)

Section 532 (Falsification of books of companies)

Section 556 (Summary convictions—time)

Section 633 (Evidence on charge of treason)

Section 681 (Seizure of counterfeit coin, tools for coining etc.)

Section 696 (Names of jury to be given to person charged with treason or concealment of treason)

Section 698 (Committal of fraudulent debtors).

SCHEDULE 2**OTHER ACTS AMENDED**

section 122

BAIL ACT 1980**1. Section 20(3A)(a)(i), ‘during the sittings specified in the undertaking’—***omit.***CRIMINAL LAW (SEXUAL OFFENCES) ACT 1978****1. Section 3, definitions “prescribed sexual offence” and “report”—***omit.***2. Section 3—***insert—***‘“prescribed sexual offence”** means any of the following offences—

- (a) rape;
- (b) attempt to commit rape;
- (c) assault with intent to commit rape;
- (d) a sexual assault defined in the Criminal Code, section 337.³⁷

“report” means an account in writing and an account broadcast or distributed in any way in or as sound or visual images.’.

³⁷ Criminal Code, section 337 (Sexual assaults)

SCHEDULE 2 (continued)

DISTRICT COURTS ACT 1967**1. Section 61(2), after ‘419,’—***insert—*

‘421,’.

EVIDENCE ACT 1977**1. Section 93A, heading, after ‘12 years’—***omit, insert—*

‘or intellectually impaired person’.

2. Section 93A, after ‘12 years’—*insert—*

‘or an intellectually impaired person’.

3. Section 93A(1)(b) and (c) and (2), after ‘child’—*insert—*

‘or intellectually impaired person’.

4. Section 93A—*insert—*

‘(5) A person is an “**intellectually impaired person**” if the person has a disability—

- (a) that is attributable to an intellectual, psychiatric, cognitive or neurological impairment or a combination of these; and

SCHEDULE 2 (continued)

- (b) that results in—
- (i) a substantial reduction of the person's capacity for communication, social interaction or learning; and
 - (ii) the person needing support.'

5. After section 131—

insert—

'Court may order interpreter to be provided

'131A.(1) In a criminal proceeding, a court may order the State to provide an interpreter for a complainant, defendant or witness, if the court is satisfied that the interests of justice so require.

'(2) In deciding whether to make an order under subsection (1), the court must have regard to the fundamental principles of justice for victims of crime declared by the Criminal Offence Victims Act 1995, part 2.'

6. After section 132—

insert—

'Admissibility of similar fact evidence

'132A. In a criminal proceeding, similar fact evidence, the probative value of which outweighs its potentially prejudicial effect, must not be ruled inadmissible on the ground that it may be the result of collusion or suggestion, and the weight of that evidence is a question for the jury, if any.

'Evidence of domestic violence

'132B.(1) This section applies to a criminal proceeding against a person for an offence defined in the Criminal Code, chapters 28 to 30.

'(2) Relevant evidence of the history of the domestic relationship between the defendant and the person against whom the offence was committed is admissible in evidence in the proceeding.'

SCHEDULE 2 (continued)

JUSTICES ACT 1886**1. Section 108(1), ‘until the sittings of the court before which the defendant is to be tried, or’—**

omit.

2. Section 113(1), ‘until the sittings of that court, or’—

omit.

3. Section 126(1)(a), ‘sittings of a’—

omit.

4. Section 147A—

omit.

JUVENILE JUSTICE ACT 1992**1. Section 8(2)(a)—**

omit, insert—

‘(a) the Criminal Code, section 552B(1)(a)³⁸ on a charge of receiving, or the Criminal Code, section 552B(1)(e); or’.

2. Section 98—

omit, insert—

³⁸ Criminal Code, section 522B (Charges of indictable offences that may be dealt with summarily)

SCHEDULE 2 (continued)

‘Correction of error by court making order

‘**98.(1)** The *Penalties and Sentences Act 1992*, section 188³⁹ applies to a Childrens Court Judge and a Childrens Court Magistrate.

‘**(2)** For the *Penalties and Sentences Act 1992*, section 188(5)(b), a party to the proceeding includes, if the defendant affected is a child, the chief executive or the commission acting in the interests of the child.

‘**(3)** This section does not affect the power of a court under another section of this division.’

MENTAL HEALTH ACT 1974**1. Section 28A, definition “unsoundness of mind”, after ‘Criminal Code’—**

insert—

‘, but does not include a state of mind resulting, to any extent, from intentional intoxication or stupefaction alone or in combination with some other agent at or about the time of the alleged offence’.

2. Section 28D(2), ‘intends to’—

omit, insert—

‘may’.

3. Section 43A(3)—

omit, insert—

‘**(3)** An appeal to the Court of Appeal against a decision of the Mental Health Tribunal may be instituted by—

³⁹ *Penalties and Sentences Act 1992*, section 188 (Court may reopen sentencing proceedings)

SCHEDULE 2 (continued)

- (a) the person to whose mental condition the decision relates; or
- (b) the Attorney-General.’.

4. Section 43A(4), ‘28 days’—

omit, insert—

‘1 calendar month’.

PENALTIES AND SENTENCES ACT 1992**1. After section 13—**

insert—

‘Cooperation with law enforcement authorities to be taken into account

‘**13A.(1)** This section applies for a sentence that is to be reduced by the sentencing court because the offender has undertaken to cooperate with law enforcement agencies in a proceeding about an offence, including a confiscation proceeding.

‘**(2)** The undertaking must be in a written declaration.

‘**(3)** The court must—

- (a) cause the written undertaking and the sentencing remarks under paragraph (b) to be sealed and placed on the court file with an order that it may only be opened by an order of the court, including on an application to re-open the sentencing proceedings under section 188(2)⁴⁰; and
- (b) state in closed court—

⁴⁰ Section 188 (Court may reopen sentencing proceedings)

SCHEDULE 2 (continued)

- (i) that the sentence is being reduced under this section; and
- (ii) the sentence it would otherwise have imposed.’.

2. Replacement of section 188 (Supreme or District Court may reopen proceeding to correct sentencing errors)—

omit, insert—

‘Court may reopen sentencing proceedings

‘188.(1) If a court has in, or in connection with, a criminal proceeding, including a proceeding on appeal—

- (a) imposed a sentence that is not in accordance with the law; or
- (b) failed to impose a sentence that the court legally should have imposed; or
- (c) imposed a sentence decided on a clear factual error of substance;

the court, whether or not differently constituted, may reopen the proceeding.

‘(2) Also, if—

- (a) a court has, in or in connection with, a criminal proceeding reduced a sentence because the offender has undertaken in a written declaration to cooperate with law enforcement agencies in a proceeding about an offence, including a confiscation proceeding; and
- (b) the offender, without reasonable excuse, does not cooperate under the undertaking;

the court, whether or not differently constituted, may reopen the proceeding.

‘(3) If a court reopens a proceeding, it—

- (a) must give the parties an opportunity to be heard; and
- (b) may resentence the offender—
 - (i) for a reopening under subsection (1)(a)— to a sentence in accordance with law; or

SCHEDULE 2 (continued)

- (ii) for a reopening under subsection (1)(b)— to a sentence the court legally should have imposed; or
 - (iii) for a reopening under subsection (1)(c)— to a sentence that takes into account the factual error; or
 - (iv) for a reopening under subsection (2)— to a sentence under subsection (4); and
- (c) may amend any relevant conviction or order to the extent necessary to take into account the sentence imposed under paragraph (b).
- ‘(4) On an application under subsection (2)—
- (a) if the court is satisfied that the offender has completely failed to cooperate, the court must resentence the offender having regard to the sentence that would otherwise have been imposed if an undertaking under section 13A⁴¹ had not been given; or
 - (b) if the court is satisfied that the offender has partly failed to cooperate, the court may substitute for the reduced sentence the sentence it considers appropriate, not greater than the sentence that would have been imposed if the undertaking had not been given.
- ‘(5) The court may reopen the proceeding—
- (a) on its own initiative at any time; or
 - (b) for a reopening under subsection (1)—on the application of a party to the proceeding made within—
 - (i) 28 days after the day the sentence was imposed; or
 - (ii) any further time the court may allow on application at any time; or
 - (c) for a reopening under subsection (2)—on the application of the prosecution made at any time, whether or not the appeal period

⁴¹ Section 13A (Cooperation with law enforcement authorities to be taken into account)

SCHEDULE 2 (continued)

under the Criminal Code, section 671(2)⁴² has expired.

‘(6) Subject to subsection (7), this section does not affect any right of appeal.

‘(7) For an appeal under any Act against a sentence imposed under subsection (3) or (4), the time within which the appeal must be made starts from the day the sentence is imposed under subsection (3) or (4).

‘(8) This section applies to a sentence imposed, or required to be imposed, whether before or after the commencement of this section.’.

VAGRANTS, GAMING AND OTHER OFFENCES ACT 1931

1. Section 2—

insert—

‘ **“graffiti instrument”** means a spray-paint can or another applying, scratching or etching implement.

“graffiti offence” means an offence to which the Criminal Code, section 469⁴³, punishment in special cases, clause 9, applies.

“spray-paint can” means a container capable of propelling or otherwise applying paint.’.

2. Part 4, after section 37B—

insert—

‘Possession of a graffiti instrument

‘**37C.(1)** A person must not without lawful excuse, the proof of which lies on him or her, possess a graffiti instrument under circumstances that

⁴² Criminal Code, section 671 (Time for appealing)

⁴³ Criminal Code, section 469 (Wilful damage)

SCHEDULE 2 (continued)

give rise to a reasonable suspicion that the instrument has been used or is intended to be used to commit a graffiti offence.

Maximum penalty—70 penalty units or 2 years imprisonment.

‘(2) The court may—

- (a) whether or not it imposes any other penalty for the offence, order the offender to perform community service under the *Penalties and Sentences Act 1992*, part 5 division 2⁴⁴ including, for example, removing graffiti from property; or
- (b) whether or not it imposes any penalty for the offence, order the offender to pay compensation to any person under the *Penalties and Sentences Act 1992*, part 3, division 4.⁴⁵.

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⁴⁴ *Penalties and Sentences Act 1992*, part 5 (Intermediate orders), division 2 (Community service orders)

⁴⁵ *Penalties and Sentences Act 1992*, part 3 (Releases, restitution and compensation), division 4 (Orders for restitution and compensation)